

GAHC010001272023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/11/2023

MOIN UDDIN LASKAR
S/O LATE MASKANDAR ALI LASKAR, R/O HAILAKANDI TOWN, WARD NO.
II, P.S.-HAILAKANDI, DIST-HAILAKANDI

VERSUS

MD. ABDUL HAKIM BARBHUIYA
S/O LATE ABDUL LATIF BARBHUIYA, VILL-BARNAGAD, P.S.-ALGAPUR,
DIST-HAILAKANDI, ASSAM

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : MR. A U CHOUDHURY

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (ORAL)

Date : 04-04-2023

Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. S. Islam, learned counsel for the respondent.

2. The petitioner/judgment debtor has filed an application under Article 227

of the Constitution of India against the order dated 21.12.2022 passed by the learned Civil Judge, Hailakandi rejecting the petition No. 365/01 arising out of Title Execution Case No. 06/2017 in connection with Title Suit No. 27/2010 wherein the decree holder was directed to file the draft sale deed by fixing the date 04.01.2023.

3. Today the revision is fixed for admission. However, after hearing both sides, the matter is taken up for final disposal.

4. The brief facts of the case is that the opposite party as plaintiff had instituted the Title Suit being No.27/2010 in the Court of Civil Judge, Hailakandi against the present petitioner for a decree of specific performance of contract with a direction to the defendant i.e. the present petitioner to execute and register a formal deed of sale in respect of the suit property by receiving balance consideration amounting to Rs.5,00,000/- from the opposite party/plaintiff and put the plaintiff in possession of the suit property.

5. The petitioner as defendant had contested the suit with a plea that as there had been no amicable partition of the suit land between the vendor of the petitioner and other co-sharers, the petitioner had been in ejmali possession with others and as such, cannot legally transfer any specific plot of land until specific partition of the suit property.

6. The learned trial court vide judgment and decree dated 10.01.2017 had decreed the Title Suit No. 27/2010 for specific performance of the contract in favour of the plaintiff/opposite party. The learned trial court has observed that the plaintiff was entitled to get a register sale deed in respect of the suit property from the defendant/petitioner followed by delivery of possession after receiving the balance amount from the plaintiff and in default the plaintiff was

entitled to get a register sale deed through the process of the court and possession of the property thereof.

7. Against the said judgment and decree, the petitioner as appellant has preferred an appeal before this Court vide RFA No.53/2017 which was also dismissed by this Court. Subsequently, the petitioner also preferred an appeal before the Hon'ble Apex Court and the same was also dismissed vide order dated 09.02.2021 by the Hon'ble Apex Court. Thereafter, the petitioner had filed an application under Order 47 CPC praying for review of the judgment and order dated 01.11.2019 vide review petition No.96/2022 but the said review petition was also dismissed dated 02.09.2022 and subsequent application filed by the petitioner under Article 227 of the Constitution of India which was registered as CRP(IO)/151/2022 and the same was also dismissed on withdrawal. Thereafter, the petitioner as judgment-debtor had filed a petition before the learned Executing Court taking a plea of refunding the money so received from the plaintiff with an interest along with adequate and sufficient amount of compensation. The decree holder/opposite party filed a written objection to the said petition taking a stand that since the judgment-debtor had lost the proceedings in the Apex Court, the judgment debtor had no right to pray for alternative remedy in the execution proceeding.

8. The learned Executing Court after hearing both sides passed the order on 21.12.2022 on the premise that this is not the stage to agitate against the decree and the learned Executing Court does not have the power to modify the decree and accordingly, rejected the petition vide petition No. 365/01. Hence, this petition filed under Article 227 of the Constitution of India.

9. It has been submitted by the learned counsel for the petitioner that the learned Civil Judge has rightly passed the order that in execution stage of a

proceeding, the Executing Court does not have the power to modify the decree. It is also submitted that the suit property in question is the homestead of the petitioner and the petitioner is ready to refund the earnest money which was received by the plaintiff/opposite party. It is also the submission of the learned counsel for the petitioner that as the final sale deed has not been prepared, the petitioner may be allowed to file a review petition before the learned trial court against the decree passed in Title Suit No.27/2010.

10. On the other hand, learned counsel for the plaintiff/opposite party has argued that the revision is not maintainable as the Executing court cannot go beyond the decree. The petitioner had taken the last resort to file an appeal before the Apex Court which was also dismissed in connection with the suit property. Hence, at this stage, there is no question to accept the offer given by the petitioner/judgment-debtor.

11. I have considered the submissions made by the learned counsel for the parties. I have also perused the order dated 21.12.2022 passed by the learned Civil Judge, Hailakandi in Title Execution Case No. 06/2017.

12. It would be useful at this juncture, to refer to a judgment of the Hon'ble Supreme Court in *Hiralal vs. KaliNath*, reported in *MANU/SC/0041/1961*, wherein it was observed by the Hon'ble Apex Court that-

“the validity of a decree can be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seized of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of

rendering the Court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

13. In the case of *Ganapathi vs Balasubramania Gounder AIR1987, Mad124*, which takes the view that the question of validity of a decree is not one which can be agitated in execution, because it does not relate to the satisfactory discharge of the decree. It is only where a decree is passed by a Court, which lacks inherent jurisdiction to pass the decree, that the objection to the validity of the decree may be raised in a proceeding in execution, if such an objection appears on the face of the record.

14. Undoubtedly, the Executing Court does not have jurisdiction to go behind the decree, unless, there was lack of inherent jurisdiction and the Executing Court cannot go behind the decree in cases of erroneous exercise of jurisdiction. The only remedy in cases of erroneous exercise of jurisdiction is to challenge the same by filing an appeal. The Executing Court cannot travel beyond the decree under execution and an erroneous decree cannot be said to be a nullity nor can a decree based on an error be a nullity.

15. The Hon'ble Supreme Court in the case of *Sunder Dass v. Ram Prakash AIR 1977 SC 1201* has laid down that the validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree lacked inherent jurisdiction. A court is said to be lacking in jurisdiction when it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time of institution of the suit or when the suit was decreed. Inherent lack of jurisdiction means a power or jurisdiction which does not at all exist or vest in a court.

16. The settled legal position is that the executing court can go behind a decree only if there was lack of inherent jurisdiction and not on the ground that there was erroneous exercise of jurisdiction. It will not be open to a party to challenge a judgment when it is sought to be enforced on the ground that the judgment is based on wrong conclusions or on erroneous findings or on wrong application of law. As the remedy of the aggrieved party in such cases is to challenge the same in appeal or revision as the case may be and not to challenge it when it is sought to be enforced.

17. In the present case, the lack of jurisdiction was not pleaded by the petitioner nor the point as raised by the petitioner at this stage that he is willing to refund the earnest money which was received by the plaintiff earlier as consideration of selling the suit property to the decree holder/opposite party, they cannot raise the very same point in the Executing Court.

18. The Executing Court has jurisdiction only to execute the decree with the procedure laid down under Order 21 of Civil Procedure Code. The law on the point that the Executing Court cannot go beyond the decree is well settled. The Executing Court cannot sit in appeal over the decree passed by the court nor is entitled to pass any order which will virtually result in affecting the rights of the parties already settled under the decree.

19. In another case, *Pothuri Thulasidas vs Potru Nageswara Rao AIR 2005 AP 171*, it was held that once the decree reached finality, it is not open to the judgment-debtor to plead new facts in execution proceedings.

20. In view of the above legal proposition, this Court has no hesitation to hold that the Executing Court has no jurisdiction to entertain the said application vide No. 365/01 and the said application itself was not maintainable.

21. In the result, the present revision petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant