

GAHC010005322023



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

Case No. : CRP(IO)/21/2023

RITA LALA (BHUIYA)
W/O- SRI AMIT BHUIYA, BHUIYA GADDI ROAD, JANIGANJ BAZAR, P.O.
SILCHAR, DIST. CACHAR, ASSAM

VERSUS

BHANUMATI LALA AND 9 ORS
W/O- LATE KANAILAL LALA, R/O- CENTRAL ROAD, P.O. AND P.S.
SILCHAR, DIST.- CACHAR, ASSAM, PIN- 788001.

2:AMARESH SINGH
S/O- LATE ISWAR DAYAL SINGH
R/O- EAST NARSING ROAD
AMBICAPATTY
SILCHAR TOWN
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788004.

3:HRITESH SRIVASTAVA
S/O- LATE MAHENDRA LAL SRIVASTAVA
R/O- ITKHOLA
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788002.

4:HIMANGSHU RANJAN DEB
S/O- LATE HARISH CHANDRA DEB
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788001.

5:MOTILAL LALA

S/O- LATE MOHANLAL LALA
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788001.

6:MANOJ LALA
S/O- LATE MOHANLAL LALA
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788001.

7:DIPAK LALA
S/O- LATE MOHANLAL LALA
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788001.

8:SMT. RINA LALA
D/O- LATE MOHANLAL LALA
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788001.

9:SMT. BINA LALA
D/O- LATE MOHANLAL LALA
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN- 788001.

10:SMT. MINA LALA
D/O- LATE MOHANLAL LALA
R/O- CENTRAL ROAD
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM PIN- 788001

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 18.01.2023

Heard Mr. D. Chakrabarty, learned Counsel for the petitioner and Ms. A. Lala, learned counsel for the respondent No. 6.

By this petition under Article 227 of the Constitution of India read with Section 151 of the CPC, the petitioner has prayed for expeditious proceeding in Title Execution Case No. 04/2012, pending in the Court of learned Civil Judge No. 2, Cachar, Silchar and to execute the final decree of partition, dated 28.10.2009, passed in Title Suit No. 23/1987 by putting the petitioner in possession of the allotted share of the suit property as per decree.

The case of the petitioner, in brief, is that Title Suit No. 23/1987 was filed by Smt. Ahalya Lala and Smt. Bhanumati Lala against co-sharers of the joint family properties for ascertaining their shares as well as partition thereof and on 24.12.2001, a preliminary decree was passed in the said suit. The preliminary decree was put to challenge by the proforma respondent No. 9 in RFA No. 7/2013 before this Court and on 19.10.2004, SAHAM (allotment of shares) which eventually formed part of the final decree passed in the said suit was submitted before the learned Trial Court. However, the same was not given effect as per direction of this Court. Thereafter, final decree was drawn in the said Title Suit No. 23/1987. Subsequently, proforma respondent Nos. 6 and 7 herein preferred RFA No. 8/2013 before this Court against the final decree, which was eventually dismissed vide order, dated 11.01.2017. On 13.02.2017, the petitioner filed a petition for execution of her share of the decree, but the

same was kept in abeyance in Title Execution Case No. 04/2012. Thereafter, the case was posted on several dates and kept pending without executing the share of the decree of the petitioner. Hence, this petition.

Ms. A. Lala, learned counsel for the respondent No. 6, has no objection if a suitable order is passed.

Having considered the nature of averments made in the petition supported by copy of the relevant documents and the nature of relief sought for, this Court proposes to dispose of the petition at the motion stage itself, without prejudice to the respondents.

It may be pointed out that Section 47 of the Code of Civil Procedure requires that all objections relating to execution, discharge and satisfaction of the decree arising as between the parties to the suit should be decided by the Executing Court and not by a separate suit.

The present Title Execution Case No. 04/2012 has been arisen out of the decree for partition, dated 28.10.2009, passed in T.S. No. 23/1987. The order sheet of the aforesaid T. Ex. Case No. 04/2012 reveals that the said decree for partition of the suit property has been pending since long due to frequent adjournments being granted and due to pendency of new T.S. No. 82/2021, seeking permanent injunction to restrain from proceeding with T. Ex. Case No. 04/2012.

It is well settled that a decree by competent Court having achieved finality must be executed in terms of the decree and cannot be frustrated or defeated by entertaining any technical objections. The Executing Court is duty bound to execute the decree as it stands without going behind the decree

except when the decree is challenged as void.

For the above stated reasons, it is provided that the learned Executing Court shall make an endeavour for settlement of all objections within the purview of Section 47 of the Code of Civil Procedure so as to ensure an early rational execution of the decree in accordance with law.

With the above direction, the revision petition stands disposed of.

Be it mentioned that no observation made in course of this order shall have any bearing in the independent judicial discretion of the learned Executing Court.

JUDGE

Comparing Assistant