

GAHC010037972023



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

Case No. : CRP(IO)/121/2023

SMTI. REKHA MUKHARJEE AND 5 ORS.
W/O LATE SATYABRATA MUKHARJEE, R/O RAMANI ROAD-2, KARIMGANJ
TOWN, P.O., P.S. AND DIST-KARIMGANJ, ASSAM

2: SUBHASISH MUKHARJEE
S/O LATE SATYABRATA MUKHARJEE
R/O RAMANI ROAD-2
KARIMGANJ TOWN
P.O.
P.S. AND DIST-KARIMGANJ
ASSAM

3: SUBRATA MUKHARJEE
S/O LATE SATYABRAT MUKHARJEE
R/O RAMANI ROAD-2
KARIMGANJ TOWN
P.O.
P.S. AND DIST-KARIMGANJ
ASSAM

4: SMTI. SHANTA CHATTERJEE (MUKHARJEE)
W/O SRI SUBHANKAR CHATTERJEE
R/O JAMES RESIDENCE
BLOCK NO. 1
FLAT NO. 4D-1
MOTILAL GUPTA ROAD
BEHALA
KOLKATA-700008
WEST BENGAL

5: SMT. MITHU CHAKRABORTY (MUKHARJEE)
W/O SHRI RAJAT CHAKRABORTY
R/O FLAT NO. 704
7TH FLOOR

ROSE RESIDENCY
GARDENS
PLOT NO. 10
SECTOR-6
KHARGHAR
NAVI MUMBAI
MUMBAI-410210
MAHARASTRA

6: SMTI. RAKHI CHAKRABORTY (MUKHARJEE)
W/O BIBHUTI BHUSAN CHAKRABORTY
R/O NAYABARI
P.O.-TILLABAZAR
DIST-KARIMGANJ
ASSA

VERSUS

BISHNULAL RABIDAS AND 11 ORS.
S/O LATE RAGHURAM RABIDAS @ RAGHUNATH RABIDAS, R/O STATION
ROAD, KARIMGANJ TOWN, WARD NO. 18 OF THE KMB, P.O. AND DIST-
KARIMGANJ, ASSAM, PIN-788710

2:KESHAB LAL RABIDAS
S/O LATE KRISHNA RABIDAS
R/O STATION ROAD
KARIMGANJ TOWN
WARD NO. 18 OF THE KMB
P.O. AND DIST-KARIMGANJ
ASSAM
PIN-788710

3:NANDALAL RABIDAS
S/O LATE RAGHU RAM RABIDAS
R/O STATION ROAD
KARIMGANJ TOWN
WARD NO. 18 OF THE KMB
P.O. AND DIST-KARIMGANJ
ASSAM
PIN-788710

4:SMTI. LNGI RABIDAS
W/O SHRI BHAGIRATI RABIDAS
VILL-BARGOOL
P.O.-RATABARI
DIST-KARIMGANJ
ASSAM
PIN-788735

5:SMTI. JAMUNA RABIDAS
W/O SHRI RAMCHARAN RABIDAS
VILL-SADARSWANPUR
DIST-HAILAKANDI
ASSAM
PIN-788160

6:SMTI. MUNNI RABIDAS
D/O LATE KRISHNA RABIDAS
R/O STATION ROAD
KARIMGANJ TOWN
WARD NO. 18 OF THE KMB
P.O. AND DIST-KARIMGANJ
ASSAM
PIN-788710

7:SMTI. SARASWATI RABIDAS
W/O SRI SUKHAMOY RABIDAS
R/O PUTNIBASTI
P.O.-KUKITAL
DIST-KARIMGANJ
ASSAM
PIN-788725

8:GANGA RABIDAS
W/O KRISHNA RABIDAS
VILL AND P.O.-SADARSWANPUR
DIST-HAILAKANDI
ASSAM
PIN-788160

9:SADHU RABIDAS
S/O LATE LAKHSMI PRASHAD RABIDAS
VILL-PAKHICHERRA
P.O.-MONACHERRA
DIST-HAILAKANDI
ASSAM
PIN-788164

10:PRADIP RABIDAS
S/O LATE KRISHNA LAL RABIDAS
R/O STATION ROAD
KARIMGANJ TOWN
WARD NO. 18 OF THE KMB
P.O. AND DIST-KARIMGANJ
ASSAM
PIN-788710

11: PURAN RABIDAS
S/O LATE RAGHURAM RABIDAS @ RAGHU LAL RABIDAS
R/O STATION ROAD
KARIMGANJ TOWN
WARD NO. 18 OF THE KMB
P.O. AND DIST-KARIMGANJ
ASSAM
PIN-788710

12: SARIP RABIDAS
S/O LATE RAGHURAM RABIDAS @ RAGHU LAL RABIDAS
R/O STATION ROAD
KARIMGANJ TOWN
WARD NO. 18 OF THE KMB
P.O. AND DIST-KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR. B C DAS

Advocate for the Respondent : MR G N SAHEWALLA (FOR CAVEATOR)

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. B.C. Das,
Sr. Advocate.

For the Respondents: Mr. G.N. Sahewalla,
Sr. Advocate.

Date of Hearing: 23.05.2023.

Date of Judgment: 30.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. B.C. Das, learned senior counsel representing the petitioners as well as Mr. G.N. Sahewalla, learned senior counsel

representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 21.01.2022 passed by the learned Munsiff, No.1, Karimganj in Title Execution Case No.11/2016.

3. In the year 1990, the T.S. No.273/1990 was filed against the petitioners for their ejectment from the suit property. During the pendency of the suit, the predecessor-in-interest of the petitioners purchased a part of the suit property. Ultimately, the said suit was decreed in favour of the respondents. An appeal was preferred and the said appeal was also dismissed. Thus, the Execution proceeding being Title Execution Case No.11/2015 came into existence.

4. Thereafter, the respondents filed again T.S. No.191/1993 exercising their preferential right under Section 22 of the Hindu Succession Act, 1996 to purchase the suit property and for cancellation of the earlier sale deed. This suit was also decreed in favour of the respondents. Accordingly, the connected appeal as well as the connected second appeal were also dismissed. Thus, the Title Execution Case No.11/2016 came into existence.

5. This time, the petitioners filed the Title Suit being T.S. 150/2022 praying for declaration of their right, title and interest of the suit land and for setting aside the judgment and decree of T.S. 191/1993 and also for dismissal of Title Execution Case No.11/2016 (arising of T.S. No.191/1993).

6. The petitioners filed an application before the executing court praying for stay of this execution proceeding i.e. Title Execution Case

No.11/2016 on the ground that the subject-matter of the suit and the execution proceeding is the same. The executing court dismissed the prayer made by the petitioners.

7. I have considered the submissions made by the learned counsels of both sides.

8. Under Section 47 of the Code of Civil Procedure, a decree which is a nullity, can be the subject-matter of objection, not on any other ground either on error of law or of facts. The power of the Court under Section 47 of the Code, is very narrow. The subject-matter of T.S. 150/2022 and Title Execution Case No.11/2016 is the same, cannot be a ground for staying the execution proceeding.

9. I find that the petitioners have failed to present a good case in their favour. The order of the learned Magistrate does not require any interference of this Court. The present petition stands dismissed.

JUDGE

Comparing Assistant