

GAHC010040432022



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

Case No. : CRP/130/2022

M.K. MASHIUDDIN AHMED
S/O LATE DR. HABIBULLAH, R/O WARD NO. 2, MANAGALDAI TOWN, P.O.
AND P.S.-MANGALDAI, DIST-DARRANG, ASSAM-784125

VERSUS

DR. GAZI GIASUDDIN AHMED
S/ LATE HABIBULLAH, PERMANENT ADD-WARD NO. 2, MANGALDOI
TOWN, P.O. AND P.S.-MANGALDOI, DIST- DARRANG, ASSAM, PIN-784125,
PRESENT ADD-TRIBENI PATH, NEAR HOTEL ORIENTAL, DISPUR,
GUWAHATI-DIST- KAMRUP(M), ASSAM

Advocate for the Petitioner : MR. A SATTAR

Advocate for the Respondent : MS F AHMED (FOR CAVEATOR)

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

06.01.2023

Heard Mr. A. Sattar, learned Counsel for the petitioner/judgment debtor defendant and Mr. R. Baruah, learned counsel for the respondent/decreed holder plaintiff.

2. This petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), has been filed against the impugned order, dated 11.01.2022, passed in Misc (J) Case No. 36/2019 (arising out of T. Ex. Case No. 05/2018) whereby the application filed by the judgment debtor (the petitioner herein) under Section 47 of the CPC questioning the non-identifiability of the suit property (Schedule-V house) was rejected.

3. The case of the petitioner, in a nutshell, is that a title execution case being T. Ex. Case No. 05/2018 was filed by the respondent/plaintiff for execution of a decree, dated 14.05.2009, passed by the learned Civil Judge, Darrang, Mangaldoi in T.S. No. 15/1996, which was affirmed by the learned District Judge, Darrang at Mangaldoi vide judgment and order, dated 29.01.2013, passed in Title Appeal No. 3/2009 as well as by this Court vide Judgment and Order, dated 12.09.2018, passed in RSA No. 239/2013. The petitioner herein, being the judgment debtor, filed an application under Section 47 of the CPC registered as Misc. (J) Case No. 36/2019 raising certain issues relating to execution, discharge and non- identifiability of the schedule property (Schedule V house) from which the petitioner/ judgment debtor was sought to be evicted. The learned Executing Court after receipt of written objection from the respondent/decreed holder proceeded to hear the matter and thereafter, vide order, dated 11.01.2022, passed in the said case, rejected the application thereby denying the prayer of the petitioner/judgment debtor to hold any inquiry and determine the identity of the suit property (Schedule V house). Being aggrieved by the said order, dated 11.01.2022, the petitioner/judgment debtor has filed the instant revision petition.

4. The impugned order, dated 11.01.2022, passed in Misc. (J) Case No. 36/2019 arising out of T.Ex. Case No. 05/2018 is extracted hereinbelow

(relevant portion)-

“XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6. The main contention of the petitioner/judgment debtor that Schedule-V is not identifiable or it does not correspond with Schedule-II as shown in T.S. 15/1996 has already reached finality in RSA No.239/19 wherein Hon'ble Gauhati High Court in para 15 has specifically recorded “that the appellant/defendant no. 1 has also not succeeded in establishing that the house measuring 16'x10' under his occupation is standing upon his own land. Once parties have accepted that their rights over the family property would be governed by the deed of family settlement, there would be no scope for this court to go behind the said deed and record finding of facts which are inconsistent with the projection made in the registered deed, more so, when the deed of family settlement itself is not under challenge.” Thus the legality of the family settlement deed as well as the challenge of petitioner/judgment debtor that schedule-V is not identifiable is already been decided by the Hon'ble Gauhati High Court. In fact the above reference which was recorded by the Hon'ble Gauhati High Court shows that the petitioner/judgment debtor was unable to prove his valid possession over the room in dispute which is shown in Schedule-V by the O.P/DH. The petitioner/judgment debtor herein failed to put up any valid question which needs determination by this executing court. There is absolutely no infirmity in the identity of Schedule-V and therefore there is nothing to determine afresh by this executing court. The petitioner/judgment debtor having failed to establish his own possession as well as legality of the family settlement deed is again failing in showing as to how section 47 needs to be applied for execution of the decree because there is no discrepancy and anomaly in the decree which has reached finality and approval of the appellate courts and the decree being devoid of any anomaly or infirmity, this executing court finds no valid reason to determine any question relating to execution of the decree and therefore the prayer made by the petitioner/judgment debtor is rejected.

The case as referred by the petitioner/judgment debtor, i.e., Nahar Singh Vs. Harnak Singh and others is not at all applicable in favour of the petitioner/judgment debtor because family settlement deed is neither vague nor decretal property is unidentifiable.

7. In accordance this Misc case is dismissed on contest with cost of Rs.10,000/-.”

5. It may be pointed out that Section 47 of the CPC provides that all objections relating to execution, discharge and satisfaction of the decree between the parties to the suit are to be decided by the executing Court and not by a separate suit. The Hon'ble Supreme Court in *Brakewel Automotive Components (India) Private Limited Vs. P.R. Selvam Alagappan*, reported in

(2017) 5 SCC 371, held that a decree of Court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof. The Hon'ble Court further held that the powers of the Court under Section 47 CPC are quite different and much narrower than those in appeal/revision or review. The exercise of power under Section 47 CPC is microscopic and lies in a very narrow inspection hole and an execution Court can allow objection to the executability of the decree if it is found that the same is void *ab initio* and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutable after its passing. An executing Court can neither travel behind the decree nor sit like in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It has been consistently held that it is only in the limited cases where the decree is by a Court lacking inherent jurisdiction or is a nullity that the same is rendered *non est* and is thus, unexecutable. The Court clarified that an erroneous decree cannot be equaled with one which is a nullity.

6. In the instant case, the learned Civil Judge, Darrang at Mangaldoi decreed the suit being T.S. No. 15/1996 instituted by the respondent vide Judgment and Decree, dated 14.05.2009, declaring the respondent's title to the suit land as described in Schedule-I and the house described in Schedule-II evicting the petitioner herein from Schedule-V house and delivering the khas possession of the said house to the plaintiff/respondent herein etc. Being aggrieved, the defendant/petitioner herein preferred an appeal against the said judgment and decree being T.A. No. 03/2009 and the Court of learned District Judge, Darrang

at Mangaldoi dismissed the same, which was affirmed by this Court in RSA No. 239/2013 vide Judgment and Order, dated 12.09.2018 holding the view that the appellant/petitioner herein failed to make out any good ground warranting interference with the **concurrent findings of facts recorded by the Courts below**. Accordingly, on the application of the decree holder/respondent herein, the present Title Execution case has been registered for delivery of property specifically decreed under Section 51 of the CPC.

7. However, at the execution stage of the decree, on the death of the original defendant No. 2, Dr. Habibullah, his legal heir the petitioner/judgment debtor has filed the aforesaid petition before the said executing Court basically on three grounds, firstly, that there was a family settlement deed in between the plaintiff and defendants, the terms and conditions of which settlement were unknown to him and secondly, that he has been in continuous possession in the suit houses since prior to the institution of the suit along with his deceased father, of which there was no specific boundary to identify. Apart from that, thirdly, as reflected in the impugned order, the petitioner/judgment debtor failed to prove his possession over the room in dispute which is specifically shown in Schedule-V by the decree holder/respondent herein and the legality/validity of the aforesaid family settlement deed, the petition in question was rejected by the aforesaid impugned order.

8. A perusal of the record indicates that there is no report from the Nazir of the Executing Court that the house in question is not identifiable for the purpose of execution of the decree. It is further noticed that the decree being not at all ambiguous so as to obscure the specific description of the suit property including the house in question in Schedule-V making the relief granted unexecutable, the execution of the decree cannot be allowed to be defeated in

the absence of any ground to show that the decree was void *ab initio* and a nullity in any way jeopardizing the decreed rights of the plaintiff decree holder.

9. Therefore, the instant revision petition being devoid of any merit, the same stands **dismissed** with a cost of Rs.3,000/- (Rupees Three Thousand).

10. Accordingly, the interim stay granted vide order, dated 05.12.2022 stands vacated.

The petition stands disposed of.

JUDGE

Comparing Assistant