

GAHC010044022023



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

Case No. : CRP(IO)/247/2023

KALAN MAHATO
W/O LT. RAJ KUMAR MAHATO D/O LT. DURGA MAHATO R/O DURGABARI
ROAD NALIAPOL DIBRUGAH TOWN P.O. DIBRUGARH P.S DIBRUGARH
DIST. DIBRUGARH ASSAM

VERSUS

SONIA MAHATO AND 5 ORS
W/O LT. RAMESH MAHATO R/O DURGABARI ROAD NALIAPOL
DIBRUGAH TOWN P.O. DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH
ASSAM

2:DULAR CHAND MAHATO
S/O LT. RAMESH MAHATO R/O DURGABARI ROAD NALIAPOL
DIBRUGAH TOWN P.O. DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH
ASSAM

3:SURAJ MAHATO
S/O LT. RAMESH MAHATO R/O DURGABARI ROAD NALIAPOL
DIBRUGAH TOWN P.O. DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH
ASSAM

4:GIRIJA DEVI MAHATO
W/O LT. BISHNU MAHATO R/O DURGABARI ROAD NALIAPOL
DIBRUGAH TOWN P.O. DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH
ASSAM

5:LAXMI DEVI CHOUHAN
W/O SONTOSH CHOUHAN R/O DURGABARI ROAD NALIAPOL
DIBRUGAH TOWN P.O. DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH
ASSAM

6: BABITA DEVI MAHATO
W/O PARATMA MAHATO R/O DURGABARI ROAD NALIAPOOL DIBRUGAH
TOWN P.O. DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH ASSA

Advocate for the Petitioner : MR. A R SHOME

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

05-08-2023

Heard Shri A. R. Shome, learned counsel for the petitioner, who has filed this petition under Article 227 of the Constitution of India challenging an order dated 15.06.2018 passed by the learned Munsiff No. 1, Dibrugarh in Title Execution Case No. 12/2015.

The facts projected is that the petitioner was initially the Proforma Defendant in a suit being Title Suit No. 92/2010 instituted for partition. Shri Shome, the learned counsel however, at the outset has clarified that subsequently since the petitioner has contested the suit he was treated as a principal defendant.

It appears that the suit for partition was decreed with certain direction and execution was started. The learned counsel has referred to a petition filed by the counsel praying for certain directions in which the learned Executing Court had passed an order dated 15.06.2018. Though the prayer was to permit use of a JCB for demolishing certain structure on the portion occupied by the defendant, the learned Executing Court while allowing the petition had allowed such use under certain restrictions and on the supervision of the bailiff of the Court. It is however submitted that the said order was not pursued and there was no demolition exercise. It further appears that due to certain reasons, the matter was not pursued at all by the decree holders leading to passing of an order dated 22.03.2022 when the execution case was

filed. However, it appears that thereafter the decree holder have appeared and accordingly on 27.04.2022, fresh show-cause notices have been issued.

Shri Shome, the learned counsel has however submitted that in the meantime, there has been various developments including death of certain parties for which the decree holder has taken steps for substitution etc. which are pending consideration.

The apprehension however raised before this Court is that taking the advantage of the order dated 15.06.2018, the structures of the defendants over the suit land would be demolished.

This Court is however of the opinion that the present petition is itself misconceived inasmuch as the order by which restricted use of a JCB was permitted is of the year 2018 and in the meantime almost more than 5 years had passed and taking into account the change in the circumstances, until a fresh order is passed for such demolition for execution of the decree, the apprehension appears to be wholly unjustified and misconceived.

The powers of revision to be exercised by this Court is circumscribed and is dependent upon certain conditions which are broadly given as follows:

- i. When the Subordinate Court exercises jurisdiction not vested by law.
- ii. When there is a failure to exercise a jurisdiction vested by law.
- iii. When there is exercise of jurisdiction illegally or with material irregularity.

The amendment to the Code of Civil Procedure of the year 2009 has added a further restriction that such powers should not be exercised by the High Court except where the order, if made in favour of the party applying of the revision would have finally disposed of the suit or other proceedings.

It is a settled law that powers of revision are supervisory in nature. The power of revision is mainly to keep the Subordinate Courts within the bounds of their

jurisdiction. The Hon'ble Supreme Court in the case of **Rafat Ali v. Sugni Bai, reported in (1999) 1 SCC 133** has laid down as follows:

“8. The appellation given to the section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well-nigh settled that a revisional jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the "legality, regularity or propriety" of the order of the lower authority. Even such a widely-worded frame of the section may at best indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of supervisory jurisdiction...”

In view of the above, this Court is of the opinion that the instant petition is not maintainable and accordingly the same is dismissed. However, the petitioner is at liberty to file appropriate application before the Executing Court raising the aforesaid grievance and in the event such application filed, the same would be considered in accordance with law.

JUDGE

Comparing Assistant