

GAHC010045522023



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

Case No. : CRP(IO)/61/2023

SHAKUNTOLA KANOO

W/O- LT. KESHAB PRASHAD KANU, R/O- HAILAKANDI TOWN, WARD NO.
12, P.O. HAILAKANDI, P.S. HAILAKANDI, DIST.- HAILAKANDI, ASSAM-
788152

VERSUS

RAJENDRA PRASHAD KANU AND 14 ORS

S/O- RAMUGRO PRASHAD KANU, R/O- HAILAKANDI TOWN, WARD NO. 12,
P.O. HAILAKANDI, P.S. HAILAKANDI, DIST.- HAILAKANDI, ASSAM- 788152

2:SANJAY KUMAR KANU

S/O- SRI SUMANTA LAL KANU

R/O- VILL- NIVIA BAZAR

P.O. OLIVIA CHERRA

P.S. RATABARI

DIST.- KARIMGANJ

ASSAM- 788737

3:NANDA KISHOR KANU

S/O- SRI SUMANTA LAL KANU

R/O- VILL- NIVIA BAZAR

P.O. OLIVIA CHERRA

P.S. RATABARI

DIST.- KARIMGANJ

ASSAM- 788737

4:SANJIB KANU

S/O- SRI SUMANTA LAL KANU

R/O- VILL- NIVIA BAZAR

P.O. OLIVIA CHERRA

P.S. RATABARI

DIST.- KARIMGANJ
ASSAM- 788737

5:DIDUL KANU
S/O- SRI SUMANTA LAL KANU
R/O- VILL- NIVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI
DIST.- KARIMGANJ
ASSAM- 788737

6:KAMALJIT KANU
S/O- SRI SUMANTA LAL KANU
R/O- VILL- NIVIA BAZAR
P.O. OLIVIA CHERRA
P.S. RATABARI
DIST.- KARIMGANJ
ASSAM- 788737

7:SUMITRA KANU
W/O- SRI RAJENDRA PRASAD KANU
R/O- IRRIGATION DIVISION OFFICE
SARKARI BEGAN
P.O. HAFLONG
DIST.- NORTH CACHAR HILL
PIN- 788819
PRESENTLY RESIDING AT H.NO. 3N
JURIPAR
PANJABARI
3RD BY-LANE
WARD NO. 31
GUWAHATI- 37
ASSAM

8:SARITA GUPTA
W/O- SRI RAVI SHANKAR GUPTA
R/O- SWEET PALACE PARADISE
MAIN ROAD
DANAPUR BAZAR
DANAPUR CANTT
PATNA
BIHAR
PIN- 801503

9:SHARMILA GUPTA
W/O- LT. BIJON KUMAR GUPTA
26-04
166 STREET

DIST.- SLUSHING
NEW WORK
PIN- 11358 U.S.A.

10:SHARMISTA GUPTA
W/O- SRI MONOJ KUMAR GUPTA
FLAT NO. 101
SONA SUSHILA APARTMENT
12 MIAN ROAD
MATRIKERI
BANGALORE
54

11:SHEKHAR PRASAD KANU
S/O- LT. KASHAB PRASAD KANU
PRESENTLY RESIDING AT HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM- 788152

12:BIJAY PRASAD KANU
S/O- BOYAJNATH PRASAD KANU
R/O- HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM- 788152

13:AJAY PRASAD KANU
S/O- LAKSHI RANI KANU AND LT. GANESH PRASAD KANU
R/O- HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM- 788152

14:BHAGABOTI SAHU
W/O- LT. PAROSH NATH SAHU
C/O- MAA DENTAL CLINIC
R/O- SHIBBARI ROAD
HAILAKANDI TOWN
WARD NO. 12
P.O. HAILAKANDI
P.S. HAILAKANDI

DIST.- HAILAKANDI
ASSAM- 788152

15:SUBRATA KUMAR DEB
S/O- LT. SUNIL KUMAR DEB
R/O- AGENT
NETWAORK TRAVELS
HAILAKANDI TOWN
WARD NO. 11
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM- 78815

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : MR. S K GHOSH

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

10. 04. 2023

Heard Mr. MJ Quadir, learned counsel for the petitioner. Also heard Mr. SK Ghosh, learned counsel for the respondent Nos. 1 to 7.

2. The present petition is filed assailing an order dated 03.02.2023 passed by the learned Executing Court in Title Execution Case No. 15/2019.

3. The respondent Nos. 1 to 7 preferred a suit for declaration of joint title of the plaintiffs and respondents and the partition of the suit for creation of separate saham.

4. The said suit was decreed by the learned court below by its judgment and decree dated 20.06.2011. Being aggrieved, the present petitioner preferred an appeal, which was registered as TA No. 11/2011. The said appeal was also dismissed by the learned Appellate Court.

5. Thereafter, the petitioner preferred a second appeal, which was

registered as RSA No. 118/2015. The said second appeal was allowed by this court under its order dated 24.07.2014 by remanding the matter to the learned lower appellate court for a fresh decision of the appeal following the mandate of Order 20 Rule 18 of the CPC.

6. Subsequently, the Appellate Court by judgment and decree dated 02.06.2017 modified the decree by ascertaining share of each of the plaintiffs and defendants.

7. Being aggrieved, the petitioner herein preferred yet another second appeal, which was registered as RSA No. 148/2018 before this court. The said appeal was withdrawn on 07.06.2019. Thereafter, the plaintiffs filed the execution case being Title Execution Case No. 15/2019 after passing of the final decree. The present petitioner preferred a petition seeking permission to raise objection in the execution proceeding, which was rejected by the learned court below on the ground that the executing court under its order dated 16.03.2021 proceeded with the execution case under Order 21 Rule 22(a) of the CPC and dispensed with the requirement of issuance of notice as the execution was initiated within two years from passing of final decree. Being aggrieved, the present application is filed.

8. Mr. Quadir submits that the final decree has been passed without ascertaining the boundaries and that one of the co-sharer has in the meantime expired issueless and therefore redetermination of the share is required.

9. Considered the argument advanced by the learned counsel for the petitioner. This court is of the opinion that the judgment debtor shall have no right at this stage to raise the issues of the validity of the final decree passed in view of the litigational history as discussed hereinabove. This court is also of the further opinion that the order dated 03.02.2023 does not suffer from any jurisdictional error or such order cannot be said to be irrational or perverse requiring interference of this Court in exercise of power under Article 227 of the

Constitution of India. The order has not also been passed in ignorance of any settled proposition of law or resulted in any miscarriage of justice.

10. The Hon'ble Apex Court in the case of ***Kattukandi Edathil Krishnan & Anr vs. Kattukandi Edathil Valsan & Ors*** reported in ***2022 SCC Online SC 737*** held that issuing of fresh notices at every stage to the defendants should be avoided. At the same time, as the execution was filed within the period of two years from the date of passing of the final decree, which the respondents were very much well aware of, giving them a chance to file objection at this stage and after attainment of finality of the decree, will be nothing but a futile exercise, which may also result delay in the execution proceeding.

11. In that view of the matter, this court finds no merit in this revision petition. Accordingly, same stands dismissed. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant