

GAHC010058072022



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

Case No. : CRP(IO)/56/2022

MD. BABUL RAHMAN
S/O. LT. ABDUL RAHMAN, R/O. A.T. ROAD, SOUTH HAIBARGAON, MOUZA-TOWN, P.O. HAIBARGAON, P.S. NAGAON SADAR, DIST. NAGAON, ASSAM, 782002.

VERSUS

KISHAN GOPAL AGARWALLA AND 4 ORS.
S/O. LT. PUNAM CHAND AGARWALLA, R/O. OLD A.T. ROAD,
HAIBARGAON, NAGAON TOWN, P.O. HAIBARGAON, DIST. NAGAON,
ASSAM, 782002.

2:JUGAL KISHOR AGARWALLA @ LOHIA

S/O. LT. NAND KISHOR AGARWALLA @ LOHIA
R/O. A.T. ROAD
HAIBARGAON
LOHIA MARKET
P.O. HAIBARGAON
DIST. NAGAON
ASSAM
782002.

3:SMT. PARMESWARI DEVI AGARWALLA

W/O. LT. NAND KISHORE AGARWALLA @ LOHIA
R/O. A.T. ROAD
HAIBARGAON
LOHIA MARKET
P.O. HAIBARGAON
DIST. NAGAON
ASSAM

782002.

4:SMT. KRISHNA DEVI CHENANI

W/O. SRI GOURI SHANKAR CHENANI
R/O. A.T. ROAD
HAIBARGAON
LOHIA MARKET
P.O. HAIBARGAON
DIST. NAGAON
ASSAM
782002.

5:MD. ATIKUR RAHMAN

S/O. LT. ABDUL RAHMAN
R/O. GHUTULI PATTY
HAIBARGAON
P.O. HAIBARGAON
DIST. NAGAON
ASSAM
782002

Advocate for the Petitioner : MR. K SINGHA

Advocate for the Respondent : MR. P K GARODIA

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

09.06.2023

Heard Mr. K. Singha, the learned counsel appearing for the petitioner. Also heard Mr. P.K. Garodia, the learned counsel appearing for the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 14.03.2022 passed by the learned Civil

Judge, Nagaon in Title Execution Case No.13/2014.

3. The Title Execution Case No.13/2014 relates to 1 Katha 7 Lechas of land. The present petitioner being a third party to the proceeding, filed a Miscellaneous Judicial Case No.11/2020 under Order 21 Rule 97 and 99 of the Code of Civil Procedure claiming that he is the owner of 2 Kathas of land and by the aforesaid decree, he is being evicted from his land. The petitioner filed an application under Order 21 Rule 29 of the Code of Civil Procedure praying for stay of the execution proceeding. The Executing Court dismissed this petition.

4. Mr. Garodia submits that in order to exercise the provision under Order 21 Rule 29 of the Code of Civil Procedure, the petitioner must be a judgment-debtor, not a third party like the present petitioner.

5. Mr. Singha, on the other hand, submits that if the decree is not stayed, his petition under Order 21 Rule 97 and 99 of the Code of Civil Procedure, would become infructuous.

6. I have considered the submissions made by the learned counsels of both sides. Order 21 Rule 29 reads as under:

“29. Stay of execution pending suit between decree-holder and judgment-debtor. – Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to scrutiny or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]”

7. On a plain reading of the aforesaid provision, I find force in the submission of Mr. Garodia. Since the petitioner is not the judgment-debtor, he is not entitled to seek stay of execution of the decree, under Order 21 Rule 29 of the Code of Civil Procedure.

8. The learned Trial Court has correctly dismissed the petition of the petitioner and no interference of this Court is required to that effect.

The Civil Revision Petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant