

GAHC010071582022



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

Case No. : CRP/124/2022

MUSTT. MUMINARA BEGUM LASKAR
W/O LATE NASIR UDDIN LASKAR, R/O GHANIALA, ITKHOLA, SILCHAR
TOWN, P.O. AND P.S.- SILCHAR, DIST.- CACHAR, ASSAM, PIN- 78006.

VERSUS

MUSTT. FERDOUSIARA AHMED LASKAR AND 2 ORS.
W/O NAZIM UDDIN LASKAR,
D/O LATE RAHIMA KHATUN LASKAR,
R/O CENTRAL ROAD, SILCHAR TOWN, P.O. AND P.S.- SILCHAR, DIST.-
CACHAR, ASSAM, PIN- 788001.

2:MUSTT. JAHANARA BEGUM BARBHUIYA
W/O REZAK UDDIN BARBHUIYA

D/O LATE RAHIMA KHATUN LASKAR

R/O CENTRAL ROAD
SILCHAR TOWN
P.O. AND P.S.- SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788001.

3:MD. SAHARUL ISLAM LASKAR
S/O LATE NASIR UDDIN LASKAR

D/O LATE RAHIMA KHATUN LASKAR

R/O GHANIALA
ITKHOLA
SILCHAR TOWN

P.O. AND P.S.- SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788001

Advocate for the Petitioner : MR. T SK

Advocate for the Respondent : MS F AHMED (R-1,2)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the appellant : Mr. Mr.I. Alam, Advocate.

For the Respondents : Mr. Mr. S. K. Ghosh.

Date of hearing &

Date of Order : 9.5.2023

JUDGMENT AND ORDER(ORAL)

1. Heard Mr. I.Alam, learned counsel for the petitioner. Also heard Mr. S. K. Ghosh, learned counsel for the respondent Nos. 1 and 2. None appears for respondent no.3.
2. The present revision petition is filed assailing the judgment and order dated 9.2.2022 passed in Misc. Appeal No. 4/2020 by learned Civil Judge, No. 1 Cachar, Silchar arising out of Misc(J) Case No. 156/2006 in Execution Case No. 21/2006.
3. **The brief facts leading to this litigation.**
 - (a) One Nasiruddin Laskar, predecessor-in-interest of the present petitioner and respondent no.3 was a tenant under Rahima Khatun Laskar, the predecessor-in-interest of the respondent No. 1 and 2.

The respondent No. 1 and 2 filed a suit being Title Suit No. 13/2004 for a decree of eviction and for recovery of arrears of rent against the respondent No.3. The said suit was decreed on 21.7.2005 by the learned trial court. Against the aforesaid decree, the respondent No. 3 preferred an appeal which was registered as Title Appeal No. 49/2005. The said appeal was also dismissed by the learned appellate court by its judgment dated 18.5.2006.

- (b) Thereafter, the decree was put into execution and accordingly, the Execution Case No. 21/2006 was registered. When the executing court issued warrant of possession, the present petitioner No.2 alongwith her deceased mother (petitioner No.1) filed an application before the learned Executing Court under Order 21 Rule 97 and 99 of the CPC 1908 which was registered as Misc (J) Case No. 156/2006.
- (c) The said petition was allowed by the learned Executing Court holding that the decree cannot be executed against the present petitioners as they were not made parties to the original suit inasmuch as they inherited the suit premises being the legal heirs of the original tenant namely Nasir Uddin Laskar and the suit was filed only against the respondent No.3 who was the son of said Nasir Uddin Laskar. The said Misc Case was allowed by an order dated 17.6.2009.
- (d) Being aggrieved, the respondent Nos.1 and 2 preferred an appeal which was registered as Misc Appeal No. 19/2009. The said appeal was also dismissed by the learned appellate court under its judgment dated 31.5.2011.

- (e) Being aggrieved, the respondent Nos. 1 and 2 approached this Court by a revision petition which was registered as CRP No. 302/2011. Said revision petition was allowed by this court by setting aside both the orders of the learned trial court on the ground that the learned trial court, below without affording any opportunity to adduce evidence, has decided the matter. Accordingly, the entire matter was remanded back by this Court under its order dated 7.3.2012 and this Court requested the learned court, below to decide the matter expeditiously.
- (f) Thereafter, the evidences were led by the parties, the matter was heard and by judgment and order dated 16.8.2019 passed in the aforesaid Misc (J) case No. 156/2006, the learned Executing Court held that the decree cannot be executed against the petitioners herein as they were not parties to the suit inasmuch they are the legal heirs of the original tenant namely Nasir Uddin Laskar. Such decision was once again challenged by the respondent Nos. 1 and 2 herein by preferring an appeal before the learned appellate court which was registered as Misc. Appeal No. 04/2020.
- (g) After hearing the parties, the learned appellate court set aside the decision of the executing Court and held that the decree can still be executed inasmuch as the estate of Nasir Uddin Laskar was duly protected and represented by the son of Nasir Uddin Laskar respondent No.3 herein. Therefore in view of principles of unity of estate, the non arraying the petitioner as defendants in the original suit cannot have any effect on the outcome of the suit. The court was also of the view that the validity of a decree may be challenged

by filing a properly constituted suit in accordance with law or taking any other remedy available under the law. The Court also came to a conclusion that the Misc Case was initiated only with an attempt to thwart the appellants right to enjoy the fruits of a decree.

4. **Findings of the Executive Court:**

Though the learned trial court recorded the aforesaid deposition of PW 1, however as it was admitted position that the petitioners were the legal heirs of original tenant after his death they were necessary parties to the suit and in absence of them being made party, the decree cannot be executed against them.

5. **Findings of the appellate Court:**

- (i) The petitioners have neither pleaded nor led any evidence to show that they occupied decretal premises by any independent actions /right. They have no independent possession nor any part of the decretal premises on the strength of any independent right. Therefore the doctrine of sufficient representation is attracted and therefore the learned executing court has wrongly concluded that the decree passed in Title Suit no. 13/2004 is not binding upon the petitioners and not executable against them.
- (ii) It was also a finding of the appellate court that executing court cannot go behind the decree and executing court must take the decree according to its tenor and cannot entertain on the ground that the decree is not binding on the

petitioners as they were not made parties in Title Suit No. 13/2004. Accordingly, the same was set aside. A passing comment was also made that the decree can be challenged in a suit properly filed.

6. **Argument advanced by Mr. I. Alam, learned counsel:**

Learned counsel for the petitioner submitted the followings :

- (i) As the suit was filed under the Assam Urban Areas Rent Control, 1972 (the Act, 1972), in terms of Section 2 (f) which defines a tenant, the petitioners were also tenant and therefore, decreeing a suit without the presence of such tenant is nothing but a nullity against the tenant, who were not made parties and therefore the learned executing court has rightly held that the decree cannot be executed against the petitioners.
- (ii) He further contends that in terms of Order I Rule 3 of the CPC 1908 the present petitioners were necessary parties to be joined as defendants and decree passed in such a suit cannot be executed against the present petitioners without making them parties to the suit.
- (iii) The learned counsel further submits that there is no dispute on the issue that the petitioner Nos. 1 and 2 alongwith respondent No.3 are the legal heirs of late Nasir Uddin Laskar and it is also not in dispute that late Nasir Uddin Laskar was a tenant under the predecessor-in-interest of respondent Nos.

1 and 2. Therefore it is an admitted fact that the petitioners are having share in the tenancy after death of their predecessor-in-interest Nasir Uddin Laskar and it has also come on the record through the evidence of respondent No.1 that admittedly the present petitioners were the legal heirs of Nasir Uddin Laskar. Such fact was within the knowledge of the respondent plaintiff and in spite of such knowledge, they did not arraying the present petitioners as defendant and therefore the learned trial court has rightly decided the issue in favour of the present petitioners. However, the learned appellate court taking recourse of principle of unity of the estate held that the present petitioners are not necessary parties as the estate was duly represented by the opposite party No. 3, the son of original tenant namely Nasir Uddin Laskar.

- (iv) Relying on the decision of Hon'ble Apex Court in the case of ***Brahmdeo Choudhury Vs. Rishikesh Prasad Jaiswal and another*** reported in ***(1997) 3 SCC 694*** and ***N.S.S Narayana Sarma and others Vs M/s Goldstone Exports (P) Ltd. and others*** reported in ***(2002) 1 SCC 662***, the learned counsel contends that the finding of the learned appellate court that the validity of decree can be challenged by filing properly constituted suit is perverse as law is well settled that in a proceeding under Order 21 Rule 97 and 99 of the CPC all the issues including title can be decided and no separate suit is required to be filed for that purpose. While

concluding the arguments, the learned counsel for the petitioner submits that in view of the aforesaid, the appellate court has committed serious illegality and perversity and therefore the same is liable to be dismissed.

7. **Arguments advanced by Mr. S. K. Ghosh, learned counsel representing the respondent Nos. 1 and 2.**

- (a) The present petitioners cannot be treated as third party to file an application or to decide any issue under Order 21 Rule 97 and 99 of the CPC inasmuch as the interest over the tenanted premises and the right of the tenant were duly represented by respondent No.3, who is one of the legal heirs of the original tenant i.e. son of Nasir Uddin Laskar.
- (b) Relying on the pleadings made in the application filed under Order 21 Rule 97 and 99 of the CPC and the evidence of petitioner No.1, Mr.Ghosh argues that it is an admitted fact that the business was run by the respondent No.3 from the tenanted premises and it is admitted in cross examination that the entire business was run by and looked after by respondent No.3 and therefore in that view of the matter the learned executing court could not have decided that the decree cannot be executed against the petitioners herein. Such perversity has been cured by the appellate court by a reasoned order therefore this court in exercise of revisional power should not reverse such finding of fact by entertaining the revision petition.

8. **Findings and determinations of this Court:**

- (1) This court has given anxious consideration to the arguments advanced by the learned counsel for the parties and also perused the material available on record.
- (2) From the judgment of both the courts below and from the pleadings, the following facts are discernible:
 - (a) From the pleadings of the Misc(J) Case No. 156/2006 it is seen that the original tenant Nasir Uddin died leaving behind the two petitioners herein and the respondent No. 3 as his legal heirs and successor.
 - (b) After the death of original tenant, all the aforesaid three legal heirs are enjoying the tenancy right over the suit house and they were in the possession and enjoyment of the suit shop running their business therefrom.
 - (c) It is also pleaded that after few months of the death of the original landlord i.e. predecessor in interest of the respondent No. 1 and 2, the respondent Nos 1 and 2 with a malafide intention started refusing to acknowledge receipt of lawful rent paid by the petitioners as well as by the respondent No. 3. It is also pleaded that having no alternative, the petitioners as well as the respondent No. 3 started depositing rent in the court under the provision of Assam Urban Areas Rent Control Act, 1972.

- (d) From the two decisions of the learned courts it is clear that the petitioner no.1 as PW 1 deposed the following:
- i. Rents were deposited by respondent No.3 for himself and on behalf of the petitioner as they are joint tenants by inheritance after death of Nasir Uddin.
 - ii. During cross examination she admitted that her permanent residence was situated at Ghaniwala, Itkhola, Silchar and she had been residing therein permanently since 1982. After death of her husband, she, her daughter (petitioner-2) and son (respondent No. 3) were residing at her house in a common Mess.
 - iii. Her son Saharul Islam Laskar, respondent No.3 used to run the business from the suit premises after death of her husband. She also deposed during the cross-examination that neither she, nor her daughter deposited any monthly rent in the court under the provision of the Act, 1972 in respect of the suit premises and the monthly rent were used to be deposited by her son i.e. respondent No.3.
 - iv. She also admitted that she shared the same kitchen with Respondent No. 3 and she had no inimical relation with her son i.e. respondent No. 3. She deposed that she came to know from her son regarding the decision of the courts and she further admitted that she became aware about the dismissal of the related appeal immediately

after the decision of the court. She also admitted that she or her daughter did not have any separate deed of agreement for monthly tenancy in respect of suit premises.

3. From the aforesaid, this court is also of the view that it is established well, from the pleadings made in the petition under Order 21 Rule 97 of the CPC, 1908 and from the evidence of the deceased petitioner No.1, after the death of Nasiruddin, the tenancy was inherited by three individual i.e. petitioner Nos. 1, 2 and respondent No. 3 and that business from the suit premises was run by the respondent No. 3 on behalf of all the legal heirs and rent was also paid by him. It is also admitted position that the three legal heirs of the original tenant are having no dispute among themselves and thus according to this Court the learned appellate Court has rightly concluded that the interest of the estate was duly represented by respondent No.3.
4. The tenancy right was being protected and the represented by one of the co-sharer. No co-sharer is having any definite right of tenancy over any particular portion of the tenanted suit premises and such tenancy was duly represented by other co-sharer. Therefore, in absence of such co-sharer, the decree can be executed. Thus when such unity of estate is represented by other co-sharer and as the petitioners are having no independent right over the suit property, non

impleading them as party to the suit will not prejudice their case, more particularly in the given facts of the present case where one of the co-sharer was representing the tenanted premises and no collusion has been alleged against the other co sharer.

5. In view of aforesaid, this court finds no merit in this revision petition, accordingly same is dismissed.

JUDGE

Comparing Assistant