

GAHC010093252021



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

Case No. : I.A.(Civil)/1515/2022

JARADA HAZARIKA AND ANR
D/O- LATE HITESWAR HAZARIKA
R/O- VILL.- SAKRAHI
MAUZA- NARAYANPUR
PIN- 784164
DIST.- LAKHIMPUR
ASSAM

2: SMTI. MONI HAZARIKA KARMAKAR
D/O- LATE HITESWAR HAZARIKA
R/O- VILL.- SAKRAHI
MAUZA- NARAYANPUR
PIN- 784164
DIST.- LAKHIMPUR
ASSAM
VERSUS

PURNANANDA HAZARIKA
S/O- LATE HITESWAR HAZARIKA
R/O- VILL.- SAKRAHI
MAUZA- NARAYANPUR
PIN- 784164
DIST.- LAKHIMPUR
ASSAM

Advocate for : MR. T J MAHANTA (R
Advocate for : MR P K GOSWAMI appearing for PURNANANDA HAZARIKA
Link Case:

RSA/95/2021

PURNANANDA HAZARIKA
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ASSA

Advocate for the Petitioner : DR. P K GOSWAMI

Advocate for the Respondent : MR. T J MAHANTA (R-1,2)

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

17. 02. 2023

Heard Mr. TJ Mahanta, learned Senior counsel assisted by Ms. P Bhattacharya, learned counsel. Also heard Mr. PK Goswami, learned counsel for the respondents.

The connected second appeal was admitted by this court on 08.11.2021 and considering the prayer of stay in IA (Civil) 1631/2021, this court under its order dated 08.11.2021 stayed the eviction of the defendants from the suit land by

demolishing the structure constructed by the defendants. However, this court observed that it will be open to the learned trial court to send the relevant papers to the Collector in pursuance to preliminary decree passed so that the Collector is able to take appropriate action in term of Section 54 of Code of Civil Procedure read with Sections 106, 107 and 110 of Assam Land Revenue Regulation, 1886. Thereafter, the learned trial court/ executing court under its order dated 24.03.2022, kept in abeyance the further proceeding of the title execution case until receipt / production of any other order from this court.

Mr. Mahanta, learned Senior counsel submits that as the suit was a partition suit and the dispute is between brother and sister, this court under its order dated 08.11.2021 made it clear to the learned trial court that the trial court to do the needful in term of the preliminary decree so as to exercise the Collector its duty in term of Section 54 of the CPC and other provisions of Assam Land Revenue Regulation, 1886.

Mr. PK Goswami, learned counsel submits that so far relating to the observation of this court regarding exercise of power under Section 54 of the CPC, he will have no objection.

Considering the above stand of the contesting parties and in view of the observation made by this court under its order dated 08.11.2021, this court is of the opinion that it was a bounden duty upon the learned trial court/ executing court under its order dated 24.03.2022 to at least express his opinion while passing order instead of keeping the entire proceeding in abeyance.

Therefore, in view of the aforesaid, this court is of the view that the learned executing court while not proceeding with eviction of the defendant No. 7, should proceed to send the records in term of Section 54 of the CPC read with

Sections 106, 107 and 110 of Assam Land Revenue Regulation, 1886 to the Collector so that the Collector can do the needful for implementation of preliminary decree for partition.

With the above observation, this IA stands allowed.

JUDGE

Comparing Assistant