

GAHC010094082022



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

Case No. : CRP(IO)/97/2022

NURUN NISSA
W/O. MD. HASSAN ALI, R/O. A.T. ROAD NALIAPOOL, NEAR NAINA
CINEMA HALL, P.O., P.S. AND DIST. DIBRUGARH, ASSAM.

VERSUS

SMT. ANJALI DAS
D/O. LT. KUMAR SINGH AND LT. PUTALI DAS AND W/O. SRI BIJAY
MISHRA, R/O. NALIAPOOL, NEAR NAINA CINEMA HALL, P.O., P.S. AND
DIST. DIBRUGARH, ASSAM, PIN-786001.

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : MR S DUTTA

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date of hearing : 2.11.2022, 4.11.2022, 27.1.2023, 1.2.2023

Date of order : 20.04.2023

JUDGMENT AND ORDER(CAV)

1. Heard Mr. P. J. Saikia, learned Senior Counsel assisted by Ms. M.Kechii learned counsel for the petitioner and Mr. S. Dutta, learned Senior Counsel assisted by Mr. K. Upamanyu, learned counsel for the

respondent.

2. The present revision is filed assailing the order dated 23.3.2022 passed by the learned Munsiff No.2, Dibrugarh whereby the petition No.1252/18 arising out of Title Execution Case No. 9 of 2016, filed by the present petitioner/ judgment debtor has been dismissed.
3. The brief facts leading to filing of the present petition can be summarised as follows:
 - I. The respondent herein as plaintiff preferred a suit for arrears of rent and eviction of the petitioner/defendant from the schedule of the plaint. The petitioner/defendant filed a counter claim in respect of schedule A & B of her written statement.
 - II. The learned trial court below decreed the suit and dismissed the counter claim. Being aggrieved the defendant/petitioner preferred appeal. The appellate Court reversed the decree passed in favour of the respondent/plaintiff and uphold the decree of dismissal of the counter claim.
 - III. Being aggrieved, both the parties preferred two revision petitions being CRP 207/2012 (by the defendant/petitioner) and CRP/95/2012 (by the respondent/plaintiff). Both the revision petitions were disposed of by this Court under its order dated 31.5.2016 whereby the decree passed by the trial court in favour of the respondent/plaintiff was restored, meaning thereby the suit was decreed in favour of the plaintiff in respect of the schedule of the plaint and counter claim of the defendant was dismissed as not maintainable.

- IV. Thereafter, against the orders dismissing the counter claim, the petitioner/defendant preferred a second appeal being RSA 64/2018 which is pending before this court for adjudication and for hearing.
- V. Along with the appeal an interlocutory application for grant of stay was also filed, which was registered as IA(C) No 2606/2017. This court under its order dated 11.7.2018 passed in the aforesaid IA, protected the defendant / petitioner from eviction till returnable date.
- VI. Subsequently, the said order dated 11.7.2018 was vacated by this court under its order dated 6.1.2021. In the aforesaid order dated 6.1.2021 this court came to a conclusion on the basis of a report of Civil Nazir dated 17.7.2018 that decree passed in favour of the plaintiff / respondent herein has already been executed and expressed that there is preponderance of probability in favour of the respondent /plaintiff that after the decree was successfully executed on 3.7.2018, she was dispossessed on 4.7.2018. The court further held that in such an eventuality, the respondent shall have right to have decree executed again in terms of the ratio laid down by this court in the case of ***Chameli Debi And Ors. vs Dipak Nath And Ors reported in (2006) 2 GLR 512 .***
- VII. During pendency of the aforesaid Second Appeal and I.A(C) the respondent/decreed holder filed an application on 18.7.2018 inter alia alleging that though the Civil Nazir handed over the possession of the decretal premises to the decree holder on

3.7.2018 at around 3-30 PM, later on at around 7 PM, the petitioner/judgment debtor illegally tried to dispossess the decree holder and at around 8 AM on 4.7.2018, the petitioner/judgment debtor forcefully broke the boundary fencing and dispossessed the decree holder from the decretal property.

VIII. During the pendency of the Second Appeal and IA, the petitioner/judgment debtor also filed an application u/s 151 of CPC being Petition No. 1252/2018 with a prayer to appoint one Advocate Commissioner to ascertain whether the house premises as described in the schedule of plaint is at all in existence or not. The aforesaid application was dismissed by the learned court below under the impugned order dated 23.3.2022. Assailing such order, the present petition is filed.

4. Argument Advanced By Mr. P.J.Saikia ,learned Senior counsel for the petitioner/judgement Debtor:

I. In the guise of execution of the decree in terms of the plaint, the decree holder is trying to dispossess the judgment debtor from his own property mentioned in schedule-A in the written statement.

II. The schedule of the plaint in which the decree has been passed is non-existent and therefore, it is in interest of the execution of the decree in its true perspective, it has become necessary to appoint an Advocate Commissioner, which has wrongly been rejected by the learned Executing Court.

III. To do the complete justice and to arrive at a just conclusion

during the course of execution, the appointment of Advocate Commissioner has become necessary, which will not prejudice the decree holder, rather it will help the decree holder to get the decree executed strictly in terms of the decree passed.

5. Per contra, Mr. S.Dutta, learned Senior Counsel submits:

- I. The decree has duly been executed by the Court. However, the judgment debtor had dispossessed decree holder again as reflected in its application dated 18.7.2018. Therefore, there is no necessity of appointment of any Advocate Commissioner inasmuch as decretal property was duly identified by Civil Nazir of Court, same was duly executed, possession was handed over to the petitioner and therefore at this stage, the aforesaid application for appointment of Commissioner filed by judgment debtor cannot be entertained.
- II. This Court in order dated 6.1.2021 passed in I.A(C) 2606/2017 in connection with RSA 64/2018 came to a finding that report of Civil Nazir discloses that property was duly handed, that cannot be disbelieved and categorically observed that there is every probability that judgment debtor had dispossessed the decree holder after execution of decree. Accordingly, this court directed to execute the decree again.
- III. In view of the matter, this court may not like to go beyond such finding and pass an order for ascertainment of the decretal land.
- IV. Accordingly, learned Senior counsel contends that this revision

petition is liable to be dismissed with heavy cost inasmuch as this litigation is nothing but a frivolous litigation to stall the execution proceeding .

6. Findings and determination:

- I. This Court has given anxious consideration to the arguments advanced by the learned Senior Counsels for the contesting parties and also perused the materials available on record.
- II. This court under its order dated 06.01.2021 passed in IA (Civil) 2606/2017, came to a definite finding that there is nothing on record to show that the report of the Civil Nazir dated 17.07.2018 is false, fabricated or manufactured and thus disbelieved that the decree was not executed. It was further held that preponderance of probability tilts in favour of the decree holder as decree was successfully executed on 03.07.2018 and she was dispossessed as alleged on 04.07.2018. This court further held that in such an eventuality, the decree holder shall have right to execute the decree again as per ratio laid down in the case of **Chameli Devi** (Supra). It was also the finding of the court that the decree in question has attained finality and there was no scope for the court to stay execution of the decree dated 24.05.2010 passed by the learned Munsiff No. 2, Dibrugarh in TS No. 102/2007 as affirmed in CRP 95/2002.
- III. As discussed hereinabove, in the meantime, decree holder filed another petition under Order 21 Rule 19 CPC by which the decree holder prayed for a direction to the Civil Nazir to hand over khas

possession of the said decretal property. In view of the order passed by this court in IA (Civil) 2606/2017, the learned trial court allowed such petition and decree has already been executed.

- IV. In view of the finding as discussed hereinabove of this court in the order dated 06.01.2021 in IA (Civil) 2606/2017, the contention raised by the petitioner that the decree has not been executed cannot be revisited either by this court or by the learned Executing Court below at this stage.
- V. Mr. Dutta, learned Senior counsel has also asserted that the decree has already been executed. In fact, the decree holder has waived the arrears of rent.
- VI. The basic prayer in the petition No. 1252/2018 is implementation of order dated 31.05.2016 passed by this court in CRP 95/2002. The case of the petitioner is that by the said order this court has declared that suit premises of the plaintiff does not match with the land and house premises as referred in the written statement and counter claim filed by the defendant (the present petitioner) and as such execution shall be strictly to be as per schedule of the plaint. However, there is nothing on record to show that decretal property is not identifiable. What is observed in the aforesaid order is that premises of the plaintiff and property described in written statement and counter claim does not match. The fact also remains that counterclaim of the petitioner/judgement debtor has been dismissed by the Court. Therefore, in the considered opinion of this Court there is no

requirement of appointment of advocate commissioner.

VII. In view of the facts as narrated herein above, this court is of the considered opinion that the application filed by the petitioner for appointment of Commissioner for ascertaining the decretal land is nothing but an attempt to delay the execution proceeding and abuse of the process of the Court. In that view of the matter, this Court is of the further opinion that the decree holder should be compensated for this unnecessary litigation by the judgment debtor. Accordingly, cost of Rs. 25,000/- is imposed upon the petitioner which is to be paid to the decree holder within a period of four weeks from today. Such amount should be deposited before the learned Executing Court.

7. Direction:

Accordingly, having found no illegality or infirmity in passing the impugned order dated 23.3.2002 by the learned Executing Court below, the present revision petition stands dismissed with the aforementioned cost of Rs.25000/-

JUDGE

Comparing Assistant