

GAHC010133732023



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

Case No. : CRP(IO)/178/2023

SAYAB ALI AND 4 ORS

S/O LT HASEN ALI R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

2: ABDUL RASHID

S/O LT HASEN ALI R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

3: AJIJUL HAQUE

S/O LT HASEN ALI R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

4: SAHABUDDIN

S/O LT ATABUDDIN R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

5: SAMARUDDIN @ MD. SAMSUDDIN

S/O LT. FAZAR ALI R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSA

VERSUS

UPEN NATH AND 10 ORS. B

S/O LT. SATRAM NATH R/O VILL. KATONIGAON MOUZA NAHARBARI PS
THELAMARA DIST. SONITPUR ASSAM

2: JOGEN NATH

S/O LT. SATRAM NATHI R/O VILL. KATONIGAON P.O. THELAMARA
MOUZA NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

3: LILABATI DEVI

W/O LT. DEBADHAR NATH R/O VILL. KATONIGAON P.O. THELAMARA
MOUZA NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

4: LAKHI NATH

S/O LT DEBADHAR NATH R/O VILL. KATONIGAON P.O. THELAMARA
MOUZA NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

5:RUDRA NATH

S/O LT DEBADHAR NATH R/O VILL. KATONIGAON P.O. THELAMARA
MOUZA NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

6:GAJEN NATH

S/O LT DEBADHAR NATH R/O VILL. KATONIGAON P.O. THELAMARA
MOUZA NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

7:BIROHI DEVI

D/O LT. SATRAM NATH R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

8:AMBIKA DEVI

D/O LT. SATRAM NATH R/O VILL. KATONIGAON P.O. THELAMARA MOUZA
NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

9:BALIKA DEVI

W/O TULSHI HAZARIKA R/O VILL. KATONIGAON P.O. THELAMARA
MOUZA NAHARBARI P.S. THELAMARA DIST. SONITPUR ASSAM

10:SENCI DEVI

W/O BABULAL DAS R/O BAMAKHATA KENDUGURI PATHSALA P.O.
BAMAKHATA DIST BARPETA ASSAM

11:LILY DEVI

W/O LT. TERAJ NATH R/O BIHAGURI MEKANA CHUBURI MOUZA AND P.O.
BIHAGURI DIST. BARPETA ASSA

Advocate for the Petitioner : MR M R ADHIKARI

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

19.06.2023

Heard Mr. M. R. Adhikari, the learned counsel for the petitioners.

2. The instant revision petition has been filed challenging the order dated 02.06.2023 passed in Petition No.506/2022 by the Executing Court

in Title Execution Case No.40/2022. It appears from the records that vide the judgment and decree dated 18.02.2022 passed in Title Suit No.41/2017, the said suit was decreed thereby declaring the right, title and interest of the plaintiffs; granted a decree for recovery of possession of the suit land by evicting the defendants as well as a decree for permanent injunction was also issued.

3. It reveals from the records that an application was filed by the defendants who are the petitioners herein under Order IX Rule 13 of the Code of Civil Procedure, 1908 read with Section 5 of the Limitation Act, 1963 for setting aside the judgment and decree dated 18.02.2022 on the grounds and reasons stated therein. It further reveals from the records that the plaintiffs who are respondents herein had filed the Execution Proceedings registered and numbered as Title Execution Case No.40/2022. During the pendency of the application for setting aside the judgment and decree dated 18.02.2022-Misc.(J) Case No.115/2023, the petitioners filed an application bearing No.506/2023 for stay of the Execution Proceedings till the disposal of the Misc.(J) Case No.115/2023. The learned Executing Court rejected the said application vide the order dated 02.06.2023 on the ground that the stay of the Execution Proceedings can only be granted by the Court before whom the Misc.(J) Case No.115/2023 was filed or by the Appellate Court or the Revisional Court. Under such circumstances, the petitioners, therefore, approached the learned Trial Court by filing a petition bearing No.1264/2023 for stay of the operation of the impugned judgment and decree dated 18.02.2022 passed in Title Suit No.41/2017 as well as Title Execution Case No.40/2022 till the disposal of Misc.(J) Case No.115/2023. In the said proceedings, the learned Trial Court vide the

order dated 07.06.2023 had issued only notices thereby fixing 04.07.2023 for SR & Objection. The instant petition, as already noted herein above, has been filed challenging the order dated 02.06.2023 passed in Title Execution Case No.40/2022.

4. This Court upon perusal of the order dated 02.06.2023 is of the opinion that no case is made out for interference under Article 227 of the Constitution in as much as the learned Executing Court was justified in passing the order dated 02.06.2023 and had exercised the jurisdiction in accordance with law.

5. The learned counsel for the petitioners, however, submits that vide the order dated 17.06.2023, the learned Executing Court had directed the decree holders, i.e. the respondents herein to deposit the costs for police aid and has also issued the writ for delivery of possession.

6. This Court is of the opinion that the petitioners would be well advised to file appropriate application before the learned Trial Court before whom Misc.(J) Case No.115/2023 is pending seeking urgent relief taking into account the order dated 17.06.2023.

7. It is observed that upon such application so filed, the learned Trial Court shall pass appropriate order as it deems proper in accordance with law.

8. With the above observation and direction, the instant petition stands disposed of.

JUDGE

Comparing Assistant