

GAHC010143942023



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

Case No. : CRP/93/2023

RAJESH BHARTIA AND 5 ORS
S/O LATE RAM GOPAL BHARTIA, R/O N.T. ROAD, NALBARI, DIST-
NALBARI, ASSAM

2: SATISH BHARTIA
S/O LATE RAM GOPAL BHARTIA
R/O N.T. ROAD
NALBARI
DIST-NALBARI
ASSAM

3: NEERAJ BHARTIA
S/O LATE RAM GOPAL BHARTIA
R/O N.T. ROAD
NALBARI
DIST-NALBARI
ASSAM

4: PANKAJ BHARTIA
S/O LATE RAM GOPAL BHARTIA
R/O N.T. ROAD
NALBARI
DIST-NALBARI
ASSAM

5: JAI PRAKASH BHARTIA
S/O LATE GOBORDHAN DAS BHARTIA
R/O NALBARI TOWN
WARD NO. 5
P.O.-NALBARI
P.S.-NALBARI
DIST- NALBARI
ASSAM

6: ASHISH BHARTIA
S/O LATE GOBORDHAN DAS BHARTIA
R/O NALBARI TOWN
WARD NO. 5
P.O.-NALBARI
P.S.-NALBARI
DIST- NALBARI
ASSA

VERSUS

KRISHNA KUMAR BHARATIA
S/O LATE GOBORDHAN DAS BHARATIA, R/O NALBARI TOWN, WARD NO.
5, P.O.-NALBARI, P.S.-NALBARI, DIST- NALBARI, ASSAM, PIN-

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : MRS A K CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.10.2023

Heard Mr. S.K. Goswami, learned counsel for the petitioners. Also heard Ms. K. Bharali, learned counsel for the respondent.

2. By this application filed under Article 227 of the Constitution of India, the petitioners have assailed the order dated 27.04.2023 passed by the learned Civil Judge (Junior Division) No.1, Nalbari in T.Ex. Case No. 5/2023.

3. The learned counsel for the petitioners has referred to the pleadings made in the suit as well as the prayer made in the plaint and the nature of decree dated 31.08.2021, passed by the learned Civil Judge (Junior Division) No.1, Nalbari in T.S. No. 66/2020, which was previously registered as T.S. No. 03/2003. It is submitted that the decree was to the effect that the respondent-

plaintiff had a right to use the common path as noted in the schedule of the plaint and the petitioners-defendants, their men, workmen etc. were restrained from putting hindrance on the common path. It is submitted that although there was no decree to remove the gate, but in excess of decree, the gate was removed by the Nazir of the Court on 23.05.2023. It is submitted that after the removal of the gate, the petitioners are suffering theft from their compound and unwanted people have got a free entry to the compound.

4. By referring to the rough sketch-map of the suit property, it is submitted that the respondent-plaintiff has a separate entrance from the main road. Accordingly, the learned counsel for the petitioners has submitted that by removal of the gate, the petitioners and their family members have been put to a lot of suffering. It is submitted that the petitioners have been compelled to approach this Court because the execution proceeding was closed after the decree was executed on 23.05.2023.

5. The learned counsel for the respondent had prayed for some time as the learned counsel holding the brief is not available. In view of the order proposed to be passed, prayer for adjournment is refused.

6. Having regard to the nature of submission made by the learned counsel for the petitioner, it *prima facie* appears that his submission is based on the nature of decree passed by the learned trial Court and it has been successfully demonstrated that there was no decree for removal of the gate. Therefore, the Court is *prima facie* inclined to accept the submission made by learned counsel for the petitioners that on 23.05.2023, execution was made in excess of the decree.

7. In this regard, the Court is of the considered opinion that

notwithstanding that the execution petition was closed, but if the petitioners have a grievance that the execution was made in excess of the decree, it would be open to the petitioners to move the executing Court for passing appropriate orders so as to undo the execution, if it can be shown that execution has been done in excess of the decree, or beyond the decree.

8. Therefore, the Court is inclined to grant leave to the petitioners to move the executing Court in connection with T.Ex. Case No. 05/2023 with a prayer for restore the execution case to file with further liberty to the petitioners to move the learned trial Court for appropriate orders.

9. The Court is of the considered opinion that the issue relating to execution in excess of decree is a jurisdictional issue and therefore, under Article 227 of the Constitution of India, this Court would have jurisdiction to direct the learned executing Court, i.e. the Court of learned Civil Judge (Junior Division) No.1, Nalbari that in the event an application is filed by the petitioners in terms of leave granted by this Court, the said learned Court shall examine the matter and pass appropriate orders thereon.

10. With the aforesaid observation, this revision stands closed.

JUDGE

Comparing Assistant