

GAHC010172042020



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

Case No. : CRP/74/2020

ON THE DEATH OF HAJI RASHID ALI LASKAR HIS LEGAL HEIRS IKBAL AHMED LASKAR AND 6 ORS

1) IKBAL AAHMED LASKAR, S/O. LT. HAJI RASHID ALI LASKAR, R/O. VILL. BALIKANDI PART-1, P.O. AND DIST. HAILAKANDI, ASSAM.

1.02: DILWAR AHMED LASKAR
S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

1.03: KABIR AHMED LASKAR

S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

1.04: HUSSAIN AHMED LASKAR
S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

1.05: SAHIDA BEGOM LASKAR
D/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

1.06: ROHIMA BEGUM LASKAR
D/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI

ASSAM.

1.07: HASINA BEGUM LASKAR
D/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM

VERSUS

ABDUL MALIK LASKAR
S/O. LT. ABDUL JOBBAR LASKAR, VILL. BALIKANDI PART-1, P.O.
HAILAKANDI, DIST. HAILAKANDI, ASSAM, PIN-788155.

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : MR. N H BARBHUIYA

Linked Case : I.A.(Civil)/3159/2022

ON THE DEATH OF HAJI RASHID ALI LASKAR HIS LEGAL HEIRS IKBAL
AHMED LASKAR AND 6 ORS
IKBAL AAHMED LASKAR
S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

2: DILWAR AHMED LASKAR
S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

3: KABIR AHMED LASKAR

S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

4: HUSSAIN AHMED LASKAR
S/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI

ASSAM.

5: SAHIDA BEGOM LASKAR
D/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

6: ROHIMA BEGUM LASKAR
D/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
ASSAM.

7: HASINA BEGUM LASKAR
D/O. LT. HAJI RASHID ALI LASKAR
R/O. VILL. BALIKANDI PART-1
P.O. AND DIST. HAILAKANDI
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VERSUS

ABDUL MALIK LASKAR
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P.O. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-788155.

Advocate for : MR. J LASKAR
Advocate for : MR. N H BARBHUIYA appearing for ABDUL MALIK LASKAR

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 01-03-2023

Heard Mr. J. Laskar, learned counsel for the petitioner. Also heard Mr. N.H.Borbhuyan, learned counsel for the respondent.

2. The present petition is filed assailing an order dated 15.2.2020 passed in

Misc. Case No. 99/2019 in Title Execution case No. 12/17. The respondent herein instituted a suit being Title Suit No. 103/2013 for declaration of right, title interest over the suit land and for recovery of possession by evicting the defendant No. 1 and also for permanent injunction. The petitioner herein is defendant No. 1 the suit. The suit was contested by the defendant. Finally learned trial court decreed the suit vide judgement and decree dated 28.4.2017.

3. Thereafter an execution proceeding was initiated which was registered as Title Execution case No. 12 of 2012. As the decree was also for ascertaining and demarcating the schedule land through Amin Commissioner and handing over the possession of the schedule land in favour of the respondent / plaintiff, the executing court appointed Amin Commissioner for demarcation and execution of the decreetal land. Thereafter, the decree was executed after demarcation by the Amin Commissioner.

4. After execution of the decree, the judgment debtor/petitioner preferred an application under Order 21 Rule 97 of the CPC and raised an objection to the effect that certain portion of land has been illegally handed over to the decree holder without ascertaining the actual suit land of the decree holder and further prayed that the report of the Nazir which reported that the decree has duly been executed is required to be cancelled and decreetal land is required to be surveyed afresh by experienced Amin Commissioner of different set, from the office of the Asstt. Settlement Officer, Hailakandi. Such petition was registered as Misc. Case No. 1999 of 2019. The learned executing Court by impugned order dated 15.2.2020 rejected such prayer on the following counts:

- i. Civil Nazir reported that the land was demarcated by Amin Commissioner in presence of the decree holder and the son of the judgment debtor as well as people of the locality. Thereafter only the khas

possession of the decreetal land was delivered to the decree holder and his signature was taken in the report.

ii. The elder son of judgment debtor has also put his signature upon the report.

iii. Amin Commissioner report discloses that land was demarcated as per decree.

iv. Considering the fact that the entire execution was carried out in presence of Amin Commissioner, Civil Nazir, Decree holder and the sons of judgment debtor, Process server, Police force as well as people of the locality, the court did not entertain such application.

5. We do not find any infirmity in such finding inasmuch as such conclusion has been arrived at on the basis of report of the Civil Nazir and Amin Commissioner. The petitioner has not disputed that two sons of the petitioner/ Judgment debtor were present and they put their signature in the report. However now they are taking a plea that they are actually not aware of the actual boundary of the decreetal land and therefore they have signed.

6. This court is afraid if such kind of pleas are allowed there will be no end to an execution proceeding. Time and again the Hon'ble Apex Court has held that the execution proceeding should be finalised at the earliest.

7. Be that as it may, the finding of the learned executing court is based on cogent material and report of the Amin Commissioner, which have been approved by the sons of the petitioner putting their signature. The facts also remains that the present petitioner has not disputed regarding presence of his two sons he rather pleads that he was not physically well on that day. Therefore he sent his sons to witness of the execution of decree.

8. In that view of the matter, this court do not find any error not to say any jurisdictional error in the impugned order to exercise its jurisdiction under Article 227 of the Constitution of India.

9. Accordingly the present revision petitioner stands dismissed. Interim order if any stands vacated.

JUDGE

Comparing Assistant