

GAHC010228882023



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

Case No. : CRP/157/2023

KANON LAL CHAKRABORTY AND 8 ORS
S/O- LATE KETOKI RANJAN CHAKRABORTY

2: KISHORE LAL CHAKRABORTY
S/O- LATE KETOKI RANJAN CHAKRABORTY

3: NABANITA CHAKRABORTY
W/O LATE KANOK LAL CHAKRABORTY

D/O- LATE KETOKI RANJAN CHAKRABORTY

4: KULDEEP CHAKRABORTY
S/O- LATE KANOK LAL CHAKRABORTY

5: KUSHAL CHAKRABORTY
S/O- LATE KANOK LAL CHAKRABORTY

6: NIBEDITA CHAKRABORTY
D/O- LATE KANOK LAL CHAKRABORTY

7: LIPIKA CHAKRABORTY
W/O- LATE KANCHAN CHAKRABORTY

8: KISHALOY CHAKRABORTY
S/O- LATE KANCHAN CHAKRABORTY

9: KAUSTAV CHAKRABORTY

S/O- LATE KANCHAN CHAKRABORTY

ALL ARE R/O HAILAKANDI TOWN

W/NO-4
BHUTOR GHAT

P.O
P.S AND DIST- HAILAKANDI
ASSA

VERSUS

NEPAL CHANDRA ROY AND 2 ORS
S/O- LATE GURU PRASANNA ROY

2:KANON NAG
S/O- LATE KEDAR NAG

3:DIBAKAR DEB ROY
S/O- LATE DHIREN DEB ROY

ALL ARE R/O HAILAKANDI TOWN

W/NO-4
BHUTOR GHAT

P.O
P.S AND DIST- HAILAKANDI
ASSA

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 09.10.2023

Heard Mr. M. Khan, learned counsel for the petitioners.

2. By filing this revision under Article 227 of the Constitution of India, the petitioners have assailed the order dated 11.09.2023 passed by the learned Civil Judge (Senior Division), Hailakandi in connection with T.Ex. No.11/2019, thereby allowing the decree holder to continue with their construction work of boundary wall in accordance with the decree and survey report.

3. The petitioners, who are the plaintiffs in TS 12/2016, wherein the respondent no.1 is the principal defendant and the respondent nos. 2 and 3 are the proforma defendant. The prayer in the plaint was to declare the petitioners as the legal owners of the suit land described in the schedule of the plaint, for recovery of *khas* possession for the dispossessed 2 kathas of land. The defendant no. 1 filed the written statement and contested the claim of the petitioners and also filed a counter claim.

4. The copy of the written statement as well as the counter claim is not annexed to this revision petition. However, it appears from the discussion on additional issue no. 3(A) in the judgment and decree dated 26.11.2018 passed by the learned trial Court in TS 12/2016 that the respondent no.1, as counter claimant, had prayed for a decree in respect of 2 katha land and second RS Patta No. 75 of Dag No. 1981 and while deciding the said on additional issue no. 3(A), the learned trial Court, found the respondent no.1 (counter claimant) entitled to *khas* possession of only the 3(three) cubit path from the petitioners and no other and accordingly, the counter claim to the said extent was allowed by directing that the *khas* possession of the said path be restored to the respondent no.1.

5. In connection with the execution proceeding, being T. Ex. Case No.

11/2019, the learned Executing court by order dated 21.09.2022 was of the opinion that a proper survey was necessary for ascertainment of path by measuring both Schedule A and Schedule B land and it is also observed that there was no necessity to conduct a separate survey because the possession would be delivered only on proper measurement with the aid of amin commissioner.

6. In this revision petition, it is projected that the respondent no.1 started a construction of a *pucca* wall in respect of a suit path and therefore, by order dated 26.04.2023, the respondent no.1 was restrained from constructing a *pucca* wall till disposal of the execution petition.

7. The Assistant Settlement Officer, Hailakandi Revenue Circle, forwarded a report dated 14.07.2022 to the learned Executing Court, amongst others, reporting that there was a 4.5 ft. road available in the land described therein from the MB Road on northern side of eastern boundary of Dag No. 1981 to the south side up to southern boundary of Dag No. 1982 and that the said 4.5 ft. road was connected with the southern side of Schedule A to MB Road via south-east side of Schedule B land. The sketch map was enclosed with the said report. The measurement of Schedule A and B land was also contained in the said report.

8. Accordingly, the learned Executing Court, by order dated 11.09.2023, recorded that there was no objection to the said survey report and there being a 4.5 ft. path in existence, and thus, the prayer of decree holder was allowed and they were permitted to continue with their construction of the boundary wall in accordance with the decree and survey report.

9. Aggrieved by the said order, the learned counsel for the petitioners

has submitted that in the said report dated 14.07.2023, it was mentioned therein that the Schedule B land covered by second RS Patta No. 175, Dag No. 1981 (P) land measuring 09 Katha- 05 Chatak- 05 Ganda is a pond.

10. As the learned counsel for the petitioners has submitted that the petitioners are only interested in Schedule B land, the description of Schedule A land is not referred in this order.

11. It is submitted that as per the said report, there is a short fall in the land holding of the petitioner and therefore, the suit path which has been decreed in favour of the respondent no.1 was an integral part of the land of the petitioner. Accordingly, it is submitted that the learned Executing Court had committed a gross error in allowing the respondent to take over possession of the 4.5 ft. path and to encircled it by raising a wall.

12. In this connection, the Court is of the considered opinion that as already indicted above, in the suit the petitioners had claimed right, title and interest in respect of the suit land described in Schedule of the plaint, which includes 2 katha of land from which the petitioners claimed to have been dispossessed.

13. The claim of the petitioners-plaintiffs was rejected and the suit was dismissed and the counter claim of the respondent was allowed to the extent of 3(three) cubit path to the adjacent of Schedule A land and to the adjacent to west of the Schedule B land, which was ordered to the restored to possession of the respondents.

14. Therefore, as the Amin Commissioner report which is forwarded in form of report dated 14.07.2023 by the Assistant Settlement Officer, is otherwise not been objected to, the impugned order passed by the learned trial Court is not

found to suffer perversity requiring interference of this Court.

15. There is one more reason not to interfere with the impugned order, which is the fact that in the impugned order dated 11.09.2023, it has been mentioned that the petitioners as judgment debtors had not come forward with any objection against the survey report and that there is a 4.5 ft. path in existence. Therefore, once a report of the Commissioner is not objected to, it would not be in the interest of justice to interfere with the impugned order based on the report of the Commissioner.

16. At this stage, learned counsel for the petitioners has submitted that insofar as the decree is concerned, the petitioners would have right to challenge the same. The same is not disputed and if the petitioners feel aggrieved by the decree that has been passed, it would be open to them to make a challenge, if so advised and subject to law limitation.

17. Accordingly, this revision stands closed without interference with the order dated 11.09.2023 impugned in this revision which is passed by the learned Civil Judge (Senior Division) Hailakandi in connection with T.Ex. No.11/2019.

JUDGE

Comparing Assistant