

GAHC010243692022



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

Case No. : CRP(IO)/292/2022

RASHIDA KHATUN MAZUMDER AND 15 ORS
W/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

2: SURATAN NESSA
D/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

3: ALI AHMED MAZUMDER
S/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

4: HANIF AHMED MAZUMDER
S/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

5: LUTHFA BEGUM MAZUMDER
D/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

6: HUSSAIN AHMED MAZUMDER
S/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

7: NAZRUL HUSSAIN MAZUMDER
S/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

8: RUHANA BEGAM MAZUMDER
S/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

9: NAZRANA BEGUM MAZUMDER
D/O. LATE AFTAB HUSSAIN MAZUMDER @ ATA

10: AMINA KHATUN MAZUMDER
W/O. LT. ABDUL HANNAN MAZUMDER

11: ANOWARA BEGUM MAZUMDER
W/O. LT. ABDUL HANNAN MAZUMDER

12: ABDUL SUBHAN HUSSAIN MAZUMDER
S/O. LT. ABDUL HANNAN MAZUMDER

13: ABDUL ROUF MAZUMDER

S/O. LT. ABDUL HANNAN MAZUMDER

14: ABDUL KUDDUS MAZUMDER
S/O. LT. ABDUL HANNAN MAZUMDER

15: FATIMA BEGUM MAZUMDER
D/O. LT. ABDUL HANNAN MAZUMDER

16: ABDUS SALAM MAZUMDER

S/O. LT. ABDUL HANNAN MAZUMDER
ALL ARE THE RESIDENTS OF DALIDAHAR GRANT
P.O. JANAKI BAZAR
P.S. PANCHGRAM
DIST. HAILAKANDI
ASSAM
PIN-788801

VERSUS

SAHAB UDDIN BARBHUIYA
S/O. LT. KALAMDAR ALI BARBHUIYA, VILL. DALIDAHAR, P.O. JANAKI
BAZAR, P.S. PANCHGRAM, DIST. HAILAKANDI, ASSAM, PIN-788801.

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : MR M J QUADIR

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

26.07.2023

Heard Ms. R. Choudhury, learned counsel for the petitioners, who has filed this petition under Article 227 of the Constitution of India read with Section 151 of the CPC.

2. The petitioners, who are the defendant in the connected Title Suit has challenged an order dated 22.09.2022 passed in Title Execution Case No. 7/2020 whereby the learned Civil Judge, Hailakandi had rejected the objection raised by the petitioner (judgment debtor) against the maintainability of the Execution Petition. The petitioner has also brought to the notice of the Court an order dated 27.07.2022 passed by the said Court in allowing the Petition No. 276/2014 filed by the decree holder with a prayer to direct for survey of the decretal land through Amin Commissioner.

3. The Suit was instituted against the defendant for declaration of right, title, interest and for recovery of possession. The Suit was decreed on contest on 28.02.2020.

4. Ms. Choudhury, learned counsel for the petitioners has submitted that in the meantime an appeal has been preferred which however was barred by limitation and accordingly the said appeal is accompanied by an application for condonation of delay.

5. The principal ground urged in this petition against the order passed by the learned Executing Court is that the said Executing Court had failed to appreciate the provisions of law. In this connection, Ms. Choudhury, learned counsel has referred to Section 54 read with Order XX Rule 18 of the CPC.

6. Section 54 is with regard to partition of estate or separation of share wherein it talks about the procedure in case of a decree for partition of an undivided estate. Order XX Rule 18 is in connection with Section 54 of the CPC.

7. For the sake of convenience, both the aforesaid provisions of law are extracted hereinbelow-

“Section 54 - Partition of estate or separation of share.—Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

Order XX Rule 18 - Decree in suit for partition of property or separate possession of a share therein.—Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—
(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54; (2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.”

8. It is the submission of the learned counsel for the petitioners that such procedure has to be done by the Collector or any gazetted subordinate of the Collector deputed by him which however has not been followed in the instant execution proceeding and therefore, the impugned order dated 22.09.2022 is not sustainable in law and liable to be interfered with. The learned counsel further submits that the

order passed in the petition by the decree holder on 27.07.2022 is also in violation of the aforesaid provision of law as ultimately the question of partition would come in.

9. *Per contra*, Shri MJ Quadir, learned counsel for the respondent has submitted that there is a basic fallacy in the argument and projection made on behalf of the petitioners. He submits that though there is no dispute to the proposition that it is Section 54 and Order XX Rule 18 of the CPC which would apply in a Suit for partition, the point which is to be noted in this case is that the instant Suit is not for a partition and is a Suit for declaration of right, title, interest and for recovery of possession which was decreed on 28.02.2020. The learned counsel has also referred to the Rules framed under the Land and Revenue Regulation under Chapter 1 Section 1. Under Rule 4, the provisions have been laid down that when a Settlement Officer has been appointed under the Regulation, he shall exercise the powers of a Deputy Commissioner as conferred by the Rules. The learned counsel for the respondents further submits that the conduct of the petitioners in taking recourse of filing an objection in the execution proceeding as well as a parallel proceeding by filing an appeal will itself demonstrate the lack of *bona fide* as the appeal was not preferred with due diligence and there has been delay which is yet to be condoned.

10. After consideration of the submissions made by the learned counsel for the rival parties and on perusal of the materials on record, this Court finds force in the submission made by Shri Quadir, learned counsel for the respondent that the principal grounds of challenge by taking the recourse of Section 54 read with Order XX Rule 18 of the CPC will not be available to the petitioners as the Suit in question was not a partition Suit and admittedly the Suit was declaration for right, title, interest and for recovery of possession.

11. Further, the scope of a Revisional Court is limited and such powers of revision would be exercised only on restricted grounds, namely, illegality / material irregularity and jurisdictional issues.

12. In view of the above, this Court is of the opinion that the instant petition is misconceived and accordingly, the same stands dismissed.
13. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant