

GAHC010260392023



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

Case No. : CRP(IO)/376/2023

KANKAN KALITA
S/O SRI DHANCHIT KALITA, R/O RANGIA TOWN, WARD NO. 4, RANGIA
BAZAR, P.O. AND P.S.-RANGIA, PIN-781354, MOUZA-PANDURI, CIRCLE-
RANGIA REVENUE CIRCLE, DIST- KAMRUP, ASSAM

VERSUS

BISWANATH JAJODIA
S/O BAJRANGALAL JAJODIA, R/O RANGIA TOWN, WARD NO. 4, RANGIA
BAZAR, P.O. AND P.S.-RANGIA, PIN-781354, MOUZA - PANDURI, CIRCLE -
RANGIA REVENUE CIRCLE, DIST- KAMRUP, ASSAM

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01.12.2023

Heard Mr. A. Paul, the learned counsel for the petitioner.

2. By this application under Article 227 of the Constitution of India read with section 151 CPC, the petitioner has invoked inherent jurisdiction of

this Court to assail the order dated 08.08.2023, passed in Misc.(J) Case No. 07/2023 by the learned Munsif, Kamrup, Rangia in T.Ex. Case No. 5/2019, thereby refusing to stay the execution proceeding till disposal of Misc. (J) Case No. 8/2021.

3. The case of the petitioner is that his father is the defendant in T.S. No. 14/2014, which was instituted by the respondent. The suit was decreed by judgment and decree dated 01.03.2019, passed by the learned Civil Judge (Junior Division), Kamrup, Rangia [formerly Court of Munsiff, Kamrup, Rangia]. The father of the petitioner had filed an appeal, which was registered as Title Appeal No. 1/2021.

4. Although the decree was passed on 01.03.2019, no statement has been made in this application, why appeal filed by the father of the petitioner was registered in the year 2021. Be that as it may, the petitioner claims that he had resisted the decree by filing an application before the learned Executing Court under Order XXI, Rules 97, 99, 101 and 103 of the CPC. The said application was registered as Misc. (J) Case No. 7/2023. However, the learned Executing Court, by order dated 08.08.2023, impugned in this application, had dismissed the said misc. case. The legality of the said order is put to challenge in this application filed under Article 227 of the Constitution of India read with Section 151 CPC.

5. It may be mentioned that the father of the petitioner has also approached this Court by filing CRP (I/O) No. 375/2023 on refusal of the learned Executing Court to stay the execution proceeding. The said application is filed by Mr. Ashim Paul, Advocate. In this application, which is also filed by the same learned advocate, namely, Mr. Ashim Paul, the petitioner has made a statement that he was in possession of the suit land on the strength of his own

right. Therefore, though the interest of the father of the petitioner, who had filed CRP (I/O) No. 375/2023 appears to be in conflict with that of the petitioner in this case, but as both the applications are filed by the same learned advocate, the Court has no hesitation to hold that CRP (I/O) No. 375/2023 as well this CRP (I/O) No. 376/2023 are collusive because the petitioners in both cases are related as father and son respectively. Both the parties are resisting the execution of the decree passed in T.S. No. 14/2014. When the proceeding of CRP (I/O) 375/2023 was being heard, the Court was not informed that CRP (I/O) No. 376/2023 was filed by the son of petitioner in CRP (I/O) No. 375/2023. Therefore, in the order passed in CRP (I/O) No. 375/2023, it was observed by this Court that reference to statement by a third party was irrelevant. However, the relationship between the petitioners in CRP (I/O) No. 375/2023 and CRP (I/O) No. 376/2023 as father and son has come to light only when this application was heard.

6. The learned counsel for the petitioner has not made any attempt to show any provision of law or any case citation to demonstrate that order of rejection of petition under Order XXI, Rules 97, 99, 101 and 103 of the CPC could be assailed under Article 227 of the Constitution of India.

7. It may also be mentioned that the learned counsel for the petitioner has not made any attempt to demonstrate any jurisdictional error in the impugned order. It also could not be shown that the High Court in exercise of power under Article 227 of the Constitution of India or under Section 151 CPC can stay execution of decree *in the interest of justice*. On the contrary, in connection with the scope of Article 227 of the Constitution of India, we may refer to the case of *Ouseph Mathai v. M. Abdul Khadir, (2002) 1 SCC 319: AIR 2002 SC 110*, where the Supreme Court of India had held that a mere wrong

decision is not a ground to exercise jurisdiction under Art.227 and it was further held that High Court may intervene under Art.227 only where it is established that lower Court or Tribunal has been guilty of grave dereliction of duty or flagrant abuse of power, which has resulted in grave injustice to any party. We may also refer to the case of *Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97*, where the Supreme Court of India had held to the effect that finding can be set aside under Article 227 of the Constitution of India if findings are based on no evidence at all or are so perverse that no reasonable person could come to such a conclusion. Thus, Article 227 of the Constitution of India can be invoked only when the learned Court below had committed jurisdictional error.

8. Thus, in a case like this, where the order impugned suffers from no legal infirmity, or jurisdictional error, and when it could not be shown that the impugned order was passed in grave dereliction of duty and when it cannot be shown that the impugned order was passed in flagrant abuse of power, the Court would not have power under Article 227 of the Constitution of India and under Section 151 CPC to either interfere with the order dated 08.08.2023, passed in Misc.(J) Case No. 07/2023 by the learned Munsif, Kamrup, Rangia in T.Ex. Case No. 5/2019 or to stay the execution proceeding.

9. Therefore, this petition appears to be *ex facie* misconceived and nothing but an abuse of the process of Court.

10. Thus, in light of the discussions above, the Court is inclined to hold that the impugned order dated 08.08.2023, passed by the learned Civil Judge (Junior Division), Kamrup, Rangia in Misc.(J) Case No. 7/2023, thereby rejecting the said Misc. (J) Case No. 7/2023 does not suffer from any jurisdictional error and therefore, does not warrant any interference whatsoever either under Article 227 of the Constitution of India or under Section 151 CPC or

under any other law in force.

11. Therefore, by holding that this petition is *ex facie* misconceived and abuse of the process of Court, this application stands dismissed *in limine*, at the *motion* stage, without issuance of notice on the respondent.

12. The Registry shall transmit a copy of this order before the Court of Civil Judge (Junior Division), Kamrup, Rangia to make it a part of the record of T.Ex. Case No. 5/2019.

JUDGE

Comparing Assistant