

GAHC010271142017



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

Case No. : CRP(IO)/220/2017

SABIR AHMED
S/O. LT. MOSID ALI, R/O. VILL. BHELUGURI, MOUZA- JAMUNAMUKH,
DIST. HOJAI, ASSAM.

VERSUS

RANGILA SATNAMI and 13 ORS.
W/O. LT. MISRI LAL SATNAMI,

2:SMTI. GANGA SATNAMI

GHY.
KAMRUP (M)

3:SMTI. GAURI SATNAMI

4:SMTI. PINKI SATNAMI

ALL ARE D/O. LT. MISRI LAL SATNAMI

5:RAM KUMAR SATNAMI

S/O. LT. MISRI LAL SATNAMI
RESPONDENT NO. 2 TO 5 BEING MINORS REPRESENTED BY THEIR
NATURAL GUARDIAN MOTHER
SMTI. RANGILA SATNAMI
RESPONDENT NO. 1. R/O. VILL. BHELUGURI
MOUZA JAMUNAMUKH
DIST. NAGAON

ASSAM
PRESENTLY RESIDING AT VILL. SINGARI BASTI
DIST. NAGAON
PIN-782428.

6:LEGAL HEIRS OF RATNA KANTA LASKAR
SMTI. PURNIMA LASCAR
W/O. LT. RATNA KANTA LASCAR

7:ASHOK LASKAR

8:ANIL LASKAR

BOTH SONS OF LT. RATNA KANTA LASKAR

9:SMTI. NIRA LASKAR

10:SMTI. TILA LASKAR

11:SMTI. MAINA LASKAR

12:SMTI. MANJU LASKAR

ALL ARE DAUGHTERS OF LT. RATNA KANTA LASKAR
R/O. VILL. BHELUGURI
MOUZA JAMUNAMUKH
DIST. HOJAI
ASSAM
PIN-782824.

13:MILARAM KOCHARI

S/O. SRI GOLAP SINGH KOCHARI
R/O. VILL. RAJA PATHAR
P.O. and P.S. BAKULIA
DIST. KARBI ANGLONG
PIN-782482.

14:MD. KHURSHOD ALI

S/O. LT. SAKUM ALI
R/O. VILL. BHELUGURI
MOUZA JAMUNAMUKH
DIST. HOJAI
ASSAM
PIN-782428

Advocate for the Petitioner : MR.S R BARBHUIYA

Advocate for the Respondent : MR.H A TALUKDARR- 6 a,d,f

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 12-05-2023

Heard Mr. N. Haque, learned counsel for the petitioner. Also heard Mr. R. L. Yadav, learned counsel for the respondents.

2. The present petition is filed under Article 227 of the Constitution of India assailing an order dated 18.5.2017 passed in Title Execution Case No. 16/2014.

3. The respondents herein as plaintiff instituted a suit being Title Suit No.57/1995 in the court of learned Munsiff, Hojai, Sankardev Nagar for declaration of right, title, interest and recovery of Khas possession over the suit land appended to the plaint. The present petitioner was defendant No.3 in the suit

4. The plaintiffs' claim for the suit land was based on the plea that their predecessor-in-interest purchased the suit land from the defendant No. 2 by a registered deed in the year 1969 and got possession over the suit land. The claim of defendant No. 1 was that he has also purchased the suit land from

the defendant No.2. Thus, the dispute so far relating to defendant No. 1 and defendant No. 2 was concerned whether the suit land was sold by defendant No.2 to the plaintiff or to the defendant No. 1.

5. The case of the defendant No. 3 was that the defendant No.1 purchased the suit land from defendant No. 2 and after such purchase the defendant No.1 entered into an agreement for sale with the defendant No. 3 and put him in possession of the suit land.

6. The suit was decreed declaring right, title and interest of the plaintiff and the contention of the defendants were rejected. Such decree was put into execution by the plaintiff/ respondent Nos. 1 to 5.

7. In the execution proceeding the judgment debtor/defendant No.3/present petitioner filed an objection to the execution proceeding on the ground that during the pendency of the suit, the defendant No. 1 expired and thereafter, his legal representatives were though impleaded but wrongly impleaded and the impleaded persons were not the legal heirs of defendant No.1 and therefore execution cannot be done.

8. The second contention was raised that a civil suit was pending for specific performance of contract between the defendant No. 3/present petitioner and defendant No.1 for specific performance of agreement for sale.

9. Such objection was dismissed by the learned executing court on the ground that executing court cannot go behind the decree and is to execute the decree as it is and to execute the decree dated 24.12. 2002 as per its terms.

10. Mr. Haque learned counsel assailing such order submits that the

contention raised has not been discussed by the learned executing court and without giving any reason it was decided that it cannot go behind the decree of the court. Such course of action is not permissible under the law.

11. Per contra, Mr. R. L. Yadav, learned counsel for the decree holder respondents submitted that even if the parties are wrongly impleaded the defendant No. 3 cannot have any objection to such mistake. The decree has not been challenged by the defendant No.3/present petitioner and therefore, pendency of the suit between the defendant No.3 and 1 cannot be a reason of obstruction to the decree. Accordingly, Mr.Yadav learned submitted that the present petition should be dismissed.

12. Considered the rival arguments advanced by the learned counsel for the parties. Fact remains that the defendant No. 3 / petitioner was a party to the Title Suit No. 57/1995. The claim of the plaintiff in the Title Suit No. 57/1995 relates to the same property as that of the pending suit between defendant No.3 and defendant No.1. According to the petitioner defendant No. 2 sold the suit land to the defendant No. 1 and defendant No.1 entered into an agreement with the defendant No.3 for sale of such suit land. All this facts were before the learned trial court below in Title Suit No. 57/1995 and learned trial court decreed the suit holding that the suit land, over which the defendant No. 3 and defendant No. 1 were claiming, belongs to the plaintiff.

13. Therefore, in that view of the matter, at this executing stage whether the legal heirs were duly substituted on the death of defendant No.1 cannot be a ground for stalling the execution inasmuch as even such defendants are wrongly substituted the same will not prejudice the defendant No.3/ present petitioner. Further the suit for specific performance of contract is admittedly relates to the

same land on which decree has been passed declaring right, title and interest in favour of the plaintiff. Such decree has not been challenged by the defendant No. 3/petitioner till date. In that view of the matter the decree shall have a binding effect upon the subsequent suit until and unless the earlier decree is set aside by the superior court or the decree is declared to be a nullity by a competent court. No such proceeding ever has been initiated by any party till date.

14. In that view of the matter, this court finds no merit in this petition and the same shall stand dismissed.

JUDGE

Comparing Assistant