

GAHC010066392023



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

Case No. : CRP(IO)/88/2023

TARULATA DAS @ PUJA DAS
W/O- SRI SATYA TALUKDAR R/O- H.NO. 36, BHOLANATH MANDIR PATH,
B.K. KAKATI ROAD, ULUBARI, GUWAHATI- 781007, P.S. PALTAN BAZAR,
DISTRICT- KAMRUP (M), ASSAM, PH. NO.- 9435345601

VERSUS

SATYA TALUKDAR
S/O- LATE MASHARAM, R/O- MAA KAMAKHYA HOTEL BIRUBARI, OPP. B.
BARUA CANCER INSTITUTE, GUWAHATI- 8 PALTAN BAZAR P.S., DIST.-
KAMRUP (M) ASSAM OR C/O- IKBAL SAIKIA, H/NO.-13 LILADHAR BARUA
ROAD, AMBARI, GUWAHATI

For the Applicant(s) : None appears.

For the Respondent(s) : Ms. R. Sahin, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 08.05.2024

1. None appears on behalf of the Petitioner on call. Ms. R. Sahin, the learned counsel appears on behalf of the Respondent.
2. This is an application under Article 227 of the Constitution challenging the

order dated 15.03.2023 passed by the learned Court of the Munsiff No.1, Kamrup (M) at Guwahati in Misc. (J) Case No.322/2022 arising out of Title Execution Case No.23/2017.

3. This Court has perused the order dated 15.03.2023 which has been impugned in the instant proceedings. From a perusal of the said order, it reveals that the Petitioner herein has filed an application under Order XXI Rule 29 read with Section 151 and Section 47 of the Code of Civil Procedure, 1908 (for short "the Code") seeking stay of the execution proceedings pending disposal of Title Suit No.43/2022 along with Misc. (J) Case No.39/2022.

4. This Court has duly perused the application so filed under Section 47 read with Order XXI Rule 29 and Section 151 of the Code. By the said application, the Petitioner herein sought for stay of the further proceedings of the execution case till the decision in Title Suit No.43/2022 and Misc. (J) Case No.39/2022 in between the decree holder and judgment debtor in respect to the same property. This Court finds it very pertinent to take note of that the execution proceedings being Title Execution Case No.23/2017 arises out of a judgment and decree dated 04.08.2014 passed in Title Suit No.49/2012 whereby the learned Trial Court dismissed the suit of the plaintiff and the counter claim of the defendant was decreed declaring that the defendant has right, title and interest and possession over the schedule land of the counter claim. It was also mentioned that the defendant was entitled for recovery of khas possession of the schedule property by evicting the plaintiff and her men.

5. Against the said judgment and decree so passed on 04.08.2014 in Title Suit No.49/2012, a Title Appeal was filed by the plaintiff of Title Suit No.49/2012 who is also the Petitioner herein. The said Title Appeal was registered and numbered as Title Appeal No.78/2014. Vide a judgment and decree dated

27.05.2016, the said Title Appeal was dismissed. It is under such circumstances, the execution application has been filed. Thereupon, after almost 5 (five) years, the Title Suit No.43/2022 has been filed by the plaintiff of Title Suit No.49/2012 seeking declaration and permanent injunction in respect to the subject matter of the same suit land which was the subject matter of the counter claim filed by the Defendant in Title Suit No.49/2012. Along with the said application, an injunction application was filed which was registered and numbered as Misc (J) Case No.39/2022 seeking a temporary injunction restraining the defendant therein/respondent herein from entering into the suit land till the disposal of the suit. This Court has also perused the said application so filed on the basis of which the impugned order dated 15.03.2023 was passed. In the opinion of this Court, the order dated 15.03.2023 has been passed by duly taking into account the relevant provisions of law as well as well settled principles of law. The question of staying the execution of the decree passed in Title Suit No.49/2012 does not arise in the facts of the instant case and as such, the learned Executing Court had rightly dismissed the said application.

6. Consequently, this Court finds no reason for interfering with the impugned order for which the instant petition stands dismissed.

JUDGE

Comparing Assistant