

GAHC010089312023



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

Case No. : CRP(IO)/119/2023

CHANDRA PRAKASH BAGARIA
S/O LATE NANDKISHORE BAGARIA, R/O MANCOTTA ROAD, DIBRUGARH
TOWN, P.O., P.S. AND DIST-DIBRUGARH, ASSAM

VERSUS

ALOK BAGARIA AND 5 ORS
S/O LATE BHAWANI SHANKAR BAGARIA, R/O GIRDHARILALL
SADARMALL, MANCOTTA ROAD, DIBRUGARH TOWN, DIBRUGARH,
ASSAM

2:RANJIT BAGARIA
S/O LATE BHAWANI SHANKAR BAGARIA
R/O GIRDHARILALL SADARMALL
MANCOTTA ROAD
DIBRUGARH TOWN
DIBRUGARH
ASSAM

3:SMT. UMA BAGARIA
W/O LATE BHAWANI SHANKAR BAGARIA
R/O GIRDHARILALL SADARMALL
MANCOTTA ROAD
DIBRUGARH TOWN
DIBRUGARH
ASSAM

4:SMT. MEENAKSHI SIOTIA
D/O LATE PRAHLADRAI BAGARIA
R/O BEVERLY PARK-1
MG ROAD
GURGAON

HARYANA

5:SMT. AMBICA AJITSARIA
D/O LATE BHAWANI SHANKAR BAGARIA
R/O SRI KRISHNA BHAWAN
36A
B.T. ROAD
BELGHARIA
RATHTALA
KOLKATA-700056
WEST BENGAL

6:SMT. TARA RAJGARIA
D/O LATE BHWANI SHANKAR BAGARIA
R/O TUNDI ROAD
GIRIDIH
JHARKHAN

Advocate for the Petitioner : MR. B DUTTA

Advocate for the Respondent : MR. SAILENDRA DEKA (r-1,2,3,4,5 and 6)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri B. Dutta, Senior Counsel
Shri S. Banik

Advocate for the respondents : Shri D. Mazumdar, Senior Counsel
Shri S. Deka

Date of hearing : **07.06.2024**
Date of Judgment : **07.06.2024**

JUDGMENT & ORDER

Heard Shri B. Dutta, learned Senior Counsel assisted by Shri S. Banik, learned counsel for the petitioner. Also heard Shri D. Mazumdar, learned Senior

Counsel assisted by Shri S. Deka, learned counsel for all the respondents.

2. Considering the facts and circumstances and as agreed to by the learned counsel for the parties, the instant petition is taken up for disposal at the admission stage itself.

3. The petition has been filed under Article 227 of the Constitution of India challenging an order dated 10.04.2023 (wrongly typed as 10.04.2019 in the certified copy). By the aforesaid order, the Petition bearing No. 255/2018 filed in Title Execution Case No. 2/2014 under Order I Rule 10(2) read with Section 151 of the CPC has been rejected.

4. Though considering the order proposed to be passed, a detail narration of the facts may not be necessary, it would be convenient if certain basic facts are put in this order.

5. Two suits were instituted in the year 1977 and 1983 for specific performance of two agreements. The petitioner herein contends to be the successor in interest (son) of one Nand Kishor Bagaria, who was the beneficiary of a Deed of Relinquishment dated 31.03.1997. It is contended that though the father of the petitioner was also to be the beneficiary of a Will, in view of the aforesaid Deed of Relinquishment, the benefits would be restricted to those contained in the said Deed. It transpires that the suits for specific performance of contract were instituted against the two Tea Estates prior to the execution of the Relinquishment Deed. However, there was no mention of the pending suits in the said Deed.

6. Be that as it may, the suit having been decreed and being upheld by all the Appellate Courts including the Hon'ble Supreme Court, the decree was put to execution.

7. Since the petitioner was not party to the said suits and having come to know about the execution of the decree and staking a claim that he is the actual beneficiary for the fruits of such decree, had filed two applications, one under Order I Rule 10(2) read with Section 151 of the CPC which is the subject matter of the present challenge and the other under Section 47 read with Order XXI Rule 101 of the CPC._

8. By the impugned order dated 10.04.2023, the application filed under Order I Rule 10(2) read with Section 151 of the CPC has been rejected.

9. The learned Senior Counsel for the petitioner has submitted that by the aforesaid rejection, the petitioner is likely to be caused immense prejudice as he would not be in a position to put forward his claim at the time of execution. It is submitted that the reasons cited in the impugned order are not relevant and is against the established principle of law wherein a broad outlook is necessary in adjudicating a petition under the aforesaid provision of law whereby all the necessary parties are to be given a fair opportunity of hearing.

10. *Per contra*, Shri Mazumdar, learned Senior Counsel for the respondents has submitted that the rights of the petitioner, if any, has not been extinguished by the impugned order inasmuch as, the other application filed under Section 47 read with Order XXI Rule 101 CPC is still pending. The learned Senior Counsel accordingly submits that the question of suffering any prejudice would not arise. By justifying the impugned order dated 10.04.2023, the learned Senior Counsel for the respondents has submitted that the petition under Order I Rule 10(2) was not even maintainable.

11. The rival submissions have been duly considered.

12. A careful perusal of the impugned order dated 10.04.2023 would reflect

that while the Petition bearing No. 255/2018 filed under Order I Rule 10(2) read with Section 151 of the CPC was rejected, the other application bearing Petition No. 426/2018 filed under Section 47 read Order XXI Rule 101 CPC was put up for consideration on the next date fixed i.e. 26.05.2023. This Court has been apprised that due to the pendency of the present case, the further proceedings were not carried forward.

13. A perusal of the provisions of Order XXI Rule 101 of the CPC would make it clear that all questions raised in an application filed by a litigant who was not a party in the suit, all such questions would be determined by the said Court as if it is a suit and such question may not be raised by a separate suit. For ready reference, the aforesaid provision of law is extracted hereinbelow-

“101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

14. This Court is of the opinion that without even going to the aspect of maintainability of an application under Order I Rule 10 of the CPC at the time of execution, this Court is of the considered view that rejection of the aforesaid application would not cause any material prejudice to the present petitioner inasmuch as, the application under Section 47 read with Order XXI Rule 101 CPC is still pending and, as provided in the statute itself, all such questions would be determined by the said Court in an application and not by a separate

suit. This Court has also apprised, as observed above, that the application has not proceeded because of the pendency of this case.

15. In view of the aforesaid facts and circumstances, the present petition is closed with an observation that the pending petition under Section 47 read with Order XXI Rule 101 of the CPC be decided on its own merits. It is clarified that such decision is not to be influenced by the previous order passed in the application under Order I Rule 10(2) as well as any observations made by this Court in the present order.

16. Since the parties are present before this Court, let the parties appear before the learned Court of Additional District Judge (FTC), Dibrugarh on 24.06.2024 along with a copy of this order whereafter the learned Court will proceed in accordance with law.

17. Accordingly, the petition stands closed.

JUDGE

Comparing Assistant