

GAHC010096622021



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

Case No. : CRP/50/2021

ON THE DEATH OF GOBINDA BORO, HIS LEGAL HEIR AND 3 ORS
BAKSA (BTAD), ASSAM

1.1: BHANU BASUMATARY
W/O LATE GOBINDA BORO
R/O VILLAGE-GAROGAON
MOUZA-PATIDARRANG
P.S-GORESWAR
PIN-781366

DISTRICT- BAKSA (BTAD)
ASSAM.

2: DHIREN BORO
S/O LT. MAHENDRA BORO
R/O VILL-GAROGAON
MOUZA-PATIDARRANG
P.S.-GOESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSAM

3: RAGHU NATH BORO @ RAGHU RAM BORO
S/O LT. MAHENDRA BORO
R/O VILL-GAROGAON
MOUZA-PATIDARRANG
P.S.-GOESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSAM

4: BUDHI RAM BORO
S/O LT. MAHENDRA BORO
R/O VILL-GAROGAON

MOUZA-PATIDARRANG
P.S.-GORESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSA

VERSUS

ON THE DEATH OF HARPATI BORO
HIS LEGAL HEIRS

1.1:PARASHU RAM BORO
S/O LATE HARPATI BORO
R/O VILL- GAROGAON
MOUZA- PATIDARRANG
P.S.-GORESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSAM

1.2:KULEN BORO
S/O LATE HARPATI BORO
R/O VILL- GAROGAON
MOUZA- PATIDARRANG
P.S.-GORESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSAM

1.3:SUBHAS BORO
S/O LATE HARPATI BORO
R/O VILL- GAROGAON
MOUZA- PATIDARRANG
P.S.-GORESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSAM

1.4:RAJIB BORO
S/O LATE HARPATI BORO
R/O VILL- GAROGAON
MOUZA- PATIDARRANG
P.S.-GORESWAR
PIN-781366
DIST-BAKSA (BTAD)
ASSA

Advocate for the Petitioner : MR. A PAUL,

Advocate for the Respondent : MR. H DAS, MR. D K NATH,MR. B SHARMA

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 31.07.2024

1. Heard Mr. A. Paul, learned counsel for the petitioners. None appears for the respondent on call.

2. It appears from record that on last date also, i.e., on 24.07.2024, no one appeared for the respondent on call. Therefore, this case shall proceed ex-parte against the respondent.

3. This application under Section 115 of the Code of Civil Procedure, 1908 read with Section 151 of the Code of Civil Procedure, 1908, has been filed by the petitioners, impugning the order dated 12.03.2021, passed by learned Civil Judge, Baksa in Misc Appeal No.03/2019, whereby the order dated 09.05.2019, passed by the learned Munsiff, Baksa in Misc (J) Case No. 09/2018, was affirmed.

4. The facts relevant for consideration of the instant Civil Revision Petition, in brief, are as follows:

i. That the petitioner Nos. 2, 3 and 4 and the predecessors in interest of the petitioner No. 1 had filed a Title Suit bearing No. 04/2018, before the Court of learned Munsiff at Rangia, praying for declaration of right, title and interest as well as for permanent injunction and eviction of the defendants from the suit land.

ii. The defendants contested the suit by filing written statement.

However, after completion of the trial, the suit was decreed by the Court of learned Munsiff, Rangia by judgment and order dated 26.08.2015.

iii. Thereafter, the petitioners/decreed holders filed a Title Execution Case No. 05/2016 in the Court of Munsiff, Rangia.

5. On 29.05.2017, the Executing Court dismissed the Execution Case No. 05/2016 due to absence of the decree holder. Against the aforesaid dismissal order, the petitioners filed an application under Order 21 Rule 106 (1) read with Section 151 of the Code of Civil Procedure, 1908, for restoration of the Title Execution Case No. 05/2016.

6. However, by order dated 09.05.2019, the Executing Court dismissed the said application on the ground that the decree holder not only remained absent on 29.05.2017, but on the previous date i.e., on 25.04.2017, the petitioners were absent and has failed to show proper cause for his default..

7. Against the said dismissal order, the petitioners preferred a Misc Appeal before the Court of learned Civil Judge, Baksa, which was registered as Misc Appeal No. 03/2019. The said Miscellaneous Appeal was also dismissed on the ground that the Title Execution Case No. 05/2016 was not posted for hearing on 29.05.2017, and therefore, the dismissal was not made under Order 21 Rule 105 (2) of the Code of Civil Procedure, 1908 and hence, it was held that the provisions of Order 21 Rule 106 (1) would not be applicable in the said case, and therefore, the First Appellate Court declined to interfere with the impugned order of the Executing Court.

8. Mr. A. Paul, learned counsel for the petitioner has submitted that the Title Execution Case No. 05/2016 was not fixed for hearing on 29.05.2017, and

it was dismissed for default only. He also submits that as there is no provision for dismissal of an execution case for default, hence, it is apparent that the Executing Court while dismissing the said case exercise its power under Section 151 of the Code of Civil Procedure, 1908 and therefore, same can also be restored by invoking provisions under Section 151 of the Code of Civil Procedure, 1908.

9. The learned counsel for the petitioner has also submitted that though, the petitioner was wrong in filing an application under Order 21 Rule 106 of the Code of Civil Procedure, 1908, as the execution case was not fixed for hearing of any application on the date when it was dismissed, however, the petitioner has also mentioned Section 151 of the Code of Civil Procedure, 1908 in his application and it is submitted by the learned counsel for the petitioner that the Executing Court as well as the First Appellate Court ought to have invoked Section 151 for restoring the Execution Petition.

10. In support of his submission, learned counsel for the petitioner has cited a ruling of the Apex Court in the case of “***M/s Ramchand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava & Ors.*** reported in ***AIR 1966 SC 1899***”, wherein the Apex Court has discussed the scope and ambit of Section 151 of the code and has observed that the scope and ambit of Section 151 of the Code of Civil Procedure are very wide. Inherent power of the Court is in addition to and complementary to the powers expressly conferred under the Code, but the powers will not be exercised, if its exercise is inconsistent with or comes into conflict with any powers expressly or by necessary implication conferred by other provision of the Court.

11. Learned counsel for the petitioner has submitted that there is no provision in the Court for dismissal of an execution case for default. Similarly,

there is no provision for restoration of such a case after such dismissal order. Hence, it is appropriate that the powers of Section 151 of the Code of Civil Procedure, 1908 should be invoked under such circumstances.

12. Learned counsel for the petitioner has also cited a ruling of Madhya Pradesh High Court in the case of “***Khoobchand Jain and Anr. Vs Kashi Prasad and Ors.***” reported in ***AIR 1986 MP 66***, wherein the Madhya Pradesh High Court observed that where the dismissal of an execution application is under inherent powers, the application for its restoration will be by invoking the inherent powers of the Court and in that event no time limit is prescribed for invoking the inherent powers of the Court.

13. I have considered the submissions made by the learned counsel for the petitioner and have perused the materials available on record. I have also gone through the judgments cited by the learned counsel for the petitioner.

14. On perusal of the record, it appears that the Title Execution Case No. 05/2016 was dismissed by the Executing Court, as the decree holder was absent without any steps on that date.

15. It is apparent from the records that on that day, the said execution case was not fixed for hearing of any application, but, it was fixed for taking of necessary steps by the decree holders.

16. As the said execution case was not fixed for hearing on any application, the said case was not dismissed under Order 21 Rule 105 (2) of the Code Civil Procedure, 1908 and it has to be treated that the same was dismissed in exercise of inherent powers of Court as observed in the case of “***Khoobchand Jain and Anr. Vs Kashi Prasad and Ors.***” (*Supra*). |

17. Though, there is no bar for filing a fresh execution case within the

period of limitation, again by the present petitioner, however, as the execution case which was filed by the petitioner had progressed fairly and orders for issuance of writ was passed by learned Munsiff, Rangia and the petitioner also took steps in pursuant to the said orders, this Court is of considered opinion that as the limitation period for filing execution case is not over, the ends of justice would be saved if the Title Execution Case No. 05/2016 is restored.

18. As regards the impugned order of the First Appellate Court is concerned, though, the First Appellate Court refused to interfere with the order passed by the Executing Court on the ground that the decree holder filed the suit for restoration of the Execution Case under Order 21 Rule 106(1) read with Section 151 of the Code of Civil Procedure, 1908 and as rightly held by the First Appellate Court, the provision of Order 21 Rule 106(1) of the Code of Civil Procedure, 1908 is not applicable in this case. However, the First Appellate Court, considering the circumstances of the case could have invoked Section 151 of the Code of Civil Procedure, 1908 for directing the restoration of the Title Execution Case No. 05/2016.

19. Considering the facts and circumstance of this case and for the reasons mentioned hereinbefore, this Court deems it proper to exercise its inherent power and order restoration of the Title Execution Case No. 05/2016, pending before the Court of learned Munsiff, Baksa.

20. Consequently, the Civil Revision Petition is allowed and the impugned order of both the Courts, namely, the Court of learned Munisiff, Baksa as well as Court of learned Civil Judge Baksa are hereby set aside.

21. No order as to cost.

22. This Civil Revision petition is accordingly, disposed of.

23. The Executing Court is directed to restore the Title Execution Case No. 05/2016 in pursuant to the directions passed in this order. The petitioner shall appear before the Executing Court within a period of one month from the date of this order along with a certified copy of this order and take necessary steps in further proceeding of the execution case pending before the Executing Court, as per the directions of the Executing Court.

JUDGE

Comparing Assistant