

GAHC010127212024



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

Case No. : CRP(IO)/213/2024

MADHAB DIHINGIA @ MONYA DIHINGIA AND ANR
SON OF LATE MAHENDRA DIHINGIA,
RESIDENT OF BLOCK NO. 2,
P.O.- DHEMAJI, P.S.- DHEMAJI,
PIN- 787057,
DISTRICT- DHEMAJI, ASSAM.

2: NIREN DIHINGIA @ LAKHAN DIHINGIA
SON OF LATE MAHENDRA DIHINGIA

RESIDENT OF BLOCK NO. 2

P.O.- DHEMAJI
P.S.- DHEMAJI

PIN- 787057

DISTRICT- DHEMAJI
ASSAM

VERSUS

HIMADRI GOGOI AND 2 ORS
DAUGHTER OF CHANDRA GOGOI,
RESIDENT OF MALOBARI GAON,
P.O.- MOHEMARI, P.S.- DHAKUAKHANA,
PIN- 787055, DISTRICT- LAKHIMPUR,
ASSAM.

2: BIPLOB GOGOI
SON OF CHANDRA GOGOI

RESIDENT OF MALOBARI GAON

P.O.- MOHEMARI
P.S.- DHAKUAKHANA

PIN- 787055
DISTRICT- LAKHIMPUR

ASSAM.

3:RAMEN GOGOI
SON OF CHANDRA GOGOI

RESIDENT OF MALOBARI GAON

P.O.- MOHEMARI
P.S.- DHAKUAKHANA

PIN- 787055
DISTRICT- LAKHIMPUR

ASSAM

Advocate for the Petitioner : MR G CHOUDHURY

Advocate for the Respondent : MR A GOHAIN

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri G. Choudhury

Advocate for the respondents : Shri A. Dhar

Date of hearing : **25.06.2024**

Date of Judgment : **25.06.2024**

JUDGMENT & ORDER

Heard Shri G. Choudhury, learned counsel for the petitioners, who has presented this petition under Article 227 of the Constitution of India challenging

an order dated 10.06.2024 passed by the learned District Judge, Dhemaji in Title Execution No. 03/2015. Also heard Shri A. Dhar, learned counsel for the respondents.

2. By the impugned order, the learned District Judge, Dhemaji has directed the Civil Nazir to deliver whatever land is found in Dag No. 182 of PP No. 43 within the boundary of the decretal land to the decree holder and to submit report on the remaining lands, if any, which could not be delivered along with the reasons.

3. Shri Choudhury, learned counsel for the petitioners has submitted that the impugned order suffers from perversity as the learned Executing Court had failed to appreciate that there was a discrepancy in the description of the land. He has specifically pointed out that while the land claimed to have been purchased by the predecessors of the defendants was said to be under Patta No. 31, the schedule in counter claim was stated to be under Patta No. 34 which was subsequently changed to a new Patta No. 43. He submits that the decree as such was an erroneous decree by which a different plot of land has been made part thereof.

4. Shri Choudhury, learned counsel has also urged that in any case, a decree cannot be fragmented and a part thereof can be put to execution. He submits that the execution of a decree has to be done as a whole and not in a piecemeal manner. In this regard, he has relied upon a decision of the Hon'ble Calcutta High Court in the case of ***Kusum Kamini Debi Vs. Sailesh Chandra Chakravarty and Ors.*** reported in ***AIR 1935 Cal 118***. The learned counsel accordingly submits that there being error in exercise of jurisdiction by the Executing Court, interference is liable to be made by this Court under the supervisory powers of Article 227 of the Constitution of India.

5. *Per contra*, Shri Dhar, learned counsel for the respondents has disputed the factual proposition advanced on behalf of the petitioners. It is submitted that there was no discrepancy in the description of the suit land which was correctly reflected in the decree. He has also submitted that as per his knowledge, the decree had attained finality as there was no appeal preferred against the same and therefore, at this stage, the respondents cannot raise any issue on the correctness of a decree in an application filed under Article 227 of the Constitution of India, that too against an order passed by the learned Executing Court while executing the decree.

6. Shri Dhar, learned counsel for the respondents has also drawn the attention of this Court to an earlier proceeding before this Court in CRP(IO)/314/2023 instituted by the present petitioners against an order dated 11.08.2023 of the Executing Court. This Court, vide an order dated 22.05.2024 had held that no infirmity was found in the order dated 11.08.2023 of the learned Executing Court in Title Execution No. 03/2015 and accordingly the petition was dismissed. While dismissing, this Court had made the following observations:

“7. This Court further taking note of the order which has been passed by the learned Executing Court and the non-compliance to the specific directions being issued by the learned Executing Court to the Lot Mondol as well as the Circle Officer of the Dhemaji Revenue Circle directs the Deputy Commissioner, Dhemaji to take appropriate steps so that the decree which has been passed by this Court by the learned Trial Court can be executed in accordance with the true spirit. The Superintendent of Police, Dhemaji is also directed to do the needful.”

7. The rival submissions have been duly considered.

8. Though it is submitted on behalf of the petitioners that there was a discrepancy in the description of the land in question *qua* the Patta number, this Court is of the opinion that such discrepancy, if any, has to be raised in an appropriate manner and not by an application under Article 227 of the Constitution of India against an order of the Executing Court while executing the decree. On the other leg of the submissions that a decree cannot be fragmented wherein reliance has been made on the decision of the ***Kusum Kamini Debi*** (supra), this Court is of the view that the context under which the observations were made on Section 39 of the CPC was on a different aspect altogether wherein decrees could be executed by another Court.

9. This Court has also noted that while dismissing the earlier CRP(IO)/314/2023 by this Court vide order dated 22.05.2024, an observation was made for executing the decree in accordance with law in which the assistance of the Superintendent of Police, Dhemaji was also to be taken. The said order admittedly has not been put to further challenge.

10. This Court is of the considered opinion that the powers which are required to be exercised under Article 227 of the Constitution of India being a supervisory power wherein this Court is to examine the limited aspect whether the Subordinate Court had acted within its jurisdiction and the instant case does not appear to be such wherein such supervisory powers may be exercised. In the considered opinion of this Court, the impugned order dated 10.06.2024 does not suffer from any jurisdictional error or any legal infirmity that calls for interference by this Court.

11. In this connection, one may gainfully refer to the case of ***Umaji Keshao Meshram Vs. Radhikabai*** reported in ***1986 Supp SCC 401*** wherein the Hon'ble Supreme Court has laid down as follows:

“103. *It is equally well settled in law that a proceeding under Article 227 is not an original proceeding. In this connection, we need refer to only two decisions of this Court. In Ahmedabad Mfg. & Calico Ptg. Co. case this Court said*

“Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary court of appeal. The material part of this article substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this article to tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors....”

12. This petition is accordingly dismissed.

JUDGE

Comparing Assistant