

GAHC010162802024



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

Case No. : CRP(IO)/301/2024

MD. SIRAJUL ISLAM
S/O- LATE SADAR ALI, R/O- BIDHYA NAGAR, GARIGAON, P.S. JALUKBARI,
GUWAHATI-12, DIST. KAMRUP(M), ASSAM

VERSUS

FIROZA BEGUM AND 4 ORS
D/O- LATE LAGIMA BEGUM, W/O- MD. OSMAN ALI, R/O- GARIGAON,
RANGAMATI, NEAR BILLAL MAZID, P.S. JALUKBARI, GUWAHATI-12, DIST.
KAMRUP(M), ASSAM

2:KHUDEJA BEGUM
D/O- LATE LAGIMA BEGUM
W/O- MD. SUKUR ALI
R/O- VILL.- GARIGAON
GAON BURHAPARA
P.S. JALUKBARI
GUWAHATI-12
DIST. KAMRUP(M)
ASSAM

3:KHURSEDA BEGUM
D/O- LATE LAGIMA BEGUM
W/O- MD. HABIBUR RAHMAN
R/O- DWARANDHA
SIXMILE
H/NO. 128
GUWAHATI-23
P.S. DISPUR
DIST. KAMRUP(M)
ASSAM

4:JEHIRUL ISLAM
S/O- LATE LAGIMA BEGUM
R/O- GARIGAON
MEDHIPARA
P.S. JALUKBARI
GUWAHATI-781112
DIST. KAMRUP(M)
ASSAM

5:IMRAN KHAN
S/O- LATE LAGIMA BEGUM
R/O- GARIGAON
MEDHIPARA
P.S. JALUKBARI
GUWAHATI-781112
DIST. KAMRUP(M)
ASSAM

ALL ABOVE OPPOSITE PARTIES NO. 1 TO 5 ARE SUBSTITUTED AFTER
DEATH OF THEIR MOTHER LAGIMA BEGUM

Advocate for the Petitioner : MR H RAHMAN, DR. P AGARWAL,MR. B J DAS,MS. Z R
MAJUMDAR,P W A MAJUMDAR

Advocate for the Respondent : ,

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

14.08.2024

- 1.** Heard Mr. H. Rahman, learned Senior Counsel, assisted by Mr. B.J. Das, learned counsel for the petitioner.
- 2.** This application under Article 227 of the Constitution of India has been filed by the petitioner, namely, Md. Sirajul Islam, impugning the order dated 02.07.2024 passed by the Executing Court, i.e. the Court of learned Civil Judge (Junior Division) No. 2 in Title Execution Case No. 24/2022, whereby the application filed by one Musstt. Nurun Nahar Begum praying for stay of the

execution proceeding of Title Execution Case No. 24/2022, was dismissed by the Executing Court.

3. The learned Senior Counsel for the petitioner has submitted that the predecessor-in-interest of the respondents of this revision petition, namely, late Lajima Begum had filed a suit for eviction of the present petitioner from the suit property which she had purchased from the present petitioner on the strength of a sale deed No. 9414/2007 dated 24.07.2007. It was registered as Title Suit No. 200/2008.

4. The said suit was contested by the present petitioner by filing written statement. However, by the Judgment and Decree dated 24.05.2016 passed in Title Suit No. 200/2008, the suit filed by the predecessor-in-interest of the present respondent was dismissed by the Trial Court. Against the said Judgment of the Trial Court, the legal representatives and successor of the original plaintiff preferred an appeal before the Court of learned Civil Judge (Senior Division) No. 3, Kamrup(Metro). The said appeal was registered as Title Appeal No. 73/2016. The appeal was heard in absence of the present petitioner and by Judgment dated 28.04.2022, the appeal was allowed. The Judgment and Decree of the Trial Court was reversed.

5. Thereafter, the successor of the original plaintiffs filed the Title Execution Case No. 24/2022, for execution of the decree passed by the First Appellate Court in Title Appeal No. 73/2016.

6. Against the Judgment and Decree of the First Appellate Court in Title Appeal No. 73/2016, the present petitioner preferred a Civil Revision Petition before this Court which was registered as CRP No. 133/2023. However, the said Civil Revision Petition was dismissed by this Court, by order dated 08.05.2024.

7. The learned Senior Counsel for the petitioner has submitted that the

petitioner is considering to file an SLP before the Apex Court of India.

8. The learned Senior Counsel for the petitioner has submitted that there is another development, which is relevant to this case, i.e. before filing of the suit, namely, Title Suit No. 200/2008, the sisters and brothers of the present petitioner, namely, Musstt. Samsun Nahar Begam, Musstt. Nurun Nahar Begum and Md. Nazrul Islam had filed another Title Suit for declaration of right, title and interest and for recovery of khas possession, along with permanent injunction as well as for cancellation of deed of power of attorney No. 1400/07 dated 07.03.2007 and sale deed No. 9414/2007 dated 24.07.2007 against the present petitioner and three other defendants. The said suit was registered as Title Suit No. 11/2008. By Judgment dated 12.10.2015, the Trial Court, i.e. the Court of learned Munsiff No. 2, dismissed the Title Suit No. 11/2008. Against the said dismissal the siblings of present petitioner preferred a Title Appeal before the Court of learned Civil Judge (Senior Division No. 2), Kamrup(Metro). The said Title Appeal was registered as Title Suit No. 09/2016. However, the Title Appeal was also dismissed by the Appellate Court, by its Judgment dated 29.08.2019. Against the Judgment of the Title Appeal passed in Title Suit No. 09/2016, the plaintiffs of the Title Suit No. 11/2008 preferred a second appeal before this Court. However, as the appeal has been filed after the lapse of the period of limitation prescribed for filing the said appeal. Hence, an Interlocutory Application was filed, along with the same for condoning the delay in preferring the said second appeal. The said Interlocutory Application has been registered as I.A. (C) No. 167/2024.

9. The learned Senior Counsel for the petitioner has submitted that in the meanwhile, Musstt. Nurun Nahar Begum, who is the siblings of the present petitioner and who has preferred the second appeal in connection with the

Judgment and Decree passed in Case of Title Appeal No. 09/2016 as well as Title Suit No. 11/2008, has filed an application before the Executing Court under Order 21 Rule 26 of the Code of Civil Procedure, 1908 for stay of execution, till the second appeal filed by the said petitioner is decided by this Court. However, by the order dated 02.07.2024, the Executing Court has dismissed the said prayer and the said order of dismissal has been impugned in this instant revision petition.

10. The learned Senior Counsel for the petitioner has submitted that since the property in respect of the Title Execution Case No. 24/2022, is same, as that of the Title Suit No. 11/2008 in respect of which the second appeal has been preferred by the siblings of the petitioner, in the event of allowing of the appeal in the said case, it may have an impact in the execution of the decree passed in Title Appeal No. 73/2016 also, therefore, he has prayed that till the disposal of the second appeal preferred by the siblings of the petitioner, namely, Musstt. Nurun Nahar Begum, the further proceeding of Title Execution Case No. 24/2022 may be stayed.

11. I have considered the submissions made by the learned Senior Counsel for the petitioner and have gone through the petition, as well as the annexures, annexed along with the petition.

12. On perusal of the impugned order, it appears that the impugned order was passed on the basis of a petition under Order 21 Rule 26 of the Code of Civil Procedure. However, it is pertinent to note that said application was not filed by the present petitioner, but by one Musstt. Nurun Nahar Begum, who the petitioner claims to be his siblings and the said Musstt. Nurun Nahar Begum has not preferred this revision petition. Therefore, apparently, it appears that the petitioner does not have a *locus-standi* to challenge the impugned order dated

02.07.2024, which was not passed on the basis of any application filed by the present petitioner.

13. Moreover, though the subject-matter of the suit filed by the siblings of the present petitioner, i.e. Title Suit No. 11/2008 may be same to that of the present case, i.e. Title Appeal No. 73/2016, however, as the present petitioner had also preferred a Civil Revision Petition against the Judgment passed in Title Appeal No. 73/2016 which was dismissed, the decree has attained a finality and no appeal or any other case is pending before any higher forum against the said decree.

14. Mere submissions of the learned Senior Counsel for the petitioner that the petitioner is intending to file an SLP before the Supreme Court of India may in itself not be a ground for staying the execution of the Title Execution Case No. 24/2022.

15. Moreover, on considering the reasons stated by the Executing Court for dismissing the application filed by Nurun Nahar Begum, this Court is of considered opinion that the reasons mentioned by the Executing Court in the impugned order are plausible and just and does not need any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

16. For the reasons mentioned hereinabove, this Court is of considered opinion that this revision petition filed by the present petitioner does not have any merit warranting any interference by this Court.

17. In view of above, this application is dismissed without issuing notice to the respondent side.

JUDGE

Comparing Assistant