

GAHC010175962024



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

Case No. : CRP(IO)/316/2024

ANIL CHOUDHURY
S/O- LATE SONELAL CHOUDHURY, R/O- REHABARI, GUWAHATI-781008,
P.S. PALTANBAZAR, DIST. KAMRUP(M), ASSAM

VERSUS

SADHAN DAS
S/O- LATE RATHINDRA KUMAR DAS, R/O- SOLAPAR, PALTANBAZAR,
GUWAHATI-781008, DIST. KAMRUP(M), ASSAM AND PRESENTLY
RESIDING AT VAISHALI HOUSING SOCIETY CO-OPERATIVE, FLAT B-2,
SHANTI RAM DAS PATH, P.O. REHABARI, DIST. KAMRUP(M), GUWAHATI-
781008, ASSAM

Advocate for the Petitioner : MR. S P ROY, JYOTISH DAS,MS. V RAI,MS. P AGARWALA

Advocate for the Respondent : MR. R K BHUYAN, FOR CAVEATOR,MR A ZAMAN,MR. M KASHYAP

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

10.09.2024

Heard Mr. S.P. Roy, learned Counsel for the petitioner and Mr. R. K. Bhuyan, learned counsel for the respondent.

2. Correctness or otherwise of the order, dated 22.07.2024, passed by

the learned Addl. District Judge, No.3, Kamrup (M) in Title Appeal No. 19/2011 (Old)/19A/2016(New), is challenged in this petition, under Article 227 of the Constitution of India, by the petitioner, namely, Shri Anil Chaudhury.

3. It is to be noted here that vide impugned order, dated 22.07.2024, the learned Addl. District Judge, No.3, Kamrup (M) in Title Appeal No. 19/2011 (Old)/19A/2016(New) had rejected the petition No. 213/24 filed by the petitioner under Section 151 of the Civil Procedure Code to bring on record copies of plaint, judgment and decree passed in T.S. No. 438/17 filed the respondent which was decreed ex-parte vide judgment and decree dated 03.12.2020 in respect of the same plot of land involved in the said Title Appeal.

4. Mr. Roy, the learned Counsel for the petitioner, submits that in the Title Execution Case No. 04/2007, pending before the learned Civil Judge, (Sr. Divn. No. 3, Kamrup (M) at Guwahati, the petitioner had filed an application under Order 21 Rule 97, 98 and 101 of the CPC before the learned Executing Court questioning the very executability of the Decree. Upon the said petition Misc. (J) Case No. 43/2010 has been registered and after hearing the parties the learned court had dismissed the said petition vide order dated 23.12.2010. That being aggrieved the petitioner had preferred an appeal being Title Appeal No. 19/2011 which was re-numbered as Title Appeal No. 19(A)/2016, which is pending before the learned Addl. District Judge, No.3, Kamrup (M). In the said appeal the petitioner had filed a petition No.213/2024, for allowing him to submit the copies of plaint, judgment and decree passed in T.S. No. 438/17, filed by the respondent, which was decreed ex-parte, vide judgment and decree dated 03.12.2020, is necessary to take judicial notice of the same as the land in question which is involved in the said Title Appeal and the land in question

involved in T.S. No. 438/17, is same. But, the learned Addl. District Judge No. 3, Kamrup (M) had dismissed the same arbitrarily. Mr. Roy also submits that in order to adjudicate the dispute between the parties, it is very much necessary to bring on record the said documents and that he is ready to argue the matter before the learned Court on next date. Therefore, Mr. Roy has contended to allow the same. Mr. Roy had referred following decisions in support of his submission:-

(i) Shew Bux Mohata and Another vs. Bengal Breweries Ltd. And Others, reported in **1961 AIR (SC) 137** and

(ii) Billa Jagan Mohan Reddy and Another vs. Billa Sanjeeva Reddy and Others, reported in **(1994) 4 SCC 659**.

5. Per contra, Mr. R.K. Bhuyan, the learned counsel for the respondent, has supported the impugned order passed by the learned Addl. District Judge No.3 he submits that the order so passed by the learned court suffers from no illegality or impropriety requiring interference of this court. Mr. Bhuyan also raised the question of maintainability of this petition under section 151 CPC and further submits that the petition is nothing but a deliberate design to cause further delay in disposal of the case which, according to Mr. Bhuyan already protracted for being pending since 2011. Therefore, Mr. Bhuyan has contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 22.07.2024, passed by the learned

Addl. District Judge No.3, Kamrup (M) in Title Appeal No. 19/2011 which was re-numbered as Title Appeal No. 19(A)/2016. Also, I have gone through the case laws referred by Mr. Roy, learned counsel for the petitioner.

7. It appears that the learned Addl. District Judge No.3, Kamrup (M) Guwahati had rejected the petition No. 213/24 filed by the petitioner under Section 151 of the Civil Procedure Code to bring on record copies of plaint, judgment and decree passed in T.S. No. 438/17, on the following grounds:-

(i) That, by introducing the documents mentioned in the petition No. 213/2024, the appellant is trying to establish that respondent No.1 is already in possession of the suit land and if it is the admitted position that the suit land is in possession of the respondent No.1, the instant petition itself would not be maintainable.

(ii) That, the documents sought to be introduced vide instant petition are not necessary for deciding the present appeal.

(iii) That, the instant petition is filed just to delay the hearing of the appeal.

8. Having examined the reasons so assigned by the learned court for dismissing the petition No. 213/2024, in the light of the submission of learned Advocates of both sides and also in the light of facts and circumstances on the record, this court is of the view that the impugned order appears to be not illegal or arbitrary. Indisputably, the Title Appeal is pending since the year 2011. It was re-numbered as Title Appeal No. 19A/2016, in the year 2016. Mr. Bhuyan, the learned counsel for the respondent has rightly pointed this out at the time

of hearing and I find substance in the same. Further, to decide the Title Appeal No. 19A/2016, wherein judgment and decree dated 23.12.2010 in Misc. (J) Case No. 43/2010, arising out of T. Ex. Case No. 04/2017, is challenged and in the Misc (J) Case No.43/2010, a declaration was sought that judgment and decree dated 27.02.2007 passed in Title Appeal No. 55/2006 is in-executable. Further it appears that the documents, sought to be introduced, appears to be not at all necessary as in view of submission of Mr. Roy, the learned counsel for the petitioner, only to take judicial notice of the documents by the court, the petitioner wish to introduce the same.

9. I have carefully gone through the decisions referred my Mr. Roy and I find that there is no quarrel at the bar about the proposition of law laid down in the said cases. But, in the given factual background, the same would not advance the case of the petitioner.

10. Under the given facts and circumstances on the record, I find no merit in this petition and accordingly the same stands dismissed leaving the parties to bear their own cost.

JUDGE

Comparing Assistant