

GAHC010184892023



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

Case No. : CRP(IO)/264/2023

JIT BAHADUR CHETRY
SON OF MUKUNDA PRASAD CHETRY,
RESIDENT OF KACHUBIL, MOUZA- GOROIMARI,
P.S.- TEZPUR, DISTRICT- SONITPUR,
ASSAM.

VERSUS

DIPMALA BISWAKARMA AND 3 ORS
DAUGHTER OF LATE PRITHIRAJ BISWAKARMA,
RESIDENT OF VILLAGE- KACHUBIL,
MOUZA- GOROIMARI,
P.S.- TEZPUR,
DISTRICT- SONITPUR, ASSAM,
PIN- 782104.

2:RAJU BISWAKARMA
SON OF LATE PRITHIRAJ BISWAKARMA

RESIDENT OF VILLAGE- KACHUBIL

MOUZA- GOROIMARI

P.S.- TEZPUR

DISTRICT- SONITPUR
ASSAM

PIN- 782104.

3:HIMA BISWAKARMA
DAUGHTER OF LATE PRITHIRAJ BISWAKARMA

RESIDENT OF VILLAGE- KACHUBIL

MOUZA- GOROIMARI

P.S.- TEZPUR

DISTRICT- SONITPUR
ASSAM

PIN- 782104.

4:NITU BISWAKARMA
DAUGHTER OF LATE PRITHIRAJ BISWAKARMA

RESIDENT OF VILLAGE- KACHUBIL

MOUZA- GOROIMARI

P.S.- TEZPUR

DISTRICT- SONITPUR
ASSAM

PIN- 782104

Advocate for the Petitioner : MS. B CHOUDHURY, MR. P. CHOUDHURY

Advocate for the Respondent : MR. P SUNDI,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11.11.2024

Heard Ms. B. Choudhury, learned counsel for the petitioner and Mr. P. Sundi, learned counsel for the respondents.

2. Pursuant to the order of this Court, dated 12.06.2024, the petitioner has submitted a copy of the plaint which is placed on the record.

3. This petition, under Article 227 of the Constitution of India, is preferred by

the petitioner challenging the correctness or otherwise of the order dated 12.07.2023, passed by the learned Munsiff No. 2, Sonitpur, Tezpur, in Misc. (J) Case No. 276/2022, arising out of Title Suit No. 67/2009.

4. It is to be noted here that vide impugned order dated 12.07.2023, the learned Munsiff No. 2, Tezpur had rejected the petition filed by the petitioner for sending the disputed sale deed, along with another sale deed, relevant for adjudication of the suit to the Forensic Science Laboratory, Kahilipara, Guwahati, under Order 26 Rule 10A of the CPC.

5. Ms. Choudhury, learned counsel for the petitioner submits that the petitioner had purchased a plot of land measuring 2 bighas 2 kathas 10 lechas, covered by Dag No. 293, Periodic Patta No. 47 of village Kochubil, Mouza Goroimari, which is described in Schedule-A of the plaint by executing a registered sale deed, bearing No. 299/1997 from Late Prithiraj Biswakarma and since then the petitioner had been possessing the same. Thereafter in the year 1998, the petitioner had purchased another plot of land measuring 1 bigha 2 kathas from Late Prithiraj Biswakarma during his lifetime, by executing another registered sale deed, bearing No. 8/1998 on 05.01.1998. But, when the petitioner went to take possession of the aforementioned plot of land purchased, vide registered sale deed No. 8/1998, the respondents herein resisted him and thereafter, the respondents herein had instituted Title Suit No. 67/2009 for declaration of their right, title and interest over the plot of land measuring 1 bigha 2 kathas out of their share of 3 bighas 2 kathas 3 lechas out of total land measuring 5 bighas 4 kathas 13 lechas, covered by Dag No. 293, Periodic Patta No. 47, and also for declaration of the registered sale deed No. 8/1998, dated 05.01.1998 as null and void. While the trial of the Title Suit No. 67/2009 was going on, the petitioner herein had filed a petition before the

learned trial Court for sending the registered sale deed No. 299/1997, along with registered sale deed No. 8/1997 for examination and comparison of the signature for expert opinion. But, the learned trial Court, vide order dated 28.05.2015, had dismissed the petition stating that the petitioner at appropriate stage might pray for expert opinion. Thereafter, the petitioner had preferred another petition for sending the registered sale deed No. 299/1997, and the other registered sale deed No. 8/1998, to the Forensic Science Laboratory, Kahilipara, Guwahati, under Order 26 Rule 10A of the CPC. But, the same was dismissed by the learned trial Court, vide impugned order dated 12.07.2023, and therefore, the present petition is preferred for sending both the sale deeds to the Forensic Science Laboratory, Kahilipara, Guwahati for comparison and expert opinion and that the same will also help the learned trial Court to dispose of the suit in an effective manner.

6. On the other hand, Mr. Sundi, learned counsel for the respondents has opposed the petition. Mr. Sundi, by referring to the order dated 28.05.2015, passed by the learned trial Court dismissing the earlier application, submits that in the said order dated 28.05.2015, the learned trial Court had observed that sale deed No. 299/1997 relates to another plot of land and hence, the sale deed No. 299/1997 is not relevant in adjudication of the matter in dispute and no purpose will be served by sending the sale deed No. 299/1997 for expert opinion, and that this order attained finality and the same had not been challenged at any point of time by the present petitioner. Mr. Sundi further submits that though the respondents had not admitted the signature of Late Prithiraj Biswakarma in sale deed No. 299/1997 and they had also prayed for cancellation of the sale deed No. 8/1998 in the title suit and since there is no admitted signature of Late Prithiraj Biswakarma, no purpose will be served by

sending the two sale deeds for expert opinion and therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the impugned order dated 12.07.2023, and the order dated 28.05.2015.

8. It appears that the learned trial Court had dismissed the petition on the ground that nowhere in the plaint the plaintiffs/respondents herein stated regarding registered sale deed No. 299/1997, dated 10.03.1997 and they had only stated that another land measuring 2 bighas 2 kathas 3 lechas was sold. But, nowhere they admitted the execution of sale deed No. 299/1997 by Late Prithiraj Biswakarma and in view of total denial of the execution of the sale deed by Late Prithiraj Biswakarma, the sale deed No. 299/1997 is not relevant for adjudication of the matter in dispute, as the dispute is in respect of sale deed No. 8/1998, and thereafter, dismissed the same. It also appears from the order dated 28.05.2015, that the earlier petition was dismissed by the learned trial Court on the ground that both the sale deeds relate to a different plot of land and as such, no purpose will be served by sending the sale deed No. 299/1997 for expert opinion. On perusal of the plaint, which is filed in the additional affidavit by the petitioner, indicates that the suit land relates to Dag No. 293, Periodic Patta No. 47 of village Kochubil, Mouza Goroimari and from the written statement, which is also placed on record, indicates that sale deed No. 8/1998, relates to a plot of land covered by Dag No. 193, Periodic Patta No. 47 of village Kochubil, Mouza Goroimari and as such, the observation made by the learned trial Court in the order dated 28.05.2015, attained finality having not been challenged at any point of time.

9. In view of the above, and also in view of denial of the signature of Late Prithiraj Biswakarma over the sale deed No. 299/1997, by the respondents herein, this Court is of the view that no purpose will be served by sending both the sale deeds for comparison of signature by the expert and to obtain an opinion.

10. Accordingly, this Court finds no infirmity or arbitrariness in the impugned order dated 12.07.2023 and accordingly, this revision petition stands dismissed.

11. It appears that the Title Suit No. 67/2009 is pending for more than 15 years and therefore, the learned Court is requested to proceed to dispose of the matter in accordance with law as soon as practicable.

JUDGE

Comparing Assistant