

GAHC010192202024



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

Case No. : CRP(IO)/363/2024

LILADHAR NATH AND 4 ORS.

S/O- LATE GAGIRAM NATH, R/O- NAFUK NINGARI TELI GAON, P.O. AND
P.S. SONARI, UNDER SONAI REVENUE CIRCLE, MOUZA- ABHOYPUR,
CHARAIDEO SUB-DIVISION, DIST. SIVASAGAR, ASSAM

2: SMTI.SHITOLA BAMUN
W/O- LATE DAULUT BAMUN
R/O- NAFUK NINGARI TELI GAON
P.O. AND P.S. SONARI
UNDER SONAI REVENUE CIRCLE
MOUZA- ABHOYPUR
CHARAIDEO SUB-DIVISION
DIST. SIVASAGAR
ASSAM

3: SURAJ BAMUN
S/O- LATE DAULUT BAMUN
R/O- NAFUK NINGARI TELI GAON
P.O. AND P.S. SONARI
UNDER SONAI REVENUE CIRCLE
MOUZA- ABHOYPUR
CHARAIDEO SUB-DIVISION
DIST. SIVASAGAR
ASSAM

4: ARUP BAMUN
S/O- LATE DAULUT BAMUN
R/O- NAFUK NINGARI TELI GAON
P.O. AND P.S. SONARI
UNDER SONAI REVENUE CIRCLE
MOUZA- ABHOYPUR
CHARAIDEO SUB-DIVISION
DIST. SIVASAGAR
ASSAM

5: GOBIN BAMUN
S/O- LATE DAULUT BAMUN
R/O- NAFUK NINGARI TELI GAON
P.O. AND P.S. SONARI
UNDER SONAI REVENUE CIRCLE
MOUZA- ABHOYPUR
CHARAIDEO SUB-DIVISION
DIST. SIVASAGAR
ASSA

VERSUS

HANGMEO THAM AND 10 ORS.
S/O- LATE AIYONG THAM, R/O- DEOHAL TEA ESTATE, P.O. AND P.S.
BORDUBI, DIST. TINSUKIA, ASSAM

2:AJENG THAM
S/O- LATE AIYORI THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

3:AJEO THAM
S/O- LATE AIYONG THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

4:AHONG THAM
S/O- LATE AHOI THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

5:AHM THAM
S/O- LATE AHOI THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

6:SMTI SEWGAN THAM
C/O- LATE AHOI THAM
R/O- DEOHAL TEA ESTATE

P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

7:SOONPHON THAM
S/O- LATE AWAN THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

8:MITHUN THAM
S/O- AWAN THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

9:SMTI SOORJI THAM
S/O- LATE AWAN THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

10:SMTI MAMONI THAM
C/O- LATE AWAN THAM
R/O- DEOHAL TEA ESTATE
P.O. AND P.S. BORDUBI
DIST. TINSUKIA
ASSAM

11:SMTI.SOROJINI BORUAH
W/O- SRI LALIT KR.BARUAH
R/O- SONARI TOWN
PARBATPUR
324 NO. GRANT
UNDER ABHOIPUR MOUZA
P.S. SONARI
DIST. CHARAIDEO

Advocate for the Petitioner : MR G N SAHEWALLA, MR M SAHEWALLA,MS. S. TODI,MR H K SARMA,MS K SARMA

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

23.09.2024

Heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Ms. G. Dugar, learned counsel for the petitioners.

2. Order dated 06.06.2024, passed by the learned Civil Judge (Junior Division) cum J.M.F.C., Charaideo, in Title Execution No. 04/2023, is challenged in this petition, under Article 227 of the Constitution of India read with Section 151 of the C.P.C.

3. It is to be noted here that vide impugned order dated 06.06.2024, the learned Civil Judge (Junior Division) cum J.M.F.C., Charaideo has dismissed the petition No. 206/2024, filed by the petitioner for staying the execution of the case.

4. Mr. Sahewalla, learned Senior Counsel appearing for the petitioners submits that the petitioners as plaintiffs had instituted a title suit, being T.S. No. 05/2011, for declaration of right, title, permanent injunction on the basis the averments made in the suit. But, the said suit was dismissed and decreed in favour of the respondents. Thereafter, the petitioners had preferred an appeal before the learned appellate court, being Title Appeal No. 04/2021. But, the same was also dismissed for default. Thereafter, the petitioners had preferred a petition for restoration of the said appeal and upon the said petition, the learned appellate court had registered a case, being Misc. (J) Case No. 02/2024, and while the same was pending before the learned court, execution proceeding was initiated on before the learned trial court, by the respondent herein, being Title Execution Case No. 04/2024, wherein the petitioners had filed a petition for staying the execution proceeding. But, vide order dated 06.06.2024, the learned executing court had

dismissed the petition on the ground that the said court has no power at that stage under the CPC for staying the executing case. Referring to Rule 26 of Order 21 of the CPC, Mr. Sahewalla submits that since the restoration petition is pending before the learned appellate court, the learned executing court can be directed to stay the execution proceeding till disposal of the restoration petition, else serious prejudice will be caused to the petitioners and the appeal filed by them would become infructuous.

5. Having heard the submission of learned counsel for the petitioners, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 06.06.2024, passed by the learned Civil Judge (Junior Division) cum J.M.F.C., Charaideo, in Title Execution No. 04/2023.

6. It appears that the Misc. (J) Case No. 02/2024 is yet to be disposed of and if in the execution proceeding the decree is executed then the appeal will be infructuous.

7. Taking note of the submission of Mr. Sahewalla as well as the relevant provision of law and also considering the given facts and circumstances on the record, this court is inclined to allow this petition.

8. Accordingly, it is provided that the learned executing court can stay the execution proceeding, being Title Execution No. 04/2023, till disposal of the restoration petition, being Misc. (J) Case No. 02/2024.

9. In terms of above, this petition stands disposed of, at this motion stage itself.

JUDGE

Comparing Assistant