

GAHC010202492023



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

Case No. : CRP(IO)/310/2023

NIBEDITA DAS AND ANR
DAUGHTER OF LATE SARAJ KUMAR DAS,
R/O- LAXMI CHARAN ROAD, KARIMGANJ,
WARD NO. 5, P.O., P.S. AND DIST- KARIMGANJ,
ASSAM.

2: NABANITA DAS
DAUGHTER OF LATE SARAJ KUMAR DAS

R/O- LAXMI CHARAN ROAD
KARIMGANJ

WARD NO. 5
P.O.
P.S. AND DIST- KARIMGANJ

ASSAM

VERSUS

DEBABRATA SAHA
S/O- LATE SURESH CHANDRA SAHA,
R/O- SUBASH NAGAR, KARIMGANJ TOWN,
P.O., P.S. AND DIST- KARIMGANJ, ASSAM.

Advocate for the Petitioner : MR. S P CHOUDHURY

Advocate for the Respondent : MR. R K JAIN

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

18.03.2024

This is an application under Article 227 of the Constitution challenging the order dated 30.06.2023 passed by the learned Court of the Munsiff No.1 Karimganj in Title Execution Case No.06/2006. It appears from the materials on record that the petitioners herein are decree holders in Title Suit No.332/1992. On the basis of the said decree, an execution proceeding was initiated being Title Execution Case No.6/2006. In the said execution proceeding, an application was filed by the respondent herein on 28.06.2023 stating *inter alia* that the respondent is not creating any obstruction in the execution of the decree. But the said respondent had reasons to believe that through the execution proceeding the decree holder may occupy some land of the petitioner of the said agreement so the survey of the decreetal land is highly required. It was, therefore, prayed for in the said application by the respondent herein that the learned executing court should pass necessary order for handing over the decreetal land to the decree holder after proper measurement and survey of the decreetal land under the supervision of the Court.

2. The petitioners herein who were the decree holder submitted an objection to the said application filed by the respondent stating, *inter alia*, that the said application was nothing, but just to delay the execution of the decree. It was also mentioned that the respondent herein had earlier filed an application under Order XXI Rule 97, 99 and 101 of the Code of Civil Procedure, 1908 (for short,

the Code) in the execution proceedings, which was, however, rejected. It was also stated that against the said order of rejection of the said application under Order XXI Rule 97, an appeal was preferred before the learned Civil Judge Karimganj registered as Misc.Appeal No.1/2022 which was also rejected with a cost of Rs.5000/-. The respondent thereupon did not stop and preferred a regular second appeal before this Court which was registered and numbered as RSA No.60/2023 which was also dismissed vide an order dated 07.06.2023. It was, therefore, the case of the petitioners in the said objection that the said application so filed is nothing, but a re-agitation of the matter which had already stood concluded.

3. The learned Executing court upon hearing the parties, vide the impugned order rejected the petition filed by the respondent stating, *inter alia*, that the prayer for survey and demarcation of the decreetal land is not maintainable at that stage. However, the learned Executing court in the said impugned order observed that the parties having agreed on the point of the matter of concern regarding measurement of the decreetal land and, as such, the assistance of the staff of the Circle Officer, Karimganj would be required for the purpose of carrying out the execution, for which, the learned Executing court directed the Circle Officer Karimganj to depute his or her eligible staff for assistance in the execution process and fix the matter for report on 14.07.2023 by the Nazir.

4. Being aggrieved by the order dated 30.06.2023 passed by the learned Executing Court, the petitioners, who are the decree holders have approached this Court on the ground that when the said issue have already been objected to and the petition having been dismissed, the learned Executing court ought not

to have observed that the parties have agreed regarding the measurement of the decreetal land and the assistance of the Circle Officer, Karimganj for fixing the issue.

5. I have heard the learned counsels appearing on behalf of both the parties and have given due consideration to their respective submissions. This Court is of the opinion that the learned Executing Court while executing the decree in respect to a land is not powerless to take the help of the Revenue authorities so that the possession of the decreetal land as per the decree is duly handed over to the decree holder. Under such circumstances, this Court is of the opinion that no interference is required to the impugned order dated 13.09.2023, *inasmuch as*, the perusal of the said order only shows that the learned Executing court has only asked the assistance of the staff in the office of the Circle Officer, Karimganj so that the execution process could be carried out.

6. Accordingly, this Court finds no merit in the instant petition, for which the instant petition stands dismissed.

7. Before concluding, this Court finds it relevant to observe and direct that the learned Executing Court shall carry out the execution in terms with the decree and the assistance of the Revenue authorities may be taken by the learned Executing court. The said assistance should be only limited to showing the boundaries of the decreetal land and nothing further.

8. With the above, the instant revision petition stands disposed of.

JUDGE

Comparing Assistant