

GAHC010207452022



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

Case No. : CRP(IO)/270/2022

ON THE DEATH OF HARI PRASAD DOWERAH HIS LEGAL HEIRS AMRIT
DOWERAH
S/O. LT. HARI PRASAD DOWERAH, R/O. LONGJONG GAON, P.O. AND P.S.
NAHARKATIA, DIST. DIBRUGARH, ASSAM.

VERSUS

TATA TEA LIMITED AND 2 ORS
HAVING ITS REGD. OFFICE AT BISPOP LOFRAY ROAD, KOLKATA.

2:THE AMALGAMATED TEA COMPANY ESTATE COMPANY

A LIMITED LIABILITY COMPANY INCORPORATED IN ENGLAND AND ITS
PRINCIPAL OFFICE IN KOLKATA CARRYING ON BUSINESS OF TEA
PLANTATION AND MANUFACTURE IN INDIA AND OWNING AMONGST
OTHERS NAHARKATIA TEA ESTATE
P.O. NAHARKATIA
DIST. DIBRUGARH
ASSAM.

3:TATA FINALAY LTD.

A COMPANY INCORPORATED IN INDIA AND HAVING ITS REGISTRAR
OFFICE AT BOMBAY HOUSE
34 MOMY REDY STREET
FORT
BOMBAY-400023 CARRYING ON TEA PLANTATION AND MANUFACTURE
AND OWING AMONGST OTHERS NAHARKATIA TEA ESTATE
P.O. NAHARKATIA
DIST. DIBRUGARH

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : MR. N C DAS (R- 1,2,3)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing & judgment : 26.04.2024

**JUDGMENT & ORDER
(ORAL)**

Heard Mr. P.J. Saikia, learned senior counsel assisted by Mr. R.S. Mishra, Advocate, appearing on behalf of the petitioner and Mr. N.C. Das, learned senior counsel assisted by Ms. M. Devi, learned counsel appearing on behalf of the respondents.

2. This application under Article 227 of the Constitution of India is filed by the petitioner challenging the order dated 25.08.2022, passed by the learned Executing Court, i.e. the Court of learned Munsiff at Naharkatia, Assam, in Title Execution Case No. 5/2019, whereby the application filed by the petitioner was rejected.

3. From a perusal of the materials on record, it reveals that the decree holders, as plaintiffs, had instituted a suit, being Title Suit No. 23/1975, against one Tankeswar Dowerah for recovery of *khas* possession of a premises which have been described in the Schedule to the plaint of the said suit. The said suit was decreed on 19.08.1994. It is relevant to mention that during pendency of the said suit, the defendant Tankeswar Dowerah expired and he was substituted by his wife, namely, Maichana Dowerah. Thereupon the said Maichana Dowerah, being aggrieved with the judgment and decree dated 19.08.1994 passed in the said Title Suit No. 23/1975, preferred an appeal before the First Appellate Court, which was registered and numbered as Title Appeal No. 15/1994. The said appeal was dismissed by a judgment and decree dated

31.05.1995. Thereupon a Second Appeal, being RSA No. 128/1995, was filed before this Court in the year 1995 and the same was dismissed on 31.10.2000. Upon dismissal of the second appeal, an Execution Application was filed on 16.06.2011, which was registered as Title Execution Case No. 11/2011. It is relevant to mention that while dismissing the Second Appeal, this Court categorically directed the appellant therein to vacate the decretal property within a period of six months.

4. Pursuant to filing of the Execution Application in the year 2011, the grandsons of the original defendant, i.e. Late Tankeswar Dowerah, filed a suit in the year 2011, which was registered and numbered as Title Suit No. 49/2012, seeking a declaration that the decree obtained by the defendants therein was null and void, illegal, inoperative and unexecutable due to fraud and misrepresentation and the defendants had no right, title and interest to execute the said decree; a declaration that the plaintiffs or their dependents and persons under them are not liable to be evicted from the suit premises described in the said decree as well as also for a perpetual injunction and stay of the execution proceedings, being Title Execution Case No. 11/2011. The said suit subsequently was re-numbered as Title Suit No. 4/2022. In view of the amendment to the Bengal, Agra and Assam Civil Courts Act, 1887 whereby the pecuniary jurisdiction of the Court was enhanced and, consequently, the said Title Suit filed by the petitioners was transferred to the Court of the learned Munsiff, Naharkatia. It is also relevant to take note from the relief sought for in the suit filed by the petitioners that prior to filing of the suit, an application was filed by the petitioners in the said execution proceeding under Order XXI Rule 29 of the Code of Civil Procedure, 1908 for stay of the execution proceedings. The said application was rejected by the learned court below vide order dated 28.05.2022 and it is under such circumstances the present application has been filed.

5. Mr. P. J. Saikia, learned senior counsel appearing on behalf of the petitioners has submitted that in view of the provisions of Order XXI Rule 29 CPC, the learned Executing Court ought to have stayed the decree in view of the pendency of Title Suit

No. 49/2012, which was subsequently re-numbered as Title Suit No. 4/2022. He has submitted that if the order of stay of the execution proceeding is not passed, the suit, being Title Suit No. 4/2022, would become infructuous.

6. On the other hand, Mr. N.C. Das, learned senior counsel appearing on behalf of the respondents submitted that the original suit was filed against one Tankeswar Dowerah, i.e. the grandfather of the petitioners, who was in possession of the suit premises solely on the basis that he was an employee of the company which the respondents succeeded to. The grandfather of the petitioners duly contested the suit during his lifetime and after the death of the grandfather of the petitioners, their grandmother was duly substituted, who fought at the litigation till this Court. He emphasised that after Tankeswar Dowerah passed away on 19.08.1994, an appeal was preferred by the grandmother of the petitioners, which was registered and numbered as Title Appeal No. 15/1994. The said Title Appeal was dismissed vide order dated 31.05.1995. Thereupon, a Second Appeal was filed by the grandmother of the petitioner, which was also dismissed by this Court on 31.10.2000. Learned senior counsel appearing for the respondents further submitted that the petitioners herein had no independent right sans the rights emanating from their grandmother and grandfather and, as such, filing of the subsequent suit was an attempt to deprive the decree holder of the fruits of the decree. He further submitted that a perusal of the plaint would also show that the execution proceedings had been initiated much earlier than the suit which was filed by the petitioners inasmuch as the relief in the subsequently suit categorically mentions about temporary injunction till disposal of the application under Order XXI Rule 29 of the Code.

7. Mr. P.J. Saikia, learned senior counsel appearing on behalf of the petitioners, rejoining to his earlier submissions, submitted that the plaintiffs/petitioners had claimed independent right over the decreetal land on the basis of *Rioti Khatian* being issued in favour of the father of the petitioners on 12.12.1995.

8. This Court has duly heard the learned counsel appearing for the parties and has given anxious consideration to their respective submissions.

9. From the materials available on record, it is apparent that a lawful decree was passed by the Courts against the grandfather and the grandmother of the petitioners herein in respect to the suit premises, which was a quarter situated at Old Staff Line at Naharkatia Tea Estate. Though it has been submitted by the learned senior counsel appearing on behalf of the petitioners that the petitioners claimed their independent right on the basis of the *Rioti Khatian* issued in favour of their father, this Court is of the opinion that issuance of a *Khatian* would only be a *Khatian* in respect to the land and not in respect to the Schedule premises of the suit. Moreover, the said *Khatian* was issued during the pendency of the suit and, as such, any devolvement of the right(s) during pendency of the suit would be only subject to the outcome of the further proceedings of the said suit, which, in the present case, was decreed in favour of the respondents herein.

10. This Court also finds it relevant to take note of the fact that the Executing Court was completely justified in coming to the finding that the provisions of Order XXI Rule 29 of the CPC would not be applicable to the facts of the case taking into account that the suit, which was filed by the petitioners, was subsequent to filing of the Execution Application and, as such, the said provisions would not be applicable.

11. In view of the facts and circumstances noted above, it is the opinion of this Court that the impugned order dated 25.08.2022 does not call for any interference inasmuch as there is a lawful decree which has been passed in favour of the decree holders/respondents herein. Moreover, it is seen that the suit was filed in the year 1975 and as on date almost 49 years have passed by and the decree holders are yet to enjoy the fruits of the said decree.

12. Consequently, the instant petition stands dismissed thereby directing the learned Executing Court to proceed with the decree in accordance with law. Taking

into account that the parties are duly represented, this Court vacates the interim order dated 18.11.2022 passed by this Court and directs the parties to appear before the learned Executing Court on 25.05.2024 in connection with further proceedings of Title Execution Case No. 11/2011.

The instant Civil Revision Petition stands disposed of in terms of the above observations and directions.

JUDGE

Comparing Assistant