

GAHC010209962023



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

Case No. : CRP(IO)/302/2023

TOP RAM BORAH AND 3 ORS
S/O LATE BAPURAM BORAH, R/O VILL-BARANGABARI, P.O.-
KOMORAGURI, P.S. AND DIST-MORIGAON, ASSAM, PIN-782105

2: SUMESWAR BORAH
S/O LATE BAPURAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-782105

3: AKAN CHANDRA BORAH
S/O LATE BAPURAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-782105

4: HARESWAR BORA
S/O LATE BAPURAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-78210

VERSUS

ON THE DEATH OF GUNAAM BORA, S/O LATE GURA BORA, HIS LEGAL
HEIRS, ANIL BORA AND 4 ORS.
S/O LATE GUNARAM BORAH, R/O VILL-BARANGABARI, P.O.-
KOMORAGURI, P.S. AND DIST-MORIGAON, ASSAM, PIN-782105

2:NAREN BORA
S/O LATE GUNARAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-782105

3:DEBA KANTA BORA
S/O LATE GUNARAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-782105

4:DINESH BORA
S/O LATE GUNARAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-782105

5:DAYAL BORA
S/O LATE GUNARAM BORAH
R/O VILL-BARANGABARI
P.O.-KOMORAGURI
P.S. AND DIST-MORIGAON
ASSAM
PIN-78210

Advocate for the Petitioner : MR. A. ALAM
Advocate for the Respondent : MS. R CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 14-03-2024

1. This instant petition has been filed under Article 227 of the Constitution of India challenging the order dated 12.07.2023 passed

by the learned Court of Munsiff No.1, Morigaon in MJ Case No. 85/2022 arising out of Title Execution Case No. 3/2014.

2. A perusal of the said order reveals that the decree holders had filed an application under Order XXI Rule 11 of the Code of Civil Procedure, 1908 seeking execution of the judgment and decree in T.S. No.29/1994. It further reveals that during the proceedings, the said execution application was dismissed for default on 06.07.2017. Thereupon on account of ailment, the restoration application could not be filed immediately. Subsequently, in the year 2022, the application was filed seeking restoration of the execution proceedings.

3. The learned executing Court had restored the said execution application vide the impugned order dated on 12.07.2023. Being aggrieved, the instant application has been filed under Article 227 of the Constitution of India by the judgment debtors/petitioners challenging the order dated 12.07.2023.

4. I have heard the learned counsels appearing on behalf of the parties. Taking into account that the judgment and decree passed by the learned Trial Court which has been affirmed by this Court vide judgment and decree dated 14.03.2012 in RSA No. 63/2001, the decree holder is entitled to get the fruits of the said decree. Under such circumstances, it is the opinion of this Court that the learned executing Court have not committed any illegality in restoring the said execution proceedings vide the impugned order dated 12.07.2023.

5. Accordingly, this Court finds no merit in the instant application for which the same stands dismissed.

6. The interim order passed on 20.09.2023 stands vacated and parties

herein are directed to appear before the learned Executing Court on 08.04.2024 for further continuation of the execution proceedings.

JUDGE

Comparing Assistant