

GAHC010233322022



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

Case No. : CRP/118/2022

SUNIL BISWAS AND 5 ORS.
S/O- LATE HAR CHARAN BISWAS

2: MANIK BISWAS
S/O- SUNIL BISWAS

3: HAREN BISWAS
S/O- SUNIL BISWAS

4: BIPLAB BISWAS
S/O- SUNIL BISWAS

5: MINA BISWAS
W/O- SUNIL BISWAS

6: ANITA BISWAS
W/O- MANIK BISWAS

ALL ARE RESIDENTS OF
VILLAGE- KULIDUNGA
P.O- AMBAGAN

MOUZA BORBHOGIA

P.S- ULUANI

DIST- NAGAON
ASSAM
PIN-78212

VERSUS

BISWAJIT BISWAS AND 5 ORS.,
LATE BIPIN CH. BISWAS

2:PRANJIT BISWAS
S/O -LATE BIPIN CH. BISWAS

3:RINA BISWAS
D/O -LATE BIPIN CH. BISWAS

4:AJANTA BISWAS
S/O -LATE BIPIN CH. BISWAS

5:BINUDINI BISWAS
W/O- LATE BIPIN CH. BISWAS

ALL ARE RESIDENTS OF VILLAGE KULIDUNGA
P.O- AMBAGAN

MOUZA BORBHOGIA

P.S- ULUANI

DIST- NAGAON
ASSAM
PIN-782120

6:KHITISH BISWAS
S/O- LATE SASHI MOHAN BISWAS

VILLAGE- KULIDUNGA
P.O- AMBAGAN

MOUZA BORBHOGIA

P.S- ULUANI

DIST- NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR. S K GHOSH

Advocate for the Respondent : MR. B K DAS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 13-03-2024

JUDGMENT & ORDER

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the order dated 11.07.2022, passed by the learned Munsiff, Kaliabor in Title Execution Case No.9(K)/2017, whereby the application filed by the petitioners, who were the judgment debtor was rejected.

2. From the materials on record, it transpires that the respondents herein as plaintiffs had instituted a suit being Title Suit No.8(K)/2013 seeking declaration of right, title and interest and for recovery of khas possession and permanent injunction. In the said suit, it was the specific claim of the plaintiffs that they were the owners of a plot of land measuring 1 bigha, 1 katha and 17 ½ lessas of PP No.25 which comprises of 4 kathas, 7 ½ lessas out of 1 bigha 12 ½ lessas, covered by dag No.133 and 2 kathas 10 lessas, out of 1 bigha 1 katha 17 ½ lessas in dag No.134 of PP No.25 of Kissam- Kulidunga under Mouza Borbhogia in the district of Nagaon, Assam. It was also the specific case of the plaintiffs that the defendant without having right, title and interest encroached upon a portion of the suit land which was specifically described in schedule C to the plaint on 10.07.2012. It is under such circumstance, the plaintiffs sought for recovery of possession of the schedule C land, which as per the plaintiffs were encroached by the defendants and for confirmation of possession in respect of the remaining land described in schedule B. This Court at this stage finds it relevant to take note of that the schedule C land which has been claimed to be

encroached by the defendants measuring 2kathas 12 lessas covered by dag No.133 and 10 lessas covered by dag No.134.

3. The defendants pursuant to the filing of the suit filed their written statement raising various preliminary issues. On merits, it was stated that as per the jamabandi/patta of the suit land pertaining to Mouza Borbhogia, Kissam-Kulidunga under PP No.25 covered by dag No.133 and 134, the total land under dag No.133 was shown as 1 bigha 4 kathas 3 lessas and under dag No.134, it was shown as 2 bighas 1 katha and 10 lessas and the total land for both the dags were 4 bighas 13 lessas. It was further mentioned that the father of the defendant No.1 had purchased a plot of land by the deed of sale dated 05.03.1974 for an area measuring 2 kathas 10 lessas under dag No.133 of PP No.25 and another plot of land of similar measurement in dag No.77 of PP No.24, and, therefore, the defendant had title over 1 bigha of land. It also appears from a perusal of the written statement that the defendants took the plea of adverse possession, *inasmuch as*, amongst the various issues framed, one of such issues pertains to Article 64/65 of the Limitation Act, 1963.

4. The learned trial court after perusal of the evidence on record, while deciding the issues No.3 categorically had come to an opinion that the plaintiffs had purchased the suit schedule land from one Debendra Biswas through sale deed and later on mutated their names. While deciding the issue No.4, as to whether the plaintiffs had possession over the schedule B land, wherein the plaintiffs sought for confirmation of possession, the learned trial court came to an opinion that the plaintiffs had possession over the Schedule B land. While deciding the issue No.5, as to whether the plaintiffs are entitled to khas

possession of the schedule C land, the learned trial court even after taking the fact that the defendant had duly claimed 2 kathas 10 lessas of land covered by dag No.133 of PP No.25, came to an opinion that the plaintiffs were the absolute owners of the said land and, as such, entitled to recovery of the schedule C land.

5. On the basis thereof, the learned trial court decreed the suit thereby declaring that the plaintiffs had right title and interest over the suit land described in schedule A to the plaint. It was declared that the plaintiffs would be entitled to confirmation of possession over the suit land described in schedule B to the plaint and the plaintiffs would be also entitled to recovery of khas possession of the land mentioned in schedule C to the land by removing therefrom the defendants and the man, agents etc. after demolishing the illegal structures, construction of the four houses standing thereon. On the basis thereof, the said decree was prepared. It is also seen from the record that as the plaintiffs were not able to get the delivery of khas possession, on the basis of the decree for which an execution proceedings was filed being Title Execution No.9(K)/2017. In the said application, the defendant again raised the issue as regards the purchase of 2 kathas 10 lessas of land in dag No.133 of PP No.25 which was duly taken note as already stated hereinabove by the learned trial court in passing the judgment and decree dated 13.07.2015. The said issue which was raised was raised by an application under Section 47 of the Code. On the basis of the said application which was filed, the learned Executing court vide an order dated 11.07.2022 rejected the said application and it is against that, the instant application has been filed under Section 115 of the Code.

6. This Court has duly taken note of the facts and also heard the learned counsels appearing on behalf of both the parties. A perusal of the application under Section 47 filed by the judgment debtor i.e. the petitioners herein categorically shows that the said issues which had already been decided by the learned trial court in the suit has again been raised in the execution proceedings. The same in the opinion of this Court cannot be done, sans a challenge being made to the judgment and decree which admittedly the judgment debtor have not done.

7. This Court finds it profitable to refer to the judgment of the Supreme Court in the case of *Ravinder Kaur Vs. Ashok Kumar*, reported in (2003) 8 SCC 289, wherein the Supreme Court had dealt with raising similar issues pertaining to description of land which had already been decided in the trial court proceedings. The Supreme Court observed in paragraph 22 of the said judgment that raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. It was observed that the courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These types of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.

“22. All these facts apart, we notice that nowhere in the petition the respondent tenants claim to be in possession of any shop other than Shop No. 3 in regard to which they have suffered an eviction order. It is not their case that they are also in possession

of some other property in regard to which there is no eviction order but the landlord is trying to take possession in these execution proceedings. We have specifically asked the learned counsel appearing for the respondents that apart from Shop No. 3 belonging to the appellant, are the respondents in possession of any part of the property bearing No. EK 172/2 situated at Chowk Panjeer, Jalandhar. The learned counsel was not able to give any satisfactory reply to our question which would only mean that the respondents are not in possession of any other property other than Shop No. 3 leased out to them in the abovementioned property belonging to the appellant. That is also why they prayed for restoration of possession. Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system."

8. In the instant case, the facts are similar wherein the petitioner who are the judgment debtors after having suffered the decree had now again sought to raise the issue as regards the description of the property which had been duly decided. This Court also has also seen that the decree passed by the learned trial court and the Schedules mentioned therein are clearly identifiable. Under such circumstances, the application which was filed by the judgment debtor is on the face of it mis-conceived. It is also seen that on account of the said application being filed, a delay has been caused to the execution proceedings and thereby depriving the decree holders of the fruits of the decree.

9. Considering the above and taking into account the conduct of the

petitioners, who are the judgment debtors, this Court dismisses the instant petition with a cost of Rs.25,000/-.

10. Interim order passed earlier stands vacated.

11. Taking into account that the parties are duly represented, this Court directs both the parties to appear before the learned executing court on 03.04.2024 so that the execution proceedings are taken up for further disposal.

12. With the above, this revision petition stands dismissed with costs as stated above.

JUDGE

Comparing Assistant