

GAHC010242382024



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

Case No. : CRP/126/2024

PURNA ROY
S/O LATE KHALAI ROY, R/O VILL- KALDOBA PART-II, P.S.-AGOMANI, DIST-
DHUBRI, ASSAM

VERSUS

SMTI. MADHUMITA BARUA AND 2 ORS
D/O LATE SIBENDRA NR. BARUA, R/O WARD NO. 2, GAURIPUR TOWN, P.O.
AND P.S.-GAURIPUR, DIST-DHUBRI, ASSAM, PIN-

2:DIPTI BARUA
W/O LATE SANDIP NARAYAN BARUA
R/O WARD NO. 2
GAURIPUR TOWN
P.O. AND P.S.-GAURIPUR
DIST-DHUBRI
ASSAM
PIN-

3:NARAYAN BARUAH
S/O LATE SANDIP NARAYAN BARUA
R/O WARD NO. 2
GAURIPUR TOWN
P.O. AND P.S.-GAURIPUR
DIST-DHUBRI
ASSAM
PIN

Advocate for the Petitioner : MR. A RAHMAN,

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 25.11.2024

Heard Mr. A. Rahman, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with Section 151 and read with Section 115 of the CPC, the petitioner has put to challenge the correctness or otherwise of the order dated 05.11.2024, passed by learned Civil Judge (Senior Division), Dhubri, in Misc. (J) Ex. Case No. 2/2023 (filed under Order 21 Rule 97 of the CPC, in Title Execution No. 2/2023).

3. Mr. Rahman, learned counsel for the petitioner submits that the petitioner being a 3rd party, had filed a petition before the Court of learned Civil Judge (Senior Division), Dhubri ('executing Court', for short), being petition No. 280/2023, which was registered as Misc. (J) Ex. Case No. 2/2023. In the said petition, the respondents herein had filed objection. While the petition under Order 21 Rule 97 was pending for adjudication, the respondents herein had filed a petition No. 1043/2024, challenging the maintainability of the petition under Order 21 Rule 97 of the CPC. In the said petition, the petitioner herein had filed objection on 05.11.2024. Thereafter, vide impugned order dated 05.11.2024, the learned executing Court had dismissed the petition by holding that the same is not maintainable. Mr. Rahman further submits that while dismissing the petition, the learned executing Court had adopted an irregular procedure and without giving an opportunity of adducing evidence, dismissed the same and as such, the impugned order dated 05.11.2024, suffers from illegality and infirmity and therefore, it is contended to set aside the same.

4. Having heard the submission of Mr. Rahman, learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused impugned order dated 05.11.2024.

5. It appears that while Title Execution No. 2/2023 is pending before the learned executing Court, the present petitioner had filed a petition under Order 21 Rule 97 of the CPC. Upon the same, the learned executing Court had registered Misc. (J) Ex. Case No. 2/2023. The respondents herein had filed objection and also filed a petition questioning the maintainability of the said petition. Thereafter, the learned executing Court, vide impugned order dated 05.11.2024, had dismissed the petition by holding that the petitioner had taken two inconsistent views in the said petition on the ground that firstly, he claimed possessory title over the same claiming himself to be a *Dakhaldar* on the basis of Chitha and secondly, he claimed right over the part of decreetal land on the ground of adverse possession and the same is contradictory to the first claim and it is not sustainable in view of the fact that one cannot approbate and reprobate at the same time, and both the pleas taken by the petitioner are hit by principle of estoppel and as such, the petition is not maintainable. Further, the learned executing Court, by relying upon a decision of Hon'ble Supreme Court, held that the petitioner did not mention the exact date from which his possession to the decreetal land became adverse as held in the case of **Parwatabai vs. Sonabai and Ors.**, reported in **AIR 1997 SC 381**, by Hon'ble Supreme Court that by mere pleading of adverse possession of land in question, the decree of declaration shall not be granted by the Court and that there shall be a specific pleading in the plaint as to the exact date from which adverse possession started for claiming the adverse possession of land.

6. In the case in hand, upon perusal of the petition under Order 21 Rule 97

of the CPC filed by the present petitioner, nowhere it is stated as to from which date his possession of the decreetal land became adverse. He had merely taken a plea that the same started in the month of January, 1993, against the decree holder of T.S. No. 12/2009.

7. To a pointed query of this Court also, Mr. Rahman, learned counsel for the petitioner could not state the date, as required in view of the ratio laid down by Hon'ble Supreme Court in the case of **Parwatabai** (supra), as to from which date the possession of the present petitioner became adverse against the decree holder.

8. Having considered above and also having considered the facts and circumstances on the record, this Court finds no infirmity or illegality in the impugned order dated 05.11.2024. Though Mr. Rahman, learned counsel for the petitioner submits that the petitioner had not been afforded an opportunity of being heard, yet the same is found to be incorrect, in as much as, before passing the order upon the petition under Order 21 Rule 97 of the CPC, the learned executing Court had afforded opportunity of being heard to both the parties and the petitioner herein also filed objection to the petition No. 1043/2024, dated 19.08.2024, filed by the respondents herein under Section 151 of the CPC questioning the maintainability of the petition under Order 21 Rule 97 of the CPC, and thereafter, hearing both sides, the learned executing Court had dismissed the petition preferred by the present petitioner.

9. In view of the above, I find no merit in this petition and accordingly, this revision petition stands dismissed.

JUDGE

Comparing Assistant