

GAHC010248042014



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

Case No. : CRP/119/2014

MD ISHAQUE

S/O- LT. ABDUL GANI, R/O VILL. and P.O.- GANIYARI VIA SILOT, DIST.-
MUZAFFARPUR, BIHAR, PRESENTLY RESIDING AT JANATA TYRE
SERVICE, G.S. ROAD, GANESHGURI, P.O.- DISPUR, GHY- 6, ASSAM.

VERSUS

M/S ASHOK BIRI FACTORY

A FIRM HAVING ITS BRANCH OFFICE SITUATED AT A.T. ROAD, GHY- 1,
KAMRUP, ASSAM.

Advocate for the Petitioner : MR.H NATH, MR.B D DEKA

Advocate for the Respondent : ,

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner :	Mr. A. Deka, Advocate.
For the Respondent:	None appeared.
Date of Hearing :	29.07.2024.
Date of Judgment :	01.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Deka, learned counsel representing the petitioner. None appeared for the respondent.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 19.12.2013 passed by the learned Munsiff No.2, Kamrup at Guwahati in Title Execution Case No.32/03 arising out of Title Suit No.333 of 1997.

3. The petitioner is the absolute owner of a plot of land measuring 12 lechas covered by K.P. Patta No.121 (Old), 98 (New), Dag No.283 (Old), 266 (New) of village Sahar Guwahati, Mouza- Guwahati in the district of Kamrup, Assam.

4. There was an Assam Type house situated over the said plot of land. The petitioner was running his business under the name and style of M/s. Indian Tyre Service in the said house.

5. In the year 1988, some persons had encroached upon a part of the land of the petitioner. A person called Md. Anowar Hussain had demolished a part of the said house.

6. Therefore, the petitioner filed the suit being Title Suit No.02/1988 in the court of Civil Judge (Jr. Divn.) No.2 at Guwahati.

7. Be that as it may. Since a portion of the Assam Type House was demolished, a part of the land of the petitioner became vacant.

8. Adjacent to the land of the petitioner, the respondent has its godown and residence over another plot of land. Since a portion of the land of the petitioner was lying vacant, the respondent used that vacant portion as a road from F.A. Road to its land.

9. Therefore, the petitioner filed another suit being T.S. No.333/1997 in the court of Civil Judge (Jr. Divn.) No.2 at Guwahati praying for declaration that he is entitled to

restrain the respondent from using his land as a road. The petitioner also prayed for a permanent injunction restraining the respondent from using his land as a passage for plying vehicles.

10. The trial court issued notice to the respondent. But the respondent did not appear to contest the case. Therefore, on 27.09.2000, the trial court decreed the suit of the petitioner *ex parte*.

11. Thereafter, the respondent filed an application before the trial court under Order 9 Rule 13 of the Code of Civil Procedure praying for setting aside the said *ex parte* decree. The trial court dismissed the said application.

12. The respondent also filed an application before the trial court for staying execution of the decree dated 27.09.2000. This application was also dismissed.

13. This time, the respondent moved this Court vide C.R.P No.183/2007. This Court had directed withdrawal of the earlier attachment order and directed the respondent to deposit ₹10,000/- before the trial court. This Court sent back the matter to the trial court for passing further orders after due consideration of the matter.

14. The petitioner being the decree holder, filed an application before the trial court under Order 21 Rule 32 of the Code of Civil Procedure praying for keeping Shri Suranjan Saha who represented M/s. Ashok Bidi Factory in civil imprisonment.

15. The learned trial court vide the impugned order dated 19.12.2013 has held that the decree holder failed to prove that the decree passed in T.S. 333 of 1997 was violated by the respondent.

16. The petitioner used to remain absent at Guwahati and he used to spend most of his time in the State of Bihar. He comes to Guwahati only for short period of time. The petitioner had admitted before the trial court, that during his stay at Guwahati he had not seen the respondent using his land as a road.

17. Taking into consideration the aforesaid two facts, the trial court dismissed the entire execution case and also returned the amount of ₹10,000/- which was deposited by the respondent in the trial court pursuant to the order of this Court.

18. I have considered the submissions made by Mr. Deka.

19. A decree of a civil court remains alive until it is set aside by a superior court. The decree passed in T.S. 333 of 1997 is still alive. The petitioner filed the said suit seeking two reliefs. The first one is- a declaration that the petitioner is entitled to restrain the respondent from using his land as a road and for plying vehicles over his land. The second relief wished by the petitioner is that- the respondent and his agents should be permanently restrained from plying vehicles over his land.

20. The trial court decreed the suit entirely, meaning that both the reliefs prayed by the petitioner were granted.

21. This Court is of the opinion that the learned trial court had erroneously oriented itself and passed the impugned order dated 19.12.2013. This order is bad in law and therefore, this order is set aside.

22. The primary duty of an executing court is to execute the decree. Therefore, the executing court should always endeavour to execute the decree. The executing court is never supposed to frustrate a lawful decree.

23. The Title Execution Case No.32 of 2003 is remanded to the court of the Munsiff No.2, Kamrup at Guwahati for expeditious disposal in accordance with the procedure as laid down by law.

24. The executing court is at liberty to use police force to execute the decree.

With the aforesaid direction, this revision petition stands allowed and disposed of accordingly.

JUDGE

Comparing Assistant