

GAHC010249592023



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

Case No. : CRP(IO)/441/2023

KAMAL JODHANI
S/O LATE CHETRAM JODHANI, R/O D. NEOG PATH, ABC, G.S ROAD,
GUWAHATI-, KAMRUP (M), ASSAM
VERSUS

MAHENDRA BORO AND 3 ORS.
S/O TANURAM BORO, R/O VILL-GAURIPUR, MOUZA-SILASUNDARI
GHOPA, DIST-KAMRUP (R), ASSAM

2:SMTI JONAKI BORO
W/O LATE RAJENDRA BORO
R/O VILL-GAURIPUR
MOUZA-SILASUNDARI GHOPA
DIST-KAMRUP (R)
ASSAM

3:GANESH BORO
S/O LATE RAJENDRA BORO
R/O VILL-GAURIPUR
MOUZA-SILASUNDARI GHOPA
DIST-KAMRUP (R)
ASSAM

4:LAKHI BORO
S/O LATE RAJENDRA BORO
R/O VILL-GAURIPUR
MOUZA-SILASUNDARI GHOPA
DIST-KAMRUP (R)
ASSA

Advocate for the Petitioner : MR. W SHARMA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

10.01.2024

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

This is an application filed under Article 227 of the Constitution of India challenging the order dated 26.07.2023 passed by the learned Civil Judge No. 2, Kamrup (M), Guwahati in Title Execution No. 48/2018.

A very short question involved in this petition as to whether pendency of a regular second appeal would bar for stay of an execution proceeding without specific direction from the appellate court.

The trial court stayed the execution proceeding because of pendency of RSA 50/2017. Order 41 Rule 5 says that an appeal shall not operate as a stay of proceedings under decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree.

On the face of the record, the impugned order dated 26.07.2023 staying the execution proceeding on the ground that RSA 50/2017 is pending before the High Court is bad in law.

Therefore, the impugned order dated 26.07.2023 passed by the learned Civil Judge No. 2, Kamrup (M), Guwahati passed in Title Execution No. 48/2018 is set aside and quashed. The trial court is directed to proceed with the execution proceeding in accordance with law.

With the above, the civil revision petition is disposed of.

JUDGE

Comparing Assistant