

GAHC010276542023



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

Case No. : CRP(IO)/425/2023

CHANDRA BABU SINGH AND ANR
S/O- LATE BADAN SINGH, R/O- VILL.- PURBARKITTARBOND PART-I, P.S.
LALA, P.O. AMALA, DIST. HAILAKANDI, ASSAM

2: MONIHAR SINGHA
S/O- LATE BADAN SINGH
R/O- VILL.- PURBARKITTARBOND PART-I
P.S. LALA
P.O. AMALA
DIST. HAILAKANDI
ASSA

VERSUS

RAJ KUMAR SINGH AND 2 ORS.
S/O- LATE DHANANHAY SINGH, R/O- VILL.- PURBARKITTARBOND PART-I,
P.S. LALA, P.O. AMALA, DIST. HAILAKANDI, ASSAM

2:RAJ KISHORE SINGH
S/O- LATE DHANANHAY SINGH
R/O- VILL.- PURBARKITTARBOND PART-I
P.S. LALA
P.O. AMALA
DIST. HAILAKANDI
ASSAM

3:RAJENDRA SINGH
S/O- LATE DHANANHAY SINGH
R/O- VILL.- PURBARKITTARBOND PART-I
P.S. LALA
P.O. AMALA
DIST. HAILAKANDI
ASSA

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

20.03.2024

This is an application under Article 227 of the Constitution of India challenging the order dated 08.11.2023 passed in Misc. (J) Case No.187/2023 arising out of Title Execution No.10/2016 by the Court of the learned Civil Judge (Senior Division) Hailakandi.

2. From a perusal of the materials on record, it reveals that the decree holders as plaintiffs had filed a suit before the Court of the learned Civil Judge Senior Division Hailakandi which was registered and numbered as Title Suit No.32/2004. The said suit was decreed in favour of the plaintiffs holding, *inter alia*, that the plaintiffs are entitled to the declaration that they are owners of 12 kathas 2 chataks of land within the 1st Schedule. Further to that, it was also decreed that a survey would be required to be carried out at the time of execution of the decree and recovery of schedule 1(ka) land shall only depend upon if the decree is not satisfied with the land in possession of the plaintiffs in both sides (East-West) of the Schedule 1(ka) land.

3. Pursuant to the said judgment and decree being passed by the learned Trial Court on 23.06.2005, the decree holder filed an Execution Case before the Executing Court i.e. the Court of the learned Civil Judge (Senior Division) Hailakandi being of Title Execution No.10/2016. The delay in filing the execution proceedings was on account of various Appeals filed and the judgment of the learned Trial Court stood affirmed by this Court in the second appeal.

4. In the said proceedings, an application was filed by the judgment debtors under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 (for short, the Code), stating, *inter alia* that the survey had been conducted by the A.S.O, Lala and in the survey report, it was indicated that there were 3 strips of land in the trace map; within DCFE of the trace map, land measuring 5 kathas was found; within HGJI land measuring 3 kathas 5 Chattaks was under the possession of the plaintiffs. It was also stated that within EFGH, 3 kathas of land were found, wherein there is a C.I sheet wooden frame cowshed, one dwelling house, half wall C.I sheet part of house and in the middle courtyard having some betel nut trees. Further to that, it was also stated in the said application that in respect to the said survey report that within DCJI, there is 5 kathas under the possession of the plaintiffs + 3 kathas disputed + 3 kathas-5 chattaks under the possession of the plaintiffs. Under such circumstance, the deficiency was only 13 chattaks of land. It was also stated in the said application that if the decree is executed as per the trace map, the defendant shall lose their only hearth and home and shall sustain irreparable loss which reasonably assessed at @Rs.5,00,000/-. Further to that, it was also mentioned that sufficient land towards the north side of the suit schedule 1 land of the same suit dag No.131 was there to satisfy the decree.

5. The learned Executing Court by the impugned order dated 08.11.2023 rejected the application filed by the petitioner/judgment debtor. This Court has duly taken note of that the learned Executing Court had taken into account the contents of the application filed under Section 47 while passing the impugned order. The learned Executing Court observed that the judgment debtors i.e. the petitioners did not challenge the survey report, but only prayed on equitable ground that the decree may be executed saving his cowshed and other structures which he had constructed during the pendency of the suit or during the pendency of the present execution proceedings. The learned Executing Court further taking into account that for the last 18 years the decree holder has not been able to get the fruits of the decree and the objection to the executability of the decree as made was not maintainable had rejected the application under Section 47 of the Code.

6. This Court having taken note of the above facts and, more particularly, upon perusal of the judgment and decree dated 23.06.2005 is of the opinion that the learned Trial Court while passing the said judgment and decree had duly declared the rights of the decree holders/the respondents herein in respect to 12 kathas 2 chattaks of land within the 1st Schedule. In the said decree, it was further mentioned that there would be a survey report at the time of execution of the decree and the recovery of schedule 1(ka) land shall only depend upon, if the decree is not satisfied within the land in possession of the plaintiffs in both sides (East-West) of the Schedule 1(ka) land. This judgment and decree dated 23.06.2005 has attained its finality.

7. Under the such circumstances, the learned Executing Court has to execute the decree in terms with the decree so passed, more so, it being well settled that the Executing Court cannot go beyond the decree. In that view of the matter, this Court upon perusal of the impugned order dated 08.11.2023 is of the opinion that the learned Executing Court has not erred in law or there has been any jurisdictional error committed in rejecting the application under Section 47 of the Code. Consequently, the instant petition stands dismissed.

8. This Court has also taken note of that vide an order dated 12.01.2024, this Court has stayed the further proceedings of the Execution Case No.10/2016. The said stay order stands vacated and as the parties are represented before this Court, the parties are directed to appear before the learned Executing Court on 22.04.2024 for further proceeding in the execution case.

9. With the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant