GAHC010157872024

2026:GAU-AS:16465

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

Case No. : CRP(IO)/287/2024

BIMAL KR. SARMA AND 2 ORS.
S/O- LATE UMA KANTA SARMA, PERMANENT RESIDENT OF JAGIROAD TOWN, MOUZA- GOVA, NEAR SOBHASINI MEDICAL STORE, MORIGAON ROAD, P.O. AND P.S. JAGIROAD, DIST. MORIGAON, ASSAM, PIN- 782410.

2: SMT. RANJU SARMA
W/O- SRI BIMAL KR. SARMA
PERMANENT RESIDENT OF JAGIROAD TOWN
MOUZA- GOVA
NEAR SOBHASINI MEDICAL STORE
MORIGAON ROAD
P.O. AND P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN- 782410.

3: KAUSTABH MONI SARMA
S/O- SRI BIMAL KR. SARMA
PERMANENT RESIDENT OF JAGIROAD TOWN
MOUZA- GOVA
NEAR SOBHASINI MEDICAL STORE
MORIGAON ROAD
P.O. AND P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN- 782410

VERSUS

DAIBAKI KUMARI DEVI
W/O- LATE UMA KANTA SARMA, RESIDENT OF JAGIROAD TOWN, MOUZA- GOVA, NEAR SOBHASINI MEDICAL STORE, MORIGAON ROAD, P.O. AND P.S. JAGIROAD, DIST. MORIGAON, ASSAM, PIN- 782410.

Advocate for the Petitioner : MR. P D NAIR, MR. D MAZUMDAR,MR. R SARMA,MR G ALAM,MR. H ROHMAN,MR S R A NASER

Advocate for the Respondent : MR. R BARUAH, FOR CAVEATOR,MS. M NATH,MR. A IKBAL

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

10.11.2026

Heard Mr. D. Mazumdar, the learned senior counsel assisted by Mr. G. Alam, the learned counsels appearing for the petitioners. Also heard Mr. S. Ali, the learned counsel appearing for the respondent.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 02.07.2024 passed by the learned Civil Judge (Jr. Divn.) No.1, Morigaon in Title Execution Case No.04/2013.

3. The respondent Daibaki kumari Devi is the mother of the present petitioner Bimal Kr. Sarma. She allowed her son to occupy and reside over 8 lechas of her land. But her son occupied some more lands. Therefore, she was aggrieved by the act of her son. She filed a suit being T.S. 11/2004 (new number is 39/2006) praying for her son's ejectment from the said excess land. In the plaint, there are four schedules titled as Schedule-Ka, Schedule-Kha, Schedule-Ga(1) and Schedule-Ga(2). All the four plots of lands have distinct four boundaries.

4. In Schedule-Kha land, on the eastern side, there is Schedule-Ga(1) land. But this Ga(1) land has been written by hand after erasing the earlier content by applying

whitener liquid.

5. Ultimately, the trial court decreed the suit of Daibaki Kumari Devi and the decree was put to execution. Accordingly, Title Exe Case being Title Execution Case No.04/2013 came into being.

6. In the Title Execution case, the petitioner Bimal Kr. Sarma, filed an application. That application was accompanied by copy of the plaint. In this copy of plaint, in Schedule-Kha, it is mentioned that on the eastern side, Morigaon Road is situated, not Ga(1) land.

7. Mr. Mazumdar has submitted that after passing of the decree, somebody had applied whitener and erased the words "Morigaon Road" and put Ga(1) land.

8. Mr. Ali has submitted that the correction was done before filing of the suit. According to Mr. Ali, Daibaki Kumari Devi while she filed the execution application, also claimed that on the eastern side of Schedule-Kha land, Ga(1) land is situated.

9. Mr. Ali further submits that this is a long pending execution case and deserves to be disposed of early. He has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan*, (2017) 5 SCC 371. Paragraph 20 of the said judgment is quoted as under:

> "**20.** It is no longer res integra that an executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An erroneous decree cannot be equalled with one which is a nullity. There are no intervening developments as well to render the decree unexecutable."

10. Mr. Ali further relied upon another judgment of the Supreme Court that was delivered in *Bhoj Raj Garg v. Goyal Education & Welfare Society*, *(2025) 9 SCC 618*. Paragraphs 1 and 2 of the said judgment are quoted as under:

> "**1.** The complaint of the petitioner is that the executing court is not abiding by the directions issued by this Court in the decision in *Rahul S. Shah* v. *Jinendra Kumar Gandhi* [*Rahul S. Shah* v. *Jinendra Kumar Gandhi*, (2021) 6 SCC 418 : (2021) 3 SCC

(Civ) 569] . In the said decision, this Court held as follows:

> "*42.* All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:
>
> 2. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay."

2. This means that it becomes the duty of the executing court to dispose of the execution proceedings at the earliest and since this Court has directed that the executing court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time-limit and the executing court should have reasons for not being able to dispose of the execution petition. The executing court is duty-bound to record reasons in writing when it is unable to dispose of the matter."

11. The learned Executing Court did not agree with the petitioner Bimal Kr. Sarma.

12. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

13. The main grounds on which the High Court interferes under Article 227 of the Constitution of India are –

1. When the inferior Courts act arbitrarily
2. When the inferior Courts act in excess of the Jurisdiction vested in them.
3. When the inferior Courts fail to exercise jurisdiction vested in them.

14. It is pertinent to note that the High Court does not interfere for correcting mere error of facts or, with a finding of the subordinate court which is within the jurisdiction of such court. However, if, such finding is perverse in such a sense that no prudent person having the knowledge of law could have arrived at such finding, or the finding is not based on any material evidence or, such finding results in manifest injustice or if there is a misdirection in law then the High Court can interfere under Article 227 of the Constitution of India.

15. In the case in hand, I have found that the learned executing court has correctly disagreed with the judgment debtor Bimal Kumar Sarma. In the original plaint, in Schedule-Kha, Ga(1) land is shown to exists on its eastern side. At this stage, there are sufficient reasons to hold that it is the correct Schedule. This Court is of the opinion that the judgment debtor Bimal Kr. Sarma has failed to show that after passing of the judgment in the suit, somebody had made some corrections by hand showing that instead of "Morigaon Road", Ga(1) land is situated on the eastern border of Schedule-Kha land.

16. Under the aforesaid circumstances, this Court is of the opinion that this revision petition is devoid of merit and stands dismissed and disposed of accordingly.

17. The executing court is directed to expeditiously dispose of the execution proceeding. The original records of T.S. 39/2006 shall be returned immediately.

JUDGE

Comparing Assistant