

GAHC010056742022



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

Case No. : CRP/30/2022

SUSHANTA DAS AND 3 ORS
S/O. LT. SUKHENDRA CHANDRA DAS, R/O. NEW MARKET, OPP. G.B.
COMPLEX, B.N.P. PATH, DIBRUGARH TOWN, P.O., P.S. AND DIST.
DIBRUGARH, ASSAM.

2: SHIRPA DAS
W/O. LT. SUKHENDRA CHANDRA DAS

3: SMT. SHRABONI DAS
D/O. LT. SUKHENDRA CHANDRA DAS

4: SMT. SWETA DAS
D/O. LT. SUKHENDRA CHANDRA DAS
PETITIONER NO.2 TO 4 RESIDENTS OF MORANHAT PIOLI NAGAR
NEAR BENGALI SCHOOL
P.O. MORAN
DIST. DIBRUGARH
ASSAM-785670

VERSUS

ANIL KUMAR AJITSARIA AND ANR
S/O. LATE PHULCHAND AJITSARIA, SOLE PROPRIETOR OF M/S. MALIRAM
PHULCHAND A REGD. FIRM SINCE CHANGED AS A SOLE
PROPRIETORSHIP CONCERN, HAVING ITS PRINCIPLE PLACE OF
BUSINESS AT OLD SHANKAR BHANDAR ROAD, NEW MARKET,
DIBRUGARH TOWN, P.O., P.S. AND DIST. DIBRUGARH, ASSAM.

2: THE DIBRUGARH MUNICIPALITY BOARD

DIBRUGARH
REP. BY ITS CHAIRMAN GRAHAM BAZAR

A.T. ROAD
DIBRUGARH
PIN-786001

Advocate for the Petitioner : MR. D MOZUMDER

Advocate for the Respondent : MS. N PODDAR

Linked Case : CRP/28/2022

RATAN CHANDRA MAZUMDAR
S/O. LT. SUKUMAR CHANDRA MAJUMDAR
R/O. NEW MARKET
OPP. G.B. COMPLEX
B.N.P. PATH
DIBRUGARH TOWN
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM.

VERSUS

ANIL KUMAR AJITSARIA AND ANR
S/O. LATE PHULCHAND AJITSARIA
SOLE PROPRIETOR OF M/S. MALIRAM PHULCHAND A REGD. FIRM SINCE
CHANGED AS A SOLE PROPRIETORSHIP CONCERN
HAVING ITS PRINCIPLE PLACE OF BUSINESS AT OLD SHANKAR BHANDAR
ROAD
NEW MARKET
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P.S. AND DIST. DIBRUGARH
ASSAM.

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DIBRUGARH
PIN-786001.

Advocate for : MR. D MOZUMDER

Advocate for : MS. N PODDAR appearing for ANIL KUMAR AJITSARIA AND ANR

Linked Case : CRP/29/2022

SWAPAN DAS
S/O. LT. ATINDRA CHANDRA DAS
R/O. NEW MARKET
OPP. G.B. COMPLEX
B.N.P. PATH
DIBRUGARH TOWN
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM
786001.

VERSUS

ANIL KUMAR AJITSARIA AND ANR
S/O. LATE PHULCHAND AJITSARIA
SOLE PROPRIETOR OF M/S. MALIRAM PHULCHAND A REGD. FIRM SINCE
CHANGED AS A SOLE PROPRIETORSHIP CONCERN
HAVING ITS PRINCIPLE PLACE OF BUSINESS AT OLD SHANKAR BHANDAR
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DIBRUGARH
REP. BY ITS CHAIRMAN GRAHAM BAZAR
A.T. ROAD
DIBRUGARH
PIN-786001.

Advocate for : MR. D MOZUMDER

Advocate for : MS. N PODDAR appearing for ANIL KUMAR AJITSARIA AND ANR

Linked Case : CRP/31/2022

TAPAN KUMAR DUTTA
S/O. LT. BISHNUPADA DUTTA
R/O. NEW MARKET
OPP. G.B. COMPLEX
B.N.P. PATH
DIBRUGARH TOWN
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM.

VERSUS

ANIL KUMAR AJITSARIA AND ANR
S/O. LATE PHULCHAND AJITSARIA
SOLE PROPRIETOR OF M/S. MALIRAM PHULCHAND A REGD. FIRM SINCE
CHANGED AS A SOLE PROPRIETORSHIP CONCERN
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2:THE DIBRUGARH MUNICIPALITY BOARD

DIBRUGARH
REP. BY ITS CHAIRMAN GRAHAM BAZAR
A.T. ROAD
DIBRUGARH
PIN-786001.

Advocate for : MR. D MOZUMDER
Advocate for : MS. N PODDAR appearing for ANIL KUMAR AJITSARIA AND ANR

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. S. Biswas,
Advocate.
For the Respondents : Mr. B.D. Deka,
Advocate.

Date of Hearing : 19.02.2024.

Date of Judgment : 22.02.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Biswas, learned counsel representing the petitioners as well as Mr. B.D. Deka, learned counsel appearing for the respondents.

2. This is a common judgment for these four petitions.

These are applications under Article 227 of the Constitution of India praying for exercising the supervisory jurisdiction of the High Court in respect of the orders dated 21.12.2021 passed by the learned Munsif No.2, Dibrugarh in Title Execution Case Nos.04/2020, 03/2020, 05/2020 and 02/2020.

3. The factual matrix lies within a very short campus.

4. Shri Maliram Ajitsaria and Phulchand Ajitsaria were the partners of the said firm. Both died in the year 1981 and 2004 respectively. Phulchand Ajitsaria left behind Anil Kumar Ajitsaria and 6 daughters who are now married.

5. After the death of Shri Maliram Ajitsaria and Phulchand Ajitsaria, the partnership firm was converted to a proprietorial concerned with Anil Kumar Ajitsaria as the sole proprietor.

6. The great grandfather of Anil Kumar Ajitsaria took on lease certain properties over which he had constructed a two storeyd Assam Type House with C.I. Sheet roofing. The said house was numbered with Holding Nos.278 and 279 of Ward No.11.

7. The Holding No.279 consists of a house where Anil Kumar Ajitsaria resides. He also has a shop there. The Holding No.278 consists of 6 shops, which are let out to the present petitioners and some other tenants on rent. The present petitioners have been paying rent regularly.

8. Thereafter, they defaulted in payment of rents. Therefore, Shri Anil Kumar Ajitsaria filed four suits being T.S. Nos.100/2015, 101/2015, 103/2015 and 104/2015 in the court of Munsiff No.2, Dibrugarh against Atindra Chandra Das (since deceased), Ratan Chandra Mazumdar, Bishnapada Dutta (since deceased) and Subhendra Chandra Das (since deceased) for their ejectment and for recovery of arrears of land.

9. The present petitioners being defendants contested the said suit by filing their written statements. Among other pleas, the petitioners specifically pleaded that since the land, upon which the tenanted premises are situated, belongs to Dibrugarh Municipality, it should have been made a party.

10. The trial court agreed with the petitioners and dismissed the suit only on the ground that Dibrugarh Municipality was not made a party in the said suit.

11. The learned first appellate court also agreed with that view and dismissed the appeal.

12. Therefore, Anil Kumar Ajitsaria filed revision petitions before this Court challenging the said judgments.

13. This Court held that under Section 116 of the Indian Evidence Act, no tenant of immovable property or persons claiming through such tenant

during the continuance of tenancy be permitted to deny that the landlord at the beginning of tenancy had a title to such immovable property. This Court further held that a tenant is estopped from denying the title of the landlord in respect of any premises during subsistence of tenancy.

14. This Court finally decreed the suit for eviction of the present petitioners from the suit premises.

15. The present petitioners had approached the Hon'ble Supreme Court where their Special Leave Petitions were dismissed.

16. Thereafter, Anil Kumar Ajitsaria started execution proceedings.

17. The present petitioners being the judgment debtors, filed applications under Section 47 of the Code of Civil Procedure raising the same plea that the decreetal property is situated over land owned by Dibrugarh Municipality and therefore, the decree is non-executable.

18. I have considered the submissions made by the learned counsels of both sides.

19. Mr. Biswas has relied upon *Jai Narain Ram Lundia vs. Kedar Nath Khetan and Ors.*, reported in AIR 1956 SC 359.

20. Mr. Deka, on the other hand, relied upon *Pradeep Mehra vs. Harijivan J. Jethwa*, reported in 2023 SCC OnLine SC 1395. Paragraphs 9, 10 and 11 are quoted as under:

“**9.** Section 47 of the CPC reads as under:

Section 47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree

was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

* * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1.— For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.— (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

10. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the "execution of the decree". The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum.

11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in *Dhurandhar Prasad Singh v. Jai Prakash University*, (2001) 6 SCC 534, in para 24, it had stated thus:

"24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that

executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing."

21. It is a settled position of law that the power under Section 47 of the Code of Civil Procedure is microscopic and lies within a very narrow inspection hole.

22. The petitioners being the defendants took the plea before the trial court that the property which they are occupying as tenants, are situated over a land which belongs to Dibrugarh Municipality. The trial court and the first appellate court accepted their pleadings and dismissed the suit. Subsequently, this Court refused to agree with them by holding that in the present litigation, Dibrugarh Municipality is not a necessary party. Their Special Leave Petitions were dismissed by the Supreme Court.

23. Now, the petitioners have been resisting the decree on the same ground, which was rejected by this Court earlier. I find that the learned Executing Court rightly dismissed their application under Section 47 of the Code of Civil Procedure.

24. In fact, in a disguised manner, the petitioners are challenging the judgment passed by this Court and this is not allowed by law.

25. For the aforesaid reasons, the Civil Revision Petitions are found to be devoid of merit and dismissed accordingly. The Executing Court is directed to execute the decrees expeditiously.

Interim orders passed earlier stands vacated.

JUDGE

Comparing Assistant