



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

RSA No. 59/2017

On the death of Roma Roy, her legal heirs-

- 1(a). Shri Janmajit Roy,
S/o Jitendra Mohan Roy.
- 1(b). Smt. Narayani Roy,
D/o Jitendra Mohan Roy.
- 1(c). Smt. Kalyani Roy,
D/o Jitendra Mohan Roy.
- 1(d). Smt. Chandrani Roy,
D/o Jitendra Mohan Roy.
- 1(e). Smt. Mousumi Roy,
D/o Jitendra Mohan Roy.
- 1(f). Smt. Panchami Roy,
D/o Jitendra Mohan Roy.
All are residents of Digolbak,
PO-Girishgarj Bazar, PS-Karimganj,
Dist.-Karimganj, Assam.
- 2(i) Putul Roy,
S/o Late Dharani Mohan Roy,
Station Road, Madrasa Galli, PS-Karimganj.
- 2(ii) Dhiraj Roy,
S/o Late Dharani Mohan Roy,
Station Road, Madrasa Galli, PS-Karimganj.
- 3(i) Tanuj Roy,
S/o Late Tarani Roy,
Station Road, Ward No.18, Karimganj Town,
PS-Karimganj, Dist.-Karimganj, Assam.

- 3(ii) Supta Roy,
W/o Late Tarani Roy,
Station Road, Ward No.18, Karimganj Town,
PS-Karimganj, Dist.-Karimganj, Assam.
4. Shri Sagar Ch. Biswas,
S/o Late Upendra Biswas,
Village-Telikhalerpar, PS-Karimganj,
Dist.-Karimganj,
Presently residing at Station Road,
Ward No.18, Karimganj Town,
PO, PS & Dist.-Karimganj, Assam.

.....*Appellants.*

-Versus-

1. Smt. Shipra Aditya,
D/o Late Debeswar Choudhury,
W/o Shri Mukulesh Aditya,
Village-Pinnagar (Suprakandi),
PO-Girishgarj Bazar, PS-Karimganj, Pin-788710.
2. Smt. Shibani Choudhury,
D/o Late Debeswar Choudhury,
Station Road, Ward No.18, Karimganj Town,
PS-Karimganj, Assam.
3. Smt. Bhavani Choudhury,
D/o Late Debeswar Choudhury,
Station Road, Ward No.18, Karimganj Town,
PS-Karimganj, Assam.
4. Smt. Bani Choudhury @ Lipu,
D/o Late Debeswar Choudhury,
Station Road, Ward No.18, Karimganj Town,
PS-Karimganj, Assam.
5. Smt. Banani Choudhury @ Tukli,
D/o Late Debeswar Choudhury,
Station Road, Ward No.18, Karimganj Town,
PS-Karimganj, Assam.

6. Shri Chitta Ranjan Roy.
7. Shri Satya Ranjan Roy.
8. Shri Bidhu Roy.
9. Shri Indrajit Roy @ Khukan Roy.

Sl.Nos.6 to 9 are sons of late Upendra Ch. Roy,
Residents of Village-Patelnagar, PO-Sarifnagar,
PS & Dist.-Karimganj, Assam.
10. Struck off vide order dated 02.02.2018 passed in RSA No.59/2017.
11. Hironmoy Choudhury,
S/o Late Jogyeswar Choudhury,
Resident of Station Road, Ward No.18, Karimganj Town,
PS & Dist.-Karimganj, Assam.
Presently residing at Bonomali Road, Ward No.14,
Karimganj Town, PO, PS & Dist.-Karimganj, Assam.
(C/o Priyoda Ranjan Mallik, S/o Not known, Bonomali Road,
Ward No.14, Karimganj Town, PO, PS & Dist.-Karimganj,
Assam.)
12. Smt. Sita Rani Roy,
W/o Shri Sunil Ranjan Roy,
Resident of Station Road, Ward No.18, Karimganj Town,
PO, PS & Dist.-Karimganj, Assam.
Presently residing at Vill-Nandapur,
PO-Lalarchak (Chargola), PS-Badarpur,
Dist.-Karimganj, Assam.
- 13(a) Priyoda Ranjan Mallik,
S/o Late Prabhat Ranjan Mallik.
- 13(b) Partha Mallik,
S/o Priyoda Ranjan Mallik.
- 13(c) Pankaj Mallik,
S/o Priyoda Ranjan Mallik.

Sl.Nos.13(a) to (c) are residents of Bonomali Road, Ward No.14,
Karimganj Town, PO, PS & Dist.-Karimganj, Assam.
14. Smt. Krishna Roy,
W/o Shri Kanu Roy,
Vill-Umednagar, PO & PS-Lala, Dist.-Hailakandi, Assam.

(Within the jurisdiction of the Court of learned District Judge,
Hailakandi, PO, PS & Dist.-Hailakandi.)

15. Struck off vide order dated 02.02.2018 passed in RSA No.59/2017.
16. Smt. Madhuri Roy,
W/o Ranjit Roy,
Vill-Gojalghat, PO & PS-Dholai,
Dist.-Cachar, Assam.
17. Smt. Rupali Roy,
D/o Late Dhorani Kanta Roy of Roypara,
PO-Katakhali, PS-Silchar, Dist.-Cachar.
18. Struck off vide order dated 02.02.2018 passed in RSA No.59/2017.
19. State of Assam,
Represented by
Deputy Commissioner, Karimganj,
PO, PS & Dist.-Karimganj, Assam.
20. The Deputy Commissioner, Karimganj,
PO, PS & Dist.-Karimganj, Assam.

.....Respondents.

21. Shri Ranjit Roy,
S/o Late Kokil Ch. Roy,
C/o Sujit Kr Roy, Botertal,
Surjya Sen Lane, PO-Meherpur,
Silchar, Dist.-Cachar.

.....Proforma Respondent.

22. Struck off vide order dated 29.11.2017 passed in RSA No.59/2017.
23. Dulu Roy.
24. Kanu Roy.
25. Khukan Roy.
Sl.Nos.23 to 25 are sons of Late Ambika Roy,
Vill-Katagram/Suprakandi, PO-Girishganj Bazar,
PS & Dist.-Karimganj.
26. Shikha Namasudra,
S/o Anu Namasudra, Vill-Sarisha, PO-Silchar Road,
Karimganj, PO & Dist.-Karimganj.

27. Seema Roy,
D/o Swapan Roy,
Vill-Naturpur, PO-Borkotpur,
Jatkapan, PS & Dist.-Karimganj.
28. Anu Biswas,
W/o Chunilal Biswas,
Vill-Digolbak, PO-Nilambazar,
PS & Dist.-Karimganj.
29. Shantilal Roy,
H/o Mina Roy.
30. Manika Roy,
D/o Shantilal Roy.
Sl. Nos.29 and 30 are of village Nathupur,
PO-Girishganj Bazar, PS & Dist.-Karimganj, Assam.
31. Babli Roy,
D/o Shantilal Roy,
W/o Niranjan Roy,
Vill-Pinnagar, PO-Girishganj Bazar,
PS & Dist.-Karimganj, Assam.
32. Moni Roy,
D/o Shantilal Roy,
W/o Santush Roy,
Vill & PO-Girishganj Bazar,
PS & Dist.-Karimganj, Assam.
33. Sanjoy Roy.
34. Sambhu Roy.
35. Santu Roy.
36. Raju Roy.
37. Sumen Roy.
Sl. Nos.33 to 37 are sons of Shantilal Roy,
Vill-Nathupur, PO-Girishganj Bazar,
PS & Dist.-Karimganj, Assam.
38. Struck off vide order dated 02.02.2018 passed in RSA No.59/2017.
39. Dulan Paul,
W/o Moni Paul,

Station Road (Opp to Ganga Bhandar),
Karimganj Town, PO, PS & Dist.-Karimganj, Assam.

.....Added Respondents.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Appellants : Mr. P.K. Roy, Sr. Adv.,
Mr. S.K. Chakraborty.Advocates.

For the Respondents : Mr. D. Mozumder, Sr. Adv.,
Mr. S. Biswas.Advocates.

Dates of Hearing : 03.09.2024, 10.09.2024, 17.09.2024,
04.10.2024 & 24.10.2024

Date of Judgment : **29.11.2024**

JUDGMENT AND ORDER

Heard Mr. P.K. Roy, learned Senior counsel assisted by Mr. S.K. Chakraborty, learned counsel for the appellants and also heard Mr. D. Mozumder, learned Senior counsel assisted by Mr. S. Biswas, learned counsel for the respondents.

2. In this appeal, under Section 100 of the Code of Civil Procedure, 1908, the appellants have challenged the correctness or otherwise of the impugned judgment and decree dated 22.12.2016 passed by the learned District Judge, Karimganj, in Title Appeal No.04/2013, whereby the learned District Judge, Karimganj, hereinafter the First Appellate Court,

affirmed the judgment and decree dated 27.02.2013 passed by the learned Civil Judge, Karimganj, in Title Suit No.6/2007. It is to be noted here that vide impugned judgment and decree dated 27.02.2013, the learned Civil Judge, Karimganj, has dismissed the Title Suit No.6/2007.

3. The background facts leading to filing of the present appeal is briefly stated as under:-

"The predecessor-in-interest, namely, late Debeswar Choudhury of the respondent Nos.1 to 5 in this appeal, as plaintiffs instituted a suit, being Title Suit No.39/1984, renumbered as Title Suit No.33/1995, against one Mukteswar Choudhury and others in the year 1984 for a declaration that he had landholder's right, Maliki right over the suit land and the houses and also for declaration that the defendants are licensee under him and prayed for their eviction. The case of the plaintiffs was that after the death of his father late Dinomoni Choudhury, the suit property was transferred in his name by his mother and sister by executing a gift deed No.6390, dated 26.09.1962 and the defendants are the licensee who were allowed to stay in the suit property only and they have no right, title and interest over the suit property. Then, after hearing the parties, the learned Trial Court vide judgment and decree dated 20.01.1998 decreed the suit in favour of late Debeswar Choudhury, the predecessor-in-interest of the present respondents, declaring that he is the sole owner of the suit land and the defendants were the licensee without any right, title and interest and on such count, they are liable to be evicted from the suit property.

Then, being dissatisfied the defendants had preferred one Title Appeal No.1/1998, which came to be dismissed on 28.06.1999. Thereafter, the defendants had preferred one regular second appeal, being RSA No.1/1999 and the same also came to be dismissed on 31.08.2006 by this Court. Thereafter, the judgment and decree dated 28.01.1998 passed in Title Suit No.33/1995 was put into execution by filing Title Execution Case No.03/2007 by the legal heirs of decree-holders of late Debeswar Choudhury, the respondent Nos.1 to 5 herein this appeal. Thereafter, the successor-in-interest of late Dinomoni Choudhury filed a suit, being Title Suit No.06/2007 praying for a declaration that the deed of gift, being No.6390, dated 26.09.1962 and the power of attorney mentioned in the said deed of gift are illegal, collusive, fraudulent and void ab initio and therefore, are liable to be cancelled with a further declaration that the judgment and decree dated 20.01.1998 in Title Suit No.39/1984, renumbered as Title Suit No.33/1995, passed in favour of late Debeswar Choudhury, the predecessor-in-interest of respondent Nos.1 to 5 in this appeal, is illegal, fraudulent and liable to be set aside. While the said suit was pending, the present appellants had filed a petition under Order 21 Rule 97 of the CPC in Title Execution Case No.3/2007, which was registered as Misc. Case No.85/2011 praying for the same relief as in the Title Suit No.6/2007. While the Misc. Case No.85/2011 was pending for hearing, the Title Suit No.06/2007 was dismissed by the learned Trial Court vide judgment and decree dated 27.02.2013 on the preliminary ground that in view of the provision of Order 21 Rule 97 CPC, all the

question relating to right, title and interest in the property can be decided and on such count, the suit is not maintainable.

Thereafter, being aggrieved, the appellants herein, filed the Title Appeal No.4/2013, and the same also came to be dismissed vide judgment and decree dated 22.12.2016. And being aggrieved, the appellants preferred the present appeal challenging the correctness or otherwise of the findings, so recorded by the learned Trial Court as well as the learned First Appellate Court."

4. Thereafter, this Court was pleased to admit the appeal on the following substantial question of law:-

Whether the suit of the appellants/plaintiffs, praying for declaration that the judgment and decree dated 20.01.1998 and 27.01.1998, respectively, passed in Title Suit No.33/1995 and the subsequent appellate judgment, are illegal, fraudulent, baseless and also for preliminary and final decree for partition could have been dismissed as being not maintainable, on the ground of pendency of a proceeding, under Order 21 Rule 97 CPC, initiated subsequent to the filing of the suit?

5. Mr. Roy, the learned Senior counsel for the appellants, firstly, submits that the judgment and decree passed by both the learned Courts below are apparently based on perverse finding for the reason that Title Suit No.6/2007 was filed by the appellants as plaintiffs prior to filing of the application under Order 21 Rule 97 CPC.

- 5.1 Secondly, Mr. Roy submits that Order 21 Rule 104 CPC provides that every order made under Rule 101 or Rule 103, shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under Rule 101 or Rule 103 is made, has sought

to establish a right which he claims to be the present possessor of the property.

5.2 Further, Mr. Roy submits that though under 1976 amendment of the CPC, the right to determination of all question including questions relating to right, title and interest in the property under Order 21 Rule 97 or Rule 99 CPC has been brought in for the first time, yet, the right to file a separate suit was not taken away and as such, the learned Courts below are not justified in dismissing the suit on the preliminary issue of maintainability, by holding that the said dismissal was irrespective of the merit of Misc. Case No.85/2011, filed by the plaintiffs as 3rd party petitioners under Order 21 Rule 97 CPC in Title Execution Case No.03/2007.

6. Per contra, Mr. Mozumder, learned Senior counsel for the respondents, submits that the substantial question of law framed in this appeal may be answered in negative to the effect that Title Suit No.06/2007, which was filed during the pendency of Misc. Case No.85/2011, under Order 21 Rule 97 CPC by the appellants are barred under Order 21 Rule 101 CPC, which specifically provides that all questions arising between the parties to a proceeding on an application under Order 21 Rule 97 CPC, shall be determined by the Court dealing with the said application and not by a separate suit and since Order 21 Rule 97 CPC petition was already filed by the appellants, the suit is clearly not maintainable and therefore, Mr. Mozumder submits that there is no substantial question of law in this appeal and therefore, it is contended to dismiss the appeal.

7. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the memo of appeal and the

grounds mentioned therein and also perused the impugned judgment and decree dated 27.02.2013, passed by the learned Trial Court in Title Suit No.06/2007, and also the judgment and decree dated 22.12.2016, passed by the learned First Appellate Court in Title Appeal No.04/2013.

8. It appears that the learned Trial Court has held that since in Title Execution Case No.03/2007, wherein the judgment and decree dated 28.01.1998, passed in Title Suit No.33/1995, was put into execution and since in the said title execution case the present appellants have filed a petition under Order 21 Rule 97 CPC, the suit, seeking same relief in the petition under Order 21 Rule 97 CPC, is not maintainable and the grievance being sought to be addressed in the said title suit, can be adjudicated in the application under Order 21 Rule 97 CPC.

9. Further, it appears that the learned First Appellate Court also vide judgment and decree dated 22.12.2016, has upheld the judgment and decree dated 27.02.2013, passed by the learned Trial Court by holding that perusal of the Order 21 Rule 97 CPC makes it clear that right, title and interest over the property as regards decree-holders and the plaintiffs i.e. 3rd party/appellants has to be decided in terms of an application filed under Order 21 Rule 97 CPC and not by the corresponding title suit and that the object of Order 21 Rule 97 CPC is to prevent multiplicity of litigation so that the decree-holder may ripe the fruit of the decree within a reasonable period of time and thereby, held that the title suit is not maintainable at all and thereby dismissed the same.

10. The law relating to maintainability of a suit, seeking similar relief while a petition under Order 21 Rule 97 CPC is pending before the executing court for decision, is well settled in catena of decisions by

Hon'ble Supreme Court. Reference in this context can be made to the following decisions:-

11. In the case of Bangalore Development Authority vs. N. Nanjappa and another, CIVIL APPEAL NOS. 6996-6997 OF 2021

Hon'ble Supreme Court has held as under:-

5.1 9 Therefore, as per Order XXI Rule 101 CPC, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order XXI rule 97 or rule 99 CPC and relevant to the adjudication of the application shall have to be determined by the Court dealing with the application. For that a separate suit is not required to be filed. Order XXI Rule 97 is with respect to resistance/obstruction to possession of immovable property.

12. Again in the case of B. Gangadhar v. B.G. Rajalingam, reported in (1995) 5 SCC 238 it has been held by Hon'ble Supreme Court as under:-

“4. Order 21 Rule 101 provides that:-

“All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

5. The executing court, therefore, is mandated to decide all questions relating to right, title or interest in the property in the execution proceedings and not by way of a separate suit, notwithstanding anything contained contrary in any other law for the time being in force.
.....”

13. Thereafter, in the case of **Babulal v. Raj Kumar**, reported in **(1996) 3 SCC 154**, Hon'ble Supreme Court has held that –

6. The controversy is no longer res integra. This Court in Bhanwar Lal v. Satyanarain [(1995) 1 SCC 6] considered the controversy and had held that even an application filed under Order 21 Rule 35(3) or one filed under Section 47 would be treated as an application under Order 21 Rule 97 and an adjudication is required to be conducted under Rule 98. Dispossession of the applicant from the property in execution is not a condition for declining to entertain the application. The reasons are obvious. The specific provisions contained in Order 21 Rules 98, 101, 102 enjoin conduct of a regular adjudication, finding recorded thereon would be a decree and bind the parties. In para 7 thereof it was held thus: (SCC p. 9)

“In the above view we have taken, the High Court has committed grievous error of jurisdiction and also patent illegality in treating the application filed by the appellant as barred by limitation and the third one on res judicata. Once the application, dated 25-5-1979 was made, the Court should have treated it to be one filed under Order 21, Rule 97(1) CPC. The question of res judicata for filing the second and third applications does not arise. Under these circumstances the appellate court, though for

different reasons was justified in directing an enquiry to be conducted for removal of the obstruction or resistance caused by Satyanarain under Order 21 Rules 35(3) and 97(2) and Order 21, Rules 101 and 102 of CPC.”

It would, therefore, be clear that an adjudication is required to be conducted under Order 21, Rule 98 before removal of the obstruction caused by the objector or the appellant and a finding is required to be recorded in that behalf. The order is treated as a decree under Order 21, Rule 103 and it shall be subject to an appeal. Prior to 1976, the order was subject to suit under 1976 Amendment to CPC that may be pending on the date the commencement of the amended provisions of CPC was secured. Thereafter, under the amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away. The determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Thus, the procedure prescribed is a complete code in itself. Therefore, the executing court is required to determine the question, when the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance.

14. Again in the case of **Noorduddin v. K.L. Anand (Dr)**, reported in **(1995) 1 SCC 242**, Hon'ble Supreme Court has held that :-

“8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest

claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.”

15. Thus, having examined the impugned judgment and decree passed by the learned Trial Court and also the judgment and decree passed by the learned First Appellate Court, in the light of the decision of Hon’ble Supreme Court discussed herein above, and also in the light of the relevant provision i.e. Order 21 Rule 101 CPC, this Court is of the view that the suit filed by the appellants herein, seeking same relief as in the petition under Order 21 Rule 97 CPC, in Title Execution Case No.03/2007 is not at all maintainable.

16. It is crystal clear from the decision of Hon’ble Supreme Court in the case of **Noorduddin (supra)**, no other proceedings were allowed to be taken while the petition under Order 21 Rule 97 CPC is pending before the Court and the right of suit under Order 21 Rule 103 CPC, which was

available prior to Amendment Act, 1976, has been taken away by the Amendment Act, 1976. It has been held that the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

17. In the result, I find no merit in this appeal and accordingly, the same stands dismissed. The substantial question of law so formulated by this Court stands answered accordingly.

Sd/- Robin Phukan
JUDGE

Roy