

GAHC010058472023



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

Case No. : CRP(IO)/73/2023

MD. KARIM ALI
S/O- JAIN SHEIKH, R/O- VILL- ULUBARI, P.O. JANGALPARA, P.S.
DALGAON, DIST. DARRANG, ASSAM, PIN- 784116.

VERSUS

MD. SAMIR ALI AND 11 ORS.
S/O- LATE ABDUL GAFUR, R/O- VILL.- ULUBARI, P.O. JANGALPARA, P.S.
DALGAON, DIST. DARRANG, ASSAM, PIN- 784116.

2:MD. FARID ALI @ SHEIKH FARID
S/O- LATE ABDUL GAFUR
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

3:MD. JALALUDDIN
S/O- LATE ABDUL GAFUR
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

4:MD. BILLAL ALI
S/O- LATE ABDUL GAFUR
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON

DIST. DARRANG
ASSAM
PIN- 784116.

5:MD. ALLAL UDDIN
S/O- LATE ABDUL GAFUR
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

6:AKLIMA BEGUM
D/O- LATE RUSTOM ALI
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

7:JALEKHA BEWA
W/O- LATE RUSTOM ALI
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

8:MD. NUR MOHAMMAD
S/O- LATE JINNAT ALI
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

9:MD. ALMAS ALI
S/O- LATE MAKSHED ALI
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

10:MD. ISHAHAQUE ALI
S/O- LATE MAKSHED ALI
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

11:MD. YEAKUB ALI
S/O- LATE MAKSHED ALI
R/O- VILL.- ULUBARI
P.O. JANGALPARA
P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116.

12:MD. ABDUL KASHEM
S/O- LATE MOHAMMAD ALI
R/O- VILL. AND P.O. AMINPARA
P.S. ROWTA
DIST. UDALGURI (BTAD)
ASSAM
PIN-784514

Advocate for the Petitioner : MR. T ISLAM, MR. S NATH, MS F AHMED, MS K DAS

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 13.08.2024

- 1.** Heard Mr. S. Nath, learned counsel for the petitioner.

- 2.** None has appeared for the respondents though the notices are duly served on the respondents.

3. On perusal of the order dated 31.07.2024, it appears that this Court had observed in the said order that if the respondents fails to appear on the next date i.e., today, this case would be heard in their absence, hence, this Court has decided to proceed *ex-parte* against the respondents.

4. This application under Article 227 of the Constitution of Indian has been filed by the petitioner, namely, *Md. Karim Ali*, impugning the order dated 01.10.2022 passed by the learned Munsiff No. 1, Darrang, Mangaldai in Misc.(J) Case No. 127/2022 arising out of Title Suit No. 69/2016 whereby the application filed by the present petitioner under Section 151 of the Code of Civil Procedure, 1908 for Police help to enforce the order dated 18.07.2022 was rejected by the Trial Court.

5. The facts relevant for consideration of the instant revision petition, in brief, are as follows:-

(i) That the respondent Nos. 1 to 5 have instituted a Title Suit which has been registered as Title Suit No. 69/2016 in the Court of Munsiff No. 1, Darrang, Mangaldai wherein the present petitioner has been arrayed as defendant No. 3, the respondents have prayed for declaration of right, title and interest as well as for cancellation of sale deeds No. 190/2011 as well as 193/2011 for recovery of Khas possession of the suit land. The petitioner, who is the defendant No. 3 in the aforesaid suit, has contested the suit by filing his written statement.

6. It is submitted by the learned counsel for the petitioner that the defendant No. 3 is presently possessing the suit land which he claims to

purchase by registered sale deed which is also the subject matter in the pending title suit.

7. The learned counsel for the petitioner has submitted that the present petitioner along with other defendants had filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 against the plaintiff of the suit seeking temporary injunction. However, after hearing both the parties, the Trial Court by its order dated 06.08.2018 passed in Misc.(J) Case No. 27/2018 directed both the parties to maintain *status quo* in respect of the suit land.

8. It is pertinent to mention herein that the present petitioner has also filed a counter claim in the suit filed by the respondents.

9. The learned counsel for the petitioner has submitted that the petitioner is possessing 4 Kathas of land by constructing residential houses thereon and some of the parts of the residential houses got damaged in the flood, and, therefore, he filed an application under Section 151 of the Code of Civil Procedure, before the Trial Court, for allowing the petitioner to make necessary repair in the damaged house.

10. On the basis of the said application, Misc.(J) Case No. 85/2022 was registered and by order 18.07.2022, the Trial Court has allowed prayer of the petitioner to repair the damaged house.

11. The learned counsel for the petitioner has submitted that when the petitioner tried to repair the damaged house, the respondent side put resistance to such repair in violation of the order of the Trial Court dated 18.07.2022 passed in Misc.(J) Case No. 85/2022. It is submitted by the learned counsel for the petitioner that thereafter the petitioner filed an application under Section

151 of the Code of Civil Procedure for seeking police help in enforcing the order of the Trial Court by which the petitioner was allowed to repair his damaged house over the suit land.

12. The learned counsel for the petitioner has submitted that by order dated 01.10.2022, which has been impugned in this case, the Trial Court has rejected the prayer for police help merely on the grounds that the respondents here to have filed a review application which was registered as Misc.(J) Case No. 106/2022 for review of the order dated 18.07.2022, whereby the petitioner was allowed to repair his damaged house.

13. In the said review application, the respondents took the plea that the order dated 18.07.2022 has been obtained by the petitioner by misleading the Court and on that ground the prayer for police help was rejected. The court also observed in the impugned order that the police force cannot be used routinely and mechanically.

14. The learned counsel for the petitioner has submitted that in the meanwhile, the review application filed by the respondents has been dismissed by order dated 05.01.2024 passed in Misc.(J) Case No. 106/2022 and in support of his submission, the learned counsel for the petitioner has produced a certified copy of the said order. The certified copy of the said order is marked as "X" and kept in this record as a part of this record.

15. I have considered the submissions made by the learned counsel for the petitioner and have gone through the materials available on the record.

16. It appears that the Trial Court had by its order dated 18.07.2022 allowed the petitioner to repair the damaged house of the petitioner. However, when the

petitioner tried to do the repairing in pursuant to the Court's direction, the respondents side resisted to such repairing.

17. The main ground on which the Trial Court rejected the prayer for police help is the contention raised by the respondents side regarding misleading of the Court by the petitioner in their review petition no longer remain valid as the said review petition has been dismissed by the Trial Court.

18. When the Court has passed an order, the same has to be taken to its logical conclusion, otherwise, the efficacy of the Court's order would not remain and it would not be in the interest of justice. However, for seeking police help, there are specific provisions in the Gauhati High Court Civil Rules and Orders. For example, Rule 203, where resistance is offered in execution of a decree, recourse shall have to be taken of the said Rule. Though, Rule 203 is applicable at the stage of execution of decree, same may be applicable even if there is resistance to execution of an order passed by the Court during the pendency of the Trial. The Trial Court has to consider as to whether in facts and circumstances of the case, the resistance offered by the respondents is of such nature that it would warrant allowing the police help for implementation of the orders passed by the Court. For that, the petitioner has to place all the facts before the said Court by filing an application supported by an affidavit where all the circumstances mentioned under Rule 203 of the Gauhati High Court Civil Rules and Orders have to be satisfied.

19. For the reasons stated above, the impugned order dated 01.10.2022 passed by the Trial Court in Misc.(J) Case No. 127/2022 is hereby set aside.

20. The petitioner is directed to file a fresh application akin to the

application which is filed under Rule 203 of the Gauhati High Court Civil Rules and Orders during execution proceeding when police help is required, satisfying all the conditions which are laid down in the said Rule and if the petitioner file such an application, the said application shall be considered and disposed of by the Trial Court in accordance with law.

21. With the above observation, this Civil Revision Petition (IO) is hereby disposed of.

JUDGE

Comparing Assistant