

GAHC010045562019



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

Case No. : CRP/47/2019

ABDUL RAZZAK
VILL.-BATAMARI, MOUZA- ALITANGANI, P.O.-BATAMARI, P.S.-JURIA,
DIST.-NAGAON, ASSAM, PIN-782122

VERSUS

ABDUL HAQUE AND 3 ORS.
S/O ABDUL MAJID, VILL-BATAMARI, MOUZA-ALITANGANI, P.O.-
BATAMARI, P.S.-JURIA, DIST.-NAGAON,ASSAM, PIN-782122

2:ABDUL HYE
S/O ABDUL MAJID
VILL-BATAMARI
MOUZA-ALITANGANI
P.O.-BATAMARI
P.S.-JURIA
DIST.-NAGAON
ASSAM
PIN-782122

3:ABDUL MOTALIB
S/O ABDUL MAJID
VILL-BATAMARI
MOUZA-ALITANGANI
P.O.-BATAMARI
P.S.-JURIA
DIST.-NAGAON
ASSAM
PIN-782122

4:MAINUL HAQUE
S/O ABDUL MAJID

VILL-BATAMARI
MOUZA-ALITANGANI
P.O.-BATAMARI
P.S.-JURIA
DIST.-NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MD. M H CHOUDHURY

Advocate for the Respondent : MR. A U CHOUDHURY

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. M.K. Choudhury,
Advocate.

For the Respondents: Mr. A.U. Choudhury,
Advocate.

Date of Hearing : 21.05.2024.

Date of Judgment : 28.05.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. M.K. Choudhury, learned counsel representing the petitioner as well as Mr. A.U. Choudhury, learned counsel appearing for the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 06.12.2018 passed by the Munsiff No.2, Nagaon in Title Execution Case No.10/2015.

3. Late Jonab Ali had purchased a plot of land from Md. Rahimuddin, Md. Somed Ali and Md. Noor Jahan Bibi on execution of a registered sale deed. The boundary of the land is like this –

North - Seller's land.

South- Ajit Ali.

East- Buyer's land.

West- Ajit Ali.

4. Thereafter, they had to file a suit for the said plot of land seeking a decree for declaration of their right, title and interest over the said plot of land. In the plaint, the four boundaries of the land was given as under:

North- Other land of the plaintiffs.

South- Hussain Ahmed and Others.

East- Saiful Islam and Others.

West- Abdul Haque and others.

5. The said suit i.e. T.S. 77/1995 was decreed by the trial court. An appeal was filed and the said appeal being Title Appeal No.14/2004 was dismissed. The matter was brought to the High Court when a Regular Second Appeal was filed. The RSA No.72/2006 was also dismissed.

6. Thereafter, the decree holders filed the Title Execution Case No.10/2015.

7. At this stage, it was discovered that the four boundaries of the suit property was erroneously described in the plaint. Therefore, the decree holders filed an application before the executing court praying for correction of the four boundaries of the decreetal property. The executing court rejected the said application on the ground that the executing court cannot order amendment of the decree.

8. I have considered the submissions made by the learned counsel of both sides.

9. In *Pratibha Singh v. Shanti Devi Prasad*, (2003) 2 SCC 330, the Supreme Court has held as under:

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case — which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact

description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC."

10. In *Narattam Barman vs. Sumit Sutradhar and Others*, reported in (2021) 2 GLR 321, this Court has held as under:

" In [Pratibha Singh and Another](#) (Supra), the Apex Court in order to satisfy a decree in favour of the decree holders in a suit for specific performance of contract for agreement for sale of plot of land held that where there was no determination by the executing court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed as the property forming the subject matter of the agreement to sell and the decree, appropriate direction can be taken care for delivery of possession to the plaintiff decree holder. Further, it was held that in such situation the executing court can resort to [Section 152](#) or [Section 47](#) of the CPC considering the facts and circumstances of the case. It was also held that if the error in the description of the property was inadvertent without affecting the merit of the case the executing court can resort to [Section 152](#) CPC which passed the decree by supplying the omission. Alternatively, the executing court can invoke its power under [Section 47](#) of the CPC to determine the exact description of the decretal property in order to give effect to the decree which ought not to be defeated on account of accidental slip or omission."

11. Reverting to the case in hand, I find that the suit property was erroneously mentioned in the plaint and the defendants of the suit i.e. the present respondents never objected to it till the RSA No.72/2006 was disposed of by the High Court. I am of the considered opinion that it was an inadvertent error.

12. Unless the four boundaries of the decretal property are not corrected, a successful decree holder would be deprived of the fruit of the decree. Correction of the errors in the description of the suit property in the plaint would not affect the merit of the case. In such a circumstance, the executing court could have resorted to the power under Section 152 of the Code of Civil Procedure. For ascertaining the exact description of the decretal property, the executing court could have resorted to

Section 47 of the Code of Civil Procedure also.

13. In the case in hand, the executing court erroneously held that the executing court cannot change the boundaries of the decreetal property. The impugned order dated 06.12.2018 passed in Title Execution Case No.10/2015, is erroneous and stands set aside.

14. The Revision Petition is allowed. The Executing Court shall change the four boundaries of the decreetal property as desired by the decree holders. Thereafter, the decree shall be executed.

The Civil Revision Petition is disposed of accordingly.

JUDGE

Comparing Assistant