

GAHC010056152024



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

Case No.: CRP(IO)/92/2024

RAM KISHAN MAHESWARI
S/O- LATE BAJRANGLAL MAHESWARI
PARTNER
BONGAIGAON STORES MAIN ROAD
BONGAIGAON TOWN
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM

VERSUS

ROOPCHAND KUCHERIA AND ANR
S/O- LATE MOOLCHAND KUCHERIA
R/O- WARD NO. 4
BONGAIGAON TOWN (NEAR MAYAPURI)
P.O. AND P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783380.

2:SMT. INDIRA DEVI SURANA
W/O- RAJ KARAN SURANA
D/O- LATE MOOLCHAND KUCHERIA
R/O- WARD NO. 4
BONGAIGAON TOWN (NEAR MAYAPURI)
P.O. AND P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783380. PRESENTLY RESIDING AT B-1
GALI NO. 4
4TH FLOOR
OLD ARJU NAGAR
NEW DELHI-110051.

Advocate for the Petitioner : Mr. B. J. Mukherjee, Advocate

Advocate for the Respondents : Mr. S. Sancheti, Advocate
Mr. B. C. Das, Sr., Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 27.03.2024

Date of Judgment : 27.03.2024

JUDGMENT AND ORDER (ORAL)

This is an application under Article 227 of the Constitution of India challenging the order dated 19.02.2024 passed in Misc.(J) Case No.28/2024 arising out of Title Execution No.02/2024.

2. The brief facts involved in the instant proceedings is that a suit was filed by one Moolchand Kucheria against one Bongaigaon Stores and Rameswarlal Maheswari herein who were the defendants in the said suit. The said suit was registered and numbered as Title Suit No.2/2000. The said suit was filed on the ground that the defendants who were the tenants were to be evicted from the suit premises on the ground that they were defaulter in the payment of rent as well as also on the ground of bonafide requirement of the plaintiff. The said suit was decreed vide the judgment and decree dated 05.08.2010 whereby the learned Trial Court, i.e. the Court of the Munsiff, Bongaigaon, held that the defendants were defaulters in payment of rent. However, the issue pertaining to bonafide requirement was decided against the plaintiff in the said suit.

3. Being aggrieved, an Appeal was preferred by the defendants herein

before the Court of the Civil Judge, Bongaigaon which was registered and numbered as Title Appeal No.35/2010. In the said appeal, the plaintiff filed cross-objection as regards the decision on the issue of bonafide requirement. The First Appellate Court, i.e. the Court of the Civil Judge, Bongaigaon vide the judgment and decree dated 05.11.2013 disposed of the said Appeal affirming the judgment passed by the learned Trial Court thereby directing eviction of the defendants. In doing so, the learned First Appellate Court decided the issue pertaining to default in payment of rent by the defendants against the plaintiff and decided the issue of bonafide requirement in favour of the plaintiff. Being aggrieved, a revision application was filed before this Court which was registered and numbered as CRP No.77/2014.

4. This Court vide an judgment and order dated 03.11.2016 taking into account that the judgment so rendered by the learned First Appellate Court was not in consonance with Order XLI Rule 31 of the Code of Civil Procedure, 1908 (for short, 'the Code'), reversed the said judgment and decree passed by the learned First Appellate Court dated 05.11.2013 and remanded the matter back to the First Appellate Court for recording a fresh decision on the issues by discussing the evidence available on record and keeping in mind the principle embodied in Order XLI Rule 31 of the Code. Thereupon, the learned First Appellate Court decided the Title Appeal being Title Appeal No.35/2010 vide the judgment and decree dated 22.09.2017 thereby holding the issue of bonafide requirement as well as the issue of defaulter in payment of rent against the plaintiff, and accordingly, dismissed the suit. It is under such circumstances, the plaintiff filed a revision petition under Section 115 of the Code before this Court

which was registered and numbered as CRP No.19/2018 challenging the judgment and decree dated 22.09.2017 passed in Title Appeal No.35/2010.

5. This Court after hearing the learned counsel for the parties vide its detailed judgment and order dated 05.06.2023 decided the said revision petition in favour of the plaintiff on both the issues, i.e. defaulter in payment of rent as well as also bonafide requirement of the plaintiff over the suit premises.

6. This Court however taking a considerate view of the matter in view of the defendants carrying on a business, granted the defendants a period of 6 months to vacate the suit premises provided they submitted an undertaking before the Trial Court within 20.06.2023 to the effect that they shall vacate the suit premises within a period of 6 months from the date of the judgment, i.e. on or before 06.12.2023. It was made clear by this Court vide the judgment and order dated 05.06.2023 that if within the period the undertaking is not submitted, the plaintiff would be entitled to initiate execution proceedings for evicting the defendants.

7. This Court further made it clear in the said judgment and order that permitting defendants to remain in possession for a period of 6 months shall not create any right or interest in favour of the defendants in respect to the schedule premises. It was further mentioned that during this period, the defendants shall remain in possession of the suit premises as the custodian of the plaintiff and shall not do any act or acts which may affect the rights of the plaintiff over the suit premises in any manner whatsoever.

8. It further reveals from the records of the instant proceedings that a purported unregistered agreement was entered into between one Indira Devi Surana (the respondent No.2 herein) and one Sri Ram Kishan Maheswari. This agreement has been enclosed as Anenxure-3 to the instant proceedings and is dated 13.11.2023. The said Sri Ram Kishan Mahewari was not a party in the earlier proceedings. The contents of the said purported rental agreement dated 13.11.2023 show that Late Moolchand Kucheria who was the landlord expired on 05.01.2023 at Delhi. It has been categorically mentioned in the said purported deed of agreement that there was no amicable partition of the said property during the life time of Late Moolchand Kucheria. It was claimed by the lessor Smt. Indira Devi Surana that she was entitled to get the shop room along with two rooms residential accommodation on the backside of the shop room being her share as per the promise made by her father. Although two schedules were mentioned in the body of the purported deed of agreement, but perusal of the said deed do not show any schedule-1 or schedule-2. It is also very pertinent to mention that during the course of hearing, Mr. B. J. Mukherjee, the learned counsel for the petitioner has placed before this Court a document of handing over/taking over possession of the shop premises by which the judgment debtors handed over the possession to one Smt. Indira Devi Surana. But there was not a single whisper in the said purported deed of agreement about the same. The said purported Deed is completely silent about the suit proceedings and the decree passed for eviction of the defendants.

9. Before further proceeding with the case in hand, this Court finds it pertinent to observe that there was a decree for eviction against the

defendants in the suit. The judgment and order passed on 05.06.2023 was clear that no action was to be taken by the defendants/judgment debtors which would prejudice the plaintiffs/decree holders. The decree for delivery of possession would only be satisfied in terms with Order XXI Rule 36 read with Order XXI Rule 35 of the Code. Therefore, the purported actions taken by the said petitioner along with one decree holder amounted to deliberately denying the benefits of a lawful decree to the decree holders. The action of the petitioner in concert and collusion with the judgment debtors are nothing but a subterfuge in order to deprive the decree holders of the fruits of the decree.

10. Be that as it may, taking into account that in the meantime, the judgment debtors did neither submit the undertaking nor the decree holders were able to take possession, the decree holder filed Title Execution proceedings being Title Execution No.02/2024 seeking assistance. In the said Execution Application, the copy of which is enclosed as Annexure-6 to the instant application, reveals that the said application was filed by one Roopchand Kucheria who was a decree holder whereby the assistance of the Court was sought for the purpose of release of Rs.9,363.05 from the judgment debtor in terms with the decree. Pursuant to the filing of the said application, a writ for possession was issued by the learned Executing Court thereby fixing 19.02.2024 as for report. On the next date, i.e. on 19.02.2024, the judgment debtor No.1 filed an application under Section 47 of the Code stating about the agreement dated 13.11.2023 entered into with one of the decree holder by one Sri Ram Kishan Mantri @ Maheswari who is being claimed to be a constituted Attorney as well as partner of M/s Bongaigaon Stores. It was

also mentioned that the amount of Rs.9,365.05 had been deposited and as such be handed over to the decree holder as full and final satisfaction of the decree.

11. On 19.02.2024, an application was filed by the decree holder under Order VI Rule 17 read with Section 151 of the Code seeking amendment to the application thereby to insert the prayer for recovery of khas possession of the decratal premises and hand over the vacant possession to the decree holder by evicting the judgment debtors and all their belongings from the decratal premises. The said application was allowed vide an order dated 19.02.2024 which has been impugned in the instant proceedings on the ground that the same was allowed without giving an opportunity to the judgment debtors to file an objection.

12. This Court has duly heard Mr. B. J. Mukherjee, the learned counsel appearing on behalf of the petitioner and Mr. S. Sancheti, the learned counsel appearing on behalf of the respondent No.1 as well as Mr. B. C. Das, the learned senior counsel appearing on behalf of the respondent No.2.

13. This Court is only dealing in the present application as to whether the learned Executing Court ought to have allowed the amendment in the relief portion of the execution application. This Court having perused the materials on record and also taking into account that there is a decree passed by this Court in its judgment and order dated 05.06.2023 in CRP No.19/2018 to the effect that the decree holder would be entitled to not only the recovery of arrears but also for recovery of possession is of the opinion that the learned Executing Court was justified in passing the order dated 19.02.2024 for the purpose of permitting the amendment so sought

for to the application seeking execution of the decree.

14. This Court therefore finds no good reasons for the purpose of exercising the power under Article 227 of the Constitution for which the instant proceedings stands dismissed.

15. Mr. S. Sancheti, the learned counsel for the respondent No.1 further submitted that the judgment debtor in order to delay further proceedings has filed the transfer application before the Court of the District Judge, Bongaigaon being Misc. Transfer Case No.8/2024. This Court is of the opinion that as the learned District Judge, Bongaigaon is deciding the said application, any order passed at this stage would not be proper. However, this Court taking into account that there is a judgment and decree passed by this Court on 05.06.2023 in CRP Case No.19/2018 requests the learned District Judge, Bongaigaon to decide the said transfer proceedings as expeditiously as possible.

16. The stay order dated 01.03.2024 stands vacated and the Executing Court shall proceed with the execution of the decree pursuant to such order/orders that may be passed by the learned District Judge in Transfer Case No.8/2024.

JUDGE

Comparing Assistant