

GAHC010057332023



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

Case No. : CRP/33/2023

MAHANANDA DEKA
S/O LATE MADHAB DEKA, R/O VILL-CHANDKUCHI, MOUZA-BAHJANI,
P.S.-NALBARI, DIST-NALBARI, ASSAM

VERSUS

ON THE DEATH OF KALYAN RAJBONGSHI, HIS LEGAL HEIRS
DIST-NALBARI, ASSAM

1.1:Smti. Pakhili Rajbongshi
W/O- Late Kalyan Rajbongshi

Resident of village- Chandkuchi

Mouza- Bahjani

P.S.- Nalbari

District- Nalbari
Assam- 781334.

1.2:Sri Deepak Rajbongshi
S/O- Late Kalyan Rajbongshi

Resident of village- Chandkuchi

Mouza- Bahjani

P.S.- Nalbari

District- Nalbari
Assam- 781334.

1.3:Sri Biraj Rajbongshi
S/O- Late Kalyan Rajbongshi

Resident of village- Chandkuchi

Mouza- Bahjani

P.S.- Nalbari

District- Nalbari
Assam- 781334.

1.4:Smti. Deepika Rajbongshi
D/O- Late Kalyan Rajbongshi

Resident of village- Chandkuchi

Mouza- Bahjani

P.S.- Nalbari

District- Nalbari
Assam- 781334

For the Petitioner(s) : Ms. B. Choudhury, Advocate

For the Respondent(s) : Mr. D. Goswami, Advocate
: Mr. S. Afridi, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 04.03.2024

1. The instant application under Article 227 of the Constitution has been filed challenging the order dated 22.12.2022 passed in Title Execution Case No.9/2020 whereby the learned Executing Court i.e. the Court of the Munsiff No.1 at Nalbari had dismissed the application filed by the judgment debtor.

2. From a perusal of the record, it reveals that the Petitioner herein had filed a suit being Title Suit No.32/2017 seeking for declaration, recovery of khas possession, injunction and other reliefs. The said suit was disposed of vide a judgment and decree dated 10.12.2018 whereby the learned Trial Court declared that the plaintiff has the right, title and interest over the Schedule-A land. It was also declared that the plaintiff is entitled to recover the khas possession of the suit land by evicting the defendant and his men, agents therefrom by demolishing the illegal construction made by the defendant thereon. Further to that the defendant and all men and agents were permanently restrained from interfering with the peaceful possession of the plaintiff over the suit land or from making any claim over the suit land after the delivery of the khas possession of the suit land to the plaintiff. The said decree was put to execution by filing an application on the basis of which Title Execution Case No.9/2020 was registered. On the basis of the said proceedings, warrant for delivery of khas possession was issued. It is the allegation of the Petitioner that the entire land was not handed over to the Petitioner. On the other hand, the Nazir and the other authorities have misled the Petitioner to put the signature and this aspect of the matter was brought to the attention of the learned Executing Court by filing an application under Section 151 of the Code of Civil Procedure, 1908.

3. On the other hand, the learned counsel appearing on behalf of the Respondents who were the defendants has submitted that the decree was duly executed and thereupon, the signature was taken from the decree holder i.e. the Petitioner and as such, there is no illegality in the order impugned in the instant proceedings.

4. This Court has duly heard the matter and given its anxious consideration to

the issues involved. This Court has duly taken note of the decree which has been passed and a perusal of the decree, it reveals that the suit was not only decreed declaring the right, title and interest and recovery of khas possession of the Schedule-A land but also there was also a decree for permanent injunction to the effect that the defendants therein would not interfere with the peaceful possession of the decree holder over the suit land after the delivery of khas possession. Therefore, the question arises even assuming the decree for delivery of khas possession was duly satisfied, whether the question of compliance to the decree for permanent injunction was required to be investigated upon by the learned Executing Court. This however is not seen from the impugned order dated 22.12.2022 inasmuch as by the impugned order, the learned Trial Court had assumed that upon the delivery of the khas possession, the entire decree stood satisfied.

5. Considering the above, this Court therefore sets aside the order dated 22.12.2022 directing the Executing Court to decide afresh the said application treating it to be an application for the purpose of compliance to the decree for permanent injunction. Taking into account that both the parties are represented before this Court, the parties are directed to appear before the learned Executing Court on 20.03.2024 on which date the learned Executing Court shall further proceed with the execution case in accordance with law.

6. With above observations and directions, the instant application stands allowed.

JUDGE

Comparing Assistant