

GAHC010182832019



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

**Case No. : CRP/113/2019**

**1. Sri Kulendra Nath Kakati**

**2. Smt. Surabi Kakati**

**...PETITIONERS**

**VERSUS**

**1. Sri Bhabesh Baruah**

**2. On the death of Tikendra Nath Kakati his legal heirs are –**

**2A. Smt. Daisy Kakati,**

**2B. Smt. Barnali Kakati,**

**2C. Smt. Pranati Kakati,**

**2D. Sri Parag Kumar Kakati,**

**– 3.**

**3. Smt. Meera Kakati,**

**4. On the death Smti Niru Kakati, her legal heir –**

**4A. Bhubaneswar Kalita,**

**...RESPONDENTS**

**Advocate for the Petitioner** : Mr. Ghanashyam Das

**Advocate for the Respondent** : Mr. D. K. Kakoty, Adv. R. 1

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**...BEFORE...**

**HON'BLE MR. JUSTICE ROBIN PHUKAN**

Date of hearing : 19.01.2022

Date of verdict : 21.03.2022

**VERDICT (CAV)**

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**1.** Order dated 04.05.2017, passed by the learned Civil Judge No. 1, Kamrup (M), in Misc. (J) Case No. 458/2014, arising out of Title Execution Case No. 04/2013, and order dated 04.05.2019, passed by the learned Civil Judge No. 1, Kamrup (M), Guwahati, in Misc. (J) Case No. 600/2017, arising out of Title Execution Case No. 04/2013, are impugned in this Civil Revision Petition filed under Section 115 of the Code of Civil Procedure by the petitioners, namely, Sri Kulendra Nath Kakati & Smt. Surabi Kakati.

It is to be mentioned here that vide impugned order dated 04.05.2017, the learned Civil Judge No. 1, Kamrup (M), Guwahati, had dismissed the petition filed under **Section 47 and** Order 21 Rule 97 and 101 of the Code of Civil Procedure and vide impugned order, dated 04.05.2019, the learned Civil Judge No. 1, Kamrup (M), Guwahati, had dismissed the petition filed by the petitioners under Order 47 Rule 1 *read with* Section 151 of the Code of Civil Procedure for reviewing the order dated 04.05.2017.

**2.** The factual background leading to filing of the present petition is briefly stated as under:-

“The respondent, Sri Bhabesh Baruah, as plaintiff, has instituted Title Suit No. 87/2006 against the respondents. Tikendra Nath Kakati & Ors., and in the said Title Suit, the respondent, Sri Bhabesh Baruah, got a decree for a plot of land measuring 4 Kathas 2 Lechas covered by Kheraj Myadi Patta No. 81, 82 (Old), 138 (New), Dag No. 60 (Old)/60 (New). Thereafter, the respondent, Sri Bhabesh Baruah, filed a Title Execution Case No. 04/2013 before the learned Civil Judge No. 1, Kamrup (M), Guwahati and while the case was pending for execution, the respondent got executed a Deed of Sale for 3 Kathas 3 Lechas of land through the learned Civil Judge No. 1, Kamrup (M), Guwahati, on 27.11.2014, without modifying the decree dated 04.12.2012, which was

for a plot of land measuring 4 Kathas 2 Lechas. Thereafter, the present petitioners, whose land also allegedly falls in the decretal land, filed an application, before the learned Civil Judge No.1 , which is registered as Misc. (J) Case No. 458/2014, under Section 47 *read with* Rule 97 & 101 of Order 21 and Section 151 of the Code of Civil Procedure on 27.11.2014, apprehending that if the respondent proceed for execution of the decree for 4 Kathas 2 Lechas of land, then the remaining 19 Lechas of land of the petitioners would come into the decretal land as the decree for 4 Kathas 2 Lechas of land remained in force. But, the learned Civil Judge No. 1, Kamrup (M), Guwahati, after hearing both the parties, dismissed the petition No. 458/2014, filed by the petitioners. Thereafter, the petitioners again filed one petition before the learned Civil Judge No. 1, Kamrup (M), Guwahati, under Order 47 Rule 1 *read with* Section 151 of the Code of Civil Procedure, upon which, Misc. (J) Case No. 600/2017 has been registered and after hearing the parties, the learned Civil Judge No. 1, Kamrup (M), Guwahati, dismissed the same vide order dated 04.05.2019.

**3.** Being highly aggrieved, the petitioners approached this Court by filing the present Civil Revision Petition on the grounds:

(i) that, the learned Court below has failed to

consider that in the said Execution Case, the land of the petitioners are involved;

- (ii) that, the learned Court below failed to consider the fact that identification of boundaries of the suit land, as mentioned in the execution proceeding, is not correct as the land of the petitioners are also situated within the said boundaries;
- (iii) that, the entire case required to be reopened on the ground that the petitioners have right to seek adjudication of their claim over the suit land as provided under Order 21 Rule 101 of the Code of Civil Procedure;
- (iv) that, the learned Court below failed to consider the fact that the Executing Court cannot go beyond the decree and allowed the respondent to get part of the same executed;
- (v) that, the execution of the Deed of Sale on 27.11.2014 at Guwahati by the learned Civil Judge No. 1, Kamrup (M), Guwahati, in Title Execution Case No. 04/2013, in favour of the

respondent No. 1, is not permissible in law; and, therefore, it is contended to set aside the impugned order.

**4.** Refuting the afore mentioned averments respondent No.1 -Shri Bhabesh Barauh did file a counter affidavit asserting that the petitioners are stranger to the Title Suit and also in the Execution proceeding and they cannot maintain a petition either under section 47 Code of Civil Procedure or under Rule 97 and 101 of Order XXI Code of Civil Procedure. It is also stated that the petitioners are neither in possession of decreetal land nor their land falls in the boundary of the land as described in Schedule -B of the land of the Sale Deed No. 12740/2014 dated 27.11.2014, executed by the learned Executing Court and in view of above their apprehension that if the original decree for execution of 4 Kathas 2 Lechas of land is put in execution then their land will be affected, ceased to exist. Therefore, it is contended to dismiss the petition.

**5.** The petitioners have submitted an affidavit in reply to the aforementioned affidavit-in-opposition refuting the assertions made therein.

**6.** I have heard Mr. Ghanashyam Das, learned counsel for the petitioners and Mr. D.K. Kakoty, learned counsel for the

respondent.

**7.** Mr. Ghanshyam Das, learned counsel for the petitioners, submits that the learned Court below has dismissed the 2 (two) petitions, filed by the petitioners, without just ground and the said order suffers from manifest illegalities and that if the decree is executed, then the 19 Lechas of land of the petitioners will fall in the decreetal land and the petitioners will be highly prejudiced, and therefore, Mr. Das, learned counsel for the petitioners, contended to set aside the impugned orders.

**8.** On the other hand, Mr. D. K. Kakoty, learned counsel for the respondent, submits that the petitioners are stranger as they were neither party in the Title Suit nor in the Execution Proceeding and the learned Court below has rightly rejected the petition filed under Section 47 Code of Civil Procedure, and under Order 21 Rule 97 and 101 of the Code of Civil Procedure and also the review petition as the same are not maintainable in law and there is no cause for apprehension that in the event of execution of the decree dated 04.12.2012, 19 Lechas of their land will fall in the decreetal land, and therefore, it is contended to dismiss the petition.

**9.** Having heard the submissions of learned Advocates of both sides, I have carefully gone through the impugned orders, dated



04.05.2017 & 04.05.2019, passed by the learned Civil Judge No. 1, Kamrup (M), Guwahati, in Misc. Case No. 458/2014 & Misc. (J) Case No. 600/2017, respectively.

**10.** It appears that the learned Court below, after hearing both the parties and considering the evidence adduced by them, arrived at a finding that the petitioner in his evidence specifically deposed that the Dag No. and Patta No. of his land is 868 & 541, respectively, and the petition filed for execution of the decree in Title Execution Case No. 04/2013 shows that the concerned plot of land, against which execution is prayed, is covered by Patta No. 81, 82 (Old)/138 (New) Dag No. 60(Old)/60 (New) and, thereafter, considering the Dag No. and Patta No. of the land of the petitioner in Misc. Case and with the decreetal land, arrived at a finding that the decreetal land concerning the main Title Suit No. 87/2006 is different from the land of the petitioner. The Title Execution Case No. 04/2013 is concerned with plot of land measuring 4 Kathas 2 Lechas covered by Patta No. 81, 82 (Old)/138(New) Dag No. 60(Old)/60(New), whereas, the land of the petitioners of that Misc. Case is covered by Dag No. 868 and Patta No. 541 and as the land of the petitioner is different from the land against whom decree has been passed in the Title Suit No. 87/2006, then the prayer to declare right, title and interest over the suit land, concerning Title Suit No. 87/2006, does not arise, as execution of the decree concerning Title Suit No. 87/2006 will not any way effect the land of the petitioner, as according to

him, both the land are separate and, thereafter, the learned Court below had dismissed the petition.

**11.** It also appears that the learned Court below had dismissed the review petition in Misc. Case No. 600/2017 on the ground that the order and judgment in Misc (J) Case No. 458/2014 is meticulously done and the discussion therein does not suffer from any kind of error and as such, the same cannot be review by that Court and, therefore, dismissed the same.

**12.** I have carefully gone through the petition and the affidavit-in-opposition and affidavit-in-reply submitted by the parties and examined the same in the light of submissions of the learned counsel of both sides. And I find sufficient force in the submission of Mr. D. K. Kakoty, learned counsel for the respondent.

**13.** It appears that the learned Executing Court had executed a registered Sale Deed, No. 12740/2014, on 27.11.2014 with respect to 3 Kathas 3 Lechas of land as described in Schedule- B of the Sale Deed and bounded by:-

North :- land of Surabhi Das Kakati & Kulendra Nath Kakati,

South :- land under Dag No. 142 & 143,

East :- Bahini River,

West :- R. G. Baruah Road,

And as such, the learned Executing Court, in pursuance of the decree, has executed the decree giving right to the decree holder over 3 Kathas 3 Lechas of land covered by Dag No. 60(Old)/60(New) and K. P. Patta No. 81, 82 (Old)/ 138 (New) and new settlement Patta No. 166, Dag No. 141 of the revenue village, Dispur. The aforementioned plot of land i.e. 3 Kathas 3 Lechas of land is curved out of the total 4 Kathas 2 Lachas of land covered by Kheraj Myadi Patta No. 81, 82 (Old), 138 (New), Dag No. 60 (Old)/60 (New) bounded by-

North :- Punjab National Bank (Ganeshguri Branch),

South :- Urban Water Office,

East :- Bahini River,

West :- R. G. Baruah Road,

**14.** And admittedly, the petitioner's land is covered by Dag No. 868 and Patta No. 541, and also admittedly the same is not covered by the Dag No. and Patta No. of the decreetal land, which is totally different and the said land is not in their possession also. It is only the apprehension of the petitioners that if the decree, passed in Title Suit No. 87/2006, is allowed to be executed then it will affect their right, title and interest in respect of their land.

**15.** Admittedly, the petitioners are not a party to the main Suit.

They also could not establish that the decree is void-ab-initio and is a nullity and it is not capable of execution under the law, either because it was passed in ignorance of such provision of law or the law was promulgated making a decree in executable after its passing. Since none of the aforementioned eventualities, as recognized in law for rendering a decree in executable, the petitioners could not maintain an application under Section 47. In holding so we derived authority from a decision of Hon'ble Supreme Court reported in **Dhurandhar Prasad Singh vs. Jai Prakash University and Others**, AIR 2001 SC 2552.

**16.** However, a person, including a stranger, could maintain a petition under Rule 97 of Order XXI and object and get adjudication when he sought to be dispossessed by the decree holder. The expression 'any person' under sub-clause (1) Rule 97 include 'all person'. And all disputes between 'any such person' and 'decree holder' is to be adjudicated by the executing court under Order XXI Rule 101, as held by Hon'ble Supreme Court reported in **Sreenath and Another vs. Rajesh and Others: AIR 1998 SC 1827.**

**17.** But, in the instant case the petitioners are not sought to be disposed by the decree holder. Admittedly, they are not in possession of the decreetal land, measuring 3 Kathas 3 Lechas, covered by Dag No. 60(Old)/60(New) and K. P. Patta No. 81, 82 (Old)/ 138 (New) and new settlement Patta No. 166, Dag No. 141

of the revenue village, Dispur. Admittedly, the petitioner's land is covered by Dag No. 868 and Patta No. 541. They have filed the petition on mere apprehension that if the decree of 4 Kathas 2 Lechas is put in execution, then the same will cover their plot of land. As such, they could not maintain an application under Section 47 and under Rule 97 and 101 of Order 21 of the Code of Civil Procedure without them being sought to be dispossessed from their land by the decree holder.

**18.** Thus, having tested the impugned orders, dated 04.05.2017 & 04.05.2019, passed by the learned Civil Judge No. 1, Kamrup (M), Guwahati, in Misc. (J) Case No. 458/2014 & in Misc. (J) Case No. 600/2017, respectively, arising out of Title Execution Case No. 04/2013, on the touchstone of principles discussed herein above, I find that the same suffers from no illegality or impropriety requiring any interference of this Court.

**19.** In the result, I find no merit in this Civil Revision Petition and, accordingly, the same stands dismissed. The parties have to bear their own costs.

**JUDGE**