

(2008) 02 GAU CK 0042

Gauhati High Court

Case No: Revision Petition No. 372 of 2007

Binda Rai and Ors.

APPELLANT

Vs

Rajendra Mahato

RESPONDENT

Date of Decision: Feb. 22, 2008

Acts Referred:

- Civil Procedure Code, 1908 - Order 21 Rule 100, Order 21 Rule 99
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 99

Citation: (2008) 4 GLR 631

Hon'ble Judges: T.Nanda Kumar Singh, J

Bench: Single Bench

Advocate: S.R.Roy, N.Alam, K.Rajbongshi, R.P.N.Singh, C.K.Sarma Baruah, D.Nandi,
J.P.Sharma, Advocates appearing for Parties

Judgement

1. Heard Mr. S.P. Roy, learned counsel for the petitioner as well as Mr. C.K. Sarma Baruah, learned senior counsel, assisted by Mr. J.P. Sharma, learned counsel for the respondents.

2. This application under section 115 of CPC read with section 151 of CPC is directed against the judgment and order dated 5.7.2007 passed in Misc. (Appeal) No. 2/2005 passed by the learned Civil Judge (Sr. Division) No. 1, Guwahati.

3. The short facts, in a nutshell, of the present revision application is that the respondent filed Title Suit No. 31/1991 in the Court of the learned Civil Judge (Jr. Division) No. 1, Guwahati against the 9 defendants namely Lal Bahadur Ray, Rani Iswar Ray, Ramlal Ray, Sakkal Ray, Meghui Ray, Rajendra Ray, Ram Prit Ray, Rameswar Ray and Ram Brich Ray for a decree for permanent injunction restraining the defendants from making any construction on the land of Schedule B on declaration of the plaintiff's title and for recovery of possession of the suit land. The said Title Suit No. 31/1991 was decreed in favour of the respondent/plaintiff. The respondent/plaintiff filed the Title Execution Case No. 2/1999 for execution of the

said decree passed in Title Suit No. 31/1991.

4. The present petitioners filed an application under order 21, rules 97 & 99 of CPC read with section 151 of CPC for adjudication of the disputes between the parties (present petitioner and the decree holder, the respondent herein) and also for passing an order that the judgment and decree dated 8.9.1998 passed in Title Suit No. 31/1991 is not binding to the present petitioners. A copy of the said application under order 21, rules 97 and 99 of the CPC filed by the present petitioner is annexed as Annexure 2 to the memo of the present revision petition. On perusal of the said application, the pleaded case of the present petitioners was that the plot of land over which the present petitioners was/are residing was a annual patta land, which was earlier possessed by Shri Sakkal Rai, son of Shri Bhagat Rai (defendant No. 4 in T.S. No. 31/1991) and Shri Rambrich Rai, son of Shri Kunja Bihari Rai (defendant No. 9).

5. From the pleading of the present petitioners in their said application under order 21, rules 97 and 99 of the CPC, it is clear that they are claiming their the right to the suit land through the said two defendants of the Title Suit No. 31/1991 namely Shri Sakkal Rai and Rambrich Rai.

6. The Executing Court passed order dated 25.1.2005 rejecting the said application filed by the present petitioners on the main ground that the present petitioners were claiming the suit land through said two defendants and also the present petitioners have no independent source of right.

7. Being aggrieved, the present petitioner filed Misc. Appeal, i.e., Misc. Appeal No. 2/2005 against the said judgment and order of the Executing Court dated 25.1.2005 in the Court of Civil Judge (Sr. Division) No. 1, Kamrup. The learned Civil Judge (Sr. Division) No. 1, Kamrup also dismissed the Misc. Appeal No. 2/2005 by passing, the impugned judgment and order dated 5.7.2007, wherein the learned Civil Judge (Sr. Division) No. 1 held that the present petitioners were claiming the suit land on the ground that possession of the suit property was delivered to them by the said two defendants, i.e., Shri Sakkal Rai and Rambrish Rai in 1980 and also that the present petitioners failed to substantiate their plea by producing any documents that the suit property was handed over to them in 1980 and also that the they have no own independent right over the suit land. For a ready reference the operative portion of the impugned judgment and order dated 5.7.2007 is quoted hereunder :

"On the other hand from the case record of T.S. No. 31/1991, it appears that Sakkal Roy and Rambrich were the defendants in the said suit. As appears from order dated 16.11.1991 the suit was proceeded ex parte against Rambrich Roy and other defendants had submitted their written statement on 11.6.1992. Thereafter additional written statement was also submitted by the defendants including Rambrich Roy on 2.6.1997 and said written statement was accepted subject to the payment of costs and they have claimed title over the suit property by right if

adverse possession. The defendant Nos. 1 to 8 stated nothing that possession of the suit property was delivered to the petitioners/appellants by Sakkal Roy and Rambrich Roy in 1980. The defendants were all along present during the trial of the suit and contested the suit by filing the written statement and counter claim and adduced evidence in support of their claim and from the said records appears nothing that possession of suit property was handed over to the petitioners in the year 1980. The petitioners also failed to substantiate their plea by producing any documents that the suit property was handed over to them in the year 1980 and they have been possessing the same by their own independent right. As they steps into the shoes of the judgment debtor as such they are bound by the decree and I find nothing to interfere on the findings of the learned court and this appeal is liable to be dismissed.

Accordingly, the appeal is dismissed on contest. No costs.

Return the original case records along with the copy of this judgment to the trial court."

8. Mr. C.K. Sarma Baruah, learned senior counsel for the respondents urged that scope of application under order 21, rules 99 and 100 of the CPC had already been discussed by the Apex Court in H. Seshadri v. K.R. Natarajan & Anr., (2003) 10SCC 149. The Apex Court held that

"13. For the purpose of considering an application under order 21, rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgmentdebtor or not. A person claiming through or under the judgmentdebtor may be dispossessed in execution of a decree passed against the judgmentdebtor but not when he is in possession of the premises in question in his own independent right or otherwise."

9. Ratio laid down in the case of H. Seshadri (supra) is that a person claiming through or under the judgmentdebtor therein may be dispossessed in execution of a decree passed against the judgmentdebtor but not when he is in possession of the premises in question in his own independent right. In the present case, there are concurrent findings of fact by the Executing Court as well as the appellate court that the present petitioners had no independent right in the suit land inasmuch as they are claiming the right over the suit land through the judgmentdebtors.

10. The learned Executing Court has to proceed the Title Execution Case No. 2/1999 for executing the decree dated 8.9.1998 passed in Title Suit No. 31/1991 in the terms and conditions mentioned in the decree itself. It is also made clear that the Executing Court cannot go beyond the decree and at the same time it is fairly wellsettled that if there is vagueness and ambiguity regarding description of the suit land mentioned in the decree, the Executing Court can see the plaint of the suit in which the decree was passed to have a better idea regarding the particulars of the suit land.

11. With the above observations and directions revision petition is disposed of. There shall be no order as to costs.