

## On the death of Md. Elias his heirs Matin Ahmed and Others Vs Mullik Hussain

**Court:** Gauhati High Court

**Date of Decision:** Dec. 18, 1989

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 145, 362, 482, 561A

**Citation:** (1990) 1 GLR 435

**Hon'ble Judges:** Manisana, J

**Bench:** Single Bench

**Advocate:** R. Gogoi and B.D. Das, for the Appellant; S.N. Bhuyan, N.S. Deka and M.A. Rahman, for the Respondent

**Final Decision:** Dismissed

### Judgement

Manisana, J.

This is an application u/s 482, Code of Criminal Procedure for review of the judgment dated 7.9.89 passed by this Court in

Criminal Revision No. 416/86.

2. The facts giving rise to this application, shortly stated, are thus. On 23 November 1981, the Executive Magistrate Hojai passed an order u/s

145, Code of Criminal Procedure deciding that the first party was in possession of the disputed land. Being aggrieved by the order, the second

patty filed a revision application in the Court of Session Nagaon. The Sessions Judge affirmed the order of the Magistrate. Thereafter, the

Petitioner filed Criminal Revision No. 416 of 1986 in this Court u/s 482, Code of Criminal Procedure. This Court by an order dated 7 September

1989 dismissed the petition.

3. Mr. R. Gogoi, the learned Counsel for the Petitioner has contended that the judgment of the Court requires review on She following grounds.

The judgment is in the name of Elias Mia (since deceased) although his legal representatives were made parties. The area of the land involved in the

civil suit measures 4K--14L and that involved in the proceeding u/s 145 measures 8B--2 k--13L but this Court has given findings that the subject

matter of the proceeding u/s 145 and that of the civil suit are substantially the same. Therefore, there are errors on the face of the records. Mr.

S.N. Bhuyan, the learned Counsel for the opposite party, has contended that the review petition is (sic, not) maintainable in view of Section 362,

Code of Criminal Procedure.

4. The question which arises for consideration is whether the judgment of this Court can be reviewed by exercising its power u/s 482, Code of

Criminal Procedure. Section 362 Code of Criminal Procedure provides:

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order

disposing of a case, shall alter or review the same, except to correct a clerical or arithmetical error.

5. In State of Orissa Vs. Ram Chander Agarwala and Others, , the Supreme Court has held that once a judgment has been pronounced by the

High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no

provision in the Code which would enable the High Court to review the same or exercise revisional jurisdiction. The Supreme Court has further

held that the provision of old Section 561A, Code of Criminal Procedure (482 new) cannot be invoked for exercise of power which is specifically

prohibited by Section 362, Code of Criminal Procedure. This decision has been followed by Supreme Court in the following case-- State of

Rajasthan Vs. Gurcharandas Chadha, and Smt. Sooraj Devi Vs. Pyare Lal and Another, .

6. Turning to the present case, this Court refused to exercise its jurisdiction u/s 482, Code of Criminal Procedure. The Petitioner has filed the

application for review of judgment u/s 482, Code of Criminal Procedure. Following the decision of the Supreme Court in the cases cited above, I

am of the opinion that the present review petition cannot be entertained except for correction of clerical or arithmetical error, if any.

7. In Sooraj Devi's case the Supreme Court has, as regards the clerical and arithmetical error, held:

...A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the Court. It represents that which the court never

intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical

error is a mistake of calculation, and a clerical error is mistake in writing or typing. Master Construction Co. (P) Ltd. Vs. State of Orissa and

Another, .

8. Keeping the above principle in view, let me now examine if there is any clerical or arithmetical error. In the cause title of the judgment the name

of Elias Mia (since deceased) has been shown as the Petitioner. By an order of this Court, the legal representatives of the deceased were made

parties. Therefore, it is typing mistake and it requires correction. In respect of the second contention of Mr. Gogoi that this Court has held that the

subject matter of the dispute u/s 145, Code of Criminal Procedure and that of the civil suit are substantially same, although the area of the land

involved in civil suit measures 8B--2K--12L and that involved in the proceeding u/s 145, Code of Criminal Procedure measures 0B--4K--14L.

Even if it is assumed that it is an arithmetical error while calculating the area, it cannot be a ground for review for the reasons that it would not affect

the decision of this Court as this Court exercised its power u/s 482 on various other reasons. For the reasons stated above, the petition is liable to

be dismissed. However, it is made clear that in future dispute, if any, the finding regarding area of the land in dispute shall be of no consequence, if

the rights of the parties are well founded.

9. For the foregoing reasons, the petition is dismissed, with the direction that the office shall correct the cause title of the judgment. Interim order

stands vacated.