

(1985) 07 GAU CK 0007

Gauhati High Court

Case No: Civil Revision No. 133 of 1984

The State of Assam

APPELLANT

Vs

Sri. Hossen Ali

RESPONDENT

Date of Decision: July 2, 1985

Acts Referred:

- Assam Forest Act, 1891 - Section 24, 25, 40, 41
- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 10, Order 21 Rule 31, Order 21 Rule 31(1), Order 21 Rule 34, 47
- General Clauses Act, 1897 - Section 3(26)
- Limitation Act, 1963 - Article 48, 49
- Transfer of Property Act, 1882 - Section 3

Citation: (1985) 2 GLR 403

Hon'ble Judges: K.N. Saikia, J

Bench: Single Bench

Advocate: B.C. Das, for the Appellant; B. Sarma and A.C. Sarma, for the Respondent

Final Decision: Allowed

Judgement

K.N. Saikia, J.

The opposite party was the owner of lands under Khatian Nos. 99 and 26. He instituted Title suit No. 379 of 1980 for an order to be issued by the Defendant, the State of Assam, enabling him to fell 84 Sal trees (30 on khatian No. 99 land and 54 on khatian No. 26 land) and to appropriate the trees. It was stated in the plaint that the Plaintiff wanted to get the Sal trees for his own use and he applied to the Forest Department to mark the trees as required under the Assam Forest Regulation and that after enquiry the Forest Department marked 54 trees of Khatian No. 26 land on or about 17.10.78. The suit was decreed on 31.1.83. The Plaintiff-opposite party's absolute right over the aforesaid 84 Sal trees was declared and Defendant, the State of Assam, directed to issue order in favour of the Plaintiff for cutting and removing

30 Sal trees on Khatian No. 99 land and 54 Sal trees on Khatian No. 26 land in Village Jaipur under Bilasipara Circle.

2. It appears that there was some dispute about the Khatian lands which was claimed by the Forest Department on the basis of a declaration as forest land as far back as in 1966 notified in the Assam Gazette, while the opposite party obtained the Khatians in 1973.

3. The opposite party started Title Execution case No. 7/83 describing the State of Assam representing the Divisional Forest Officer, Dhubri as the judgment debtor and applied for survey of the land stating that without survey he could not fell the trees. Accordingly an Amin Commissioner was appointed who, however, reported that there were no Sal trees but only the stumps with hammer marks were found on the land. He found 54 such stumps. The opposite party informed that he had cut away 37 trees of Khatian No. 26 land but those were seized by the Forest Department. It appears that 10 number of trees were seized by the Forest Department on 10-4-83 and 21 numbers on 11.4.83 for the alleged commission of offences under the Assam Forest Regulation, 1891. On 23.7.83 the opposite party, as decree holder, prayed that the seized trees be attached and delivered to him. On 5.8.83 the Divisional Forest Officer (D.F.O.) filed objection on the ground that the trees were felled without hammer marks and Certificate of Origin (C.O.). On 12.8.83 the judgment-debtor was directed to put hammer marks and C.O. On 15.9.83 the Court passed order for transfer of the trees. On 21.9.83 the decree-holder/opposite party prayed for removal of 54 trees through the Nazir and the prayer was allowed. On 24.9.83 the attachment was executed and on 1.10.83 the decree holder received 37 Sal trees and prayed for further 17 trees out of which only 3 could be delivered on 29.1.84 as the rest 14 trees were not physically available and there were no record of felling these 14 number of trees.

4. On 9.2.84 the opposite party/decreed holder prayed for recovery of Rs. 69,200/- as the value of the remaining 14 number of trees. On 17.2.84 the decree holder again filed a petition under Order 21 Rule 31 CPC to recover the amount of Rs. 69,200/- and for attachment of the judgment-debtor's movable properties by warrant of attachment. On 12.3.84 the judgment debtor filed objection u/s 47 CPC contending that the executing Court could not go behind the decree and grant relief in terms of money. On 11.4.84 the impugned order was passed.

5. In the impugned order the learned Munsiff held that the Forest Department seized the decreed trees under Sections 24, 25, 40 and 41 of the Assam Forest Regulation, 1891 which, according to learned Munsiff, do not contain penal provision. According to him whereas the decreed logs belong to the decree holder and not to the Forest Department, there was no statutory provision under which royalty could be demanded from person who had grown timber on his own land and had used the same for his own purposes. The Court further found that out of total 54 Sal trees delivery of possession of 40 Sal trees had been given and the delivery of

the remaining 14 trees could not be effected owing to the obstruction put by the concerned party. The decree holder by his verified petition No. 184 dated 9.2.84 stated that the estimated value of the said 14 logs would be Rs. 69,200/- and the decree holder prayed on 17.2.84 under Order 21 Rule 31 CPC for attaching the said 14 Sal trees or the same number of other sal logs lying at the custody of the judgment-debtor/Petitioner or for attaching movable property of the concerned authority worth Rs. 69,200/-. The learned Munsiff allowed the prayer whereafter the judgment debtor/Petitioner filed objection submitting that the Court had no jurisdiction to convert the decree to a money execution and that it had no pecuniary jurisdiction to execute a money execution amounting to Rs. 69,200/-. The learned Court rejected the objection stating that the D.F.O. was not the judgment debtor in that case and that there was no prayer from the D.F.O to put him into the position of the judgment debtor even though debtor and the objector has no locus standi u/s 47 CPC and that the submission that the execution under Order 21 Rule 34 CPC did not merit consideration. The objection was accordingly rejected.

6. Mr. B.C. Das, the learned Counsel for the Petitioner judgment debtor, submits: The instant decree being a declaratory decree, the executing Court had acted beyond jurisdiction in awarding Rs. 69,200/- as money value of the undelivered 14 sal trees under Order 21 Rule 31, Code of Civil Procedure, which was not applicable in this case.

7. Mr. B. Sarma, the learned Counsel for the decree holder opposite party, submits: The instant decree is for specific movable property which includes standing trees and though no amount had been fixed by the decree as an alternative to delivery of movable property, the Court acted within its jurisdiction in awarding such compensation as it thought fit; and there being no error of jurisdiction this civil revision is not maintainable.

8. Did the executing Court act within its jurisdiction in awarding Rs. 69,200/- as the value of the 14 undelivered Sal trees to be paid by the judgment debtor to the decree holder? To answer this question, the nature of the decree has first to be determined. The decree holder, as the owner of the lands under the two khatians, claimed absolute title to the 84 Sal trees standing and because of the requirement of the Assam Forest Regulation he was required to get the hammer marks put on the trees, obtain C.Os and transit passes so that he could appropriate the trees after those were felled. What were the reliefs prayed in his suit? Did he seek any relief that the Defendant, the State of Assam was to deliver to him any specific movable property? Did the State own him any such specific movable property? The answer is in the negative. The Plaintiff needed a declaration from the Court that he was the absolute owner of 84 Sal trees and the State was bound to put hammer marks and give C.Os and transit passes so that the Plaintiff could fell and remove the felled trees to be appropriated by him. What was decreed by the Court? It declared that the Plaintiff was the absolute owner of the 84 Sal trees and he was entitled to fell

and appropriate the same for which the Defendant, the State of Assam, was bound to put the hammer marks, give the C.Os and transit passes so that the Plaintiff could appropriate the felled trees. Was there any direction to deliver 84 number of Sal trees by the State of Assam to the Plaintiff? The answer is in the negative. The trouble arose when the Forest Department seized some of trees for the alleged commission of offences under the Assam Forest Regulation. After some trees were seized by the Forest Department the trees could not be subject matter of the decree. Law could have been allowed to take its own course in respect of the trees so seized. If the Forest Department found that the trees were felled without hammer marks and C.Os and removed without transit passes, simply because of the fact that the Plaintiff had obtained a decree in respect of 54 Sal trees would not make the Forest Department bound by the decree to deliver equal number of Sal trees. If the Amin Commissioner found on survey of the land that there were only stumps with hammer marks and not the trees and the Forest Department seized certain trees without hammer marks and C.Os. and being removed without transit passes there would be nothing to connect the two by virtue of the decree itself. Under such circumstances was it permissible for the executing Court to compel the D.F.O. to put the hammer marks on the unmarked trees for execution of the decree? Could he be made to give C.Os for those trees and issue transit passes for their removal? Ultimately, when 14 number of trees could not be delivered as per order of the executing Court, it could not have treated its own order as a decree. For, the decree did not speak of any delivery of trees and for that matter any delivery of specific movable property. The notion of delivery was not there in the decree at all. It was the Plaintiff's own Sal trees in which his title was declared and he was further declared to be entitled to appropriate the felled trees and to facilitate the felling and appropriation the hammer marks were to be put, the C.Os to be given and transit passes were to be issued. It could not be said to be a decree for delivery of specific movable property. The Plaintiff himself said that hammer marks were earlier put on some of the trees. The Amin Commissioner reported that there were 54 stamps with hammer marks which meant that the hammer marks were already put but the trees were not found. There was, therefore, no default on the part of the Defendant, State of Assam, in the matter of putting the hammer marks. The State was not bound by the decree to deliver equal number of trees, put hammer marks, give C.Os and issue transit passes in respect thereof because 54 hammer marked trees were missing.

9. Mr. Sarma's submission that because the standing Sal trees were the subject matter of the decree, the decree was for delivery of specific movable property, is not reasonable. It is true that, as defined in Section 3 of the Transfer of Property Act, 1882 "immovable property" does not include standing timber, growing crops or grass and, as such, standing timber would be included within "movable property". As defined in Section 3(26) of the General Clauses Act "immovable property" shall mean property of every description except immoveable property. Even assuming that standing Sal trees were included in the definition of immovable property even

before they were felled, it would not convert the instant decree into one for specific movable property. Under Order 20 Rule 10 CPC which deals with decree for delivery of movable property, where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had. Under this Rule a person entitled to the delivery of movable property from another is not bound to sue for the delivery of the property itself, he may sue for the value thereof. Even if he does sue for the delivery of the property, the decree need not always be for the delivery of the property at the first instance, the Court may in proper cases, decree only the value of the property as damages. Thus where the Defendant is not in possession of the property, the Court need not decree delivery thereof but may pass a decree for the value of such property. But where the Court considers it proper to direct a restoration of the property, the decree should also state the amount of money to be paid as an alternative if delivery cannot be had, but failure to state the amount of money to be paid in the alternative does not render the decree "unexecutable", for it is still possible for the executing Court to fix the compensation and recover it for the decree-holder under Order, 21 Rule 31 Code of Civil Procedure. The words "movable property" in this Rule mean specific movable property, such as is referred to in Articles 48 and 49 of the Limitation Act. Order 21 Rule 31 CPC deals with decree for specific movable property and provides; (1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share by the delivery thereof to the party to whom it has been adjudged, or to such person as he points to receive delivery on his behalf, or by the detention in the civil prison of the judgment debtor, or by the attachment of his property, or by both; (2) Where any attachment order under Sub-rule (1) has remained in force for three months, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in order cases such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application. In the instant case there was no question of any amount being fixed by the decree to be put as an alternative of delivery of movable property. This was so because no delivery of any specific movable property was envisaged in the decree. Hence there could be no question of awarding compensation in lieu of delivery of specific movable property. The 84 standing Sal trees were declared to be the property of the Plaintiff-decree holder and as he was declared entitled to be felled, removed and appropriated these trees the Defendant-State of Assam, was not required to deliver those trees to the Plaintiff-decree holder. Neither Order, 20 Rule 10 nor Order 21 Rule 31 applied to the instant decree. The problem of delivery of possession arose after some trees of the Plaintiff were seized by the Forest Department. The records also show that hammer marks to 54 trees were missing. If that was so the decree was inexecutable

to that extent and the decree did not bind the Defendant to substitute the missing trees by its own logs and to put hammer marks, give C.Os and transit passes to the substituted logs.

10. The powers of the executing Court are by now more or less, settled. The executing Court can interpret an ambiguous decree, but it cannot make a new decree as was held in [V. Ramaswami Ayyangar and Others Vs. T.N.V. Kailasa Thevar](#), The executing Court can take into consideration a relevant subsequent development and decide the executability of the decree in light thereof. It can enquire whether a decree is still subsisting. Where the decree itself was not for delivery of the sal trees by the Defendant, the State of Assam, to the Plaintiff, the executing Court could not have bound the Defendant, the State, to deliver the sal trees by putting hammer marks, giving C.Os and issuing transit passes and while ordering the Defendant to do so the Court acted without jurisdiction. When the decree was not for delivery of possession of the trees by the Defendant, it was not a decree for specific movable property. In the absence of such specification the question of awarding alternative compensation would not arise and the executing Court acted beyond jurisdiction in awarding compensation of Rs. 69,200/- as value of 14 sal trees. The order has, therefore, to be set aside which I hereby do.

11. It appears that in the suit the State of Assam was the Defendant while in execution case the State of Assam represented by the D.F.O., was made a party. The felled trees were seized by order of the D.F.O. If the objection of the D.F.O. was rejected on the ground that he had no locus standi to file objection u/s 47 CPC then how could the State of Assam be made to pay compensation of Rs. 69,200/- for the undelivered 14 trees out of the logs of the D.F.O. Either the D.F.O. was a party to the suit through the State of Assam or he was not a party to it being not specifically impleaded. If he was not a party in the suit he could not be made a party in the execution case. If he was made party in the execution case he would have had the locus standi to file the objection u/s 47 Code of Civil Procedure. The learned executing Court was not consistent in rejecting the objection of the D.F.O. on the ground that he was not a party to the suit, but at the same time making the state liable for what was done by the D.F.O. in seizing unmarked felled trees from forest area.

12. In the result, the impugned order is set aside and the petition is allowed, parties are, however, left to bear their own costs.