

(2014) 02 GAU CK 0049**Gauhati High Court****Case No:** M.A. (F) No. 2 of 2013

Debashish Sen

APPELLANT

Vs

Shyamal Paul

RESPONDENT

Date of Decision: Feb. 24, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 2, Order 39 Rule 1, Order 39 Rule 2, 43, 47

Citation: (2014) 3 GLT 488**Hon'ble Judges:** Abhay Manohar Sapre, C.J**Bench:** Single Bench**Advocate:** U. Dutta, Advocate for the Appellant; G.N. Sahewalla and S. Senapati, Advocate for the Respondent**Judgement**

Abhay Manohar Sapre, C.J.

Head Mr. U. Dutta, learned counsel for the appellant and Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. S. Senapati, learned counsel for the respondents. This is an appeal filed by the plaintiff under Section 43, Rule 1(r) of the Code of Civil Procedure, 1908 against the order dated 17.4.2013 passed by the learned Civil Judge No. 1, Cachar, Silchar in Misc. Case No. 41 of 2010 arising out of Title Suit No. 44 of 2010. By the impugned order, the learned Trial Court dismissed the application made by the plaintiff under Order 39, Rule 1 and 2 of the Code and declined to grant injunction in relation to the subject matter of the suit. The appellant (plaintiff) has claimed in his suit the following reliefs as his main relief. It is quoted hereinbelow:

"19. That the humble plaintiff therefore prays that your honour may be pleased to pass a decree in favour of the plaintiff and against the principal defendant No. 1 for:

(a) Declaration that the decree passed in T.S. 59/2000 on 17.03.2004 by the Hon'ble Civil Judge No. 1, Cachar Silchar has been fully satisfied on compromise and the

principal defendant No. 1 relinquished all his claims under the said decree in favour of the plaintiff on 31.08.2006;

(b) Declaration of right, title interest and possession of the plaintiff over Schedule - 3 property;

(c) Declaration that the principal defendant No. 1 had no right to execute the decree of T.S. 59/2000 and get Sale Deed No. 1969/2010 as the decree was agreed to be set aside as per terms of compromise held on 31.08.2006.

(d) Declaration that the Deed No. 1969/2010 is void ab-initio in view of full satisfaction of decree of T.S. 59 of 2000 on compromise and liable to be cancelled with direction to the Deputy Registrar, Cachar Silchar to cancel the deed.

(e) Permanent perpetual and temporary injunction including ad interim injunction restraining the principal defendant No. 1 from proceeding with or further executing Decree of T.S. 59 of 2000 of the Court of Civil Judge No. 1, Cachar, Silchar, vide T.Ex. 6/09 or any other case and to act upon the Deed No. 1969/2010 in any way.

(f) Any other or further relief or reliefs to which the plaintiff may be held to be entitled to

(g) Cost of the suit under all circumstances."

2. Without going into much detail and on mere perusal of the relief quoted above, claimed by the plaintiff, it is clear that the suit filed by the plaintiff out of which this appeal arises is not maintainable and is hit by bar contained in Section 47 of the Code read with Order 21, Rule 2 of the Code of Civil Procedure.

3. Mere perusal of the relief claimed by the plaintiff would go to show that in substance the plaintiff has sought a declaration that decree passed by Civil Judge No. 1, Cachar, Silchar in T.S. No. 59 of 2000 on 17.03.2004 between the parties stands fully satisfied in so far as rights of defendants arising therefrom are concerned.

4. In my considered view, such relief can only be claimed before the Executing Court which had passed the said decree i.e. Civil Judge No. 1, Cachar, Silchar because it relates to the satisfaction of the decree. It thus squarely falls within the parameters specified in Section 47 of the Code of Civil Procedure.

5. The Trial Court was, therefore, right in holding that the plaintiff does not have any *prima facie* case as the suit is hit by rigors contained in Section 47 of the Code which bars filing of a separate suit to claim such relief.

6. Accordingly, and in the light of the forgoing discussions, though I dismiss the appeal, but grant the liberty to the petitioner to file an appropriate application under Section 47 of the Code of Civil Procedure before the executing court i.e. before Civil Judge No. 1, Cachar, Silchar and seek appropriate relief with respect to

satisfaction of the said decree against the defendant.

7. On such application being made, the Trial Court i.e. the Executing Court shall decide the application on merits in accordance with law keeping in view the allegations made in the application, reply filed and the requirements of Section 47 of the Code dealing with the satisfaction of the decree.

8. Learned counsel for the appellant, however, placed reliance on two decisions reported in Harendra Nath Basak and Others Vs. Gopal Chandra Basu Thakur and Others, and AIR 1937 537 (Lahore) in support of his contention and contended that the suit filed by the plaintiff-appellant was maintainable and, therefore, impugned order be set aside.

9. I have perused the said decisions. On perusal of the facts involved in the said two cases, I do not find that the law laid down therein is of any help to the appellant. They are distinguishable. The parties will be entitled to ask for interim relief. Needless to observe, the Trial Court (Executing Court) will decide the application in accordance with law on merits uninfluenced by observations made in these proceedings. It is with these observations and liberty, the appeal fails and is dismissed in limini.