
(2015) 05 GAU CK 0026
In the Gauhati High Court
Case No : CRP No. 239 of 2008

Anat Ram Teli and Others

APPELLANT

Vs

Rauf and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Citation : (2015) 05 GAU CK 0026

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : R. Dubey and R. Deka, for the Appellant; B. Baruah, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Hrishikesh Roy, J.

1. Heard Mr. R. Dubey, the learned Counsel appearing for the petitioners (Decree-Holders [D.H]). Also heard Mr. B. Baruah, the learned Counsel appearing for the respondents (Objectors), in the Title Execution Case No. 49/1982.

2. The Title Suit 27/1981 was filed by Smt. Chenia Teli and her two sons Anat Ram Teli and Shiv Kr. Teli against Dwarka Prasad Bin and six others for a decree of khas possession of suit land measuring 30 ft. x 11 ft., being part of 3 Kathas of land covered by Dag No. 436 and Patta No. 158, situated at Kalibari Road, Marwaripatty, Dibrugarh. An ex parte judgment and decree was passed in the suit on 14.7.1982 against all the defendants. Then the D.Hs initiated the Title Execution Case No. 49/1982 for execution of the decree but the process was challenged by the defendants through series of cases. Eventually the defendants filed the CRP No. 338/2006 and this Court through the judgment dated 2.5.2007 (Annexure-1) dismissed the Revision petition and upheld the decree passed in the Title Suit No. 27/1981.

3. It may be noted that the petitioners had filed a separate case i.e. the Title Suit No. 23/2007 against the present objectors who are strangers to the Title Suit No.

27/1981 and it is submitted by the learned Counsel for the Objectors, Mr. B. Baruah that Title Suit No. 23/2007 against the objectors was dismissed on 30.11.2012, by the learned Munsiff No. 1, Dibrugarh.

4. On the strength of the decree secured by the plaintiffs in the Title Suit No. 27/1981, they applied for recovery of khas possession of the decretal land and the learned Munsiff No. 1, Dibrugarh on 16.6.2007 ordered the Civil Nazir to secure the D.Hs" property, in pursuant to the Court decree. Accordingly on 23.6.2007 the Civil Nazir visited the decretal land and on the same being identified by the D.Hs, the Court staff despite the protest of the Objectors, dismantled the house standing on 3 lechas land covered by Periodic Patta No. 159 and Dag No. 441 and gave possession to the D.H.

5. As the Court officials failed to consider the protest of the Objectors, they filed Petition No. 1972/2007 on 18.8.2007 where the Objectors stated that the Nazir failed to identify and measure the land which was decreed in the Title Suit No. 27/1981 and instead he chose to be guided by the D.Hs and thereby illegally dismantled the house of the Objectors standing on the adjacent plot of land, covered by Dag No. 441 and Periodic Patta No. 159.

6. The above objection petition in the execution case was considered by the learned Munsiff No. 1, Dibrugarh and through his impugned order dated 12.5.2008 (Annexure-8), the Executing Judge considered the rival submission and to ascertain the truth, the Nazir was directed to visit the site along with the Revenue staff to measure the land and to submit a report as to whether the Objectors were wrongfully dispossessed from their own property, through wrongful execution.

7. Mr. R. Dubey, the leaned Counsel submits that while the verification through measurement of the land is not being opposed by the D.Hs, the concern of his clients is to the observation of the Executing Court at Paragraph-9 to the effect that the Objectors are entitled to restoration of possession. Mr. Dubey submits that restoration of possession should be considered by the Executing Court, only after the Nazir and the Revenue staff measure the land and verify the bona fide of the Objectors claim and the balance mustn't tilt beforehand towards the objector.

8. Responding to the contention made by the petitioners" lawyer, Mr. B. Baruah, the learned Counsel submits that the Objectors were strangers to the Title Suit No. 27/1981 and that suit pertains to land measuring 30 fit x 11 fit covered by Dag No. 436 and Periodic Patta No. 158 and the decree in that case can't be executed to dispossess the objectors from their land. The counsel therefore submits that the Objectors are not denying the right of the D.Hs in respect of the land claimed by them in the Title Suit No. 27/1981, but are concerned with the adjacent land covered by Dag No. 441 and Periodic Patta No. 159, from where the objectors were wrongfully dispossessed on 23.6.2007. He argues that the Civil Nazir erred by targeting the Objectors house on the same being identified

by the D.Hs, without taking any steps for proper identification of the decretal land by appropriate exercise.

9. From the above narratives what emerges here is that the D.Hs are seeking execution of the decree in respect of the land covered by Dag No. 436 Periodic Patta No. 158, whereas the Objectors are claiming their own right over adjacent 3 Laches land, covered by Dag No. 441 Periodic Patta No. 159. Naturally the decree has to be executed within the decretal land and the D.Hs can't take possession of others property, which is not covered by the decree secured by them in the Title Suit No. 27/1981. The report given by the Civil Nazir on 23.6.2007 as produced by the learned Counsel for the Objectors shows that the Civil Nazir handed over possession of the vacant house on the same being identified by the D.Hs. and his report doesn't show that any independent exercise was undertaken by the Nazir, to identify the actual decretal land.

10. In the above circumstances, I do not find any infirmity with the impugned direction of the Executing Court, whereby the Nazir and the Revenue staff were directed to identify and measure the decretal land in order to verify whether the Objectors were wrongfully dispossessed from their own land covered by different Dag and Patta numbers. If the ordered exercise reveals that the Objectors were wrongfully dispossessed from land which is not covered by the decree obtained by the D.Hs in the Title Suit No. 27/1981, the Objectors are certainly entitled to restoration of possession.

11. In the instant case, the ordered exercise is still to be undertaken because of the interim order passed on 1.8.2008. Therefore the Objectors claim for restoration of possession is directed to be considered by the Executing Court only after the Nazir and the Revenue staff verify and measure both the decretal land covered by Dag No. 436 Periodic Patta No. 158 and also the adjacent land of the Objectors covered by Dag No. 441 and Periodic Patta No. 159. This should be done in presence of both parties. If the verification process reveals that the Objectors were wrongfully dispossessed from land not covered by the decree, the restoration of the property should be granted to the Objectors. But if the exercise carried out on 23.6.2007 is within the decretal land, the Court will pass consequential orders. It is ordered accordingly.

12. With the above order, the Revision petition stands disposed of without substantially interfering with the impugned order dated 12.5.2008 (Annexure-8) in the Title Execution Case No. 49/1982 rendered by the learned Munsiff No. 1, Dibrugarh. The Registry should send a copy of this order to the concerned Court.