

**(1973) 03 GAU CK 0005**  
**In the Gauhati High Court**  
**Case No : Civil Revision No. 12 of 1972**

|                                       |            |
|---------------------------------------|------------|
| Aribam Ongbi Yaimabi Sarma and others | APPELLANT  |
| Vs                                    |            |
| Ningthoujam Ningol Noyon              | RESPONDENT |

**Date of Decision :** 09-03-1973

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102  
Criminal Procedure Code, 1898 (CrPC) — Section 107

**Citation :** AIR 1974 Guw 4

**Hon'ble Judges :** B.N. Sharma, J

**Bench :** Single Bench

**Advocate :** W. Kulabidhu Singh, for the Appellant; R.K. Sanjaoba Singh, for the Respondent

**Final Decision :** Allowed

## Judgement

B.N. Sarma, J.—This is a revision petition directed against the order dated 30-3-1972 passed by Shri S. Gourachand Singh, Munsiff. Imphal East, in Judicial Misc. Case No. 184 of 1971 allowing an application of the opposite party under Rules 100 and 101 of Order 21 of the CPC and directing restoration of her possession over a plot of homestead land of which the present petitioner obtained possession through Court on 30-3-1971 in execution of the decree obtained by him in T. S. No 39/63/19/65 in the Court of the Munsiff No. III, Manipur. against one Amu Singh.

2. The case of the opposite party in the said Misc. Case was that the disputed plot of homestead land originally belonged to her father late Ningthoujam Maipak Singh and that on his death she inherited the same. She stated that during his lifetime her father allowed the petitioner to live on the disputed land. After her father's death, the petitioner purchased the land from one Khundrakpam Tomba Singh, who posed himself to be the only son of Ningthoujam Maipak Singh on or about 22-3-1948 and managed to get his name mutated and also to obtain a

separate patta behind the back of the opposite party. The petitioner however according to the opposite party, left the suit land for unknown destination about 19 years ago and since then the opposite party had been residing on the disputed land by her own right. She further stated in her petition that she allowed Amu Singh (defendant in T. S. No. 39/63/19/651 to live on the land for some years, but he also left the place leaving the same in possession of the opposite party. While the opposite party was thus in possession of the land by her own right and on her own account, it was stated, the petitioner obtained possession over the land with the help of police by evicting her in execution of the decree obtained against Amu Singh in the above suit to which she was not a party. She accordingly filed the application for restoration of her possession under Rules 100 and 101 of Order 21 of the Code of Civil Procedure, which was registered as Judicial Misc. Case No. 184 of 1971.

3. The present petitioner who was the opposite party in the said Misc. Judl. Case, contested the same denying that the opposite party was in possession of the disputed land on her own account, as alleged by her. According to him, the opposite party acted merely as a stooge of the judgment-debtor Amu Singh, who having failed to resist the decree even upto the second appeal before, the Judicial Commissioner, has now set up the opposite party to resist the execution of the decree.

4. Both the parties adduced evidence in course of the enquiry and on a consideration of the same the learned Munsiff held that the present opposite party, who was the petitioner in the case, was in possession of the property on 30-7-1971 on her own account and that she was dispossessed by the present petitioner in execution of the aforesaid decree. With these findings, the learned Munsiff allowed the application filed by the opposite party for restoration of her possession.

5. The contention of Shri W. Kulabidhu Singh, the learned counsel for the petitioner, before me, was that the finding of the learned Munsiff that the opposite party was in possession of the decretal land on her own account suffers from the infirmity of non-consideration of material evidence and it was the result of a wrong approach beyond the scope of an enquiry under Rules 100 and 101 of Order 21 of the Code of Civil Procedure.

6. On going through the impugned order and the evidence on record. I find that there is sufficient force, in the above contention From the penultimate para of the impugned order it is seen that the learned Munsiff proceeded to decide the title of the opposite Party to the disputed land and in fact he had decided that the opposite party has got her title to the same. This was evidently beyond the scope of an enquiry under the aforesaid Rules. The investigation under the above Rules being a summary one, the Court should confine" itself to the question of possession and should not go to decide the question of title or any question regarding construction of the decree. It is evident that the learned Munsiff acted illegally in exercise of his jurisdiction by going to decide the question of title and

also to interpret the decree in T. S. No. 39/63/19/65 by saying that only prima facie title of the decree-holder was decided there, in respect of the disputed land and that also was done incidentally as the said suit was for eviction.

7. The finding that the opposite party was in possession of the decretal land on her own, account is also against the weight of evidence. Her own witness P. W. 1 R. K. Sanatomba Singh stated in his evidence that Amu Singh, who was the judgment-debtor in the execution case lived on the disputed land for about 10 years and that the opposite party came to occupy the same about 3 or 4 months before her dispossession. When it was vacated by Amu Singh. It is further seen from his evidence that the opposite party has been residing on a plot of land adjacent to the disputed land, which belongs to her elder sister for the last 10 years. The opposite party herself admitted these facts, in her cross-examination. There can therefore be no doubt that Amu Singh having failed to resist the decree of the petitioner left the land in possession of the opposite party about 3 or 4 months before the delivery of possession, i.e. long after the decree was passed. The suit was filed as back as 1963 and was decreed by the trial Court on 31-5-1965 which was affirmed by the District Judge in appeal on 25-9-1966 and thereafter by the Judicial Commissioner in second appeal. The petitioner got possession over the land on 30-7-1971. If the opposite party came to possess the land 3 or 4 months before that evidently it was long after the decree was confirmed by the highest appellate Court.

8. Rule 102 of Order 21 of the CPC provides that nothing in Rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. It was held in *Krishna Menon v. Ouseph Michael*, AIR 1952 TC. 102:

The transfer contemplated by the rule need not necessarily be by the judgment-debtor direct to the third party complaining of the dispossession by decree-holder. Any transfer of possession by the judgment-debtor directly or at his instance or for which he has been responsible would come within the scope of Rule 99.

9. I am in respectful agreement with the above interpretation of the word "transfer" in Rule 102. If it were otherwise the object of the rule could be very easily defeated by the judgment-debtor by putting somebody in possession of the decretal land making it impossible for the decree-holder to obtain possession. In the instant case, after the decree in question was confirmed by the highest appellate Court, it was the bounden duty of the judgment-debtor Amu Singh to deliver possession of the land to the decree-holder. Instead of doing that he left the land in favour of the opposite party who was in league with him from before as is evident from the fact that once before the decree, she and Amu Singh had to bound down u/s 107 of the Cr. P.C. by a Magistrate at the instance of the petitioner.

10. That the claim of the opposite party to possession over the land on her own account is not bona fide will be evident from her admission that the land now stands in the name of the petitioner, that he got a separate patta for the same and has been paying land revenue separately for the last 37 years or so.

11. From the foregoing discussions. I have no hesitation to hold that the order complained of is bad in law and that the learned Munsiff acted illegally in exercise of his jurisdiction in passing the same. The order complained of is accordingly set aside. The application of the Opposite party under Rules 100 and 101 of Order 21 of the CPC stands dismissed. The revision petition is allowed with costs. Hearing fee is assessed at Rs. 32/-.