

(2025) 08 GAU CK 0337
In the Gauhati High Court
Case No : CRP(IO) Of 36 Of 2025

Dineswari Kalwar And 2 Ors

APPELLANT

Vs

On The Death Of Sri Ganesh Chandra Dutta

RESPONDENT

Date of Decision : 04-08-2025

Acts Referred:

Constitution Of India, 1950 — Article 227

Code of Civil Procedure, 1908 — Section 47, Order 41 Rule 31

Citation : (2025) 08 GAU CK 0337

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : MU Mahmud, AK Sahewalla

Final Decision : Disposed Of

Judgement

Devashis Baruah, J

1. Heard Mr. MU Mahmud, the learned counsel appearing on behalf of the petitioners. Mr. AK Sahewalla, the learned counsel, who appears on behalf of the respondents.

2. The present proceedings have been initiated challenging the order dated 21.12.2024 passed by the learned Civil Judge (Junior Division) at Titabar, Jorhat (hereinafter referred to as, "the learned Executing Court") whereby the Petition No. 596/2024 filed in Misc (J) Case No. 02/2015 was rejected.

3. Before taking up the issue as regards the impugned order in the instant proceedings, it is relevant to take note of that this Court exercises supervisory jurisdiction in terms with Article 227 of the Constitution of India over all Courts and Tribunals throughout the territories within which this Court exercises jurisdiction.

4. The proceedings being Misc (J) Case No. 02/2015 is challenged in the present proceedings. It is relevant to take note of that Misc (J) Case No. 02/2015 is an

application filed under Section 47 of the Code of Civil Procedure, 1908 (for short, "the Code") by the respondents herein before the learned Executing Court questioning the authority of the learned Executing Court to execute the decree on the ground that there was no decree which could have been put to execution. Taking into account the said aspect, this Court finds it relevant to take note of the brief facts which have led to the filing of the said application being Misc (J) Case No. 02/2015.

5. The predecessor of the respondents herein filed a suit being Title Suit No. 13/1985 against the predecessor of the present petitioners, one Sonalal Kalwar and 7 (seven) others. The said suit so filed by the predecessor of the respondents herein was seeking declaration of right, title and interest over the suit land and for recovery of possession by evicting the defendants therefrom. The suit being Title Suit No. 13/1985 was dismissed vide the judgment and decree dated 22.11.1996.

6. Being aggrieved, the predecessor-in-interest of the respondents preferred an Appeal which was registered and numbered as Title Appeal No. 02/1997 before the learned Court of the Civil Judge (Senior Division), Jorhat (hereinafter referred to as, "the learned First Appellate Court"). The said Appeal so filed by the predecessor-in-interest of the respondents was allowed vide the judgment and decree dated 01.09.2000 thereby, the suit filed by the predecessor-in-interest of the respondents was decreed.

7. A Second Appeal thereagainst was filed by the present petitioners before this Court which was registered and numbered as RSA No. 15/2001. The judgment and decree dated 01.09.2000 passed in Title Appeal No. 02/1997 by the learned First Appellate Court was interfered with by this Court vide an order dated 11.06.2013 and the Appeal was remanded back to the learned First Appellate Court for deciding afresh the Appeal by taking into consideration the provisions of Order XLI Rule 31 of the Code.

8. The Appeal thereupon post remand was dismissed by the learned First Appellate Court vide the judgment and decree dated 30.11.2013. A decree thereupon was prepared on 16.12.2013 in the said Appeal categorically mentioning that "The appeal is dismissed on contest with costs".

9. The record further reveals that on 28.01.2014, the petitioners herein filed an application seeking execution of the decree. The relief which was sought for in the said execution application was that if the plaintiff/judgment debtor or anyone claiming anything through him does not vacate the land/room, then to put the decree holders/the defendants in possession of the said room/land by removing any person bound by the decree who may refuse to vacate the same claiming right through the judgment debtor/the plaintiff.

10. The said execution application on the face of it was not maintainable, as there was no decree at all in favour of the petitioners herein who were the defendants in Title Suit No. 13/1985.

11. It shocks and surprises this Court that the learned Executing Court i.e. the learned Court of the Munsiff, Titabar (presently the learned Court of the Civil Judge (Junior Division), Titabar), proceeded with the execution proceedings and handed over possession over the house/land to the defendants, that too, when the suit filed by the plaintiffs were only dismissed. This aspect appears from the order dated 15.12.2014 passed by the learned Executing Court, wherein it was mentioned that the decree holders/the defendants had submitted that the decree was satisfied and accordingly, the execution proceedings were closed.

12. It is under such circumstances, Misc (J) Case No.02/2015 was filed, questioning the authority of the learned Executing Court to execute the decree which is non-existent. The records reveal that for almost a decade, the respondents herein have not been able to pursue the said application filed before the learned Executing Court on the ground that the petitioners herein have left no stones unturned for delaying the disposal of the Misc (J) Case No. 02/2015. The present proceedings is one of such.

13. This Court having perused the materials on record and being shocked to learn that the concerned Judicial Officer who was presiding over as the learned Executing Court did not know the difference between a suit being dismissed and when a suit for recovery of possession is decreed, vide the order dated 24.06.2025 sought for a report from the Registry as to who was the Judicial Officer, for whose mistake, the execution proceedings were carried out.

14. It is further seen that pursuant to the order dated 24.06.2025, the Registry has indicated the name of the Judicial Officer, who was responsible for passing the writ for delivery of possession in respect to a non-existent decree. This Court would not like to divulge the name of the said Judicial Officer for the sole purpose that if the name of the concerned Judicial Officer is mentioned, the litigants litigating before the concerned Judicial Officer would lose faith in the judiciary, which would be more damaging to the institution.

15. In the backdrop of the above, let this Court take note of the submissions made by the respective counsels on behalf of the parties.

16. Mr. MU Mahmud, the learned counsel appearing on behalf of the petitioners submitted that in pursuance to the writ for delivery of possession in the Title Execution Case No.6/2014, the respondents herein or their predecessors were not evicted. Only one Hussain Ahmed Choudhury, who was in possession of 1 lecha of the suit land was evicted and, as such, the respondents herein as well as the predecessor-in-interest had no locus standi to file the Misc.(J).Case No.02/2015. He further referred to the order passed by the learned Coordinate Bench of this Court in CRP No.24/2021 wherein the Coordinate Bench of this Court, taking into account the petition filed by the respondents herein in the proceedings before the learned Executing Court to the effect that the respondents would not like to submit any evidence, but only would like to call for the official witnesses made an observation that if the petitioners refused to

examine themselves as witnesses for proving the facts alleged in the petition, naturally the Court would have no hesitation to hold that the allegations raised in the petition are not true. He, therefore, submitted that the respondents herein, who are the petitioners before the learned Executing Court did not want to adduce evidence, the further proceedings of Misc.(J) Case No.02/2015 is nothing, but an abuse of the process of the Court.

17. Per contra, Mr. AK Sahewalla, the learned counsel appearing on behalf of the respondents submitted that pursuant to the writ for delivery of possession issued by the learned Executing Court, the predecessor-in-interest of the respondents herein, Lt. Ganesh Chandra Dutta was evicted from the land and it is under such circumstances, Misc(J) Case No.02/2015 was filed before the learned Executing Court.

18. Mr. AK Sahewalla, the learned counsel for the respondents submitted that at that relevant point of time when the proceedings were going on, due to age old ailment of Ganesh Chandra Dutta, he was not in a position to adduce evidence. The learned counsel further submitted that subsequent thereto Lt. Ganesh Chandra Dutta, expired. The learned counsel submitted that the respondents herein, who are his successors-in-interest of Lt. Ganesh Chandra Dutta upon legal advice submitted that they would only adduce the evidence of official witnesses, who were present when the execution was carried out. It was further submitted that the respondents herein, in view of the observations made by the learned Coordinate Bench, would like to adduce evidence, if an opportunity is granted.

19. This Court has also duly perused the materials on record. In the previous segments of the instant judgment, this Court observed that inspite of there being no executable decree passed, an execution application was filed by the defendants/petitioners herein and on the basis thereof, the learned Court of the Munsiff, Titabar, presently the learned Court of the Civil Judge (Junior Division), Titabar had proceeded with the execution proceedings and delivered possession on the basis of the writ for delivery of possession. This Court further finds it pertinent to take note of that the suit so filed by the predecessor-in-interest of the respondents herein was a suit filed seeking declaration of right, title and interest with recovery of possession. The manner in which the suit was framed by the predecessor-in-interest of the respondents, presupposes that the predecessor-in-interest of the respondents were not in possession of the suit land. However, it is alleged that the predecessor-in-interest of the respondents were dispossessed on the basis of the writ for delivery of possession. It is also pertinent to observe that the petitioners herein pursuant to the issuance of the writ for delivery for possession have also submitted before the learned Executing Court that they were satisfied, which led to the closure of the Execution Proceedings. It is also an admitted fact that on the basis of a non-existent decree, the petitioners, who were the defendants in the suit were handed over possession of certain portion of land. The analysis of the above facts would show

that there was execution carried out in pursuance to the writ issued by the learned Executing Court for delivery of possession. The question whether the predecessor-in-interest of the respondents were dispossessed is a question of fact which requires adjudication by the learned Executing Court.

20. Considering the above, the instant revision petition, therefore, stands disposed of with the following observation(s) and direction(s):

(i). The question of interference with the proceedings in Misc.(J)Case No.02/2015 pending before the learned Court of the Civil Judge, (Junior Division) at Titabor, does not arise. The learned Civil Judge, (Junior Division) at Titabor who is the Executing Court is directed to expeditiously dispose of the said proceedings at the earliest and preferably within 3(three) months from the date of appearance of the parties.

(ii). The question as to whether in execution of a writ for delivery of possession issued by the learned Executing Court, the predecessor-in-interest of the respondents herein i.e. Lt Ganesh Chandra Dutta was evicted or not being a question of fact is required to be decided by the learned Executing Court as it comes within the ambit of Section 47 of the Code. The said fact can be proved, either by adducing evidence by the parties or through official witnesses. Mr. AK Sahewalla, the learned counsel for the respondents submits that the respondents herein would like to adduce evidence. Taking into account the above, this Court grants an opportunity to the respondents to file their examination-in-chief before the learned Executing Court.

(iii). This Court directs the Registry to forthwith return the records to the learned Executing Court.

(iv). Taking into account that in view of the records being called for and stay being granted by this Court earlier, the further proceedings of Misc.(J) Case No.02/2015 were not proceeded with. The parties herein being duly represented they are directed to appear before the learned Executing Court on 08.09.2025 for further proceedings in Misc.(J).Case No.02/2015.

(v). The Registry shall ensure that the records are made available before the learned Executing Court prior to the date so fixed.

(vi). The liberty so granted by this Court to the respondents herein to file the examination-in-chief of their witness(es) by way of affidavit(s) is to be exercised by filing the examination-in-chief of all witness(es) except official witness(es) on or before 08.09.2025. Upon filing the examination-in-chief on affidavit(s), due opportunity be provided to the petitioners herein to cross examine the witness(es). Opportunity be also provided to the petitioners to adduce evidence, if they wish so. The opportunity to be granted to both the parties herein by the learned Executing Court shall be, keeping in mind that this Court had requested the learned Executing Court to try and dispose of Misc. (J).Case No.02/2015 within 3(three) months, if possible.

(vii). The learned Executing Court shall decide the Misc.(J) Case No.02/2015 without being influenced by the observations made in the present judgment.

21. Before parting with the records, this Court is constrained to make an observation that it is beyond comprehension that a Judicial Officer, who is presiding over a Court exercising Civil Jurisdiction is unaware of the implication when a suit is dismissed. The Judicial Officer seems to be not aware that there is no concept of an implied decree in favour of the defendants, if a suit is dismissed. The act on the part of a Judicial Officer in the instant case to issue a writ for delivery of possession, in respect to a suit, which was dismissed shows poorly on the training meted out to the Judicial Officer. This Court further would not like to add anything more, but would leave it to the wisdom of the Gauhati High Court on the administrative side to take a call on this aspect. The Registrar General of the Gauhati High Court is directed to place the instant judgment before the Gauhati High Court on the administrative side.

22. With the above, the instant petition stands disposed of.