
(2018) 03 GAU CK 0121
In the Gauhati High Court
Case No : WP(C) 3310 of 2010

MD KHALILUR RAHMAN and ANR.

APPELLANT

Vs

THE STATE OF ASSAM and ORS

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 9 Rule 9
Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0121

Hon'ble Judges : PRASANTA KUMAR DEKA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. NC Barooah, learned counsel appearing on behalf of the petitioners. Also heard Mr. GP Bhowmik, learned Senior Counsel assisted by

Ms. M Kalita, learned counsel appearing on behalf of the respondent No. 4 and Mr. TC Chutia, learned Additional Senior Government Advocate

appearing on behalf of the respondents No. 1, 2 and 3.

2. The present petitioners filed Title Suit No. 58/1984 in the court of learned Assistant District Judge, Dhubri against the State of Assam and Collector,

Dhubri for a direction to the revenue authorities to correct the land records in respect of land measuring 81 Bighas covered by Dag No. 38, khas

Khatian No. 1 of village Haldipara under Mouza Chaibari in the district of Dhubri along with declaration of the right, title and interest in respect of the

suit land and permanent injunction. The suit was decreed on contest on 27.02.1990. The respondent State preferred Title Appeal No. 1/1990 in the

court of learned Additional District Judge, Dhubri which was dismissed on contest and thereafter the respondent State filed Second Appeal No.

59/1991 before this court which too, was dismissed on 19.09.1997. Prior to disposal of the first appeal, Title Execution Case No. 3/1990 was preferred

by all the decree holders and on the basis of the order passed by the Executing court precept was issued to the Assistant Settlement Officer (ASO),

Chapar Circle thereby directing the ASO, Chapar Circle to demarcate after survey and identify the boundary of the decreetal land shown in the

schedule of the said precept with the help of the police for which a separate direction is to be issued and thereafter fixing 19.04.1990 to submit the

report. The said precept was delivered on 11.04.1990 to the Assistant Settlement Officer (ASO), Chapar Circle, Gouripur.

3. Thereafter, the present respondent No. 4 filed Title Suit No. 26/2002 in the court of learned Munsiff, Bilasipara impleading all the plaintiffs/ decree

holders in Title Suit No. 58/1984 as defendants and the State of Assam as the proforma defendant. The said suit was filed for declaration that the

decree obtained in Title Suit No. 58/1984 is a fraudulent one and liable to be cancelled along with the decree for right, title and interest and

confirmation of possession and for permanent injunction. The suit was contested by the decree holders. The said suit subsequently renumbered as

Title Suit No. 92/2007 was dismissed for default vide order dated 13.02.2008 passed by the learned Munsiff, Bilasipara. The said respondent No. 4

preferred an application under Order IX Rule 9 of the Code of Civil Procedure (for short, CPC) which was dismissed vide order dated 25.03.2009.

The said dismissal order has been put under challenge in CRP No. 275/2015 pending disposal. It is on record that the Title Execution Case No. 3/1990

was stayed by the Executing court on the prayer of the respondent No. 4 due to pendency of Title Suit No. 26/2002 which was subsequently

renumbered as Title Suit No. 92/2007. It would not be out of place to mention here that the decree passed in title Suit No. 58/1984 went through the

process of first appeal and second appeal and obviously during the pendency of the said first appeal and the second appeal, the judgment and decree

passed in Title Suit No. 58/1984 were stayed. Finally, the second appeal was dismissed on 19.09.1997. Thereafter, due to filing of the suit by the

respondent No. 4, the Title Execution Case No. 3/1990 was stayed as per the record.

4. On the other hand, the precept so sent by the Executing court was not complied with inasmuch as, one Joynal Abedin Bepari, the power of attorney

holder of five decree holders filed a miscellaneous application which was registered as Misc. Application No. 9/2004 in the office of the Settlement

Officer, Kokrajhar and Dhubri district against one Sri Mahananda Roy who acted as the Chairman of Champabati Agricultural Farming Corporation

i.e. the respondent No. 4 in this writ petition. The said application was disposed of vide order dated 16.08.2004 and the operative portion of the said

order is reproduced herein-below:- I, therefore, from all these circumstances, come to the conclusion that (1) as regards the correction of land

records in favour of the decree holder, we may wait for clarification/ instruction and orders from the Govt. as sought for by the D.C., Dhubri vide his

letter dated 5-11-2003 as stated above.

(II) As regards the demarcation of boundaries of the decreed land, no bar should be imposed if it is desired to be done in the interest of public service

and for the interest of the maintenance of law and order. And if it is desired by any public servants in the discharge of his official duties.

Sd/- Illegible

Settlement Officer, Kokrajhar

and Dhubri Dists., Dhubri

5. Being aggrieved by the said order dated 16.08.2004, the decree holders have preferred this writ petition thereby challenging the said order passed

by the Settlement Officer. The grievance placed before this court by Mr. Barooah appearing for the petitioners, is that an execution proceeding is still

going on which has been registered as Title Execution Case No. 3/1990 in the court of learned Civil Judge, Dhubri and the precept was issued in order

to comply the direction of the Executing court arising out of a valid judgment and decree against the State Government and the said decree was very

much challenged by the State both in the first appeal and in the second appeal and the same was not complied by the respondent. The decree was not

set aside by the appellate court. Under such circumstances, there is no point in asking for any further clarification by the Government as held by the

Settlement Officer. Accordingly, Mr. Barooah submits that the writ petition must be allowed with proper direction to the Settlement Officer.

6. Mr. Bhowmik, learned Senior Counsel appearing on behalf of the respondent No. 4, submits that the respondent No. 4 challenged the judgment and

decree in favour of the petitioners/ decree holders and though the same was

dismissed for default, revival of the suit is pending in the High Court and in addition to that, Mr. Bhowmik submits that the land was allotted to the farm, respondent No. 4 in the year 1974. Subsequent thereto, a major part of the total land under various dags including the Dag No. 38 was allotted to the Agricultural College and under possession of the respondent No. 4. As on date, there is about 100 Bighas of land under its possession forming a society of 50 (fifty) numbers of shareholders and rest of the land are under the possession of the temple and mosque and another 81 Bighas of land is under encroachment. Accordingly, Mr. Bhowmik in addition to the said submission also submits that another Title Execution Case No. 5/1990 was preferred by one Jaleka Khatun was dismissed and once the said execution proceeding is dismissed, the same cannot be revived after the period of limitation of 12 years is over. It is the contention of Mr. Bhowmik that there is no bar in restoring an execution proceeding once it is dismissed but the said restoration must be within a period of 12 years and once the said prescribed period of 12 years for execution of decree is over, there cannot be any further revival of execution proceeding with respect to a single decree. It is also pointed out that with respect to Title Execution Case No. 3/1990 (Misc (J) Case No. 20/2009), there are two orders, specifically, one dated 12.06.2009 and another dated 22.12.2009 showing dismissal of Misc (J) Case No. 20/2009. Opposing the submission of the learned counsel for the petitioners vehemently, the learned Senior Counsel submits that the present petitioners are not entitled to claim their right over the land on the strength of the decree and through the process of Executing court.

7. Mr. Barooah clarified that the Annexure-1 of the joint affidavit-in-reply of the petitioners is the information obtained through RTI by one of the sons of Late Joynal Abedin Bepari, the deceased power of attorney holder of the decree holders. On the basis of the information, Mr. Barooah submits that an area of 81 Bighas of land is shown to be under encroachment in the said information dated 12.08.2015 issued by the Public Information Officer (PIO) and that area of 81 Bighas is claimed by the decree holders in Title Suit No. 58/1984. Thus, Mr. Barooah submits that the decree which is a lawfully obtained decree cannot be nullified unless and until, a lawful decree is obtained nullifying the same by a competent court and as such he submits that the petitioners be allowed to enjoy the fruit of the decree passed in

Title Suit No. 58/1984.

8. Considered the submissions of the learned counsels for the parties. On going through the records, more specifically, the records of Title Execution

Case No. 5/2009, Title Execution Case No. 3/1990, Misc. (J) Case No. 18/2008 and Misc. (J) Case No. 2/2015, the dispute raised before this court

under Article 226 of the Constitution of India is a dispute which is in seisin with the Executing court of learned Civil Judge, Dhubri. It is seen from the

records that a precept was issued by the Executing court way back in the year 1990 as referred hereinabove and the said precept has not yet been

complied with by the Land and Revenue officials and rather, it seems that further acts by the said officials complicated the matter giving rise to

various other disputes which cannot be permitted under the law. Once a precept is issued by an Executing court it will have to be executed and if not,

the reasons as to why the same cannot be executed must be intimated to the Executing court and not to other persons nor to other authority. It is seen

that the respondent Settlement Officer has webbed his own net thereby going beyond the jurisdiction inasmuch as, if there is any difficulty on his part

to execute the precept, he is supposed to inform the same to the Executing court. Moreover, from the submissions of both the learned counsels

appearing on behalf of the parties to this writ petition, it is noticed that new facts are coming up. The petitioners are claiming their right on the basis of

the lawfully obtained decree. On the other hand, the respondent No. 4 had filed the title suit which was dismissed for default and as on date, there is

no stay order of the execution of the said decree passed in Title Suit No. 58/1984 and as such, the Executing court shall take up this matter by giving

due notice to the parties to the present writ petition and thereafter deciding the issue whether the Title Execution Case No. 3/1990 can be further

proceeded owing to various orders passed as seen from the records after hearing the parties to the present writ petition and to see that the decree

may be executed.

9. From the record it is not found that the settlement officer has/ had made any response to the precept received on 11.04.1990 which clearly shows

that the said Execution proceeding is still continuing as on date. Subsequent reference by the Settlement Officer awaiting clarification from the

Government who was a party to the suit is immaterial. Government in such a

situation cannot sit as a reviewing authority when the decree was passed in its presence. Decree which is passed is to be executed without waiting for any further instruction as sought for by the Settlement Officer and the precept of the Executing court has the untrammelled force which cannot be resisted by the Government once the said decree is passed in its presence. Accordingly, this writ petition is disposed of with the aforesaid directions.

10. The parties to this writ petition shall appear before the Executing court on 2. 05.2018 and the Registry to send back

the LCRs immediately keeping in view the date fixed for appearance of the parties in the Executing court.