
(1986) 06 GAU CK 0003
In the Gauhati High Court
Case No : Civil Revision No. 247 of 1984

Nishi Kanta Sen

APPELLANT

Vs

Rajabala Sen

RESPONDENT

Date of Decision : 12-06-1986

Acts Referred:

Civil Procedure Code, 1908 — Order 20 Rule 4(2), 47
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4(2), 47

Citation : (1987) 1 GLR 251

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : T.C.Khetri, Advocates appearing for Parties

Judgement

1. This revision petition arises from the order dated 30.8.1984 passed by the learned Munsiff (II), Sonitpur, Tezpur, in Misc. Case No. 276 of 1982 arising out of T. Ex. Case No. 6 of 1982.

2. The learned Munsiff (I), Sonitpur, Tezpur, in T. S. No. 72 of 1981 passed an ex parte decree dated 11.1.1982, inter alia, for declaration of title to the suit land and delivery of possession of the suit land. The decreeholder filed T. Ex. No. 6 of 1982 in the Court of the learned Munsiff (II), Sonitpur, for the execution of the decree. In the course of the execution of the decree, the judgmentdebtor filled an application under section 47, CPC stating that the decree cannot be executed as the judgment is illegal as it has not been written in accordance with the provisions of O. 22, R. 4(2), CPC. The learned Munsiff by an order dated 30.8.1984 has held that the judgment has not been written in accordance with the provision" under O. 22, R. 4(2), CPC and as such, the decree is illegal and cannot be executed; hence this revision petition.

3. It is true that the executing Court can go into the question of the executability of the decree. It is also equally true that the executing Court cannot go behind the decree. The judgment may be in accordance with law or may not be in accordance with law. The Munsiff had jurisdiction to decide the suit and pass the

decree. The point raised by the judgmentdebtor may be good ground for appeal. But the judgmentdebtor has not filed any appeal against the decree and has allowed the decree to become final and binding.

4. In *Vasudev vs. Rajabhai*, AIR 1970 SC 1475, the Supreme Court has held that a Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

5. I am of the view that the challenge that the decree is illegal on the ground that the judgment has not been written as provided under O. 20, R. 4(2) CPC amount to a challenge of the method or the manner of the exercise of jurisdiction of the Court. Such a challenge will not be available to the judgmentdebtor who has allowed the decree to become final and binding as already stated. Even if the decree is erroneous, it must be taken as a valid when it has been allowed to become final if the Court has jurisdiction to make it. In view of the above discussions and the decision of the Supreme Court, the judgmentdebtor cannot challenge the decree on the ground that the judgment has not been written in conformity with the provision of O. 20, R. 4(2) CPC. Therefore, the question raised by the judgmentdebtor does not come within the purview of section 47 CPC and as such, the impugned order cannot be allowed to stand.

6. For the forgoing reasons, the order dated 30.8.84 passed by the learned Munsiff (II), Sonitpur, Tezpur, in Misc. Case No. 276 of 1982 arising out of T. Ex. Case No. 6 of 1982 is set aside. The records shall be sent back to the lower Court. With the above observations and directions the petition is allowed and disposed of. No costs.