

**(2003) 09 GAU CK 0041**  
**In the Gauhati High Court**  
**Case No : C.R.P. No. 27 of 1999**

Numali Gogoi and Another

APPELLANT

Vs

State Bank of India

RESPONDENT

**Date of Decision :** 05-09-2003

**Acts Referred:**

**Citation :** (2004) 1 GLR 36

**Hon'ble Judges :** P.P. Naolekar, C.J

**Bench :** Single Bench

**Advocate :** D.C. Mahanta, T.J. Mahanta and P. Bhattacharya, for the Appellant;  
B. Kalita and P. Kalita, for the Respondent

**Final Decision :** Allowed

## **Judgement**

P.P. Naolekar, C.J.—The respondent State Bank of India had filed Title Suit No. 20/89 for recovery of Rs. 2,58,276.03P with interest against (1) M/s Sonti Saw Mill ; (2) Sri Khogendra Nath Chetia, the principal borrower ; and (3) Bidyadhar Gogoi as guarantor of the aforesaid two borrowers defendants. During pendency of the suit, the defendant No. 3 namely Bidyadhar Gogoi expired on 9.7.1990. The death of the defendant No. 3 in the suit was not informed to the court and later on the Court has passed a decree in favour of the Bank on the basis of admission on 4.5.1991. Later on the Bank took up execution proceedings of the decree passed by the Court on 4.5.1991 being Title Execution Case No. 6/97. There also name of Bidyadhar Gogoi continued as defendant judgment debtor No. 3. The legal representatives of late Bidyadhar Gogoi namely Smti Numali Gogoi (wife) and Sri Hira Nath Gogoi (son), who are petitioners before this Court filed objection before the executing court contending therein that late Bidyodhar Gogoi having died on 9.7.1990 the decree passed by the court against him is a nullity. In support of the allegation made before the court that Bidyadhar Gogoi died on 9.7.1990 the petitioners herein produced a photostat copy of the death certificate. The court rejected the application on the ground that the death certificate is not an original certificate and it is only a Photostat copy and,

therefore, cannot be relied upon. The court has also held that it was the duty of the defendant to inform about the death of a party under Order 21, Rule 10A of the CPC and that having not been done, the objection of decree being a nullity cannot be raised at the stage of execution.

2. Heard Mr. D.C. Mahanta, learned counsel for the petitioners and Mr. B. Kalita, learned counsel for the respondent-Bank.

3. Any decree passed against a dead person is a nullity and can certainly be challenged at the stage of execution also. The trial court has committed an error in saying that the legal representatives of the deceased are prevented from raising the question of the decree being a nullity against late Bidyadhar Gogoi on the application of Order 21, Rule 10A CPC. The Court failed to see that the party to the proceedings having expired, could not inform the court regarding his own death and because the other defendants had not informed the court of the death of one of the defendant the legal representatives of the deceased defendant cannot be penalized. In such a situation the provision of Order 21, Rule 10A is not attracted.

4. During the course of argument before me, learned counsel for the petitioner produced before me the original death certificate of late Bidyadhar Gogoi, which has been shown to the counsel for the respondent also. The genuineness of the document is not challenged before me. Thus, it can be safely assumed that Bidyadhar Gogoi has expired on 9.7.1990 before the trial court passed the decree on 4.5.1991. The decree against late Bidyadhar Gogoi being passed after his death is a nullity and cannot be executed against the property or heirs of Bidyadhar Gogoi. That being the case, so far as the decree in regard to late Bidyadhar Gogoi is concerned the same cannot be executed. The revision is, therefore, allowed. However, under the circumstances there shall be no order as to costs.

5. The records of the case be sent back immediately within a period of 7 days.