

(2022) 11 GAU CK 0009

In the Gauhati High Court

Case No : Civil Revision Petition (IO) No. 4 Of 2014

Shantilal Dugar

APPELLANT

Vs

Siddiquir Rahman

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Citation : (2022) 11 GAU CK 0009

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : S Shah, M Deori

Final Decision : Disposed Of

Judgement

1. Heard Mr. R.C. Sancheti, learned counsel for the petitioner. None has appeared for the respondent.

2. In this revision petition, two separate orders passed by the learned Munsiff No. 1, Nagaon in connection with T.Ex. Case No. 01/2012, i.e. the orders dated 20-12-2013 and 07-01-2014 have been put under challenge. The facts of the case, in a nutshell, are as follows:-

3. The respondent herein, as plaintiff, had instituted T.S. No. 82/2006 in the court of Munsiff No. 1, Nagaon praying for a decree declaring his right, title and interest over the suit land and also for issuing a decree of permanent injunction. In the aforesaid suit, one Karani Das Chhajer had been impleaded as defendant No. 1 whereas the late father of the petitioner viz. Bhanwarlal Duggar was impleaded as defendant No. 2. The aforesaid suit was contested by the defendant No. 1. The suit filed by the respondent was decreed by judgment dated 29-10-2011 passed by the trial court. The defendant No. 1 has challenged the decree dated 29-10-2011 passed by the learned trial court by filing an appeal which is pending disposal. However, since no stay order was passed by the first appellate court, the decree dated 29-10-2011 was put to execution in T.Ex. Case No. 01/2012. Although the defendant No. 2 did not contest the suit, his son i.e.

the present petitioner had subsequently filed an application before the executing court along with copies of the death certificate issued by the Surat Municipal Corporation showing that the father of the petitioner i.e. Bhanwarlal Duggar, who is the defendant No. 2 in the suit, had died on 04-03-2009 in Surat in the State of Gujrat during the pendency of the title suit.

4. The basic contention of the petitioner before the executing court was to the effect that the decree dated 29-10-2011 having been passed against a dead person, the same was a nullity in the eye of law. In support of his above contention, the petitioner had examined himself as witness and exhibited two certificates issued by the Surat Municipal Corporation. However, taking note of the fact that the two certificates produced as Annexure- 1 and Exhibit- 1 carry different serial numbers, the learned court below had doubted the genuineness of the documents and not only rejected the petition filed by the petitioner by the order dated 07-01-2014, but had also declined the request made by the petitioner to re-examine himself so as to explain the discrepancy, by the impugned order dated 20-12-2013. Hence, this revision petition.

5. Mr. Sancheti, learned counsel for the petitioner submits that the difference in the serial numbers in Annexure- 1 and Exhibit- 1 had arisen due to the fact that the certificates Annexure- 1 contains the original issue number pertaining to the record of the Municipal Corporation whereas Exhibit- 1 was a computer generated certificate. Mr. Sancheti further submits that the discrepancy could easily have been explained by the petitioner, if he was re-examined in terms of the prayer made vide petition No. 167/2013 which was rejected by the order dated 20-12-2013 for no valid reason.

6. After a careful scrutiny of the order dated 07-01-2014, I find that the learned Executing Court did not record any finding on the plea that the petitioner's father had expired on 04-03-2009 during the pendency of the suit. Instead the consideration of the court was almost entirely confined to the issue numbers appearing in the two documents (death certificates) both certifying the date of death of late Bhanwarlal Duggar as 04-03-2009. If Bhanwarlal Duggar, who was the defendant No. 2, in the title suit, had in fact died on 04-03-2009, i.e, prior to passing the judgment and decree dated 29-10-2011 and if the decree would affect the right and interest of Bhanwarlal Duggar and/ or his legal heirs, then it is evident that there was a legal duty upon the plaintiff to substitute the legal heirs of Bhanwarlal Duggar. However, the same has not been done in this case. Rather, it prima facie appears that the decree has been passed against a dead person.

7. It is the salutary principle in law that a decree passed against a dead person would be nullity in the eye of law. Therefore, the core question that ought to have been determined by the learned court below is as to whether, the decree has been passed against a dead person and if so, was it a nullity in the eye of law. The learned court below has, however, not decided the said issue and instead had gone into the question of validity of the "serial numbers" appearing

in the death certificates and also alleged negligence on the part of the petitioner in his failure to inform the court about the death of his father during the pendency of the title suit. Since the petitioner has categorically taken a plea to the effect that his father had expired before the decree was passed thereby raising a question of nullity of the decree, the said aspect of the matter would have to be determined by the executing court, if necessary, by accepting additional evidence, before proceeding any further in the matter.

8. This Court is, therefore, of the opinion that the impugned orders dated 20-12-2013 and 07-01-2014 suffer from error in exercise of jurisdiction by the learned court below and calls for correction by this Court. Both the impugned orders, are accordingly set aside.

9. The learned executing court is directed to decide afresh as to whether, the defendant No. 2 in T.S. No. 82/2006, i.e. Bhanwarlal Duggar had died before the decree was passed and if so, whether the decree passed against a dead person can be executed against the legal heirs of the defendant No. 2.

The aforesaid aspect of the matter may be decided as expeditiously as possible, preferably within a period of 03 months from the date of receipt of a certified copy of this order, after giving adequate opportunity to both the side to present their cases.

Revision petition stands disposed of accordingly.

Send back the LCR.

The petitioner's counsel is directed to produce a certified copy of this order before the learned Executing Court within 02 weeks from today for necessary compliance.