



GAHC010079802020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/50/2020

NAROTTAM BARMAN
S/O. LT. SASHIMOHAN BARMAN, R/O. BARPETA ROAD, NO.3, BABU PARA,
WARD NO.8, P.O. BARPETA ROAD, DIST. BARPETA, ASSAM.

VERSUS

SUMI SUTRADHAR AND 4 ORS
W/O. LT. PARITOSH SUTRACHAR, R/O. BARMANPARA, BARPETA ROAD
TOWN, WARD NO.8, MOUZA- GOBARDHANA, DIST. BARPETA, ASSAM.

2:PRABIR SUTRADHAR
S/O. LT. PARITOSH SUTRACHAR
R/O. BARMANPARA
BARPETA ROAD TOWN
WARD NO.8
MOUZA- GOBARDHANA
DIST. BARPETA
ASSAM.

3:PRITAM SUTRADHAR
S/O. LT. PARITOSH SUTRACHAR
R/O. BARMANPARA
BARPETA ROAD TOWN
WARD NO.8
MOUZA- GOBARDHANA
DIST. BARPETA
ASSAM.

4:PIYUSH SUTRADHAR
S/O. LT. PARITOSH SUTRACHAR
R/O. BARMANPARA
BARPETA ROAD TOWN



WARD NO.8
MOUZA- GOBARDHANA
DIST. BARPETA
ASSAM.

5:LAILY SUTRADHAR
D/O. LT. PARITOSH SUTRACHAR
R/O. BARMANPARA
BARPETA ROAD TOWN
WARD NO.8
MOUZA- GOBARDHANA
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : MR. N HAQUE

BEFORE

THE HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

For the petitioner :Mr. D. Chakrabarty
Advocate.

For the respondent :Mr. N. Haque,
Advocate.

Date of hearing & date of
Judgment/ Order : 04.12.2020

ORDER

Heard Mr. D Chakrabarty, learned counsel for the petitioner and Mr. N Haque, learned counsel for the respondent.

2. Order dated 16.03.2020 passed in T.Ex. case No. 03/2009 by the learned court of Civil Judge, Barpeta is under challenge in this revision petition. The present petitioner filed T.S. No. 26/2006 in the court of learned Civil Judge, Barpeta against the present respondents as defendants for specific performance of contract in respect of a sale agreement for a plot of

land measuring 15 Lechas covered by Dag No. 1342 of KP Patta No. 158 of village Barpeta Road under Mouza Gobardhan. The suit was decreed. The respondents filed first appeal and second appeal and both the courts upheld the judgment and decree thereby granting enforcement of agreement for sale of the said plot of land. In T.Ex. No. 03/2009, the said decree was put to execution and the learned executing court executed the registered sale deed No. 527/2015 in terms of the decree covering the decreetal land. The petitioner filed a petition under Order 21 Rule 32 (5) of the CPC seeking for delivery of khas possession of the entire land measuring 15 Lechas sold in favour of the petitioner in the said execution case No. 03/2009. The Schedule of the suit land is specifically mentioned in the sale deed, which is reproduced hereinbelow:

“ *Schedule of the suit land*

A plot of land measuring 15 Lechas covered by Dag No. 1342 under KP Patta No. 158 at Barpeta Road Town, Mouza-Gobardhana, District-Barpeta, Assam situated within the following boundaries:-

North- Municipal Road

South- Niranjan Sutradhar and others

East- Sri Narottam Barman

West- Asutosh Sutradhar, Madusudhan Sutradhar and Mantosh Sutradhar”

3. The learned court below vide order dated 19.08.2016 allowed the said petition under Order 21 rule 32(5) of the CPC by holding that possession can be granted by the executing court in a decree for specific performance of contract for sale as the same is incidental to the execution of a document of sale. Being aggrieved by the said order dated 19.08.2016 passed in T.Ex. No. 03/2009, one of the respondents Smt. Sumi Sutradhar preferred CRP 386/2016 which was dismissed by this court vide order dated 13.03.2018. The learned executing court issued warrant to the bailiff of the court of Barpeta to put the petitioner decree holder in exclusive khas possession of the land covered by registered sale deed No. 527/2015 by evicting the respondent judgment debtors, removing their houses, other structures standing thereon. The said warrant was issued on 18.04.2018 fixing 16.05.2018 for report. The bailiff of the court took assistance of the concerned Lat Mandal in order to execute the said warrant, but the Lat Mandal submitted his report dated 10.05.2018 and 11.05.2018 in the execution case No. 03/2009 informing the court that there were some anomalies in respect of possession over the decreetal property. Due to such anomalies purportedly done at the

instance of Lat Mandal, the petitioner filed an application which was registered as Misc case No. 16/2019 in T.EX. 03/2009 seeking for direction from the executing court to the Circle Officer, Bornagar Revenue Circle to conduct a de-novo field enquiry in respect of the decreetal land in furtherance of execution of the decree dated 20.02.2009.

4. The learned court below vide its order dated 16.03.2019 allowed the said petition with a direction to the Circle Officer, Bornagar Revenue Circle to hold field enquiry in respect of the decreetal land in his presence and ensure delivery of khas possession of land measuring 15 Lechas covered by Dag No. 1342 of K P Patta No. 158 in compliance of the decree passed in TS No. 26/2006. In pursuance of the said order another warrant was issued to the bailiff of the court of Barpeta on 29.04.2019 directing the bailiff to put the petitioner in exclusive khas possession of the land described in the warrant itself. The Lat Mandal informed through his report dated 03.05.2019 that he could not find semblance between the land described in the schedule of the warrant and the boundary contained in the map and as a result warrant for delivery of possession could not be executed. The learned executing court on the basis of the said report fixed 28.06.2019 for necessary order.

5. The petitioner again filed an application under Section 47 read with Sections 151 and 152 of the CPC seeking for a direction to the Circle Officer, Bornagar Revenue Circle to make necessary correction in respect of the dag and patta numbers. of the decreetal land and the existing boundary of the same in furtherance of execution of the decree dated 20.02.2009 passed in TS No. 26/2006. The respondent judgment debtors filed their written objection raising the objection that the judgment debtors are not the only pattadars of the suit patta there being other several pattadars possessing their respective plot of land jointly without entering into any manner of partition and moreover the decree holder had no prayer in the plaint for partition of the suit land and as such creation of new dag and patta over the suit land without any suit for partition is not tenable under the eye of law. The learned court below vide order dated 16.03.2020 (impugned) disallowed the said petition and prayer made therein by holding as follows:

“From the entirety it follows that the DH by filing this petition made prayer before this court for delivery of possession of the suit land, which is absolutely beyond the decree put in execution. It is well settled law that executing court cannot go beyond the decree and on this count the decision relied upon by the learned counsel for the DH has no bearing with the facts and circumstances of the case in hand. Hence, the instant petition being beyond the decree in question, this court has no jurisdiction to pass the

direction as prayed for and accordingly the prayer of the DH stands rejected"

6. Mr. Chakrabarty assailing the said impugned order submits that the learned executing court vide order dated 19.08.2016 directed the respondents judgment debtors to deliver the possession of the decreetal land in furtherance of the execution process subsequent to execution of the sale deed by the court. Under such circumstances the learned executing court instead of passing appropriate order for satisfaction of the decree passed the impugned order and failed to apply its jurisdiction. In support of his contention Mr. Chakrabarty ***relies Pratibha Singh and Another Vs. Shanti Devi Prasad and Another reported in (2003) 2 SCC 330***, wherein it was held that in a suit for specific performance of contract the delivery of possession of the decreetal land forming the subject matter of the decree must be carried out by the executing court. Moreover, in order to deliver immovable property which forms the subject matter of a decree and when the property is definitely not identified the same can be cured under Order 7 Rule 3 and under Order 20 Rule 3 of the CPC. If the error occurred in respect of the decreetal land is inadvertent in nature, the same can be corrected under Section 152 CPC and alternatively the description of the decreetal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of the decree within the purview of Section 47 of the CPC. The learned court below as per Mr. Chakrabarty failed to apply its jurisdiction and as such the impugned order is liable to be interfered.

7. Mr. Haque fairly submits that as the decree had attained its finality the respondents cannot object the execution process. However, it is the contention of Mr. Haque that if the judgment from which the decree is drawn it is seen and noticed that the decree holder enjoyed the possession of 7 ½ Lechas of land out of total 15 Lechas of land and under such circumstances there is no point in further requiring the assistance of the execution court for recovery of possession of the other part of land measuring 7 ½ Lechas.

8. I have given due consideration to the submissions made by the learned counsel. The decreetal property is referred hereinabove which is a plot of land measuring 15 Lechas covered by Dag No. 1342 of KP Patta No. 158 of Barpeta Road town under Mouza-Gobardhan, Barpeta district which is identified specifically by the boundaries mentioned in the

sale deed and in the writ of execution. The Lat Mandal in its report dated 03.05.2019 informed the executing court that he could not find semblance between the description of the land contained in the schedule of the decree and the boundaries as contained in the map and as such the boundaries of the land could not be shown for which the warrant for delivery of possession could not be executed. Here, it would be proper to take note of the order dated 16.03.2019 passed by the learned executing court in Misc (J) Case No. 16/2019 arising out of T.Ex. 03/2009 wherein the learned court below accepted that the Lat Mandal Munindra Nath being endorsed by the concerned Circle Officer visited the field but could not deliver khas possession of the suit land measuring 15 Lechas covered by Dag No. 1342 of KP Patta No. 158 on the ground that the judgment debtors are not in physical possession over the aforesaid plot of land. The judgment debtors are practically in occupation over a plot of land covered by Dag No. 907 of periodic patta No. 151 though the said land is not recorded in their names in the revenue records whereas land of dag No. 1342 covered by patta No. 158 stands in the name of judgment debtors. From the said observation one thing is clear that as per the records the judgment debtors are possessing land covered by Dag No. 1342 and as per the field examination of the Lat Mandal the judgment debtors are possessing land covered by Dag No. 907 of periodic patta No. 151. There is no doubt that the judgment debtors promised to sell land measuring 15 Lechas under their possession covered by Dag No. 1342 of KP Patta No. 158. As per the records, the judgment debtors are possessing the decretal land. In ***Pratibha Singh and Another (Supra)***, the Apex Court in order to satisfy a decree in favour of the decree holders in a suit for specific performance of contract for agreement for sale of plot of land held that where there was no determination by the executing court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed as the property forming the subject matter of the agreement to sell and the decree, appropriate direction can be taken care for delivery of possession to the plaintiff decree holder. Further, it was held that in such situation the executing court can resort to Section 152 or Section 47 of the CPC considering the facts and circumstances of the case. It was also held that if the error in the description of the property was inadvertent without affecting the merit of the case the executing court can resort to Section 152 CPC which passed the decree by supplying the omission. Alternatively, the executing court can invoke its power under Section 47 of the CPC to determine the exact

description of the decreetal property in order to give effect to the decree which ought not to be defeated on account of accidental slip or omission.

9. Considering the said ratio, I am of the considered opinion that the decreetal land is well defined and on the eastern side the decree holder is shown to be holding another plot of land covered by Dag No. 1342 with his residence thereon. On the northern side, the municipal road is still standing. The executing court shall consider the said boundary marks of the decreetal land and if the executing court finds that the decreetal property needs to be rectified in respect of the dag and patta numbers purportedly under possession of the judgment debtors, the same shall be done under the orders of the court which shall thereafter form part of the sale deed. The necessary deed of rectification shall be executed and registered under orders of the court. The said orders must be passed in the original side of the court but not as the court of first instance i.e. the executing court. In a suit for specific performance of contract the trial court does not cease to have jurisdiction over the decree even if the decree is put to execution if Section 28 of the Specific Relief Act, 1963 is looked into.

10. In ***Ramankuthy Guptan –VS- Avara***, reported in ***AIR 1994 SC 1699*** the Apex Court while deciding the issue whether application under Section 28(1) of the Specific Relief Act, 1963 for rescission of contract, specific performance of which had been decreed should be on the original side or execution side and the section indicates that it should be “in the same suit” held that it would obviously mean in the suit itself and not in the execution proceedings. It is settled law that after passing the decree for specific performance, the court doesnot cease to have any jurisdiction. The court retains control over the decree even after the decree has been passed. It was open to the court to exercise the power under Section 28(1) of the Specific Relief Act, 1963 either for extension of time or for rescinding the contract as claimed for. Since the execution application has been filed in the same court in which the original suit was filed i.e. the court of first instance, instead of treating the application on the execution side, it should have as well been numbered as an interlocutory application on the original side and disposed of according to law.

11. From the aforesaid discussion it can very well be inferred that court has the power to invoke the jurisdiction under Section 47 of the CPC in order to determine the exact



description of the decreetal property and no decree ought to be passed for recovery of possession while executing a decree for specific performance of contract. For the said purpose any changes in the decreetal property which comes to the notice of the executing court is required to be accepted however after passing an order by the court under its original jurisdiction which remains even after passing of the decree in a suit for specific performance of contract for sale. All the aforesaid exercises are required to be carried out only for giving the benefit of the lawfully obtained decree to the decree holder.

12. Thus in my considered view the learned executing court failed to exercise its jurisdiction while passing the impugned order requiring the same to be set aside which I accordingly do. The learned executing court below as per the observation made hereinabove shall proceed with the execution proceeding and execute the same if required by resorting to the changes in the dag and patta numbers of the decreetal land after a formal order being passed by the court in its original side. With the said observation and direction this revision petition is allowed but without any costs. Interim order stands vacated if any. Parties to this revision petition shall appear before the executing court on 04.01.2021 and on production of the copy of the order passed today the court below shall issue necessary writ for execution.

13. Accordingly, this revision petition stands disposed of.

JUDGE

Comparing Assistant