



GAHC010143772023

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

Case No. : CRP(IO)/236/2023

SMTI. NILIMA DAS CHOUDHURY AND 6 ORS
W/O LATE SUBRATA DAS CHOUDHURY, R/O HAILAKANDI TOWN, WARD
NO. 3, DIST- HAILAKANDI, ASSAM

2: SMTI. SHANTASHREE CHOUDHURY
D/O LATE SUBRATA DAS CHOUDHURY
R/O HAILAKANDI TOWN
WARD NO. 3
DIST- HAILAKANDI
ASSAM

3: SMTI. TANUSHREE CHOUDHURY
D/O LATE SUBRATA DAS CHOUDHURY
R/O HAILAKANDI TOWN
WARD NO. 3
DIST- HAILAKANDI
ASSAM

4: SMTI. RAJASHREE CHOUDHURY @ JAYESHREE CHOUDHURY
D/O LATE SUBRATA DAS CHOUDHURY
R/O HAILAKANDI TOWN
WARD NO. 3
DIST- HAILAKANDI
ASSAM

5: ARABINDA DAS
S/O LATE ADHAR CHANDRA DAS
VILL- RANGPUR
PART-III
DIST- HAILAKANDI
ASSAM

6: REBATI MOHAN DAS
S/O LATE TARINI MOHON DAS



VILL-DHALAI MALAI
PART-VI
DIST-HAILAKANDI
ASSAM

7: DIPAK KUMAR DAS
S/O LATE KRISHNA MOHON DAS
VILL-DHALAI MALAI
PART-VI
DIST-HAILAKANDI
ASSA

VERSUS

JAYANTA KUMAR DAS
S/O LATE SASHI MOHON DAS, VILL- RANGABAK, PART-I, KALTICHERRA
THANA ROAD, P.O.-KATLICHERRA-788161, DIST- HAILAKANDI, ASSAM

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the Petitioners : Shri BK Sen, Advocate.

For the Respondent :

Date of Hearing : 28.07.2023.

Date of Judgment : 28.07.2023.

Judgment & Order

Heard Shri BK Sen, learned counsel for the petitioners, who have filed this

petition under Article 227 of the Constitution of India against an order dated 30.05.2023 passed by the learned Additional District Judge, Hailakandi in Title Appeal No. 05/2023. By the said order, the learned Appellate Court has appointed a Commissioner to make a local inspection to ascertain the possession of the parties over the Suit land.

2. The petitioners were the defendant Nos. 1 to 7 in the connected Title Suit No. 12/2011 which was filed in the Court of learned Civil Judge, Hailakandi. It is the case of the petitioners that the said suit was dismissed after appreciation of evidence whereafter, the plaintiffs had preferred the aforesaid appeal in which the impugned order dated 30.05.2023 has been passed.

3. Shri Sen, learned counsel for the petitioners by referring to Section 75 of the Code of Civil Procedure has submitted that such powers are to be exercised only for the purpose of appreciation of evidence and in the instant case, since the evidence were already adduced by the parties which were closed and duly appreciated, there is no further scope for exercise of such powers under Section 75 of the Code, that too, by an Appellate Court. He submits that powers of the present nature are to be exercised at the first stage itself and cannot be extended to an appellate stage as question of possession would have existed at the time of filing of suit itself.

4. In support of his submission, Shri Sen, learned counsel for the petitioners has relied upon a case of the Hon'ble Division Bench of this Court reported in **AIR 1971 Assam and Nagaland 127 (Manindra Kumar Rai Vs. Paresh Chandra De)**. Specific reference has been made to paragraph 4 of the said judgment. The relevant part of the same is extracted hereinbelow:

“4. ... Under Order XXVI, Rule 9, CPC, the court, in an appropriate case, may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Under sub-rule (2) of Rule 10 of that Order, the Court or, with its permission, any of

the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. Under sub-rule (3), where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. Under Order XVIII, Rule 18, it was not possible for the Munsiff to make a local investigation in the manner done in this suit. Under that rule, the Court may, at any stage of a suit, inspect any property or thing concerning which a question may arise. Although the Court is empowered to inspect the property in a suit at any stage, it is not permissible for the Court to conduct an enquiry in order to furnish evidence in the suit for a proper decision of the issues raised in the suit. Power under Order XVIII, Rule 18 is ordinarily exercised in order to appreciate the evidence adduced in the suit by inspection of property or thing concerning which any question is raised. The Court in its discretion uses this power in a proper case. When the Court inspects the property under this Rule, it makes a memorandum of inspection of the purpose of the record. There can be no cross-examination of the court with regard to such a report and the court does not become a witness to the proceeding by making this inspection. On the other hand, a Commissioner under Order XXVI Rule 9 has to offer himself as a witness, if required, to satisfy the court regarding the correctness or accuracy of his report or even about the manner in which he has conducted the proceeding. This right under Order XXVI, Rule 10 is available to either party in the suit. ...”

5. This Court has given its anxious thoughts to the submissions advanced by the learned counsel for the petitioners.
6. For the sake of convenience, Section 75 of the CPC is extracted hereinbelow-

“Section 75 – Power of Court to issue commissions.—Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

- (a) to examine any person;*
- (b) to make a local investigation;*
- (c) to examine or adjust accounts; or*
- (d) to make a partition;*
- (e) to hold a scientific, technical, or expert investigation;*
- (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;*
- (g) to perform any ministerial act.”*

7. A reading of the aforesaid provision makes it clear that such powers are conferred to a Court. There is no distinction between a Trial Court and an Appellate Court and therefore, it cannot be held that an Appellate Court is not vested with the aforesaid powers to issue Commissions.

8. The learned counsel, Shri Sen has strenuously argued that the purpose to issue Commission is only to appreciate the evidence. This Court is of the view that the said submission will not come to the aid of the petitioners as the First Appellate Court has equal powers to appreciate the evidence on record and for better appreciation, issuing a Commission may not be held to be a step which is against the objective of the Act and would rather be a step towards proper dispensation of justice.

9. So far as the case of **Manindra Kumar Rai** (*supra*) referred to by the petitioners is concerned, on perusal of the same reveals that the said case is not in connection with exercise of powers under Section 75 of the CPC by an Appellate Court

and therefore, would not come to the aid of the petitioners.

10. It is a settled law that powers of revision are to be exercised in a circumscribed manner and only on certain limited grounds. Broadly speaking, such powers may be exercised when the order impugned is palpably illegal or there has been material irregularity, when the order has been passed without jurisdiction, when the order is based upon irrelevant factors or extraneous circumstances, when the relevant factors have been overlooked / ignored. The conditions may be broadly put as follows:

- i. When the Subordinate Court exercises jurisdiction not vested by law.
- ii. When there is a failure to exercise a jurisdiction vested by law.
- iii. When there is exercise of jurisdiction illegally or with material irregularity.

11. The amendment to the Code of Civil Procedure of the year 2009 has added a further restriction that such powers should not be exercised by the High Court except where the order, if made in favour of the party applying of the revision would have finally disposed of the suit or other proceedings.

12. The powers of revision are supervisory in nature. The power of revision is mainly to keep the Subordinate Courts within the bounds of their jurisdiction. The Hon'ble Supreme Court in the case of **Rafat Ali Vs. Sugni Bai** reported in **(1999) 1 SCC 133** has laid down as follows:

“8. The appellation given to the section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well-nigh settled that a revisional jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the "legality, regularity or propriety" of the order of the lower authority. Even such a widely-worded frame of the section may at best

indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of supervisory jurisdiction..."

13. The powers of revision conferred to a High Court is to be exercised sparingly and only on availability of the limited preconditions laid down in the statute. In this connection, one may gainfully refer to the landmark case of ***Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav*** reported in ***AIR 1966 SC 153***, has laid down as follows:

“10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to

questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

14. In a later decision of ***Tek Singh Vs. Shashi Verma*** reported in **(2019) 16 SCC 678**, the following has been laid down as follows:

“6. Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh this Court held:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court



does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal."

15. The aforesaid two decisions have been relied upon in a recent decision of the Hon'ble Supreme Court ***Frost (International) Ltd. Vs. Milan Developers & Builders (P) Ltd.*** reported in ***(2022) 8 SCC 633.***

16. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the present case would not come within the ambit for exercise of powers of revision and accordingly the petition stands dismissed.

17. No order as to cost.

JUDGE

Comparing Assistant