



GAHC010111282024



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

Case No. : CRP(IO)/182/2024

ASHISH DAS
S/O- LATE TARINI KANTA DAS ,
VILLAGE- GARAJAN, MOUZA- SAIDURIA,
P.O- GARAJAN BAZAR,
P.S- RUPAHIHAT,
DIST- NAGAON, ASSAM

VERSUS

ABDUL HAI AND 20 ORS
S/O- LATE HAFIJUDDIN,
VILLAGE AND P.O- PUB FUTALJAR,
P.S- RUPAHI HAT, DIST NAGAON, ASSAM, PIN-782124

2:SAIFUL ISLAM
S/O- LATE HAFIJUDDIN

VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

3:SHOFIKUL ISLAM
S/O- LATE HAFIJUDDIN

VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT
DIST NAGAON
ASSAM



PIN-782124

4:MOJIBUR RAHMAN
S/O- LATE HAFIJUDDIN

VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

5:SHORIFUL ISLAM
S/O- LATE HAFIJUDDIN

VILLAGE -PACHIM AMRAKANDA
P.O- GORAJAN

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

6:ROUSHAN AFTAB
S/O- LATE RIAJUL ISLAM

VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

7:ROSBINA AKTAR
D/O- LATE RIAJUL ISLAM

R/O- VILLAGE TELIA CHAPORI TOOP

P.O- SAIDORI

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782125

8:ROWSHANARA BEGUM
D/O- HAFIJUDDIN



VILLAGE - ADHAKHUNDA
P.O- JURIA

P.S- JURIA
DIST NAGAON
ASSAM
PIN-782124

9:SAMSUN NEHAR
D/O- HAFIJUDDIN

VILLAGE- PARMAIVITI

P.O- DAGAON

P.S- JURIA
DIST NAGAON
ASSAM
PIN-782124

10:JAIMON NESSA
W/O- LATE MUHAMMAD ALI

D/O- HAFIJUDDIN
VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

11:MORJINA BEGUM
D/O- HAFIJUDDIN

VILLAGE - BEGENATI

AND P.O- NAGAON

P.S- NAGAON SADAR
DIST NAGAON
ASSAM
PIN-782001

12:MONUWARA BEGUM
D/O- HAFIJUDDIN

VILLAGE - FAKALI



AND P.O- RUPAHI HAT

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782125

13:NUR JAHAN BEGUM
W/O- LATE GIASUDDIN

14:ROWSHANARA BEGUM
D/O- GIASUDDIN

W/O- LATE ISMAIL HUSSAIN

15:SAMSUL ALAM
S/O- GIASUDDIN

16:SAMSUL HAQUE
S/O-GIASUDDIN

SL NO-13 TO 16
ALL ARE R/O- VILLAGE PASCHIM AMRAKANDA

P.O- GARAJAN

P.S- RUPAHI HAT

DIST- NAGAON
ASSAM
PIN-782124

17:SAMSUL HUDA
S/O- LATE GIASUDDIN

VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

18:FOJIUL HOQUE
S/O- LATE GIASUDDIN

VILLAGE AND P.O- PUB FUTALJAR

P.S- RUPAHI HAT



DIST NAGAON
ASSAM
PIN-782124

19:JAHIRUL HAQUE
S/O- LATE GIASUDDIN

VILLAGE -PUB FUTALJAR
P.O- PASCHIM FUTALJAR
P.S- RUPAHI HAT
DIST NAGAON
ASSAM
PIN-782124

20:MRITUNJOY DAS
S/O- LATE RAJENDRA DAS

R/O- VILLAGE GARAJAN

P.O- GARAJAN

P.S- RUPAHI HAT
DIST- NAGAON
ASSAM

21:MANIK DAS
S/O- LATE UPENDRA DAS

R/O- VILLAGE GARAJAN

P.O- GARAJAN

P.S- RUPAHI HAT
DIST- NAGAON
ASSA



B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner: Shri H.R. Choudhury, Advocate

Date of hearing : 07.06.2024

Date of judgment : 07.06.2024

Heard Shri H.R. Choudhury, learned counsel for the petitioner, who has filed this application under Article 227 of the Constitution of India read with Section 151 of the CPC in which challenge has been made to an order dated 14.11.2023 passed by the learned Munsiff No.2, Nagaon in M.J. Case No. 151/2022 arising out of Title Execution Case No. 03/2022. By the aforesaid order, the petition has been rejected.

2. The facts projected in this petition are that Title Execution Case 03/2022 has been instituted with regard to a judgment and decree dated 23.09.2005 in T.S. No. 43/1998. The said judgment and decree was the subject matter of challenge in appeal being T.A. No. 36/2005 including second appeal RSA 103/2009 before this Court. It was thereafter that the execution proceeding was initiated. It is contended that the present petitioner was not a party to the suit and accordingly he had filed the application under Order 21 Rule 26, 97, 98 read with Section 151 of the CPC which was registered as MJ Case No. 151/2022. It



is submitted that though initially there was an interim stay, vide the impugned order dated 14.11.2023 the said M.J. Case No. 151/2022 has been dismissed.

3. The learned counsel for the petitioner has submitted that the suit land consist of his residential house and in the event, the execution is affected, irreparable loss and injury would be caused by him and therefore, he prays for intervention with the impugned order dated 14.11.2023.

4. The learned counsel has also relied upon a decision of the Hon'ble Sikkim High Court dated 25.08.2023 passed in WP(C)/37/2017 and has contended that under similar circumstances, relief was granted.

5. The submissions advanced have been duly considered.

6. A perusal of the impugned order dated 14.11.2023 would however reveal that apart from taking recourse of the aforesaid provisions of law by instituting M.J. Case No. 151/2022, the petitioner has also filed Title Suit No. 235/2022. The provisions of law contained in Order 21 Rule 101 CPC is very clear which prescribes that all questions arising between the parties in a proceeding in an application under Rule 97 or Rule 99 shall be determined by the Court dealing with the application and not by a separate suit. It appears that the petitioner had chosen to file an independent suit, as mentioned above being Title Suit No. 235/2022.

7. It is seen that the learned Munsiff had taken into consideration the aforesaid fact of filing of an independent suit wherein the petitioner would have all the rights to pray for an injunction which perhaps he had done and was not successful.

8. The jurisdiction conferred under Article 227 of the Constitution of India is a supervisory jurisdiction wherein this Court is to supervise whether the orders



passed by the Subordinate Court is in accordance with law and within the jurisdiction conferred. The said powers are to be exercised in a restricted manner and not in a routine manner.

9. The Hon'ble Supreme Court in the case of ***Garment Craft vs. Prakash Chand Goel*** reported in ***(2022) 4 SCC 181***, after discussing the earlier cases, has laid down as follows on the aspect of exercise of jurisdiction under Article 227 of the Constitution of India.

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. *Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* has observed : (SCC pp. 101-102, para 6)*

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is



examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

10. In the instant case, this Court is of the considered opinion that the reasons cited in the impugned order dated 14.11.2023 are cogent, plausible and acceptable and there is no occasion to substitute the said reasons.

11. Petition accordingly stands dismissed.

JUDGE

Comparing Assistant