

Assam Schedule VII, Form No. 132.

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT OF APPEAL/CASE

DISTRICT: DHUBRI.

IN THE COURT OF THE CIVIL JUDGE DHUBRI

Present: **-Smti D. Boro, A.J.S.**

Civil Judge, Dhubri.

**Misc. Appeal No. 16/2018**

16<sup>th</sup> day of August, 2019.

1. **Afiul Islam @ Rahman** ----- Appellant

**VS.**

1. **Saydor Ali and others** ----- Respondents

This appeal coming on this day (or having been heard on):- 29/07/19

In the presence of:

**Mr. N.E.S.A. Shaheed** ----- Ld. Advocate for Appellant.

**Mr. A.R. Ahmed** ----- Ld. Advocate for Respondents.

And having stood for consideration to this day, the Court delivered the following judgment:

### **J U D G M E N T**

1. This appeal has been preferred against the impugned order dated 03-11-2018 passed by Ld. Munsiff, Hatsingimari in T.Ex. Case No. 21/16 vide which the learned Trial Court dismissed the petition.
2. Then appeal was admitted, LCR was called for and received. Respondents appeared and contested this appeal.
3. The appellant has preferred this appeal on the following grounds-

- i) The learned Trial Court, Hatsingimari erred both in law and facts in deciding the petition No.15/16.
  - ii) The learned Trial Court, Hatsingimari viewed the whole contents of the petition from a wrong angle and has come to an erroneous decision.
  - iii) The learned Trial Court, Hatsingimari dismissed the petition without applying judicial mind.
  - iv) The appellant filed the petition along with proper explanation but the learned Trial Court, Hatsingimari dismissed the same and has come to an erroneous decision.
- 4.** The appellant filed execution case being T.Ex.No.21/2016 along with a petition under U/S 6 of the Limitation Act, 1963 for allow the applicant (appellant) to file the execution petition U/O 21 R.11 CPC.
- 5.** In this petition U/S 6 of the Limitation Act, it is stated that Abdul Hannan Bepari who is the father of the appellant expired on 02-11-2004 leaving the applicant and proforma O.P. as his legal heirs. At the time of death, except the proforma O.P. No.1 & 2 other legal heirs of Abdul Hannan Bepari were minors and the family member had fallen in acquit financial hardship due to his death. The proforma O.P. No.1, widow of Abdul Hannan Bepari was illiterate and proforma O.P.No.2 is a handicap person and they are somehow maintaining the family. On 2<sup>nd</sup> week of May 2015, proforma OP No.2 Mister Zinnat the elder brother of the appellant found a file of case record along with some documents of land thereafter same has been taken to an advocate and on searching through the Ld. Advocate came to know that T.S.No.232/1995 was decreed in favour of Abdul Hannan Bepari. Thereafter, a petition was filed on 12-05-2015 for certified copy of judgment and decree of T.S.No.232/1995 and the same was delivered on 28-05-2015. Immediately an application U/O 21 Rule 11 CPC was preferred for execution of judgment and decree of T.S.No.232/1995. But during pendency of the same as it was learnt that due to wrong calculation of age of the applicant the execution petition being

T.Ex.No.3/2016 was submitted during minor age of the appellant and as the decreetal land fell in the share of the applicant as per family arrangement, the T.Ex.No.3/16 was withdrawn with liberty to file execution petition afresh. After withdrawal of T.Ex.No.3/16 the applicant (appellant) submitted a petition U/O 21 Rule 11 CPC along with this application before the learned Munsiff for execution of decree passed in T.S.No.232/1995 on 30-01-1997 in favour of Abdul Hannan Bepari (father of applicant). Since decreetal land of T.S. 232/1997 falls in the share of the applicant the other legal heirs of Lt. Abdul Hannan Bepari has discharged from the liability to take step to file execution. The applicant had no knowledge regarding filing and decree of T.S.No.232/1995 till May, 2015 and on the other hand the applicant was minor till 01-01-2016 as such he was legally debarred to file any application/petition for execution of judgment and decree of T.S. No.232/1995. The applicant after attaining majority under the Indian majority Act has filed the execution petition. It is stated that judgment and decree of T.S. No.232/1995 was passed on 30-01-1997 in favour of Abdul Hannan Bepari and the father of the applicant died on 02-11-2004 i.e. within limitation period to file execution petition of the decree, but he left the applicant as minor at the time of his death. Hence this petition.

- 6.** The proforma O.P.No.1 to 4 have filed the written objection and admitted the facts of the petition.
- 7.** The J.D. No.1 has filed the written objection against the petition u/s 6 of the Limitation Act, 1963 and contested the same. It is submitted that the petition is not maintainable in law and manner; petitioner suppressed the material facts in filing the instant petition. It is submitted that the delay is intentional. So the J.D. prayed to reject the petition with costs.
- 8.** Points for determination:

(1) Whether the Ld. Trial Court erred in reaching the findings?

**9. Discussions, Reasons and Decision:**

**10. Point No.1:**

S.6 of the Limitation Act relates to legal disability of the person who can file application for the execution of a decree or is entitled to institute a suit. In our instant case, the plaintiff was the father of the appellant and the suit filed by the father of the appellant was decreed. So, in simple words, it is the father of the appellant who can file an application for the execution of the decree. The decree was passed on 30-01-1997 in favour of Abdul Hannan Bepari, the father of the applicant who died on 02-11-2004. Under Article 136 of the Limitation Act, Abdul Hannan Bepari could file the execution within 12 years from the date of the decree. So, the limitation period to file execution case had expired on 30/01/09. The legal disability which is meant by S.6 of the said Act at first relates to the decree-holder and secondly to his legal representatives. In our present case the legal disability is minority of the appellant. The appellant is not the sole heir of his father. The proforma OP No.1 to 5 are also the legal heirs of Lt. Abdul Hannan Bepari. The point to be seen is whether all legal heirs of Lt. Abdul Hannan Bepari were legally disable to file the execution case at the time of death of Abdul Hannan Bepari or within the limitation period. It is written in the petition u/s.6 Limitation Act that at the time of death of Abdul Hannan Bepari, proforma OP No.1 & 2 were major and rest OPs were minor. The reason of not filing execution case by said proforma OP No.1 & 2 is projected as the proforma OP No.1 who is the widow of Lt. Abdul Hannan Bepari is an illiterate lady and proforma OP No.2 is a handicap person. Now, it is clear from the petition of the appellant itself that proforma OP No.1 & 2 did not have any legal disability as laid down in S.6 of the Limitation Act. The ground of illiteracy and physical handicap are not legal disability covered by S.6 of the Limitation

Act. So, we can see that the proforma OP No.1 & 2 could file the execution case within the limitation period. The ground that as the decreetal land falls in the share of the appellant, hence the other legal heirs had not taken the liability to file execution case has no stand. Hence, the appellant waited till he gets majority to file the execution case is not acceptable. The proforma OP No.1 & 2 being the legal heirs of Lt. Abdul Hannan Bepari did not have any disability as laid down in S.6 of the Limitation Act at the time of death of Abdul Hannan Bepari and could have filed the execution case within the limitation period. The Court need not look into the fact as to in whose share the decreetal land fell and thereafter to consider whether that person had any legal disability to file execution case or not. The stand of the appellant that proforma OP No.1 & 2 could not file the execution case due to illiteracy and physical handicap is of no value. So, I find that the appellant had legal disability to file the execution case within the limitation period cannot be considered due to the reason that other legal heirs of Lt. Abdul Hannan Bepari viz. proforma OP No.1 & 2 did not have any legal disability to file the execution case within the limitation period.

**11.**I find that the Ld. Trial Court rightly rejected the prayer of the appellant and the Ld.

Trial Court has not erred in reaching the findings.

**12.** In view of the above findings, the Misc. Appeal is dismissed on contest without cost.

The order dtd. 03/11/18 passed by Ld. Munsiff, Hatsingimari in T.Ex.21/16 is hereby upheld.

**13.**Send back LCR. Send a copy of this order to Ld. Trial Court.

**14.**Given under my hand and seal of this Court this 16<sup>th</sup> day of August 2018.

Typed by me----

D. BORO  
Civil Judge, Dhubri

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Civil Judge, Dhubri