

GAHC010005592026



2026:GAU-AS:697

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

Case No. : CRP(IO)/4/2026

BILLALUDDIN AND 5 ORS.
S/O LATE TAHERUDDIN, R/O SAPATKARA, MOUZA- KHATUWAL, P.O.-
SAPAT KARA, P.S.- RUPAHIHAT, DIST- NAGAON, ASSAM, PIN-782140

2: ALALUDDIN
S/O LATE TAHERUDDIN
R/O SAPATKARA
MOUZA- KHATUWAL
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
ASSAM
PIN-782140

3: JALALUDDIN
S/O LATE TAHERUDDIN
R/O SAPATKARA
MOUZA- KHATUWAL
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
ASSAM
PIN-782140

4: KAMALUDDIN
S/O LATE TAHERUDDIN
R/O SAPATKARA
MOUZA- KHATUWAL
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
ASSAM
PIN-782140

5: RISEUDDIN
S/O LATE TAHERUDDIN
R/O SAPATKARA
MOUZA- KHATUWAL
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
ASSAM
PIN-78214

VERSUS

SAMALA KHATUN AND 6 ORS.
W/O LATE ALI HUSSAIN, R/O VILL- SPAPT KARA, P.O.- SAPAT KARA, P.S.-
RUPAHIHAT, DIST- NAGAON, PIN-782140, ASSAM

2:ABUL HASIM
S/O LATE ALI HUSSAIN
R/O VILL- SPAPT KARA
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
PIN-782140
ASSAM

3:ABUL KASEM
S/O LATE ALI HUSSAIN
R/O VILL- SPAPT KARA
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
PIN-782140
ASSAM

4:ABUL KALAM
S/O LATE ALI HUSSAIN
R/O VILL- SPAPT KARA
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
PIN-782140
ASSAM

5:ABUL MALIK
S/O LATE ALI HUSSAIN
R/O VILL- SPAPT KARA
P.O.- SAPAT KARA
P.S.- RUPAHIHAT

DIST- NAGAON
PIN-782140
ASSAM

6:MUSSTT. SAFIYA KHATUN
D/O LATE ALI HUSSAIN
R/O VILL- SPAPT KARA
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
PIN-782140
ASSAM

7:MUSSTT. RABIYA KHATUN
D/O LATE ALI HUSSAIN
R/O VILL- SPAPT KARA
P.O.- SAPAT KARA
P.S.- RUPAHIHAT
DIST- NAGAON
PIN-782140
ASSA

Advocate for the Petitioner : MR M J QUADIR, MR. A K HANNAN

Advocate for the Respondent : ,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 21.01.2026

Heard Mr. M. J. Quadir, learned counsel for the petitioners.

2. This is an application under section 227 of the constitution of India read with Section 151 CPC against the impugned order dated 21.11.2025 passed by learned Civil Judge, (Junior Division), Nagaon in Title Execution No. 2/2022, whereby the petition filed under Section 47 of the CPC in Title Execution was dismissed.

3. It is further submitted by Mr. Quadir, that initially Title Suit No. 19/2010

was filed by the respondent/plaintiff but during the pendency of the said case as per the decision of merit the plaintiff/decreed holder agreed to withdraw the suit and both the parties were also agreed with the decision of the court and thereafter, the plaintiff/decreed holder also withdrew the title suit with assurance that they would withdraw the suit. And after one week, it was also informed to the present petitioner that case has already been withdrawn. But thereafter, behind the back of the petitioner/defendant the plaintiff side had filed a Title Execution No. 15/2016 and which was filed on 11.08.2016 and this was within the period of two years from the date of judgment and decree passed in Title Suit No. 19/2010. However, the said execution proceeding was dismissed by the Court on 17.07.2018 due to default of the plaintiff/ decreed holder on 4/5 occasion. But after the disposal of the said Title Execution No. 15/2016 the present Title Execution was filed on 24.08.2022 which was numbered as Title Execution Case No. 02/2022 behind the back of the present petitioners and though it was filed after seven years, but no notice was issued which was required under Order XXI Rule 22 of CPC. But the present petitioner/ judgment debtor came to know about the said proceedings only when the Nazir visited suit premises for delivery of possession. Thereafter, the petitioner immediately came before the learned Civil Judge, (Junior Division,) with a petition under Section 47 for dismissal of the said Title Execution which has violated the provision of Order XXI Rule 22 CPC, but the learned Court below did not consider this fact and had dismissed the petition filed by the present petitioner under Section 47 CPC which was registered Misc.case(J) No.170/2022 vide its order dated 21.11.2025.

4. It is submitted by Mr. Quadir that the said title execution is not maintainable for want of notice which was mandatorily required to be issued to

the present petitioner/judgment debtor under the provisions Order XXI Rule 22 CPC.

5. Hearing the submission made by learned counsel for the petitioner, I have also perused the case record and the order which has been annexed along with the petition dated 21.11.2025 in Misc.case(J) No.170/2022 in connection with Title Execution Case No. 2/2022 and TS No. 19/2010.

6. On perusal of the order it is seen that the learned Court below had observed that the purpose of issuing notice under Order XXI Rule 22 has already been served or coming to know about the proceeding, the petitioners have already appeared files show cause reply in the said proceeding, and with the said observation the Misc(J) was dismissed which was filed under Section 47 CPC. However, it is seen that the said Misc.case was dismissed wherein the present petitioner had shown the causes only for non-issuing of notice under Order XXI Rule 22 CPC, but this Court is of the opinion that an opportunity may be given to the present petitioner to file their show cause reply as to why the decree passed in TS No. 19/2010 is not executable or may be given an opportunity to file objection to that regard.

7. In view of this, the petitioner is at liberty to file a fresh application under 47 any other provision to that aspect against the execution of decree passed in TS No. 19/2010 if so advised and in that event the learned Court below is hereby directed to hear both the parties and to dispose of the matter accordingly.

8. Further the petitioner is hereby directed to file a petition in the nature as stated above within 15 days from the date of order today if so advised and the leaned trial Court below will also dispose of the matter preferably within one

month after hearing giving opportunity to both the parties for hearing. Till date the execution proceeding under Title Execution No.2/2022 may be stayed.

9. With the above observations the present petitioner is disposed of at the motion stage itself.

JUDGE

Comparing Assistant