

GAHC010008442026



2026:GAU-AS:3037

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

Case No. : CRP/7/2026

DHRUBAJYOTI SARMA AND 5 ORS.
SON OF LATE HAREN SARMA, RESIDENT ARE TENGABARI, WARD NO. 6,
MANAGALDAI TOWN, MOUZA- CHOPAI, P.O. AND P.S.- MANGALDAI, DIST-
DARRANG.

2: PANKAJ SARMA
SON OF LATE HAREN SARMA
RESIDENT ARE TENGABARI
WARD NO. 6
MANAGALDAI TOWN
MOUZA- CHOPAI
P.O. AND P.S.- MANGALDAI
DIST- DARRANG.

3: RENU DEVI
DAUGHTER OF LATE HAREN SARMA
RESIDENT ARE TENGABARI
WARD NO. 6
MANAGALDAI TOWN
MOUZA- CHOPAI
P.O. AND P.S.- MANGALDAI
DIST- DARRANG.

4: RITA DEVI
DAUGHTER OF LATE HAREN SARMA
RESIDENT ARE TENGABARI
WARD NO. 6
MANAGALDAI TOWN
MOUZA- CHOPAI
P.O. AND P.S.- MANGALDAI
DIST- DARRANG.

5: DHARANI SARMA
SON OF LATE HIREN SARMA
RESIDENT ARE TENGABARI
WARD NO. 6
MANAGALDAI TOWN
MOUZA- CHOPAI
P.O. AND P.S.- MANGALDAI
DIST- DARRANG.

6: KHAGEN SARMA
SON OF LATE HIREN SARMA
RESIDENT ARE TENGABARI
WARD NO. 6
MANAGALDAI TOWN
MOUZA- CHOPAI
P.O. AND P.S.- MANGALDAI
DIST- DARRANG

VERSUS

JOGENDRA CHANDRA SARMA
S/O LATE REBIDEV SARMA, R/O TENGABARI, WARD NO.6, MANGALDAI
TOWN, MOUZA- CHOPAI, P.O. AND P.S.- MANGALDAI, DIST- DARRANG,
ASSAM.

Advocate for the Petitioner : MR. D MOZUMDER, MS D DEVI, MR. S BISWAS

Advocate for the Respondent : MR. N CHAKRAVORTY (FOR CAVEATOR), MR. C GOSWAMI
(FOR CAVEATOR)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

27.02.2026

Heard Mr. S. Biswas, learned counsel for the petitioners and Mr. C. Goswami, learned counsel for the respondent.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have challenged the order, dated 20.12.2025, passed by the learned

Civil Judge (Junior Division) No. 1, Darrang at Mangaldai (executing court hereinafter), in Misc. (J) Case No. 83/2025, filed under Section 47 of the CPC and in the Petition No. 2380/2025, arising out of Title Execution Case No. 83/2025, filed under Order 26 Rule 9 of the CPC.

3. Mr. Biswas, learned counsel for the petitioners submits that the Title Execution Case No. 08/1994, was filed by the respondent herein for execution of the decree passed by the learned Civil Judge, Darrang at Mangaldai, in Title Appeal No. 04/2002, dated 04.07.2006. Mr. Biswas further submits that the said decree was vague and it did not specify the reliefs so granted to the appellant/plaintiff therein, rather it simply stated that the appeal is allowed granting the reliefs being claimed in the plaint and that the said reliefs were also vague and as such said decree is not executable and therefore, the petitioners herein, had filed an application under Section 47 read with Section 151 of the CPC regarding the said vague decree so passed in the Title Appeal No. 04/2002.

3.1. Mr. Biswas further submits that the impugned order is challenged mainly on the ground that the learned executing court had not dealt with the issue so raised in the petition under Section 47 of the CPC regarding vagueness of the decree and its execution. He also submits that there is also discrepancy in the boundary of the decretal land and that the learned executing court did not decide the said petition on merits.

3.2. Mr. Biswas also submits that the boundary of the decretal land is also vague and therefore, the petitioner had filed an application, under Order 26 Rule 9 read with Section 151 of the CPC, for appointment of a Commission to inquire about the suit land. But, vide impugned order dated 20.12.2025, the learned executing court had dismissed the same.

3.3. Mr. Biswas also submits that the learned executing Court had misinterpreted the order dated 02.05.2025, passed by a Coordinate Bench of this Court, in CRP(I/O) No. 55/2025. He pointed out that in the said proceeding, while directing the learned executing court to execute the decree, dated 30.06.2006, this Court had never dealt with the issues raised by the petitioners herein on merit, and it simply directed to execute the decree in view of the decision of Hon'ble Supreme Court in the case of **Periyammal (Dead) Through Lrs. and Others vs. V. Rajamani & Another**, reported in (2025) 9 SCC 568. Therefore, Mr. Biswas has contended to interfere with the order dated 20.12.2025, passed by the learned executing court and to issue direction to pass a fresh order deciding the petition under Section 47 of the CPC on merit and also to appoint a Commission, under Order 26 Rule 9 read with Section 151 of the CPC.

4. Per-contra, Mr. Goswami, learned counsel for the respondent has vehemently opposed the petition. He submits that the Title Suit No. 23/1977, was instituted in the year 1977, before the learned Civil Judge (Senior Division) No. 1, Darrang at Mangaldai, wherein, vide judgment and decree dated 23.01.1982, suit was decreed in favour of the respondent herein. Then being aggrieved, the predecessors of the present petitioners had preferred an appeal, being Title Appeal No. 52/1987, before the learned Assistant District Judge, Darrang at Mangaldai. But, the same was dismissed vide judgment and decree dated 17.03.1994. Thereafter, the predecessors of the petitioners preferred Second Appeal No. 137/1994 before this Court wherein, vide judgment dated 08.08.2000, the matter was remanded back. Mr. Goswami further submits that during the pendency of the second appeal, the respondent herein filed an execution case, being Title Execution Case No. 08/1994, before the learned

Munsiff No. 1, Darrang at Mangaldai, but the same was stayed by this Court.

4.1. Mr. Goswami also submits that when the matter was remanded, the learned Civil Judge (Junior Division) No. 1, Darrang at Mangaldai, had registered the suit as (R) Title Suit No. 23/1977 and after hearing both the parties and perusing the records, the suit was dismissed, vide judgment and decree dated 24.12.2001. Then, being aggrieved, the respondent herein had preferred an appeal, being Title Appeal No. 04/2002, before the learned Civil Judge, Darrang at Mangaldai and the same was allowed and the suit was decreed vide judgment dated 30.06.2006, and decree dated 04.07.2006. Then being aggrieved, the predecessors of the petitioners preferred a second appeal before this Court, being RSA No. 140/2007. But, the same was dismissed vide judgment and order dated 21.04.2023, and decree dated 14.03.2024. On dismissal of the second appeal, the execution case was revived and the petitioners herein filed an application, under Section 47 read with Section 151 of the CPC, before the learned Munsiff No. 1, Darrang at Mangaldai, challenging the identity of the decretal land and structures over the same, which was registered as Misc. (J) Case No. 70/2023 and vide order dated 31.05.2025, the said application was dismissed.

4.2. Mr. Goswami further submits that the respondent herein had instituted the execution proceeding on the basis of the judgment and decree dated 23.01.1982, wherein the Periodic Patta number was mentioned as P.P. No. 03, not as P.P. No. 39 and during the pendency of the said execution, the respondent herein filed an application, under Section 152 of the CPC, before the learned Civil Judge (Junior Division) No. 1, Darrang at Mangaldai, in the (R) Title Suit No. 23/1977, seeking correction of the decree dated 23.01.1982, by incorporating Periodic Patta No. 39 instead of Periodic Patta No. 3. But, the

same was dismissed, vide order dated 18.12.2024. Then, the respondent herein challenged the said order before this Court, by filing a civil revision petition, being CRP (I/O) No. 55/2025 and the same was disposed of, vide judgment and order dated 02.05.2025, directing the learned executing court to proceed with the execution of the decree dated 30.06.2006, not on the basis of the decree dated 23.01.1982, and to complete the same in view of the decision of Hon'ble Supreme Court in the case of **Periyammal (supra)**.

4.3. Mr. Goswami also submits that having exhausted all the available remedies, now the petitioners herein cannot reopen the issue again by filing application under Section 47 of the CPC and also under Order 26 Rule 9 of the CPC and that too after issuance of the WRIT by the court below.

4.4. Under such circumstances, Mr. Goswami submits that the impugned order, by which the petitions filed by the petitioners herein is dismissed by the learned executing court, suffers from no infirmity or illegality requiring any interference of this Court and that by filing a petition, under Section 47 of the CPC, the petitioners cannot reopen the issues which they have failed to raise in the earlier round of litigation and that appointment of a Commission, under Order 26 Rule 9 of the CPC, also does not arise at this stage, as there is no report to suggest that the decree is not executable in view of the discrepancy in the boundary, as contended by the petitioners.

5. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 20.12.2025, passed by the learned executing court and also perused the order dated 02.05.2025, passed by a Coordinate Bench of this Court in CRP(I/O) No. 55/2025.

6. It appears that the learned executing court, in the impugned order dated 20.12.2025, had elaborately dealt with the issues raised by the petitioners herein. The learned executing court had observed that the issues raised by the petitioners herein is substantially based on the alleged contradictions between the pleadings and the evidences, inconsistencies in the number of houses stated by witnesses and disputes regarding boundaries as deposed during the trial and such objections necessarily require re-appreciation of evidence and reassessment of factual findings recorded by the learned Civil Judge, Darrang at Mangalidoi and that it is trite law that an executing court cannot reassess or re-evaluate the evidence, irrespective of how the evidence is sought to be projected at the execution stage and doing that would truly exceed the jurisdiction of the executing court and all such issues stood concluded with the decree dated 30.06.2006, which has attained finality upon dismissal of the second appeal.

6.1. The learned executing court has also observed that during the course of actual field execution, if any genuine and specific difficulty arises with regard to the identification of the suit land or its boundaries or delivery of possession, such issue, if any, shall be dealt with by the court strictly in accordance with law, under Section 47 of the CPC.

6.2. Further, in respect of the application, under Order 26 Rule 9 read with Section 151 of the CPC, the learned executing court has held that the issue raised in the application is not founded on any ambiguity in the decree and it may appoint a Commissioner only when there is ambiguity in the decree itself, particularly with regard to the identity of the property to be delivered.

7. The finding of the learned executing court, while examined in the light of the materials available on the record and also in the light of the submissions of

learned counsel for both the parties, this Court finds no illegality or infirmity or perversity in the order of the learned executing court, dated 20.12.2025, requiring any interference of this Court.

8. The decree dated 30.06.2006, has indisputably attained the finality with the dismissal of the second appeal preferred by the present petitioners. Now, the decree is being put to execution. And if any practical difficulty arises in respect of the execution of the decree, in the field, during execution, then the same can be dealt with in accordance with Section 47 of the CPC.

9. This as has been dealt with by Hon'ble Supreme Court in para No. 17 of the decision in **Pratibha Singh vs. Shanti Devi Prasad**, reported in (2003) 2 SCC 330 as under:-

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case – which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to

execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.”

10. In the instant case though the petitions so filed by the petitioners herein were rejected by the learned executing court, yet, the scope for raising the same has not been closed for ever by the learned executing court, which is apparent from the observation made by the learned executing court in paragraph No. 47 of the order dated 20.12.2025.

11. Since the decree, so put to execution, is yet to be executed, and if any practical difficulty arises in the field in execution of the same, then the same can be addressed before the same being executed. And before confronting with such difficulties in the field, appointment of the commission, to the considered opinion of this Court is pre-mature at this stage. As held in the case of **Pratibha Singh (supra)** a decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission, and such slip or omission can be cured by the executing court by invoking Section 47 CPC. Therefore, no fault can be found with the impugned order so passed by the learned executing court.

12. In that view of the matter and also in view of the observation and direction so made by the Hon'ble Supreme Court in the case of **Periyammal (supra)**, this Court is of the view that there is no merit in this petition and accordingly, the same stands dismissed, leaving the parties to bear their own

costs.

13. However, it is provided that when a question relating to execution, discharge or satisfaction of the decree arises then the learned executing court shall deal with the same in accordance with law.

JUDGE

Comparing Assistant