

GAHC010075012023



2026:GAU-AS:7215

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

Case No. : CRP(IO)/99/2023

SANKARLAL AGARWALA @ BHARUKA
S/O LATE BANSHIDHAR AGARWALA, R/O SILBHANGA, JAGIROAD, P.O.
AND P.S.-JAGIROAD, DIST-MORIGAON, ASSAM

VERSUS

SUMAN DEVI SURANA AND 3 ORS
W/O SRI JAHARIMAL SURANA, R/O H.N. ROAD NEAR HARISABHA, P.O.-
DHUBRI, OPPOSITE APEX BANK LIMITED, WARD NO. 6, DIST-DHUBRI,
ASSAM, PIN-783301

Advocate for the Petitioner : MR. K K DEY, MR V K BAROOAH

Advocate for the Respondent : MR G N SAHEWALLA (R-1), MS T J SAHEWALLA (R-1),MR H K SARMA (R-1),MS. S. TODI (R-1),MD ASLAM (R-1)

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 25.05.2026

Heard Mr. K.K Dey, learned counsel learned counsel for the petitioner as well as Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. K. Bhattacharyaa, learned counsel for respondent no. 1.

2. By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 15.03.2023, passed by the learned Munsiff No. 1, Dhubri [now Civil Judge (Junior Division) No.1, Dhubri], in petition no.269 dated 13.02.2020, arising out of T.Ex. No. 2 of 2018.

3. The petitioner, namely, Sankarlal Agarwala @ Bharuka has instituted the suit against the respondents for declaration and injunction, amongst others, claiming that the respondents had obtained fraudulent and collusive decree dated 04.09.2017, in T.S. No. 361/2011, from the learned Court of Munsiff No. 1, Dhubri. By arraying only the defendant nos. 2, 3 and 4 as well as Smt. Puspa Devi Bharuka as defendants in the said T.S. No. 361/2011.

4. The said T.S. No. 361/2011 was filed by the respondent no. 1 as plaintiff for eviction and realization of arrear rent from the said Smt. Puspa Devi Bharuka as well as respondent nos. 2, 3 and 4. The respondent no. 1 claimed ownership of the suit, house and property by virtue of purchase thereof from Bhuneswar Prasad Ram vide registered sale deed no. 6342 of 1985. The deceased Banshidhar Bharuka, was the proprietor of M/s. Mahabir Stores, was the tenant in respect of the suit premises under the erstwhile vendor. Upon purchase of the suit premises, the respondent no.1 informed the

said tenant on 29.11.1985 about the sale/ purchase, requiring payment of rent to the said respondent no.1. It was projected that the rent of the tenanted premises was collected by the husband of the respondent no.1 through his staff from the tenant which was fixed @ Rs.325/- per month payable within first week of every calendar month. It would suffice to mention that after discussing 9(nine) issues which arose for decision in the said T.S. No. 361/2011, the tenants were held to be defaulters and the suit was decreed with cost by holding that the defendants were liable to pay rent and to be evicted from the suit premises, directing the arrear rent of Rs. 3,575/- to be due and realizable and to pay Rs.325/- per month during the pendency of the suit and cost of the suit.

5. At this juncture, the learned senior counsel for the respondent no.1 has produced a copy of the order dated 31.10.2019, passed in CRP/56/2019 to project that against the judgment and decree dated 01.02.2019, passed in Title Appeal No. 41/2017 the original defendant in said T.S. No. 361/2011, had preferred a Regular First Appeal before the Court of learned Civil Judge, Dhubri [now Civil Judge (Senior Division), Dhubri]. The first appeal was allowed and thereafter, the respondent no.1 approached this Court under Section 115 of the CPC which was registered as CRP/56/2019. This Court by an order dated 31.10.2019, allowed the revision and set aside the first appellate judgment and decree. The observation of this Court in paragraph no. 16 of the order dated 31.10.2019, passed in CRP/56/2019 is extracted below:-

Admittedly, the defendants/respondents are carrying out their business from the tenanted premises and on a specific query to Mr. Sahewalla for allowing the defendants/respondents some time to vacate the tenanted premises, he agrees for

allowing 3 (three) months time. I am unable to accept the said submission of Mr. Sahewalla on the ground that admittedly, the defendants/petitioners are running the business from the suit premises and in order to facilitate their accommodation in some other premises, in my considered view, the said three months period is not sufficient and accordingly six months time from today is granted to the defendants/ respondents to vacate the tenanted premises. However on failure on the part of the defendants/ respondents to vacate the tenanted premises on expiry of the stipulated period of six months, the plaintiff/ petitioner shall be at liberty to go for execution of the decree for ejectment of the defendants/ respondents by due process of law through the executing court. It is further directed that during the occupation of suit premises, the defendants/ respondents shall pay the rent duly to the plaintiff/petitioner and in addition to that the defendants/respondents shall give an undertaking before the trial court that they would vacate the tenant premises on expiry of the 6(six) months period from today. The said undertaking will be given by the defendants/respondent within a period of one month from today. Accordingly, the revision petition succeeds.

6. Thereafter, the petitioner being a third party had filed T.S. No.01/2020, before the Court of learned Civil Judge, Dhubri for declaration and permanent injunction as stated above claiming one-fourth share in the business of M/s. Bharuka Trading. It appears that deceased Banshidhar Bharuka was a tenant under Bhuneswar Prasad Ram since 1970 and was operating business in the name and style of M/s. Mahabir Stores, on the suit land and later on, the name of firm was changed to M/s. Bharuka Trading and the petitioner claimed to be the son from the first wife of his father and was residing in the suit premises and carrying business along with his father. It is projected that the suit was collusive and only filed against Smt. Puspa Devi Bharuka and respondent nos. 2, 3 and 4 without disclosing the name of the petitioner, who was also one of the sons of Late Banshidhar Agarwala. It is stated that the said defendants committed a fraud to deprive the petitioner of the suit property. It was also projected that the defendant/ respondent's nos. 2 to 4 always made false statements regarding the status of the said

premises. Accordingly, claiming right in the suit premises as well as business in the extent of one-fourth share, suit premises and business M/s. Bharuka Trading, the suit for declaration and permanent injunction was filed for a decree that the defendant/ respondent nos. 2, 3 and 4 with bad intention to deprive the petitioner/ plaintiff, have not stated about the anything about the right and share of the plaintiff in the suit premises and business of M/s. Bharuka Trading and thereby played fraud. The following prayer was made in the plaint:

a. The suit to be decreed declaring Late Banshidhar Bharuka @ Agarwala was a tenant of the suit premises under Bhubaneswar Prasad Ram since 1970.

And on death of Banshidahar Bharuka in the year 2005, the plaintiff, defendant No. 2, 3, 4 and Late Smti P Ushpa Devi Agarwala inherited the tenancy right over the suit premises and on death of Pushpa Devi Agarwala the plaintiff and defendant No. 2-4 jointly inherited the suit premises and the business of M/S. Bharuka Trading.

b. the suit be decreed declaring that, the defendant No.1- Smti. Suman Devi Surana allegedly purchased land measuring 1K. 6L. from land lord-Bhubaneswar Prasad Ram including the suit land/suit premises.

Though defendant No.1 never got possession over the suit premises instituted suit T.S. No. 68/2007, T.S. No. 361/2011 for eviction of defendant No.2 to 4 from the suit premises and got decree on 4/9/17 and to practice fraud plaintiff was not im-pleaded party in T.S. No. 68/07 and T.S. no. 361/11.

c. That, suit be decreed declaring that, the decree in T.S. No. 361/11, CRP No. 56/2019 is a fraudulent, concocted, collusive one obtained unlawful decree suppressing the real facts and the said decree is not executable in law.

A fraudulent decree in T.S. No. 361/2011 is not executable.

d. the suit be decreed declaring that, defendant No. 2, 3, 4 with the bad intention to deprive the plaintiff not stated anything about the right, share of the plaintiff in the suit premises and the business of M/S. Bharuka Trading and thereby played fraud.

e. the suit be decreed declaring the judgement/ decree/ order in T.S. No. 361/2011 and CRP No. 56/2019 without im-pleading plaintiff as party is nullity, fraudulent, collusive, concocted, concealment of real facts decree is invalid, void in law and not binding upon the plaintiff.

f. the suit be decree declaring that the defendant No.1 can not execute decree in T.S. No. 361/11 and evict the plaintiff from the suit premises the decree in T.S. No. 361/2011 is an illegal decree and not executable.

g. a permanent injunction shall be granted restraining the defendant No.1 from executing the decree in T.S. No. 361/2011 and CRP No. 56/2019 evicting the plaintiff from the suit premises.

h. and also grant permanent injunction restraining the defendant No.2, 3, 4 from handing over possession of suit premises in favour of the defendant No.1 to defeat the cause of this suit of the plaintiff.

7. Along with the suit, separate application was filed under Order XXI Rule 29 read with Section 151 CPC, praying for stay of the execution proceedings of T.Ex. No. 02/2018, arising out of the decree passed in T.S. No. 361/2011.

8. The respondents contested the proceedings by filing a written objection and the learned executing Court by order dated 15.03.2023, passed in T.Ex. No. 02/2018, dismissed the said application.

9. The learned counsel for the petitioner had submitted that as the petitioner had claimed right, title and interest in the suit premises as well as in the business which was on tenant, the petitioner would suffer irreparable loss and injury if the decree is executed and the suit being T.S. No. 01/2020, subsequently, re-registered as T.S. No. 23/2021 shall be frustrated. Referring to the provisions of Section 146 of the CPC, it is projected that the heirs and legal representatives are entitled to make an application in the proceedings, though he was not a party to the suit. It is also submitted that the finding of

the learned executing Court holding that the judgment-debtors in T.Ex. No.02/2018 were running the business and were sufficiently represented is not sustainable, *moreso*, when, it was not denied that the petitioner was the son of the original tenant he had the right to be in the suit premises. It is also submitted that petitioner was a necessary party in the execution proceedings. It is further submitted that although the application was filed under Order XXI Rule 29 of the CPC, this Court would have the power to treat the said application as an objection to the execution by a third party and the same be taken up for adjudication under Order XXI Rule 97 of the CPC.

10. The learned senior counsel for the petitioner has submitted that the interest of the petitioner was taken care of by the respondent nos. 2, 3 and 4 and Smt. Puspa Devi Bharuka and therefore, the decree which was passed in T.S. No. 361/2011, could not be resisted by the petitioner. By referring to the case of *Anil Kalra Vs. J.D. Pandey and Ors., (2015) 16 SCC 694*, it has been submitted that claim of tenancy in the absence of any document by dubious ways has to be strongly repelled.

11. It is further submitted that in paragraph no. 3 of the plaint of T.S. No. 23/2021, there is a categorical statement that the petitioner/ plaintiff lives with his father Banshidhar Agarwala in the suit premises and married in the year 1984 and thereafter, left Dhubri for Silbhanga, Jagiroad, in Morigaon District in the year 1988/89 and was then residing/ running business at Guwahati. Accordingly, it is submitted that the petitioner has no interest in the suit premises or business of the firm.

12. It is noticed that in paragraph no. 4 of the plaint of T.S. No. 23/2021, the following statement has been made by the petitioner:-

That, Banshidhar Agarwala father of plaintiff expired on 22/03/2005 of Dhubri in the suit premises.

The plaintiff, defendant No. 2 to 4 and Late Pushpa Devi Bharuka became the tenant for the suit premises and owner of the business M/S. Bharuka Trading.

As the plaintiff residing at Morigaon, the business of M/S. Bharuka now running by the defendant No. 2 to 4 for and on behalf of the plaintiff and defendant No. 2 to 4 (Pushpa Devi Bharuka also expired on 31/05/2015).

13. Thus, there is categorical admission that the business of M/s. Bharuka Trading was being operated by the respondent nos. 2 and 4. However, in so far as the further claim that the respondent nos. 2 to 4 were running business on behalf of the petitioner is not supported by any document on record. If the business is being run on behalf of someone, the said third party would have his name either in the Trade License or in the Sales Tax/GST/CGST records and naturally the source of income would also be reflected in the Income Tax records. However, in the plaint, there is no statement to show how the petitioner has interest in the suit premises and/ or that he has interest over one-fourth share in the business, which is being operated in the suit premises. In this regard the learned executing Court had clearly recorded that the petitioner had stated that the judgment-debtors have been running business on his behalf and therefore, the said statement clearly shows that the petitioner was adequately represented by the other judgment-debtors. In other words, the interest of the petitioner can be presumed to be taken care of the persons who were running the business allegedly on his behalf. The said finding cannot be held to be perverse or inconsistent with the materials available on record.

14. From the copy of the order dated 31.10.2019, passed by the Court in CRP/56/2019, which is the revision filed against the first appellate judgment

where the decree passed in T.S. No.361/2011 was contested, the Court takes notice of the fact that by the said order dated 31.10.2019, the first appellate judgment was set aside and therefore, the decree passed by the learned trial Court was revived. By the said order, this Court granted 6 (six) months time to the judgment-debtors in the decree passed in T.S. No. 361/2011 to vacate the suit premises. Therefore, the suit being originally filed as T.S. No. 01/2020 and subsequently re-registered as T.S. No.23/2021. It appears from Annexure-2 to this application that the same was filed on 20.12.2019 and from the seal of the Court of learned Civil Judge, Dhubri, it appears that the registration of the suit was on 02.01.2020. Therefore, the suit is clearly filed to frustrate the decree-debtors that was passed in T.S. No. 361/2011, and to frustrate the order dated 31.10.2019, passed by this Court in CRP/56/2019, with no document on record to show how the petitioner had interest in the suit premises as co-tenant or as the sharer in the business that is being operated by the respondent nos. 2, 3 and 4. In the plaint of T.S. No. 23/2021 as well as in the petition no. 269 dated 13.02.2020 which was filed by the petitioner in execution proceedings of T.Ex. No.02/2018, there is no statement that the petitioner had tendered any rent to the respondent no.1. Thus, the absence of any statement creating any tenancy the absence of any document which demonstrate that the petitioner has any interest whatsoever on the suit premises or in the business running therefrom, the Court does not find any infirmity or perversity in the order dated 15.03.2023, passed by the learned Munsiff No. 1, Dhubri, in T.Ex. No.02/2018.

15. In the considered opinion of the Court, the petitioner had filed a suit alleging fraud in obtaining the decree in T.S. No.361/2011 and has filed an objection under Order XXI Rule 26 CPC, the submission of the learned counsel

for the petitioner that the objection be directed to be treated as an objection under Order XXI Rule 97 CPC cannot be acceded to as such a decision can be only by the sole discretion of the petitioner to do needful before the learned executing Court. As per the procedure prescribed under Order XXI Rule 101 of the CPC, questions that can be determined under Order XXI Rule 97 shall be determined by the Court in the application and not by a separate suit. Therefore, it would be within the discretion of the petitioner to elect as to whether they would proceed with the suit or contest the execution proceeding by way of objection. In this case, the application for stay was moved under Order XXI Rule 29, which is a provision which is a provision which permits applications to be filed for stay of the execution pending suit between the decree-holder and judgment-debtor. The petitioner claimed to have an interest in the suit premises and therefore, it is not open to the Court to pass any order on the oral prayer made by the learned counsel for the petitioner to issue any direction to the learned executing Court to treat the objection of the petitioner under Order XXI Rule 97 of the CPC. It would be in the discretion of the petitioner to do the needful as he may be so advised.

16. As this Court is in seisin only in respect of challenge to the order dated 18.03.2023, the determination in this order would be limited to the said impugned order.

17. In view of the discussions above, this Court revision fails and the same is dismissed.

18. Interim order which was passed by this Court by order dated 25.04.2023 stands vacated.

19. There is no order as to cost.

20. As both sides are represented by their learned counsel both sides are directed appear in the proceedings of T.Ex. No. 02/2018, pending before the Court of Civil Judge (Junior Division), Dhubri on 12.06.2026, and by producing a certified copy of the order await for further orders to passed by the said learned Court.

JUDGE

Comparing Assistant