

GAHC010087192026



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

Case No. : I.A.(Civil)/1429/2026

KANAI LAL BANIK
SON OF LATE GOVINDA CHANDRA BANIK
AGED ABOUT 85 YEARS
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM.

VERSUS

AMRARESH SINGH
SON OF LATE ISWAR DAYAL SINGH
RESIDENT OF EAST NARSINGH ROAD
AMBICAPATTY
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788004
DIST. CACHAR
ASSAM ON THE DEATH OF TRANSFEROR BHANUMATI LALA
HER TRANSFEREE

2:SMT MONIKA SINGH
WIFE OF SRI AMARESH SINGH
RESIDENT OF EAST NARSINGH ROAD
AMBICAPATTY
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788004
DIST. CACHAR

ASSAM

3:HRITESH SRIVASTAVA

SON OF LATE MOHHENDRA LAL SRIVASTAVA
RESIDENT OF ITKHOLA
SILCHAR TOWN
P.O. MALUGRAM
P.S. SILCHAR
PIN 788002
DIST. CACHAR
ASSAM

4:HIMANGSHU RANJAN DEB

SON OF LATE HARISH CHANDRA DEB
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

5:RAJENDRA KUMAR SAMSUKHA

SON OF LATE ABHAY CHANDRA SAMSUKHA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
NOTARY BANTI BAISHYA KAMUP GRY G REYD NO. KAM-22 EXPIRY DATE
OVT. 22-5/28 OF A P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

6:BORNALI MAZUMDER

DAUGHTER OF SRI RAMAKANTA MAZUMDER
RESIDENT OF KALAINN BAZAR
P.O. KALAIN BAZAR
P.S. KALAIN
PIN 788
DIST. CACHAR
ASSAM

7:GOURA CHAKRABORTY

SON OF LATE GISPATI NARAYAN CHAKRABORTY

RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

8:MOTI LAL LALA
SON OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM ON THE DEATH OF MOHAN LAL LALA
HIS LEGAL HEIR

9:MONOJ LALA

SON OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

10:DIPAK LALA
SON OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

11:SMTI REETA LALA (BHUIYA)
DAUGHTER OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR

ASSAM

12:SMTI RINA LALA (BHATTACHARJEE)
DAUGHTER OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

13:SMTI MINA LALA (SRIVASTAVA)

DAUGHTER OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

14:SMTI BINA LALA

DAUGHTER OF LATE MOHAN LAL LALA
RESIDENT OF CENTRAL ROAD
SILCHAR TOWN
P.O. SILCHAR
P.S. SILCHAR
PIN 788001
DIST. CACHAR
ASSAM

Advocate for : MR. B D DEKA
Advocate for : MR. D MOZUMDER appearing for AMRARESH SINGH

In
RFACase No. 33/2026

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

07.05.2026

[1] Heard Mr. B.D. Deka, the learned counsel

for the applicant. Also heard Mr. D. Mozumder, the learned Senior Counsel, assisted by Mr. S. Biswas, the learned counsel for the respondent Nos. 1 to 7.

[2] This application under Order XLI Rule 5 of the Code of the Civil Procedure, 1908, read with Section 151 of the said code has been filed by the present applicant, in connection with RFA No. 33/2026, praying for grant of stay of execution of the Title Execution Case No. 04/2012, in respect of the premises, which is presently in possession of the present applicant.

[3] Mr. B.D. Deka, the learned counsel for the applicant has submitted that the present applicant has filed the connected Regular First Appeal No. 33/2026 against the order dated 23.04.2026, passed by the court of the learned Civil Judge (Senior Division) No. 2, Cachar Silchar in Misc.(J) Case 19/2026, arising out of Title Execution Case No. 04/2012.

[4] He submits that Title Execution Case No. 04/2012 has been filed by the present respondents before the Executing Court for execution of the decree, passed in Title Suit No. 23/1987, which was filed by the defendants praying for declaration of their right, title and interest and partition of joint family property.

[5] Mr. B.D. Deka, the learned counsel for the applicant has further submitted that in the aforesaid Title Suit No. 23/1987, the present applicant was not made a

party, though the respondents were aware of the fact that the shop room and the residential premises in which the present applicant is presently residing is in his possession even before the year 1959.

[6] Mr. B.D. Deka, the learned counsel for the applicant has submitted that out of the total land, which is presently in possession of the present applicant, the shop room was lent out to the predecessor-in-interest of the present applicant by the predecessor-in-interest of the respondents as well as the land adjacent to the shop room where the residential house of the present applicant is situated, wherein he is leaving, has been in his possession since a long period of time as he has purchased the *jote* rights in respect of the said land.

[7] He submits that after coming to know about the decree passed in Title Suit No. 23/1987, which also involves the land which is presently in possession of the applicant, he filed the Title Suit No. 82/2021, seeking several reliefs in respect of the portion of the decretal land of Title Suit No. 23/1987, which is in possession of the present applicant.

[8] However, by order dated 26.11.2025, passed in the Misc.(J) Case No. 14/2022 which arose out of the said suit (Title Suit No. 82/2021). The plaint filed by the present applicant in the Title Suit No. 82/2021 was rejected under Order 7 Rule 11(a) of the Code of

Civil Procedure, 1908.

[9] The learned counsel for the applicant further submits that thereafter the present applicant had filed an application under Order XXI Rule 97, 99,100, 101 read with Section 151 of the Code of Civil Procedure, 1908 before the Executing Court in the Title Execution Case No. 04/2012.

[10] He submits that on the basis of the aforesaid petition filed by the present applicant, Misc. Case No. 19/2026 was registered. He submits that by the impugned order dated 23.04.2026, the Executing Court of learned Civil Judge (Senior Division No. 2), Cachar, dismissed the said Misc. Case mainly on the ground that as the present applicant failed to seek the reliefs, which he has prayed for in the aforesaid Misc. Case, in the Title Suit No. 82/2021. It was held by the Executing Court that the petition filed an application under Order XXI Rule 97, 99,100, 101 read with Section 151 of the Code of Civil Procedure, 1908 by the present applicant is barred by Order 2 Rule 2(2) and Rule 2(3) of the Code of Civil Procedure, 1908. It was also held that the petition filed by the present applicant is barred under explanation IV of Section 11 of the Code of Civil Procedure, 1908.

[11] The learned counsel for the applicant has submitted that the fact that the present applicant was a tenant, of the predecessor-in-interest of the present

respondents, in respect of the shop room situated over a portion of decretal land has been acknowledged in the decree passed in Title Suit No. 257/1970 on 31.01.1985. He submits that by the said decree, the decree obtained by the predecessor-in-interest of the present respondents in Second Appeal No. 91/1963 arising out of Title Suit No. 123/1959 was declared as fraudulent and same was set aside. He submits that the predecessor-in-interest of the present respondents were also enjoined from executing the said decree.

[12] The learned counsel for the applicant has submitted that in his application under Order XXI Rule 97, 99,100, 101 read with Section 151 of the Code of Civil Procedure, 1908, he has claimed to be in possession over the portion of decretal land, whereupon the shop room and the residence of the applicant is situated. He has also claimed adverse possession over the area of land over which his residence is situated. He submits that under such circumstances, the application filed by the present applicant under Order XXI Rule 97, 99,100, 101 of the Code of Civil Procedure, 1908 has to be adjudicated by the Executing Court by giving opportunity to both sides to adduce evidence in support of their respective cases even to decide the question of applicability of bar of constructive *Res judicata* as well as to decide the plea of adverse possession.

[13] In support of his submissions, the learned counsel for the applicant has cited ruling of the Apex Court in the following cases:-

a. *"Tanzeem-E-Sufia Vs. Bibi Haliman And Ors."* reported in *"(2002) 7 SCC 50;"*

b. *"Har Vilas Vs. Mohendra Nath & Ors."* reported in *"(2011) 15 SCC 377;"*

c. *"S. Valliammai & Others Vs. S. Ramanathan & Another"* reported in *"2026 SCC OnLine SC 603;"*

[14] The learned counsel for the applicant submits that the grounds taken by the present applicant in the connected Regular First Appeal No. 30/2026 are required to be considered and adjudicated upon in the said appeal. However, he submits that in the meanwhile, unless the proceeding of the Title Execution Case No. 04/2012, is stayed during the pendency of the connected appeal, same may become infructuous. Hence, he prays for granting stay of proceedings of Title Execution Case No. 04/2012 during the pendency of the connected Regular First Appeal.

[15] On the other hand, Mr. D. Mozumdar, the learned Senior Counsel for the respondent Nos. 1 to 7 has submitted that the decree sought to be executed in Title Execution Case No. 04/2012 is of the year 2001, however, due to the delaying tactics adopted by the

present applicant, same could not be executed till date and the decree holders are deprived of enjoying the benefit of the decree.

[16] He submits that the Title Suit No. 82/2021 filed by the present applicant, was rightly dismissed by the trial court by rejecting the plaint filed by the present applicant. He also submits that in the Title Suit No. 257/1970, the injunction was granted in favour of the present applicant only to the extent of preventing the decree obtained in Second Appeal No. 91/1963 arising out of Title Suit No. 123/1959. It was not an injunction from evicting the applicant from the decretal land for all times. He submits that the present respondent No. 1 is the purchaser of the decretal land from the decree holder in whose share the land, which the applicant is presently possessing, fell. However, the present respondents, who are the rightful owners of the decretal land are deprived from recovering the possession of the decretal land due to delaying tactics of the present applicant. He submits that the Executing Court has correctly dismissed the Misc. Case No. 19/2026 on the ground of being barred by the principle of constructive *Res judicata*. He, therefore, submits that no stay of proceedings of Title Execution Case No. 04 of 2012 should be granted at this stage.

[17] I have gone through the submissions of the

learned counsel for both sides. I have also gone through the materials available on record.

[18] Though respondent Nos. 1 to 7 have been represented in this interlocutory application, however, notices are required to be issued to respondent Nos. 8 to 14. Hence, issue notice to the said respondents. The applicant shall take steps for issuance of notice to the respondents by speed post as well as by usual mode within 7(seven) days from the date of this order, returnable on 10.06.2026.

[19] However, in the meanwhile, as this court is of the considered opinion that the issues raised by the applicant in the connected Regular First Appeal are required to be adjudicated upon and as the said appeal has already been admitted, this court deems it just and proper to stay the further proceedings of Title Execution Case No. 04/2012 till next returnable date.

[20] List accordingly.

JUDGE

Comparing Assistant