

GAHC010198772025



2025:GAU-AS:15374

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

Civil Revision Petition (IO)No. 375/2025

1. Subhodeep Roy,
S/o Sri Deniel Roy,
R/o Pailapool, Labacpar, Pt-I,
P.O.- Pailapool, P.S. Lakhipur, Dist-Cachar,
Assam-788098.

Petitioner

-Versus-

1. Madhu Sudan Koiri,
S/o of Late Ram Rosayan Kairi,
R/o Pailapool, Labacpar Pt-I,
P.O. - Pailapool, P.S. Lakhipur, Dist-Cachar, Assam-
788098.
2. Smti Bina Koiri,
D/o Late Ram Rosayan Kairi,
R/o Pailapool, Labacpar Pt-I, P.O. - Pailapool, P.S.
Lakhipur, Dist-Cachar, Assam-788098.
3. Rajan Prasad Koiri,
S/o Late Ram Rosayan Kairi,
R/o Pailapool, Labacpar Pt-I, P.O. - Pailapool, P.S.
Lakhipur, Dist-Cachar, Assam-788098.
4. Amit Prasad Koiri,
S/o Late Ram Rosayan Kairi,

R/o Pailapool, Labacpar Pt-I, P.O. - Pailapool, P.S.
Lakhipur, Dist-Cachar, Assam-788098.

Respondents

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGEMENT AND ORDER(CAV)**

Advocate for the petitioner : Mr. B.J. Ghosh, Advocate.
Advocate for the respondent(s) 1 Mr. G.N. Sahewalla, Senior Advocate.
2 Ms. K. Sharma, Advocate.
Date on which judgment is reserved : 03.11.2025
Date of pronouncement of judgment : 10.11.2025

1. Mr. B.J. Ghosh, the learned counsel for the petitioner. Also heard Mr. G. N. Sahewalla, the learned Senior Counsel, assisted by Ms. K. Sharma, the learned counsel for the respondent Nos. 1 to 4.
2. This revision petition under Section 115 of the Code of Civil Procedure, 1908, read with Section 151 of the said Code, has been filed by the petitioner, namely, Subhodeep Roy, impugning the order dated 29.08.2025, passed in Misc(J) Case No.269/2025, in connection with Title Execution Case No. 05/2005 by the Court of the learned Civil Judge (Senior Division) No. 2, Cachar, Silchar, whereby, an application filed

by the present petitioner, under Order 13, Rule 10 (2), read with Section 151 of the Code of Civil Procedure, 1908, praying for calling of the case records of P.P. Case No. 30/1973-1974, from the Office of Deputy Commissioner, Cachar Sirchar, was rejected.

- 3.** The facts relevant for consideration of the instant revision petition is that the predecessor-in-interest of the respondents had filed Title Suit No. 76/1979, praying for decree of declaration of right, title and interest over the Schedule 1 land and for recovery of khas possession of the land described in Schedule 2, 3 and 4 of the plaint, while evicting the defendants therefrom. The aforesaid Title Suit was contested by the defendants, including the predecessor-in-interest of the present petitioner. The trial court granted the relief to the plaintiff in Title Suit No. 76/1979 respectively for Schedule 1 and 2 land.
- 4.** However, the relief sought for respect of Schedule 3 and 4 land were declined. Being aggrieved by the judgment dated 12.12.1986 and decree dated 17.12.1986 passed by the trial court in Title Suit No. 76/1979, the predecessor-in-interest of the present respondents filed an appeal before the Court of learned Additional District Judge Cachar, Silchar. The said appeal was registered as Title Appeal No. 01/1987. The First Appellate Court, i.e. the Court of the learned Additional District

Judge, Cachar, Silchar lecture by judgment and decree passed on 02.04-2005 filed in Title Appeal No. 01/1987 modified the judgment and decree of the trial court dated 02.04.2005 by holding that the plaintiff is entitled to khas possession of land more elaborately described in Schedule 3 and 4 of the plaint by evicting the defendant No. 2 and defendant Nos. 3-10.

- 5.** Being agreed by the judgment dated 02.04.2005 passed by the First Appellate Court in Title Appeal No. 01/ 1987; the judgment debtor (including the predecessor-in-interest of the present petitioner) filed a regular second appeal before this Court which was registered as RSA No. 230/2005.
- 6.** In the meanwhile, the decree holder had already preferred an execution case for execution of the decree in their favour, which was registered as Title Execution Case No. 05/2005. However, this Court while admitting the regular second appeal stayed the execution of the decree in Title Execution Case No. 05/2005.
- 7.** Ultimately, by judgment dated 08.01.2016 passed in RSA No. 230/2005, the regular second appeal filed by the predecessor-in- interest of the present petitioner and other judgment debtors was dismissed. After dismissal of the aforesaid regular second appeal, the decree holder/ present respondents approached the executing court by filing an application for issuance of rate in Title Execution Case No. 05/2005.

- 8.** It is pertinent to mention herein that the original records of Title Execution Case No. 05/2005 were not traceable. However, in view of the provisions of Rule No. 445 of Chapter 22 of the Civil Rules and Orders of the Gauhati High Court, the executing court on the basis of the certified copies of the decree issued the writ for recovery of possession in respect of Schedule 3 and 4 land mentioned in Title Suit No. 76/1979 of the Schedule of Title Execution Case No.05/2005.
- 9.** In the said Execution Case, the present petitioner had filed an application under Order No. 13, Rule No. 10 (2) of the Code of Civil Procedure, 1908 praying for calling all the records of Title Suit No. 62/1971 and Title Suit No. 335/1981 for complete adjudication of the matter. The said prayer was rejected by the executing court, hence this revision petition has been filed by the present petitioner.
- 10.** The learned counsel for the petitioner has submitted that the executing court had dismissed the application filed by the present petitioner under Order 13 Rule 10(2) of the Code of Civil Procedure, 1908, without applying mind to the same. He submits that the petitioner is the owner and possessor of a property covered by same dag and patta number as that of the scheduled land.

- 11.** He submits that the present petitioner is the owner as the land measuring 2 Bighas 10 Kathas covered by Dag No. 357 of RS Patta No. 119 was gifted to them by one Sarala Bala Roy Choudhury.
- 12.** He further submits that though in Title Suit No. 62/1971, a preliminary decree was passed in favour of the predecessor-in-interest of the present respondents and though they preferred a PP Case No. 30/1973-74 for separation of the respective shares of the decree holder by meets and bounds. However, same was not pursued by the decree holder of Title Suit No. 62/1971 and, therefore, unless the records of the said case, i.e. Title Suit No. 62/1971 as well as Title Suit No. 335/1981 is not called for. The matter cannot not be adjudicated properly.
- 13.** He further submits that since the petitioner also has his respective shares in the same plot of land, covered by same Dag number and Patta number. Hence, unless, the decretal land is properly identified, there is an apprehension that the land of the present petitioner may also be taken over wrongly in execution of the aforesaid decree.
- 14.** On the other hand, the learned counsel for the petitioner further submits that when the records of a case/documents necessary for the purpose of deciding controversies between the parties, the executing court ought to have exercised its powers under Order 13 Rule 10 read with Section 151 Code of

Civil Procedure, 1908 to call for the records as prayed for by the petitioner and by not doing so, grave prejudice would be caused to the petitioner.

- 15.** In support of his submissions, the learned counsel for the petitioner has cited a ruling of the Apex Court in the case of "***Phanindra Kr. Medhi Vs. Umesh Ch. Barman***" reported in "**2008 2 GauLR 469.**"
- 16.** On the other hand, the learned Senior Counsel for the respondents has vehemently opposed the revision petition filed by the petitioner and has submitted that the executing court has rightly dismissed the prayer for calling of the records of Title Suit No. 62/1971 and Title Suit No. 335/1981 as prayed for by the present petitioner, as same was not at all necessary for deciding any question while executing the decree obtained by the present respondents in Title Appeal No. 01/1987. He submits that the predecessor-in-interest of the petitioner, namely, Deniel Roy was also one of the defendants in Title Suit No. 76/1979 as well as one of the appellant in Title Appeal No. 01/1987 and also the appellant in RSA No. 230/2005.
- 17.** He submits that the question of right, title and interest of the present respondents over the Schedule 3 and 4 plot of land has been settled in three rounds of litigations, namely, Title Suit No. 76/1979, Title Appeal No. 01/1987 and RSA No.

230/2005 and after dismissal of the claims of the present petitioner in aforementioned three sets of litigation, the executing court has rightly rejected the prayer for calling of records of Title Suit No. 62/1971 and Title Suit No. 335/1981 on the ground that the right, title and interest over decretal land has already been decided by a court of competent jurisdiction at first appellate stage as well as second appellate stage.

- 18.** He further submits that by merely filing an application under Order 13 Rule 10 of the Code of Civil Procedure, 1908, without mentioning in the said application as to what purpose would be served by calling of the said records the executing court has rightly rejected the prayer of the present petitioner.
- 19.** He submits that there is no illegality or irregularity submitted by the executing court in passing the impugned order. He submits that the executing court has rightly dismissed the prayer for calling of the records made by the present petitioner and therefore, the impugned order does not warrant any interference by this court in exercise of this revisional jurisdiction.
- 20.** In support of his submissions, the learned counsel for the petitioner has cited ruling of this Court in the case of "***Apollo Machinery Mart Vs. On the Death of Firoj Shah Mustt. Rausana Begum & Others***" reported in "***(1995)2 Gau LR 279.***"

- 21.** I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record.
- 22.** It appears that the present petitioner, who was the judgment debtor in Title Execution Case No. 05 /2005, has filed the petition No. 583/2010 under Order 13 Rule 10(2) of the Code of Civil Procedure, 1908 praying for calling of the records of Title Suit No. 62/1971 and Title Suit No. 335/1981. However, on perusal of the aforesaid petition, it appears that apart from stating that the records of Title Suit No. 62/1971 as well as records of Title Suit No. 335/1981 would be very much necessary for proper and complete adjudication of the dispute between the parties nothing has been stated as to how those records are relevant and what purpose would be served by calling of the said records.
- 23.** One of the relevant factor to be taken into consideration in this case is that the decree which is sought to be executed in Title Execution Case No. 05 /2005, has been obtained by the respondents as a result of prolonged litigation beginning from the trial court to this court wherein the regular second appeal filed by the judgment debtor was dismissed.
- 24.** It further appears that the executing court, by order dated 10.04.2025, passed in Title Execution Case No. 05 /2005,

issued the writ for delivery of possession of the decretal land as described in Schedule 3 and 4 of the Title Suit No. 76/1979 in favour of the decree holder as per Order 21 Rule 35 of the Code of Civil Procedure, 1908 and till date there is no report from Nazir or any other competent officer of the court regarding any difficulty in identification of the decretal land. Further no application has been filed by any of the parties under Section 47 of the Code of Civil Procedure, 1908 before the executing court. The petitioner has only filed application for calling of the records of Title Suit No. 62/1971 and Title Suit No.335/1981 without mentioning the said application as to how the record is material to the Title Execution Case No. 05/2005.

- 25.** For exercising the powers under Order 13 Rule 10 of the Code of Civil Procedure, 1908 by a court, on an application made under said rule, it is essential to show as to how the records sought to be called for are material to the suit in which application has been made. In the instant case, since no application under Order 21 Rule 97 or Rule 99 of the Code of Civil Procedure, 1908 or for that matter any application under Section 47 of the Code of Civil Procedure, 1908 is pending before the executing court, it was incumbent on the petitioner to state, in the application under Order 13 Rule 10 filed by him, that as to how the records of the title suits sought to be

called for are material for execution of a decree in the Title Execution Case No. 05/2005, however, he has failed to do so. The executing court by the impugned order has rightly taken into consideration these aspects while dismissing the prayer for calling of the records of the said case.

- 26.** The plea taken by the petitioner in the application filed by him in the Order 13 Rule 10 of the Code of Civil Procedure, 1908 to the effect that records sought to be called for were required for complete adjudication of the matter is also rightly not acceded to by the executing court as the right, title and interest of the respondents/decreed holder over the decretal land has been settled after prolonged litigation on dismissal of RSA No. 230/2005. Since the executing court has not yet been confronted with the issue of identification of the decretal land and no application under Order 47 is pending before the said court, the executing court has rightly dismissed the prayer for calling of the records of the Title Suit No. 62/1971 and Title Suit No. 335/1981 as same were not found to be material for executing the decree obtained in Title Appeal No. 01/1987.
- 27.** For the discussions made and the reasons stated in the foregoing paragraphs, this Court finds no irregularity or illegality in the impugned order.
- 28.** Accordingly, this civil revision petition (I/O) is dismissed.

29. The parties shall bear their own cost.

JUDGE

Comparing Assistant

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n Boruah

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