

GAHC010204452025



2026:GAU-AS:2892

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

Case No. : Review.Pet./245/2025

SATYENDRA DAS AND 3 ORS.
SON OF LATE JAGANNATH DAS

2: SANJAY DAS
S/O. LT. JAGANNATH DAS

3: SAILENDRA DAS
S/O. LT. JAGANNATH DAS

4: JOYMOTI DAS
W/O. LT. JAGANNATH DAS
ALL ARE R/O. SUNDARDIA
KALAYA HATI
BARPETA TOWN
P/O. AND P/S. BARPETA
DIST. BARPETA
ASSAM
PIN-781301

VERSUS

PRATIMA BORO @ PRATIMA GOALA
DAUGHTER OF LATE HARI GOALA,
WIFE OF RAJEN BORO,
RESIDENT OF VILLAGE JNATIGAON, MOUZA GOBARDHANA, DISTRICT-
BAKSA (BTAD), ASSAM

Advocate for the Petitioner : MR M RANA, MR. R K D CHOUDHURY

Advocate for the Respondent : MR P K BASU, MR. A BISWAS, MR R KALITA

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 25.02.2026

Heard Mr. R.K.D. Choudhury, learned counsel for the review petitioners. Also heard Mr. A. Biswas, learned counsel for the respondent.

2. This review petition, under Section 114 of the CPC, read with Order 47 Rule 1 of the CPC, is preferred by the review petitioners for review of the order dated 06.08.2025, passed by this Court in CRP(I/O) No. 108/2025.

3. Mr. Choudhury, learned counsel for the review petitioners submits that the predecessor of the review petitioners had filed a title suit, being Title Suit No. 302/2013, before the learned Munsiff, Barpeta, and in the said title suit, the original defendant, namely, Hari Goala had filed his written statement-cum-counter claim. Mr. Choudhury also submits that during the pendency of the suit, the original defendant died and his legal heirs were substituted in his place, and the said legal heirs of the defendant did not appear before the Court even after getting notice, for which the suit proceeded ex-parte and the suit was decreed, vide by ex-parte judgment and decree dated 23.10.2017. Mr. Choudhury further submits thereafter, the review petitioners had filed Title Execution Case No. 05/2018, and then the respondents filed Misc. (J) Case No.53/2018, under Order 9 Rule 13 and Order 1 Rule 10(2), read with Section 151 of the CPC to add her as a defendant, but the same was dismissed, vide order dated 24.10.2019. Mr. Choudhury also submits that against the said order dated 24.10.2019, the respondent preferred Misc. Appeal No.04/2019, before the learned Civil Judge (Senior Division), Baksa, but the same was also dismissed, vide order dated 16.07.2024. And thereafter, the respondent had filed Misc. (J)

Case No. 37/2024, under Order 21 Rule 97, 99 and 101 of the CPC, before the learned Civil Judge (Junior Division), Baksa in the execution proceeding. Mr. Choudhury further submits that the said Misc. (J) Case No.37/2024, was allowed by the Court below, vide order dated 05.02.2025, and against the said order dated 05.02.2025, the review petitioners have preferred a revision petition, being CRP(I/O) No.108/2025, before this Court. But, vide order under review dated 06.08.2025, this Court was pleased to dismiss the same.

3.1. Mr. Choudhury, learned counsel for the petitioners also submits that though the respondent had filed Misc. (J) Case No. 37/2024, before the learned Court below, under Order 21 Rule 97, 99 and 101 of the CPC, but an application under Order 21 Rule 97 CPC can only be maintained by a holder of a decree, in view of the said provision and since the respondent herein is not the decree holder, she cannot maintain a petition under Order 21 Rule 97 CPC. Mr. Choudhury, by referring to a decision of Hon'ble Supreme Court in the case of **Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.**, reported in **(1998) 3 SCC 723**, and also to another decision of Hon'ble Supreme Court in the case of **Sriram Housing Finance and Investment India Ltd. vs. Omesh Mishra Memorial Charitable Trust**, reported in **2022 Supreme (SC) 694**, submits that Order 21 Rule 97 CPC contemplates only the 'decree holder' who is entitled to make an application in case where he is offered resistance or obstruction by 'any person', and as such, the respondent herein cannot maintain a petition under Order 21 Rule 97 CPC, and the only course available to him is under Order 21 Rule 99 CPC, and the same has also been laid down by Hon'ble Supreme Court in the case of **Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal and Anr.**, reported in **(1997) 3 SCC 694**, in paragraph Nos. 6 and 9 therein. Under such circumstances, Mr. Choudhury

submits that the order dated 06.08.2025, passed by this Court, in CPR(I/O) No. 108/2025, has to be reviewed as there is error apparent on the face of the record, and that the decisions of Hon'ble Supreme Court in **Silverline Forum Pvt. Ltd.** (supra), **Sriram Housing Finance and Investment India Ltd.** (supra) were not placed before this Court except, however, the decision in **Brahmdeo Chaudhary** (supra) and on such count, he has contended to allow this petition.

4. Per contra, Mr. Biswas, learned counsel for the respondent has vehemently opposed the petition. By supporting the order dated 06.08.2025, Mr. Biswas has pointed out that in paragraph No. 9 of **Brahmdeo Chaudhary** (supra), it has categorically been held that the word 'any person' in Order 21 Rule 97 CPC includes a stranger also and he can very well maintain a petition under Order 21 Rule 97 CPC.

4.1. In support of his submission, Mr. Biswas has referred to the decisions of Hon'ble Supreme Court in the cases of **Silverline Forum Pvt. Ltd.** (supra); **Shreenath and Anr. Vs. Rajesh and Ors.**, reported in (1998) 4 SCC 543; **Asgar and Ors. Vs. Mohan Varma and Ors.**, reported in (2020) 16 SCC 230.

4.2. Mr. Biswas further submits that this Court has rightly relied upon paragraph Nos. 6 and 9 of **Brahmdeo Chaudhary** (supra) and no error apparent on the face of the record could be demonstrated by the petitioners, and therefore, Mr. Biswas has contended to dismiss the petition.

5. Having heard the submissions of learned counsel for the parties, I have carefully gone through the petition and the documents placed on record, and also perused the order under review dated 06.08.2025, and the decisions

referred by learned counsel for both the parties.

6. It is to be noted here that the respondent herein, who had preferred a petition under Order 21 Rule 97, 99 and 101 of the CPC, upon which Misc. (J) Case No. 37/2024, was registered by the learned Civil Judge (Junior Division), Baksa, is one of the daughters of the original defendant and in Title Suit No. 302/2013, she was not arrayed as a party and only when the execution case was filed before the learned Executing Court, she came to know about it and then she had filed a petition for setting aside the ex-parte decree; but, the same was dismissed. Thereafter, she preferred a petition under Order 21 Rule 97, 99 and 101 of the CPC in the execution proceeding, upon which Misc. (J) Case No. 37/2024, was registered and after hearing both the parties, the learned Civil Judge (Junior Division), Baksa, had allowed the petition, vide order dated 05.02.2025, which was challenged before this Court in CRP(I/O) No.108/2025. But, vide order under review dated 06.08.2025, this Court was pleased to dismiss the same.

7. It also appears that while dismissing the aforesaid revision petition, this Court had relied upon the decision of Hon'ble Supreme Court in the case of **Brahmdeo Chaudhary** (supra), wherein in paragraph Nos. 6 and 9, it has been held as under:

“6. On the undisputed facts on record it has, therefore, to be held that because of the resistance or obstruction offered by the appellant, amongst others, on 28-4-1991 the application moved by the respondent decree-holder on 6-5-1991 was necessarily to be one falling within the scope and ambit of Order 21, Rule 97. It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order 21, Rule 97 CPC could have been offered by any person. The words “any person” as

contemplated by Order 21, Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would, therefore, be total strangers to the decree. It is not in dispute between the parties that no decree for possession has been obtained by Respondent 1 against the appellant. He is, therefore, prima facie a stranger to the decree. When he offered obstruction or resistance to the execution of the decree he would squarely fall within the sweep of the words "any person" as found in Order 21, Rule 97, sub-rule (1). Consequently it must be held that Respondent 1's application dated 6-5-1991 though seeking only reissuance of warrant for delivery of possession with aid of armed force in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot. Thus it was squarely covered by the sweep of Order 21, Rule 97, sub-rule (1) CPC. Once that happened the procedure laid down by sub-rule (2) thereof had to be followed by the executing court. The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order.

.....

9. In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure

laid down under Order 21, Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the executing court it is difficult to appreciate how the executing court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21, Rule 99 CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order 21, Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order 21, Rule 99. Order 21, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing possession and

not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order 21, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the executing court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order 21, Rule 97 CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the executing court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order 21, Rules 97 to 103 would remain a

complete code and the sole remedy for the parties concerned to have their grievances once and for all finally resolved in execution proceedings themselves.”

8. The proposition laid down in the case of **Brahmdeo Chaudhary** (supra) is affirmed in subsequent decisions also, including in the case of **Shreenath** (supra), **Silverline Forum Pvt. Ltd.** (supra), wherein it has categorically been held that the word ‘any person’ in Order 21 Rule 97 CPC, includes ‘all persons’ resisting delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger. In the case of **Shreenath** (supra), Hon’ble Supreme Court in paragraph No. 10, it has been held as under:

“....We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of the words "any person" it includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.”

9. And this being the position, the submission of Mr. Choudhury, learned counsel for the review petitioners, is found to be devoid of substance. Though Mr. Choudhury has tried to persuade this Court that the respondent herein cannot maintain a petition under Order 21 Rule 97 CPC, rather it can file a petition under Order 21 Rule 99 CPC, yet the said submission left this Court unimpressed in view of the observation made by Hon’ble Supreme Court in paragraph No. 9 of **Brahmdeo Chaudhary** (supra).

10. In paragraph No. 9 of **Brahmdeo Chaudhary** (supra), it has been observed that Order 21 Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest de hors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. It is also observed that **with respect the High Court has totally ignored the scheme of Order 21, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings.** It has also been held that the view, taken by the High Court, in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance

would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That, according to Hon'ble Supreme Court, would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. It has also been held that such an order of the executing court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice.

11. It has also been held that on the contrary the statutory scheme envisaged by Order 21, Rule 97 CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the executing court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order 21, Rules 97 to 103 would remain a complete code and the sole remedy for the parties concerned to have their grievances once and for all finally resolved in execution proceedings themselves.

12. In view of the observations made by Hon'ble Supreme Court in the case of **Brahmdeo Chaudhary** (supra), and also in the cases of **Shreenath** (supra) and **Silverline Forum Pvt. Ltd.** (supra), this Court is unable to record concurrence with the submission of Mr. Choudhury, learned counsel for the review petitioners.

13. Mr. Choudhury has also tried to convince this by referring to the decision of Hon'ble Supreme Court in the case of **Sriram Housing Finance and**

Investment India Ltd. (supra), by contending that it was a later decision. But, such argument of Mr. Choudhury also cannot be accepted in view of the fact that the decision of Hon'ble Supreme Court in the case of **Brahmdeo Chaudhary** (supra) is earlier in point of time and also in view of the decision of a Constitutional Bench of Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and Ors.**, reported in (2017) 16 SCC 680, wherein it has been categorically held that the decision in earlier point of time will prevail. Notably, the decision in **Brahmdeo Chaudhary** (supra) was affirmed by a three-Judge Bench of Hon'ble Supreme Court in the case of **Silverline Forum Pvt. Ltd.** (supra).

14. In the result, this Court finds this review petition devoid of merit as no error is apparent on the face of the record nor existence of any other sufficient ground could be demonstrated by the review petitioners, and accordingly, the same stands dismissed, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant