

GAHC010118982015



2026:GAU-AS:3680

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

**Case No. : CRP/314/2015**

ON THE DEATH OF BANGSHI DHAR LAHKAR HIS LEGAL HEIR SMTI.  
SNIGDHA BARUAH and 2 ORS.  
W/O- SRI JAYANTA BARUAH, GAZPURIA ROAD, RAJAMAIDAM, JORHAT,  
ASSAM.

2: SUSMITA LAHKAR DAS  
W/O- SRI PRANJAL KR. DAS  
MILONPUR  
WARD NO. 7  
DERGAON TOWN  
DIST.- GOLAGHAT  
ASSAM.

3: UJJAL LAHKAR  
S/O- LT. BANGSHI DHAR LAHKAR  
R/O- J.B. ROAD  
JORHAT TOWN  
ASSAM

VERSUS

GOBIN HALOI  
S/O LT. PROBIN HALOI, R/O SARBAIBANDHA PIPELINE, J.B. ROAD,  
JORHAT TOWN, P.O. JORHAT-01, ASSAM

**Advocate for the Petitioner : MR.C GOSWAMI,**

**Advocate for the Respondent : MR.U BHATTACHARYA, MS.J GOGOI,MR.D C C PHUKAN**

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA**

Date on which judgment is reserved: 18.02.2026

Date of pronouncement of judgment: 13.03.2026

Whether the pronouncement is of  
the operative part of the judgment?: No

Whether the full judgment has been pronounced: Yes

**JUDGMENT AND ORDER (CAV)**

- 1.** Heard Mr. Mr. C. Goswami, learned counsel for the appellants. Also heard Mr. D.C.C. Phukan, learned counsel for the respondent.
- 2.** This civil revision petition has been preferred against the impugned order dated 21.03.2015 passed by the Court of learned Munsiff No.1, Jorhat in Title Execution Case No. 8/14, whereby the application made under Section 152 read with section 153(A) by the Decree holder for correction of boundaries was rejected.
- 3.** The fact of the case is that, the Petitioner/Plaintiff filed a title suit against the Respondent/Defendant being Title Suit No.30/2011 for recovery of khass possession by evicting the defendant from the suit land measuring 1 (One) Katha specifically described in the schedule of the plaint, giving the boundaries as per registered Sale Deed dated 15-02-1975. The plaintiff's suit was decreed by judgment and decree dated 18-08-12 by the learned Civil Judge, Jorhat. Thereafter, first appeal preferred by the defendant being Title Appeal No.25/2012 was dismissed on contest by the learned Civil Judge, Jorhat by

judgment and decree dated 04-12-2013. Against the appellate decree dated 04-12-13 passed in Title Appeal No.25/2012 the defendant preferred second appeal before this High Court which was also dismissed by order dated 25.08.14 passed in RSA No.2014. Thereafter, the petitioner/decreed holder filed Title Execution case being T.Ex-8/2014 before the Munsiff No.1, Jorhat. During pendency of said execution proceeding the petitioner/decreed holder filed an application (Annexure-C) under Sec. 152 read with Sec.153(A) before the original court praying for amendment of boundaries of the suit land for effective execution of the decree as per present boundaries of the same. The defendant filed objection against the amendment as well as in the execution proceeding. The learned Court of Munsiff No.1, Jorhat after hearing the parties rejected the application praying for amendment of boundaries by order dated 21-03-15 passed in T.Ex.-8/2014 and held that the decree had been passed on a wrong schedule. The decretal land cannot be identified in terms of the schedule appended to the plaint and the decree. And accordingly, the execution proceeding was dropped.

**4.** Mr. Goswami learned counsel for the petitioners submitted that the Respondent/Defendant appeared and contested the suit by filing written statement. The defendant never denied the location of the scheduled land Rather he admitted that suit land is a part of aforesaid dag No. 1283 covered by Periodic Patta No.76 in para 5 of the written statement.

**5.** It is submitted that at no point of time the judgment-debtor/defendant has ever disputed the identity of the suit land and the suit land described in the plaint. So far its identity is concerned, it is specifically admitted by the judgment-debtor/defendant in paragraph 3 of the written statement. Paragraph 3 of the plaint as well as paragraph 5 of the written statement is as below :

" 3. That the plaintiff is a businessman carrying on business of Tent House. The

materials required for the business are kept in his residence but the bamboos required for the purpose of running the business of his tent house are kept on a portion of the suit land in front of the kutchha house situated on the suit land."

"5. That the contents of para 3 of the plaint is partially admitted. It is true that some materials like bamboo required for tent house have been stored in front portion of the suit land in front of the dwelling house of the defendant situated on a part of Dag No. 1283 of P.P. No. 76."

It is urged that the respondent/defendant never disputed the identity of suit land throughout the proceeding from the original court to the second appellate court and hence, a decree of a competent court and that too confirmed by the appellate court as well as High Court should not be allowed to be defeated on account of an accidental slip or omission.

**6.** In support of his contentions, learned counsel for the petitioner has relied upon the following decisions:-

1. 2003(2) SCC 330 (Pratibha Sing – Vs. Shanti Devi Prasad) wherein it was held 16- " When a suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking the provisions contained in Order 7 Rule 3 and Order 20 Rule-3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of Decree"
2. 2003(8) SCC 289 (Ravinder Kaur –Vs. Ashok Kumar & Anrs.) wherein it was held -19. " Raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Court of law should be careful enough to see through such diabolical plans of the Judgment debtor to deny the decree holders the fruits of the

decree obtain by them."

3. 2006(4) GLT 160 (Monoranjan Dutta –Vs-Narayan Dhar) wherein it was held by our High Court - 15- " Main objection of Judgment debtor is that the suit property has not been properly identified by giving necessary descriptions of boundaries in the plaint at various paragraphs, but the defense has not taken any plea made that the suit land is not identifiable"
4. 2016 (2) GLT 362 (M.K. Jokaiagri Plantation Pvt. Ltd. Anrs Vs- Legal Heirs of Alok Bagaria & Ors.) wherein it was held by our High Court:

38 " It is necessary to observe that the executing court would be in the discretion to take such steps as may be necessary for fixing identity of the property by appropriate steps and thereafter take and over possession". It was further held that after all, a successful plaintiff cannot be informed after long three decades of protracted litigation that he is not entitled to the benefit of the decree he earned in all these years and which was affirmed till the Hon'ble Supreme Court."

**7.** Per contra, learned counsel for the respondent submitted that the learned Court below has rightly rejected the petition No. 2858/2014 filed by the decree holder and also rightly dropped the proceeding on perusal of the report of bailiff, Lat mandal and considering the petition No. 2858/2014 filed by the decree holder admitting that decree has been passed on a wrong schedule.

Besides this, the impugned order dated. 21-03-2015 clearly reflects that the decree holder has not made any effort to file the Sale Deed in support of his

petition i.e petition no. 2858/2014 under section 152 read with section 153 (A) of C.P.C.

**8.** The learned Court below, that is the Executing Court upon perusal of the record, found that the schedule of the plaint in the title suit reveals that the boundary sought to be inserted by the petitioners/decreed holder is totally different except towards the southern directions from that of the boundary shown in the schedule of the plaint, i.e. with the decreetal land. The decreed holder had stated that he had put the boundary in his plaint as per the sale deed, but from the perusal of the record, it was seen that the sale deed in the suit was not filed with the plaint in order to ascertain the truthfulness of his claim and that apart he has not made any effort to file the sale deed in support of his petition, although the question regarding the identity of the decreetal land has arisen and also failed to satisfy the Court that the boundary has changed after the institution of the suit due to death transfer, etc. Ultimately the learned executing court came to the finding that allowing the petition would amount to changing the subject matter of the suit and furthermore, the omission to mention the correct schedule cannot be regarded as an accidental slip or omission as the same goes to the merit of the case.

**9.** In that view of the matter, the learned executing court rejected the prayer of the petitioner to amend the boundaries of the suit land. The Court further held that as the decree had been passed on a wrong schedule, the decreetal land cannot be identified in terms of the schedule appended to the plaint and the decree and therefore, it would be worthless to continue with the execution upon a wrong schedule and accordingly dropped the said proceedings.

**10.** I have given my anxious considerations to the rival submissions as well as to the material on record including the impugned order.

**11.** The crux of the petitioner's case before the executing Court was that the boundaries shown in the schedule to the suit land in the plaint, in respect of which a Decree in favor of the plaintiff/petitioner has been passed and confirmed by two appellate Courts including the High Court, has undergone change due to elapsement of time and hence, the present and current boundaries collected by the petitioner as mentioned in the petition are required to be taken into consideration for the purpose of execution of the decrees.

At this point it would be relevant to have a look at Section 47 CPC:-

*“47. Questions to be determined by the Court executing decree.—(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by separate suit.*

*<sup>1</sup>[\*\*\*]*

*(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*

*2[Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.*

*Explanation II.— (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*

*(b) All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”*

Since the principal issue before the Executing Court was proper identification of the suit land by ascertaining or verifying the boundary thereof, it was certainly one which related to the execution, discharge or satisfaction of the decree which the Executing court was required to decide. Since the decree holder/petitioner had already furnished the concurrent boundaries it was matter of verification as

to whether they tallied with the boundaries mentioned in the decree, after taking into account the changes occurring in the interregnum. For that purpose, resort could have been had to the provisions of Section 75 CPC which empowers the court to issue commissions for the purpose of local investigation as well as Order 26 Rule 9 CPC for the purpose of elucidating any matter in dispute in a local investigation which is also applicable to execution proceeding (Order 26 Rule 18A). After all, it is the settled position of law that a litigant should not be deprived of the fruits of the decree on mere technicalities and therefore it follows that the Executing Court must make every endeavor, within the confines of law, to ensure proper and timely execution of the decree. The executing court herein was not equipt to decide the question without resorting to external aid, as has been done in the instant case.

**12.** In *Pratibha Singh Vs Shanti Devi Prasad* reported in **2003(2) SCC 330**, the Apex Court held:-

*“(16) 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 of the 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 of the 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 of the 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 of the CPC."***

**13.** In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside and the Execution proceeding stand resorted.

**14.** The learned Executing Court will now proceed to determine the current boundary of the decretal land in terms of the appropriate provisions of law adverted to above and in the light of the legal precedents discussed.

**15.** The petition stands allowed accordingly.

**JUDGE**

**Comparing Assistant**