

CRP 135/2010

BEFORE

HON'BLE MR. JUSTICE H.N. SARMA

The subject matter of challenge in this petition is an order dated 29-3-2010 passed in Title Execution Case No. 49/06 by the learned Musiff No. 1, Guwahati.

Heard Mr. S. Katakya, learned counsel appearing for the judgment debtors/petitioners as well as Mr. B. Sarma, learned counsel appearing for the respondent/deed holder.

The Title Suit No. 127/1992 filed by the respondent against the petitioners was decreed on 13-6-1995 and the decree was signed on 15-6-1996. The decree was put into execution by the plaintiff/deed holder.

The Schedule B of the land is described as follows -

Land measuring more or less 2 kathas of land out of the aforesaid A schedule land (in the northern side) in Dag No. 662 of K.P. Patta No. 290 of the aforesaid village and mouza which is bounded by East Chakreswar Road. North : Dhiren Sarma. West - Kalipur Ashram Road. South : Other portion of the A schedule Land. That the sum of Rs. 973.10 P.S. be paid by the defendant.

On finding that the northern side of the Schedule B land which is stated to be bounded by the land of Dhiren Sarma there is a strip of Govt. land and accordingly the bailiff returned the writ because the Lot Mondal could not ascertain the decretal land. Thereafter the deed holder filed an application u/s 47 praying for a direction to execute the decree ascertaining the boundary of the entire Dag No. 662 K.P. Patta No. 290 and then to identify the portion of the occupied land by the judgment debtor as mentioned in the Schedule B and the said prayer was objected to by the judgment debtor by filing written objection.

The learned Executing Court vide impugned order dated 29-3-2010 observed that the only option left before the court is to pass a direction to the settlement officer concerned to cause measurement of the Schedule B land after excluding the sarkari dag found on the northern side. To be more specific, the northern side is to be read as the sarkari dag and not the land of Dhiren Sarma. Thereafter the learned Munsiff proceeded to direct the boundaries of the Schedule B land measuring 2 kathas to be read as follows -

North - Sarkari dag, South - Other portion of Schedule A land, West- Kalipur Ashram Road, East Chakreswar Road.

Mr. Katakya appearing for the judgment debtors/petitioners submits that in the aforesaid process the decretal land would may not be 2 kathas as indicated above by the learned Munsiff. The learned Munsiff in his earlier part of the order has stated that the execution is to be carried out after excluding the sarkari dag found on the northern side. To be more specific, the northern side is to be read as the sarkari dag and not the land of Dhiren Sarma.

Upon hearing the learned counsel for the parties and upon perusal of the materials available on record including the impugned order it is directed that the execution of the decree in respect of the Schedule B land within dag No. 662, K.P. Patta No. 290 would be carried out holding the northern boundary of the Schedule B land as sarkari land instead of the land of Dhiren Sarma and in the process there may not be exactly 2 kathas of land wherefrom the judgment debtor is to be evicted, as the B Schedule of the decree also disclose that the land may be more or less than 2 kathas as seen from the decree. In other words the sarkari land contiguous to dag No. 662 would not be subject matter of the execution.

With the above observations and directions, this revision petition stands finally closed.