

CRP 294/2008

BEFORE

HON'BLE MR. JUSTICE H.N. SARMA

Heard Mr. M.U. Mahmud, learned counsel for the petitioner.

Mr. Mahmud, learned counsel submits that the respondent No. 2 having expired in the meantime, his name may be struck off from the list of respondents. Prayer stands granted.

Although the respondent Nos. 1 and 3 are represented by their counsel and their names are reflected in the Board, nobody has appeared before the Court when the matter is taken up.

The subject matter of challenge in this petition is an order dated 20.6.2008 passed in Title Execution Case No. 5 of 2003 by the learned Munsiff, Bijni, thereby dismissing the execution case on the basis of the report of the Nazir. The petitioner obtain decree in Title Suit No. 6 of 1999 passed by the learned Civil Judge, Jr. Division, Bijni. The suit filed by the plaintiff decree holder praying for declaration of right, title and interest for khash possession of a plot of land measuring 1 bighas 15 leches covered by Annual Patta No. 11 of Dag No. 44 situated at village Bhetagaon, No. 2 under Bijni Police Station, Circle Bijni, Dist. Bongaigaon, by evicting the defendants/judgment debtors.

When the decree was put into execution the Nazir submitted a report on 20.6.2008 stating that when he visited the area on 18.6.08 along with the process server with Lat Mondal to handover the decreetal land to the decree holder but no land in the name of the decree holder mentioned in the decreetal order was found and accordingly they could not handover the possession of the decreetal land, and returned back the warrant of possession to the Hon'ble court. The learned Executing court perused the said report and accepting the same dismissed the execution case. It is contended by Mr. Mahmud, learned counsel that before passing the said order the decree holder/ petitioner was not provided any opportunity to substantiate the claim as against the possession of the decreetal land and the petitioner has also annexed a copy of the jamabandi of the concerned patta which discloses the name of the petitioner in the concerned patta and dag. The learned Munsiff before dismissing the execution case on the basis of the report submitted by Nazir, the

decree/holder petitioner ought to have been given the opportunity to file his objection against the said report. That not being done the impugned order suffers from miscarriage of justice and accordingly the impugned order is not sustainable on legal scrutiny and it stands set aside and quashed.

The petitioner would be entitled to file his objection and substantiate his claim as against the decreetal land and in the event of filing such application, the learned executing court shall consider the same and pass appropriate order that might be justified under the law and facts.

With this order, this petition stands allowed with the direction as indicated above.