

THE HIGH COURT OF MEGHALAYA

C.REF. No. 1 of 2014

Gopika Ranjan Dey.

.....Plaintiff/Petitioner

-VERSUS-

Shariful Islam Borbhuya.

....Defendant/Respondent.

Mr. K.Baruah, Advocate, present for the plaintiff/petitioner.
Mr. SP Das, Advocate, present for the defendant/respondent.

Date of Hearing 23rd April, 2014.
Date of Judgment & Order 23rd April, 2014.

HON'BLE THE CHIEF JUSTICE,
and HON'BLE MR. JUSTICE T Nandakumar Singh.

JUDGMENT AND ORDER

(ORAL: Hon'ble Prafulla. C. Pant, Chief Justice)

1. This reference has been made under Section 113 of the Code of Civil Procedure, 1908 by Smti. RM Kharsyntiew, Judicial Magistrate First Class, Assistant to Deputy Commissioner, East Khasi Hills, Shillong (here in after referred as Executing Court).
2. Brief facts of the case as stated in the statement submitted by the Executing Court are as under:

"The plaintiff, Shri Gopika Ranjan Dey filed Title suit No. 67(T) of 1985 for specific performance of a contract whereby Mussamat Sarifunessa Barbhuya was the owner of a plot of land measuring about 3600 sq ft more or less, situated at Laitumkhrah under the Shillong Municipal

holding No. 460 (old). The plaintiff Shri Gopika Ranjan Dey had been occupying the suit property for nearly 30 (thirty) years. As (L) M.S Barbhuya was in need of money he approached the plaintiff who was his tenant. The plaintiff thereafter intended to purchase the property and an agreement was drawn up which was executed between the parties on 4-4-1975, agreeing to sell the property at Rs. 8500/- only. In pursuance to the agreement of sale dated 4-4-75, the plaintiff paid Rs 4000/- only as installment. The payment of which was acknowledged by the defendant (owner). Thereafter necessary Sanction was applied for transfer from the District Council (KHADC) jointly on 20-9-76 by the parties. Accordingly the concerned authority of the Khasi Hills Autonomous District Council (KHADC) vide memo no. DC/RBF/XI/166/76/5 dated 23-12-76 accorded sanction for the transfer of the property within a period of 6 (six) months. The same however could not be completed. The plaintiff paid the full amount to the owner Shri. M.S Barbhuya who unfortunately expired on 29-5-77 and the sale could not be completed.

Therefore the plaintiff himself pursued the matter with the District Council for further extension of time which was granted for another 3 (three) months for completion of the transaction. The sons of the previous owner however never came forward to complete the transaction. Hence the plaintiff filed the suit for specific performance of a contract which went ex-parte against the defendants and in favour of the plaintiff.

Under the above given facts and circumstances of the case this court has reasonable doubt with regard to the execution of the decree which is not in conformity with the Special Provision of the law, that is, section 3 of the Meghalaya Transfer of Land (Regulation) Act, 1971. In as

much as the suit property is situated at Nongrimmaw, which is a Municipal administered tribal area of the state of Meghalaya, wherein there is a specific bar transfer of property from a non-tribal to a non-tribal like the case in hand. Although the suit proceed ex-parte against the defendants / the Judgment Debtor.”

3. Following are the two questions referred by the Executing Court:

“The pertinent question is:

- 1. Whether the executing court can allow execution of the instant ex-parte decree dated 27-5-1999 for allowing to register the sale from one non tribal to another non tribal in this tribal area of Nongrimmaw?*
- 2. Whether it shall oppose to section 3 of the Meghalaya Transfer of Land (Regulation) Act, 1971 which is a special law prevalent at the time when the agreement dated 4-4-75 was made and which is still prevalent till date?”*

4. Heard learned counsel for the parties.

5. Section 113 of Code of Civil Procedure, 1908 reads as under:

“113. Reference to High Court.- Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is

necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion, of the High Court.

Explanation.- In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

6. Order XLVI Rule 1 of the Code of Civil Procedure provides as under:

"1. Reference of question to High Court – Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court."

7. Learned counsel for the decree holder submitted before us that the reference is erroneous as in respect of decree of specific performance of contract under execution, necessary sanction has already been obtained under Meghalaya Transfer of Land (Regulation) Act, 1972. In reply to this, learned counsel for the judgment debtor submitted that the authority which granted the sanction was not competent to grant such sanction. However, this dispute as to whether sanction has been granted by the

competent authority or not is not the question referred by the Executing Court under Section 113 read with Order XLVI Rule 1 of the Court.

8. Having considered submissions of learned counsel for the parties and after going through the relevant provisions of law, we are of the view that it is not every question before the Court which can be referred under Section 113 of CPC. It is pertinent to mention here that it is settled principle of law that the Executing Court cannot go behind the decree to see its correctness of the decree and cannot refuse to execute the decree unless the decree is a nullity. As to the other objections raised by the judgment debtor, executing court can dispose of the same under Section 47 of the CPC etc. As such the questions referred are not required to be answered by this Court.
9. Therefore, the reference is disposed of with the observation that the executing court shall proceed with the execution of decree in accordance with law.

(Hon'ble Mr Justice TNK Singh)
JUDGE
23rd April, 2014

CHIEF JUSTICE
23rd April, 2014