

GAHC010084682026



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

Case No. : CRP/66/2026

AMIT SARIN AND 2 ORS
S/O LATE VIDYA SAGAR SARIN, P/R/O H.NO. 636, C/O PERFECT MOTORS
PVT. LTD., G.S. ROAD, BHANGAGARH, GUWAHATI- 781005

2: SANJAY SARIN
S/O LATE VIDYA SAGAR SARIN
P/R/O H.NO. 636
C/O PERFECT MOTORS PVT. LTD.
G.S. ROAD
BHANGAGARH
GUWAHATI- 781005
P/R/A B-7
1ST FLOOR
SUNCITY
SECTOR-54
GURGAON- 122011

3: SMTI. SUNITA KHOSLA
D/O LATE VIDYA SAGAR SARIN
P/R/O H.NO. 636
C/O PERFECT MOTORS PVT. LTD.
G.S. ROAD
BHANGAGARH
GUWAHATI- 781005
P/R/A K-8/12 D
4TH FLOOR
DLF PHASE-2
SECTOR-25
GURUGRAM-12200

VERSUS

NASIMA RAHMAN AND 12 ORS
W/O LATE MOKIBUR RAHMAN, R/O KUMARPARA, F.A. ROAD, MASJID

BYE-LANE, P.S.- BHARALUMUKH, GUWAHATI-781009

2:MUSADIQUR RAHMAN
S/O LATE MOKIBUR RAHMAN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

3:RIZBE AKHTAR RAHMAN
D/O LATE MOKIBUR RAHMAN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

4:ASMA ARA BEGUM
W/O LATE IMRAN HUSSAIN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

5:NADIA YESMIN
D/O LATE IMRAN HUSSAIN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

6:IMDAD HUSSAIN
S/O LATE IMRAN HUSSAIN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

7:MD. FARUK HUSSAIN
S/O LATE NABAJAN ALI
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH

GUWAHATI-781009

8:SAMA BEGUM

D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM

R/O KUMARPARA

F.A. ROAD

MASJID BYE-LANE

P.S.- BHARALUMUKH

GUWAHATI-781009

9:SIMA BEGUM

D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM

R/O KUMARPARA

F.A. ROAD

MASJID BYE-LANE

P.S.- BHARALUMUKH

GUWAHATI-781009

10:SUREYA BEGUM

D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM

R/O KUMARPARA

F.A. ROAD

MASJID BYE-LANE

P.S.- BHARALUMUKH

GUWAHATI-781009

11:NAZMA BEGUM

D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM

R/O KUMARPARA

F.A. ROAD

MASJID BYE-LANE

P.S.- BHARALUMUKH

GUWAHATI-781009

12:RIAJAT ALI @ RAJU

S/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM

R/O KUMARPARA

F.A. ROAD

MASJID BYE-LANE

P.S.- BHARALUMUKH

GUWAHATI-781009

13:BEILKISH BEGUM

D/O NURJAHAN BEGUM

R/O KUMARPARA

F.A. ROAD

MASJID BYE-LANE

P.S.- BHARALUMUKH

GUWAHATI-78100

Advocate for the Petitioner : MR. D MOZUMDER, MR. S BISWAS,MS D DEVI,MS. S NATH

Advocate for the Respondent : SADHAN KALITA (r-1,2,3), MR. TANUZ KASHYAP(R4TO13),N GAUTAM(R4TO13),MR. RANGON CHOUDHURY(R4TO13),MR. K N CHOUDHURY(R4TO13),MRITYUNJOY KALITA (r-1,2,3),MR P DAS (r-1,2,3)

Linked Case : CRP/65/2026

M/S PERFECT MOTORS PVT. LTD.
A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES
ACT
1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT G.S. ROAD
GUWAHATI-781005
REPRESENTED BY ITS DIRECTOR
SHRI AMIT SARIN
AGED ABOUT 57 YEARS
S/O LATE VIDYA SAGAR SARIN
C/O PERFECT MOTORS PVT. LTD.
G.S. ROAD
GUWAHATI-781005
DIST- KAMRUP (M)
ASSAM

VERSUS

NASIMA RAHMAN AND 12 ORS
W/O LATE MOKIBUR RAHMAN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

2:MUSADIQUR RAHMAN
S/O LATE MOKIBUR RAHMAN
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

3:RIZBE AKHTAR RAHMAN
D/O LATE MOKIBUR RAHMAN
R/O KUMARPARA
F.A. ROAD
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P.S.- BHARALUMUKH
GUWAHATI-781009

4:ASMA ARA BEGUM
W/O LATE IMRAN HUSSAIN
R/O KUMARPARA
F.A. ROAD
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5:NADIA YESMIN
D/O LATE IMRAN HUSSAIN
R/O KUMARPARA
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6:IMDAD HUSSAIN
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D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM
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9:SIMA BEGUM
D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM
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10:SUREYA BEGUM
D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM
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11:NAZMA BEGUM
D/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM
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12:RIAJAT ALI @ RAJU
S/O LATE SAMAD ALI AND LATE NUR NAHAR BEGUM
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GUWAHATI-781009

13:BEILKISH BEGUM
D/O NURJAHAN BEGUM
R/O KUMARPARA
F.A. ROAD
MASJID BYE-LANE
P.S.- BHARALUMUKH
GUWAHATI-781009

Advocate for : MR. D MOZUMDER
Advocate for : SADHAN KALITA (r-1

2

3) appearing for NASIMA RAHMAN AND 12 ORS

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

29.09.2026

Heard Mr. D. Mozumder, the learned senior counsel assisted by Mr. S. Biswas, the learned counsel appearing for the petitioners. Also heard Mr. K.N. Choudhury, the learned senior counsel assisted by Mr. P. Das, the learned counsel representing the respondents.

2. Both these applications under Section 115 of the Code of Civil Procedure challenging the order dated 08.04.2026 passed by the learned Civil Judge (Sr. Divn.) No.3, Kamrup(M) at Guwahati in Misc.(J) Case Nos.621/2018 and 620/2018 arising out of Title Execution Case No.01/2010.

3. The respondents filed T.S. 37/1989 wherein the present petitioners are proforma defendant no.15. In the said suit, the prayer was made for a declaration of right, title and interest and possession of the respondents over suit land and for confirmation of possession of the respondents as co-sharers in Schedule-B land.

4. The respondents also prayed for recovery of possession of Schedule-C and D land.

5. The respondents further prayed for a preliminary decree of partition of a suit land claiming $1/4^{\text{th}}$, $1\frac{1}{2}$ as well as $1/4^{\text{th}}$ of shares for the plaintiff, the defendant no.1 and proforma defendant no.6 on Schedule-A land.

6. Notice was sent to proforma defendant no.15. It was duly served. But the proforma defendant no.15 did not contest the case. As such the case proceeded *ex*

parte against him.

7. Finally, the decree was passed in favour of the respondents. A preliminary decree of partition was passed as prayed for by the plaintiff. Thereafter, some of the defendants filed the appeal being T.A. 01/2010 in the court of the Addl. District Judge No.4, FTC, Kamrup (M).

8. The appellate court dismissed the appeal with some modifications. The appellate court declared the right, title and interest of the respondents in Schedule-A land. The preliminary decree for partition was also affirmed.

9. Finally, the Title Execution Case No.01/2010 came into being.

10. The present petitioners filled an application under Section 47 of the Code of Civil Procedure before the executing court. They claimed that they are the title holders of Schedule –X and Y land, which are parts of Schedule-B and C land as mentioned in the plaint. The learned executing court dismissed the application under Section 47 of the said Code filed by the present petitioners.

11. Mr. Mozumder has submitted that according to Section 54 of the Code of Civil Procedure the the preliminary decree should have been sent to the Collector for physical portion by metes and bounds. Mr. Mozumder has submitted that instead of doing so, the trial court has proceed to execute the decree itself and therefore the entire execution proceeding is illegal.

12. Mr. Choudhury has submitted that the petitioners had purchased those lands during pendency of the suit before the trial court. They had received summons from the trial court and they did not contest the case. Mr. Choudhury has pointed out that the trial court had correctly held that the present petitioners had lied when they claimed they did not receive any summons.

13. Mr. Choudhury has submitted that the transferring from a judgment debtor is presumed to be away of the proceedings before a court of law and he should have

been careful before purchasing the property which is the subject-matter of litigation. In order to buttress his point, Mr. Choudhury has relied upon three judgments of the Supreme Court.

14. In *Silverline Forum (P) Ltd. v. Rajiv Trust*, (1998) 3 SCC 723, the Supreme Court has held as under:-

“10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions “arising between the parties to a proceeding on an application under Rule 97 or Rule 99” shall be determined by the executing court, if such questions are “relevant to the adjudication of the application”. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.”

15. In *Amit Kumar Shaw v. Farida Khatoon*, (2005) 11 SCC 403, the Supreme Court has held as under:-

“13. In this connection, the provisions of Section 52 of the Transfer of Property Act, 1882 which has been extracted above may be noted.

14. An alienee *pendente lite* is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10. Since under the doctrine of *lis pendens* a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

This extract is taken from *Amit Kumar Shaw v. Farida Khatoon*, (2005) 11 SCC 403 : 2005 SCC OnLine SC 768 at page 410

15. Section 52 of the Transfer of Property Act is an expression of the principle “pending a litigation nothing new should be introduced”. It provides that *pendente lite*, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a *lis pendens*, the following elements must be present:

1. There must be a suit or proceeding pending in a court of competent jurisdiction.
 2. The suit or proceeding must not be collusive.
 3. The litigation must be one in which right to immovable property is directly and specifically in question.
 4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
 5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.
16. The doctrine of *lis pendens* applies only where the *lis* is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee *pendente lite* can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a *lis pendens* transferee a party, under Order 22 Rule 10 an alienee *pendente lite* may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee *pendente lite* of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

16. In *Usha Sinha v. Dina Ram*, (2008) 7 SCC 144, the Supreme Court has held as under:-

"17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee *pendente lite*. That Rule is relevant and material and may be quoted in extenso:

"102. *Rules not applicable to transferee pendente lite.*—Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of *lis pendens* recognised by Section 52 of the Transfer of Property Act, 1882 ["52. Transfer of property pending suit relating thereto.—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or

established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose. Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”] . Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.”

17. I have considered the submissions made by the learned counsels of both sides.

18. It may be stated that the petitioners did not file any application under Order 9 Rule 13 of the Code of Civil Procedure praying for setting aside the ex parte decree against them, neither did they file any second appeal.

19. This Court is of the opinion that at this stage, a brief visit to Section 115 of the Code of Civil Procedure would be fruitful and it reads as under:

“115. Revision .-

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding,

except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

(2)[The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3)[A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.] *[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 43 (w.e.f. 1.2.1977).]*

Explanation .-In this section, the expression, "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.] *[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 43 (w.e.f. 1.2.1977).]*"

20. The High Court exercises revisional jurisdiction under Section 115 of the CPC against any judgment passed by a sub-ordinate court where no appeal lies against those judgments. This Court is of the opinion that the present petitioners should have filed a second appeal because a second appeal lies against the first appellate court judgment. Since, the petitioners did not file any second appeal, there cannot be any question of exercising the power under Section 115 of the Code of Civil Procedure.

21. For the aforesaid reasons, both the revision petitions are dismissed and disposed of accordingly.

1.

JUDGE

Comparing Assistant