

**03.04.2013:-**

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 577/13.

This order arises out of petition filed by Mrs Rupanjali Saikia, under order 21 rule 97 & 99 read with section 151 of CPC.

Petitioner's case in brief is that she is the owner of a plot of land measuring 1 B 3 K covered by PP no 103 Dag no 14/ 558 situated at Turung Plot Tipomia, Mouza Borhola, Dist. Jorhat. It is stated that she purchased the land vide registered sale deed no (A-2097) from Muhammad Sirajuddin Islam on 20-11-04 it further stated that soon after execution of the sale deed she got her name recorded in the Jamabandi & has been enjoying the plot of land.

It is stated that in the last week of August, 2012 Nazir of Munsiff court came to the plot of land came for execution of a decree in respect of a mill namely Janata Rice Mill standing in her plot of land. She further stated that on being enquired she came to know that a person namely Md Inamul Goney had got a decree from the court of Asstt. Session Judge, Jorhat in respect of the said mill. She has further stated that she has been possessing the said plot of land since 18-4-2002. It is further stated that neither judgment debtor nor the decree holder was in possession of the land or had any title or ownership over the suit properties. It is further stated that there was no existence of the mill under the name and style "Janata Rice Mill" in the house situated over the plot of land purchased by her. She further stated that suit was instituted by the plaintiff in the year 2008 which is much later than the year of purchase of the scheduled property. It is stated that no execution can be satisfied in a property over which neither the judgment debtor nor the decree holder has any right title & interest. It is also stated that she was neither made party in the execution case nor in the main suit. Therefore, the execution cannot be made on her property.

O.P filed written objection denying and challenging inter alia the claims of the petitioner and further stated that the parent petition u/o 21 rule 97 and 99 is itself not maintainable as the decree was passed in respect of movable property. It is further stated that the petitioner was never in possession of the suit mill & she never obtain title over the suit property & that the petitioner is the daughter of O.P/J,D no-1 & as such she with collusion of J.D no 1 has preferred the petition to delay the proceeding of the court. O.P further submitted to dismiss the petition & allow him to enjoy the fruits of the lawful decree passed by the Hon'ble court.

I have already heard both the parties, Perused the plaint, W.S, Judgment passed by Court of Asstt District and Sessions Judge & available materials on record which reveals that plaintiff has claimed his ownership right over the rice mill which is situated on a land of defendant no-2. The subject matter of dispute in the suit was ownership of the rice mill situated on the land of defendant no-2. Perusal of record further reveals that in the suit specific issues were framed regarding the rice mill wherein the appellate court while deciding the issue no 4 & 6 held that plaintiff has right title and interest over the suit property i.e the rice mill & he is entitled to recover the property.

Petitioner plea is that, she is the owner of the land ,where the mill is situated, as defendant no-2 sold the land along with a houses to her and as such execution can't be made in her property. A party may approach under order 21, rule 97 & 99 of CPC when resistance orobstruction is raised in execution for an immovable property. In our case it is apparent that the subject matter of execution is rice mill which is a movable property.

In this respect J.D has relied upon a decision of Hon'ble Supreme Court in Ashan Devi & another –vs- Phuleswari Devi & another reported in (2003) 12 S.C.Case 219 wherein it was held that a movable property if attached to earth permanently for beneficial use & enjoyment it still a movable property. Example were given sugarcane machine /oil engine attached to earth.

In view of the above I am of the considered opinion that in the instant case the subject matter of execution is the rice mill which was installed for beneficial use and enjoyment and as such in light of the above decision it is a movable property & as such provision of order 21, rule 97 & 99 are not attracted. Accordingly the petition stands rejected.

Misc (j) case is disposed of on contest

**Mrs Achma Rahman,**  
**Munsiff No 1, Jorhat.**