

Misc.(J) case No. -29/12

23.07.2013:-

The decree holder is present through their respective learned counsels. Today is fixed for passing order on petition No. 1386/12, filed under order 21 Rule 97 and 101 of C.P.C.

Petitioner's case in brief is that decree in T.S. 38/05 was passed without making the petitioner a party to the suit and as such the execution is not executable in the eye of law. It is stated that petitioner was adopted as son by Tepuram Saikia, about 42 years ago. That during the life time of Tepuram Saikia, the petitioner looked after the entire property of Late Tepuram Saikia and after his death also he has been enjoying the said property. It is also stated that Late Tepuram Saikia had one brother namely Phukan Saikia and as such the suit patta land was originally divided between Phukan Saikia and Tepuram Saikia and accordingly, both the deceased during their lifetime equally divided the suit patta land and after their death, being the legal-heirs, D.Hs. and the petitioners become owners of the said land and accordingly, have been enjoying the property. It is stated that D.Hs. has no right to evict the petitioner from the suit land without determining the question of the petitioner's right, title and interest over the suit land and that decree could not be executed.

O.P/Decree holder filed written objection denying and challenging inter alia the claims of the petitioner and further stated that O.P. is a stranger to the suit property and he has no any legal character over the suit land. It is further stated that, Tepuram Saikia and Phukan Saikia was original owners of the land and after their death, their sons and daughters inherited the property. Late Tepuram Saikia had three daughters and after his death, the names of the daughters were recorded in the record of right. It is also stated that Late Tepuram Saikia had no male issue but all the daughters had maintained their father till his death. That decree holder is the son of Phukan Saikia and apart from him, Biren Saikia and Haren Saikia are the sons of Phukan Saikia.

Petitioner had adduced three witnesses including himself.

Perusal of the evidence adduced by the petitioner's side reveals that he has claimed himself to be the adopted son of Tepuram Saikia, but has failed to produce any documentary proof in support of the adoption. The witnesses adduced by him has also shown their ignorance in respect of any documentary proof or, performing and religious or custom function with regard to the adoption.

It is also stated by the petitioner that he is possessing the share of one of the daughter of Tepuram Saikia and that Tarun Saikia has claimed his share in his father's property. It is also an admitted position that in place of Tepuram Saikia, name Kaushalya Saikia was recorded in the land record as inheritor.

Perused the Record of T.S 38/05, which reveals that present D.H. had filed the suit impleading all the legal heirs of Phukon Saikia and Tepuram Saikia, claiming his right over the suit land. The said suit was not contested by the parties, except profoma defendant No. 4, one of the brothers of the plaintiff who admitted the claim of the plaintiff and accordingly, the suit was decreed in favour of the plaintiff.

In view of the above discussion, it is seen that the petitioner could not prove that he is adopted son of Tepuram Saikia. He even failed to call as witness, Kausalya Saikia, the daughter of Tepuram Saikia and also his original parents to prove the adoption. It is also admitted position that Kausailya Saikia is the daughter of Late Tepuram Saikia and her name was mutated in place of his father after the death of Tepuram Saikia. Moreover Kausalya Saikia and the other two daughters are made party to the original suit, and in the said suit they have neither filed W.S. denying the claim of the plaintiff nor had cross-examined him and as such there is no scope to question the validity of the lawful decree passed, in favour of the plaintiff.

Considering the matter in its entirety I am of the considered opinion that the petitioner failed to prove that he was having any right or interest over the decretal property and as such his petition stands rejected.

Mrs Achma Rahman,
Munsiff No 1, Jorhat.