

GAHC010027492023



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

Case No. : I.A.(Civil)/382/2023

RANJAN KR. DEKA.
S/O SRI UDAY CH. DEKA, R/O HATIGARH CHARIALI, GUWAHATI, P.S.
CHANDMARI, KAMRUP M, DIST., ASSAM, PIN 781024

VERSUS

ASHRAFUL ALAM
S/O DEWAN JAYNAL ABEDIN, R/O BHANGAGARH, P.O. AND P.S. DISPUR,
GUWAHATI-781005, KAMRUP M, DIST. ASSAM

Advocate for the Petitioner : MR. R K BHUYAN

Advocate for the Respondent : MR. A C SARMA

Linked Case : RFA/96/2017

ASHRAFUL ALAM
S/O DEWAN JOYNAL ABEDIN
R/O BHANGAGARH
P.O. and P.S. DISPUR
GUWAHATI-781005
KAMRUP M
DIST. ASSAM.

VERSUS

SMT NILIMA BARUAH and 2 ORS
W/O LATE PRIYALAL BARUAH

2:SAURAV BARUAH

S/O LATE PRIYALAL BARUAH
BOTH ARE R/O ULUBARI
GUWAHATI
KAMRUP
METROPOLITAN DIST.
ASSAM
PIN 781007

3:RANJAN KR. DEKA.
S/O SRI UDAY CH. DEKA
R/O HATIGARH CHARIALI
GUWAHATI
P.S. CHANDMARI
KAMRUP M
DIST.
ASSAM
PIN 781024

Advocate for : MR.A C SARMA
Advocate for : MR. R K BHUYANR- 1
2and3 appearing for SMT NILIMA BARUAH and 2 ORS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 21.2.2023

Heard Mr. R. Bhuyan, learned counsel for the applicant and Mr. A. C. Sarma, learned Senior Counsel assisted by Mr. G. B. Bharadwaj, learned counsel for the opposite party respondent.

2. The present application is filed by the respondent No. 3 in RFA 96/2017 under the provision of Order 39 Rule 1 and 2 read with Section 151 of CPC for granting a temporary injunction, during the pendency of Regular First Appeal.
3. The opposite party herein as plaintiff instituted a suit being Title Suit No.

258/2008 for a specific performance of contract and injunction as well as for cancellation of sale deed executed by the defendant Nos. 1 and 2 in favour of the defendant No.3, by which the suit property was transferred .

4. The basic pleaded case of the plaintiff is that the defendant Nos. 1 and 2 are the absolute owner and possessor of the schedule-A property and they had entered into an agreement for sale with the plaintiff on 10.9.2003, agreeing to sale the suit property to the plaintiff at a total consideration of Rs. 22,50,000/- and the plaintiff paid an amount of Rs 20 lacs as per terms of the agreement and it was stipulated that the balance amount of Rs. 2,50,000/- would be paid at the time of registration of sale deed. However, the defendant No. 1 and 2 had failed to perform their part of the contract and instead sold the suit property to the defendant No.3.
5. The defendant Nos. 1 and 2 by filing written statement contended that though they have received certain amount of money as advance consideration and thus admitted the execution of the agreement for sale, however they contended that subsequently the plaintiff has failed to pay the remaining amount. Accordingly, contract was cancelled and the amount so advanced was refunded back to the plaintiff and therefore it was their case that there was no contract subsisting, which can be decreed to be specifically performed. It is their further contention that they had already sold the land by a registered sale deed in favour of defendant No. 3.
6. The defendant No. 3 by filing written statement contended that he is a genuine purchaser without notice of any litigation or contract between the plaintiff and defendant Nos. 1 and 2 and there was no fraud in the

execution of the sale deed.

7. The parties led evidences, examined and cross-examined witnesses, adduced document, etc and finally learned Trial court below dismissed the suit of the plaintiff holding that no such contract for sale was subsisting between the plaintiff and defendant Nos. 1 and 2 at the time of execution of sale deed No. 9791/2007, which was executed in favour of the defendant No. 3. The court also came to a finding that registered sale deed No. 9791/2007 cannot be termed as fraudulent.
8. Being aggrieved by such judgment, the plaintiff as appellant preferred the connected Regular First Appeal being RFA No. 96/2017. This court admitted the said appeal under its order dated 11.8.2017.
9. Now the present I.A has been filed alleging that the plaintiff has started construction over the disputed property and therefore, the present application is filed to protect the said property and to stall the plaintiff for doing any further construction.
10. Mr. Bhuyan, learned counsel for the petitioner submits that as the suit has been dismissed, a prima facie case is made out in favour of the present applicant to get his property protected which he purchased through a registered sale deed. It is also contended that in view of similar facts, balance of convenience also tilts in favour of the applicant inasmuch as during the pendency of Regular First Appeal, the property needs to be protected. The fact remain that the contention of the plaintiff has been rejected after a full trial by the learned trial court below. It is the further contention of Mr. Bhuyan that there will be irreparable loss and injuries to the petitioner, if the plaintiffs appellants are allowed to continue with the

construction, which will in turn change the nature and character of the suit. Accordingly, he prays that opposite party/appellant be enjoined from carrying out any further construction in the schedule premises and from changing the nature and character of the suit land.

11. Per contra, Mr. A. C. Sarma, learned Senior Counsel contends that the plaintiff/appellant has been in possession over the suit premises and even after an unequivocal contract, the defendant Nos. 1 and 2 had fraudulently executed the sale deed in favour of the defendant No.3 to defeat his right. He contends that the building is a very old one and condition of the same is very bad and therefore to continue his business in the said premises, the appellant has done certain minor repairing. Therefore this is not a case of grant of injunction. He submits that balance of convenience is not tilted in favour of the applicant rather it tilts towards the appellant inasmuch as he is possessing the premises and therefore he has right to get the property repaired and such renovation will not change the nature and character of the suit land.
12. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. The law is by now well settled that usually the prayer for grant of injunction is considered at a stage, when existence of legal rights asserted by the plaintiff and alleged violation are both contested and uncertain. In the present case though rights are made certain by the learned trial Court below, however since it is brought to this court by way of connected appeal, such right can't be said to be finally determined.
13. Therefore, this court at this stage while dealing with prayer of injunction should act on certain well settled principles of administration of this form

of interlocutory remedy which is both temporary and discretionary, as held in ***Wander Limited Vs Antox India Pvt Ltd. reported in 1990 (Supp) SCC 727***. The object of such interlocutory injunction is to protect the property in dispute. The need for such protection must be weighed against the corresponding need of the contesting parties. Basically such interlocutory remedy is intended to preserve in a status quo the rights of the parties, which may appear prima facie. At the same time this court is also look into that by such restraint order, the legal rights of enjoyment of other contesting party is not harmed.

14. Taking note of the aforesaid settled propositions of law and the facts as discussed hereinabove, this court is of the view that during the pendency of the present appeal the disputed property should be protected inasmuch as there is already a decree against the appellant, rejecting the claim and upholding the title decree of the applicant. Therefore, the applicant, in the considered opinion of this Court, has been able to make out a case for grant of injunction.
15. Accordingly, it is provided that the plaintiff/ appellant shall not carry out any construction whatsoever in the suit premises. If any renovation for continuation of business is required, same may be intimated to the defendant No.3 and minor repairing essential for running day to day business may be carried out with the consent of the Defendant No.3.
16. With the above observation, this IA stands disposed of.

JUDGE