

GAHC010038332017



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

Case No. : FAO/55/2017

JEHRUL HUSSAIN and ANR

2: MD. ANOWAR HUSSAIN

BOTH ARE SONS OF LATE GOLAM HUSSAIN
BOTH ARE R/O VILL. HEDAYATPUR
GUWAHATI 781001
DIST. KAMRUP M
ASSAM

VERSUS

MUSSTT SAJEDA BEGUM and 4 ORS
D/O LATE NURUDDIN AHMED, R/O HOUSE NO.9 AAMAR PATH, BYE LANE
NO. 5, DAKHINGAON, KAHILIPARA, P.S. DISPUR, GUWAHATI-19, DIST.
KAMRUP M, ASSAM.

2:M/S R.T. CONSTRUCTION
A PARTNERSHIP FIRM
HAVING ITS OFFICE AT PIYOLI PHUKAN NAGAR
P.O. CHANDMARI
P.S. CHANDMARI
GUWAHATI-3
KAMRUP M
ASSAM
REPRESENTED BY ITS PARTNER RINKU TALUKDAR
S/O TANKESWAR TALUKDAR

3:RINKU TALUKDAR

S/O TANKESWAR TALUKDAR
R/O PIYOLI PHUKAN NAGAR
P.O. and P.S. CHANDMARI

GUWAHATI-3
DIST. KAMRUP M
ASSAM PARTNER OF M/S R.T. CONSTRUCTION

4:MRS. HELMINA KHANAM
W/O MR. ABU SHAMA ALI ANSWARY
R/O VILL. ALOPATI
P.O. ALOPATI
PIN 781127 DIST. BARPETA
ASSAM PRESENTLY RESIDING AT BAGHORBARI
SATGAON
P.S. SATGAON
GUWAHATI-37
KAMRUP M
ASSAM PARTNER OF M/S R.T. CONSTRUCTION

5:AZAD MEHBUB

S/O ABU BAKKAR SIDDIQUE
R/O HOUSE NO. 9
AMAR PATH
DAKHINGAON
P.S. DISPUR
DIST. KAMRUP M
ASSAM ALTERNATIE ADDRESS MUSSTT. SAJEDA BEGUM D/O LATE
NURUDDIN AHMED
R/O HOUSE NO. 9 AMAR PATH
BYE LANE NO. 5
DAKHINGAON
KAHILIPARA
P.S. DISPUR
GUWAHATI-19
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR. P DEKA

Advocate for the Respondent : FOR CAVEATOR

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

05.06.2023

Heard Mr. R. K. Bhuyan, the learned counsel for the appellants and the Mr. K. Jain, the learned counsel appearing on behalf of the respondent Nos.2 to 4. None appears on behalf of the respondent Nos.1 & 5.

2. The instant appeal has been filed under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 challenging the order dated 11.07.2017 whereby the application seeking injunction which was registered and numbered as Misc.(J) Case No.269/2017 was rejected by the learned Trial Court.

3. It appears on record that upon filing of the instant appeal, this Court in I.A.(C) No.2991/2017, after hearing both the parties, had directed the opposite parties not to further encumber, alienate or create any third party right in respect of any of the remaining flats which have not been validly alienated, transferred as on 15.09.2017.

4. Mr. K. Jain, the learned counsel appearing on behalf of the respondent Nos.2 to 4 as well as the learned counsel appearing on behalf of the appellants duly admits that out of the 18 flats which were constructed by the respondent Nos.2, 3 & 4; thirteen flats have already been transferred prior to 15.09.2017 to various owners who have been presently impleaded in the suit. However, as regards five numbers of flats which were the allocated areas given to the respondent No.1, the possession of which have not yet been handed over and have been kept intact in view of the order passed.

5. Taking into account the matter in its entirety and there is a prima-facie case of the appellants whereby they claim their right over the land upon which the construction has been made, this Court in the interest of justice is of the opinion that till the disposal of the suit, the status-quo be maintained as regards the five remaining flats which have not yet been encumbered, alienated or transferred as on 15.09.2017.

6. Before parting with the records this Court however finds it relevant to observe the submission made by Mr. R. K. Bhuyan, the learned counsel for the appellants that the respondent Nos.2, 3 & 4 have not produced any deed of sale evidencing transfer of the remaining 13 flats to the other third parties who have been presently made parties in the suit, and as such, a status-quo be passed as regards the entire apartment containing 18 flats.

7. Taking into account that those persons who have been impleaded in the suit presently are not parties to the instant appeal, this Court is not inclined to pass such order. However, liberty is given to the appellants to approach the Trial Court, if so advised.

8. With the above observation and discussion, the instant appeal stands disposed of.

JUDGE

Comparing Assistant