

GAHC010059182023



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

Case No. : I.A.(Civil)/773/2023

ABDUL AZIZ SK.
S/O- LATE AKHI SK., R/O- VILL.- UTTAR RAIPUR PART-I, P.O. AND P.S.
GOLAKGANJ, DIST.- DHUBRI, ASSAM, PIN- 783334.

VERSUS

AMIR ALI AND 7 ORS.
S/O- LATE FAZAR ALI,

2:JAMIR ALI
S/O- LATE FAZAR ALI

3:ABDUL HYE SK.

S/O- LATE MOINAL SK.

4:ABDUL RAHMAN
S/O- LATE MOINAL SK.

5:SAHIDUR (SAJA)

S/O- LATE AKSAR ALI

6:ANOWAR ALI
S/O- LATE HABIBAR RAHMAN

7:AMINUR RAHMAN
S/O- MOHIR UDDIN

8:AWAL MOZID
S/O- ASAN ALI
ALL ARE RESIDENTS OF VILL.- UTTAR RAIPUR PART-I

P.O. AND P.S. GOLAKGANJ
DIST.- DHUBRI
PIN- 783334

Advocate for the Petitioner : MR F U BARBHUIYA

Advocate for the Respondent : MR. P M KALITA

Linked Case : RSA/253/2019

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Advocate for : MR F U BARBHUIYA

Advocate for : MR. P M KALITA appearing for AMIR ALI AND 7 ORS.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

08.05.2023.

1. Heard Mr. F. U. Barbhuiya, learned counsel for the applicant. Also heard Mr. R. Sarma, learned counsel for the opposite party.
2. The present application is filed under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 with a prayer to pass an injunction order restraining the opposite parties from demolishing and dispossessing the petitioner/plaintiff from the suit Schedule land as mentioned at Page 9 of this application.
3. The plaintiff filed a suit for declaration of right, title and interest and recovery of Schedule A and Schedule B land from the defendant. The said suit being Title Suit No. 408/2013 was dismissed by learned Munsiff No. 1 under its Judgment and Decree dated 08.05.2018 and an appeal being Title Appeal No. 24/2018 was also preferred before the learned Civil Judge, Dhubri. Such appeal was also dismissed by Judgment and Decree dated 19.06.2019 and accordingly the connected Second Appeal was filed which was admitted by this Court under its order dated 20.10.2020.
4. The appellant has pleaded that that defendants are trying to dispossess him from the suit land. Therefore, an order of injunction

restraining the opposite parties from demolishing and dispossessing the petitioner/plaintiff from the suit Schedule land as mentioned at Page 9 of this application has become necessary.

5. Per contra Mr. R. Sarma, learned counsel for the opposite parties has submitted that the opposite party has not tried to dispossessed the appellant rather the opposite parties are possessing the suit land inasmuch as the plaintiff/applicant has lost his suit before both the learned Court below and therefore, at this stage, the peaceful possession of the defendants over the suit land shall not disturbed by any order of injunction.
6. Admittedly, the suit is for recovery of possession and fact also remains that the prayer for plaintiffs for declaration of right, title, interest and recovery of possession has been refused by both the learned Courts below.
7. Considering the matter in its entirety, this Court is of the view that the enjoyment of the opposite parties over the suit land shall not be disturbed at this stage of the proceeding.
8. Accordingly, it is provided that the opposite parties shall not have any restriction to construct houses over where they were already in possession. Such construction shall be subject to final outcome of the connected second appeal.
9. Accordingly, I.A. stands disposed of.

JUDGE

Comparing Assistant