

GAHC010063952023



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

Case No. : CRP(IO)/80/2023

MAMANI DAS BORO AND ANR.
W/O SUMIT KR. BORO R/O KANAKLATA PATH KALYAN NAGAR
MALIGAON P.S. JALUKBARI GUWAHATI ASSAM PIN 781011

2: SUMIT KUMAR BORO
S/O MONU KR. BORO R/O KANAKLATA PATH KALYAN NAGAR
MALIGAON P.S. JALUKBARI GUWAHATI ASSAM PIN 78101

VERSUS

BHARAT TUMUNG AND ANR.
D/O LT. BHOGIRAM TUMUNG R/O DHALBAMA P.O. AND P.S. GARCHUK
GUWAHATI DIST. KAMRUP (M) ASSAM PIN 781035

2: PALASH KONWAR
S/O PAMAN KONWAR C/O BHARATI TUMUNG R/O DHALBAMA P.O. AND
P.S. GARCHUK GUWAHATI DIST. KAMRUP (M) ASSAM PIN 78103

Advocate for the Petitioner : MR S DAS

Advocate for the Respondent : MR. T J MAHANTA (r-1)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

11.08.2023

Heard Shri S. Sarma, learned Senior Counsel assisted by Shri A. Gautam, learned counsel for the petitioners. Also heard Shri TJ Mahanta, learned Senior Counsel assisted by Ms. P. Bhattacharya, learned counsel for the respondent no.1.

2. This Court is of the opinion that the respondent no. 1 being the contesting respondent, this matter which is stated to be urgent in nature and also taking into consideration of the order impugned, this petition is taken up for disposal at the admission stage.

3. The facts of the case projected in this petition filed under Article 227 of the Constitution of India read with Section 151 of the CPC is that the respondent no. 1 as plaintiff had instituted Title Suit No. 299/2022 for ejectment an area of land. It is submitted that immediately on appearance of the defendant, who is the respondent no. 2 herein, the Suit was decreed on compromise.

4. On the other hand, the right, title and interest of the petitioners is on the strength of a registered Sale Deed executed on 09.08.2020, much prior to the institution of the Suit. Shri Sarma, learned Senior Counsel by referring to the Sale Deed and also the Schedule appended thereto has submitted that the Sale Deed in respect of 3 Kathas and 15 Lechas of land covered by Dag Nos. 64 and 65 under KP Patta No. 52. However, since there was some error in the Dag Number, a registered rectification deed was executed on 07.06.2022 wherein the Dag Number was rectified to be only 65. The learned Senior Counsel for the petitioners has also referred to the Namjari and the Jamabandi in which the names of the petitioner have been duly reflected by virtue of the registered Sale Deed and possession. However, on 06.03.2023, the petitioners were forcefully dispossessed from the land and building and was occupied by the respondent no. 1.

5. Being thus situation, the petitioners have filed an application under Order XXI Rules 97, 99 and 101 read with Section 151 of the CPC. By drawing the attention of this Court to the said petition, the learned Senior Counsel has submitted that amongst other prayers, there was a specific prayer for grant of *ad ex-parte interim* injunction restraining the opposite parties from creating any third party interest and changing the nature and character of the Suit land.

6. Shri Sarma, learned Senior Counsel by referring to the order dated 17.03.2023 which has been impugned in this petition has submitted by the aforesaid order, only notice has been issued without considering passing of any *ad ex-parte interim order*. Shri Sarma, learned Senior Counsel is also aggrieved by certain observations made by the learned Munsiff No. 2 in the said order dated 17.03.2023 which according, to his perception, has the propensity to cause prejudice to the petitioners in conducting the case.

7. The learned Senior Counsel accordingly submits that the order is required to be interfered with and possession of the petitioners be restored. In this connection, the learned Senior Counsel have places reliance upon the following case laws-

i. (1996) 4 SCC 144 [Samir Sobhan Sanyal Vs. Tracks Trade (P) Ltd.]

ii. (1996) 8 SCC 47 [Ram Chandra Verma Vs. Jagjat Singh Singhi]

8. *Per contra*, Shri Mahanta, learned Senior Counsel for the respondent no. 1 has submitted that there is actually no cause of action in the present petition as no adverse order has been passed by the learned Munsiff No. 2. He submits that the petition filed under Order XXI Rules 97, 99 and 101 CPC has not been rejected and therefore there cannot arise any grievance to invoke the supervisory jurisdiction of this Court under Article 27 of the Constitution of India. He submits that under Order XXI Rule 99, orders are required to be passed by the Court after an adjudication of the application and unless the affected parties are given a scope of proper hearing, there cannot be adjudication and that stage is yet to be arrived at.

9. The contention advanced by the learned counsel for the parties have been duly considered and the materials placed before this Court have been duly examined.

10. The projection made by the petitioners is that the petitioners have accrued valid right, title and interest over the Suit land by virtue of Sale Deed duly executed and

registered and by taking over the possession and unless such Sale Deed was the subject matter of challenge in which there is interference by the Court of competent jurisdiction, the dispossession could not have been made. The contention made by Shri Sarma, learned Senior Counsel that the decree appears to be one of the collusion has also been noted. However, at the same time, this Court is of the opinion that these contentions are primarily to be considered and orders to be passed thereupon by the Court before whom the application under Order XXI Rules 97, 99 and 101 CPC has been filed.

11. This Court finds force in the contention of Shri Mahanta, learned Senior Counsel, who has submitted that unless there is an adjudication of such application, the prayer for handing over possession of the land in question on the first date cannot be justified.

12. Though the said submission appears to be correct, at the same time, this Court is of the opinion that on a *prima facie* consideration of the documents and on hearing the submissions, the equities are required to be balanced and the interest of the respective parties are required to be protected till the adjudication of the application. Therefore, while the order dated 17.03.2023 passed by the learned Munsiff No. 2 whereby notices have been issued is not interfered with, this Court is of the opinion that interest of justice would be served if an order of protecting the rights and interest of the parties is passed. Therefore, it is directed that the learned Court below would take up the application for disposal expeditiously, preferably within a period of 4(four) months from today and till such disposal, it is directed that no third party rights are to be created and the nature and character of the Suit land should not be changed. This Court is also making clear that the observations which have been made by the Court in the order dated 17.03.2023 are to be treated to be *prima facie* in nature and would not come into the way at the time of final adjudication of the application.

13. The petition accordingly stands disposed of.

14. Interim order passed on 24.03.2023 stands vacated.

JUDGE

Comparing Assistant