

GAHC010168592022



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

Case No: FAO/29/2019

SRI RUNU ROY AND 3 ORS.
S/O- LATE RATHINDRA LAL ROY
R/O- HAILAKANDI ROAD
SILCHAR- 788005
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

2: SMTI. SHEELA ROY
W/O- SRI RUNU ROY
R/O- HAILAKANDI ROAD
SILCHAR- 788005
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

3: SRI RATNAJIT ROY
S/O- SRI RUNU ROY
R/O- HAILAKANDI ROAD
SILCHAR- 788005
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

4: SRI SUBROJIT ROY
S/O- SRI RUNU ROY
R/O- HAILAKANDI ROAD
SILCHAR- 788005
P.S. SILCHAR
DIST.- CACHAR
ASSAM.
VERSUS

SRI SUBRATA DAS AND 5 ORS.
S/O- LATE SUKEN DAS
R/O- SATSANGA ASHRAM ROAD
SILCHAR TOWN
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

2:SRI ASHIM DAS
S/O- LATE AKHIL DAS
R/O- MAHANAMBRATA SARANI
HAILAKANDI ROAD
SILCHAR TOWN
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

3:SMTI. MANJUSHREE SWAMI
W/O- LATE SUBHENDU KUMAR SWAMI
R/O- FLAT NO. D-02
MAYUR KUNJA APARTMENT
COLLEGE ROAD
SILCHAR TOWN
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

4:SHREE BHARGAVA SWAMI @ DEEP SWAMI
S/O- LATE SUBHENDU KUMAR SWAMI
R/O- FLAT NO. D-02
MAYUR KUNJA APARTMENT
COLLEGE ROAD
SILCHAR TOWN
P.S. SILCHAR
DIST.- CACHAR.
5:M/S. JAIN UDYOG

KUSHAL COMPLEX
SONAI ROAD
SILCHAR TOWN
P.O. SILCHAR
DIST.- CACHAR. (REP. BY ITS PARTNER SRI RAMESH KUMAR JAIN
S/O- LATE GAJANAND JAIN
R/O- JAIN HOUSE
MONA CHOWMAHANI
AGARTALA- 799001
TRIPURA.
6:SMT. SUSMITA PURKAYASTHA
W/O- SHREE BISWADEEP PURKAYASTHA

D/O- LATE SUBHENDU KUMAR SWAMI
R/O- 1500 PLANTATION OAKS DRIVE
APARTMENT NO. 2904
TROPHY CLUB
TEXAS- 762662
U.S.A.

REP. BY HER DULY APPOINTED ATTORNEY SRI SAMARENDRA DAS @
SREE SAMAR DAS
S/O- LATE UPENDRA DAS
R/O- CHURCH ROAD
AMBICAPPTY
SILCHAR TOWN
P.S. SILCHAR
DIST.- CACHAR
ASSAM.

Advocate for : MR G N SAHEWALLA
Advocate for : MR. D CHAKRABARTY appearing for SRI SUBRATA DAS AND 5
ORS.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

18.5.2023

1. Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Mr. A. Chetia, learned counsel for the applicant. Also heard Mr. D. Chakraborty, learned counsel for respondent Nos. 1 and 2.
2. The present FAO was filed assailing an order dated 2.3.2019 passed by learned Civil Judge, No.2 Cachar, Silchar in Misc.(J) Case No. 29/2019 in Title Suit No. 35/2016. By the aforesaid order, the learned trial Court refused to grant exparte interim injunction restraining the respondent Nos. 1 and 2 from transfer the suit land in favour of any other person or persons or creating any

charge/encumbrance etc in favour of the respondent No.3 and from changing the nature and character of the suit land.

3. Alongwith the appeal, an application under Order 39 Rule 1 and 2 CPC, 1908 was also filed before this court which was registered as IA(C) No.1776/2019. This court under its order dated 24.5.2019, while issuing notice, directed the parties to maintain status quo over the suit land till the returnable date. Such order was passed on the consideration that in the suit, the defendant had already entered appearance and therefore, question of refusing the prayer of interim order on the ground that "no ex parte order was called for", was not correct. Accordingly, it was also the consideration of this court in the said order that learned court below ought to have considered the prayer of an application to maintain status quo till such time the application was disposed of on merit.

4. By filing IA (C) 2786/2022, the respondent has prayed for vacation / modification of the order dated 24.5.2019 passed in IA(C) 1776/2019.

5. The fact remains that the petition filed under Order 39 Rule 1 and 2 CPC 1908 is pending for grant of temporary injunction before the learned trial court. The plaintiffs were aggrieved by non grant of exparte ad interim injunction accordingly approached this court and this court has granted status quo and such status quo has been operating since the year,2019. It is submitted at the Bar that the main application for temporary injunction is still pending before the learned trial court and it has not yet been disposed of for the reason of pendency of present F.A.O.

6. This court is of the considered opinion that the present FAO is filed against non grant of ad interim injunction and therefore even if the present appeal is pending , there is no bar for the trial court to proceed with the

injunction application and decide the temporary injunction on its own merit.

7. In that view of the matter, ends of justice would be met if this appeal is disposed of directing the learned trial court to decide the application pending before it under Order 39 Rule 1 and 2 CPC of 1908 within a specific time frame. Learned counsel for the parties have also agreed to such course of action.

8. Yet another IA(C) being IA(C)No. 2151/2019 was filed by the appellant alleging violation of order of status-quo passed by this Court.

9. Accordingly, this FAO is closed with a request to the learned trial court below to decide the Misc (J) Case No. 29/2019 arising out of Title Suit No. 35/2016 within a period of two months from the date of appearance of the parties. The parties shall appear before the learned court below on 5.6.2023.

10. As status quo was granted by this court, the same shall continue till the matter is taken up by the learned trial court. If the matter is not taken up for any reason on the date fixed, the trial court shall consider, whether such status quo order needs further extension till the determination. It is expected that the parties shall not delay the proceeding by seeking unnecessary adjournments.

11. While parting with record, it is made clear that this Court has not expressed any opinion regarding prima facie case, balance of convenience, irreparable loss or injury for grant of temporary injunction or merit of the claim of either of the parties. Therefore, the learned trial court shall decide the said application on its own merit applying its judicial mind without being influenced by any of the observation made in this order.

JUDGE

Comparing Assistant