

GAHC010116302022



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

Case No. : CRP/96/2022

DR. NILUFAR RAHMAN AND ANR
W/O. DR. NADER MOHAN DESI, R/O. 9/4 PATEL RAMIAHNAGAR, BYRATHI
CROSS, KOTHANUR HENNUR MAIN ROAD, BALGORE, KARNATAKA-
560077.

2: ATIKUR RAHMAN

S/O. LT. RUMENA RAHMAN
R/O. HOUSE NO.22
URBAN CITY COMPLEX
NEAR INTERNATIONAL HOSPITAL
G.S. ROAD
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781005

VERSUS

AFROZA RAHMAN AND ANR
W/O. LT. ADILUR RAHMAN, R/O. RAHMAN BUILDING, DYNASTY HOTEL,
S.S. ROAD, LAKHTOKIA, GUWAHATI, KAMRUP (M), ASSAM, PIN-781001.

2:AZANA RAHMAN
D/O. LT. ADILUR RAHMAN
R/O. RAHMAN BUILDING
DYNASTY HOTEL
S.S. ROAD
LAKHTOKIA
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781001

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : MR. A BARUAH

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. S Chamaria, Advocate

For the Respondents : Mr. AK Srivastava, Advocate

Date of Hearing : 27.04.2023, 06.06.2023

Date of Judgement : 20.06.2023

JUDGEMENT & ORDER (CAV)

1. Heard Mr. S Chamaria, learned counsel for the petitioners. Also heard Mr. AK Srivastava, learned counsel for the respondents.
2. The present revision petition is filed challenging legality and validity of the judgment and order dated 05.03.2022 passed by learned Additional District Judge No. 3, Kamrup (M), in Misc. Appeal No. 42/2021, whereby the judgment and order dated 22.04.2021 passed by the learned Civil Judge No. 3 in Misc Case No. 108/2021 arising out of TS No. 305/2015 was upheld.
3. The petitioners herein filed TS No. 305/2015 in the court of learned Civil Judge No. 3 seeking declaration of right, title and interest and permanent injunction against the defendants. The plaintiffs prayed that a deed of

assignment dated 08.03.2007 is declared to be cancelled for the reason of same being not acted upon. The further prayer of the plaintiffs was for a declaration of right of the plaintiffs and defendants over the suit premises. The suit premises are three properties, which are described as Property No. 1, Property No. 2 and Property No. 3. Property No. 1 is one M/s Mohijuli Tea Company Pvt. Ltd. including his land and building, Property No. 2 is one Tezalpatty Division & Tea Estate including landed property and Property No. 3 is a plot of land belonging to one Rahman Properties Pvt. Ltd.

4. Along with the plaint, the plaintiffs also filed an application under Order 39 Rule 1 and 2, which was registered as Misc (J) Case No. 330/2015 seeking injunction against the suit properties. The basic allegation seeking such injunction was that the defendant No. 1 has been planning to transfer illegally some of the valuable properties and shares of the Property.
5. It was also a contention that the property has not been divided and partitioned between the plaintiffs and defendants and therefore the defendants are having no right to alienate the aforesaid property. The prayer of order of grant of status quo was not objected by the defendants' so far the same relates to Property Nos. 1 and 2. However, so far relating to the Property No. 3, it was contended by the defendants that there was a deed of assignment and same has been acted upon long back and the consideration thereof has been received by the plaintiffs. Therefore, they cannot challenge the said deed of assignment and accordingly they were not entitled to any order of injunction with regard to Property No. 3.
6. The learned court below considering the fact that the validity of the deed of assignment will be decided in the main suit after going through the evidence laid from both the sides the ad interim status quo order passed on

20.08.2015 was made absolute. Accordingly, status quo was directed to be maintained with regard to Property Nos. 1 and 2 till disposal of the main suit.

7. While the suit was proceeding, the plaintiffs once again filed an application under Order 39 Rule 1 and 2, which was registered as Misc. Case No. 108/2021 with a prayer that the defendants be restrained from disturbing the day to day activities of schedule 1 and 2 properties, which are operated by the petitioners from the registered office situated at schedule 3 properties.
8. The background fact of seeking such injunction, pleaded in the aforesaid petition was that during pandemic situation the hotel situated in the property No. 3 was declared as quarantine centre and the defendants could not carry on their necessary activities and could not operate from the aforesaid premises. However, after the pandemic situation was over, the defendants debarred the petitioners from operating its activities from the said hotel and rather threatened the defendants to take back all the articles from the said office. Such petition was resisted by the defendants by filing written objection, inter-alia, contending that M/s Rahman Properties Pvt. Ltd. (Property No. 3) was incorporated under Companies Act, 1956 and subsequently the property was transferred in the name of the company.
9. It was also contended that the landed property was transferred to the company by the deceased plaintiff No. 1, 2 and plaintiff No. 3 and defendant Nos. 1 and 2 by way of a registered sale deed. It is also contended that the deceased plaintiff No. 1 during her lifetime also transferred another plot of land by registered sale deed in the name of the company i.e. M/s Rahman Properties Pvt. Ltd. Accordingly, shares were

allotted to the plaintiffs and the defendants.

10. The defendant Nos. 2 and 3 subsequently by an assignment deed transferred their shares *in lieu* of the value of such shares. The deceased plaintiff No. 1 also transferred her share in the name of the predecessor-in-interest of defendant No. 1, however, on certain condition including condition of deferred payment on demand. It is the allegation that such condition was violated.
11. Accordingly, it is contended that the plaintiff Nos. 1 and 2 shall have no say in respect of the Property No. 3 as they have already transferred their shares in the name of the of the predecessor-in-interest of the defendant No. 1. With the aforesaid backdrop of pleaded case, the learned court below rejected the prayer of injunction by concluding the following:
 - I. From the para 8 of the plaint, it was found that the plaintiffs have not disputed the Deed of Assignment dated 08.03.2007 though they have challenged the deed of assignment and prayed for its cancellation for being not acted upon.
 - II. The document relied on by the defendants showing the declaration by the plaintiffs Nos. 2 & 3 regarding receipt of money as per assignment deed has not also been denied by the said plaintiffs and therefore such fact is required to be given due weightage while deciding the injunction petition.
 - III. According, it was concluded that no prima-facie case was made out to grant injunction.
 - IV. Regarding balance of convenience the learned court

concluded that there is no whisper by the plaintiffs to the effect that they were having access to the schedule 3 property and are using the said property or conducting day to day activities of schedule 1 and 2 property.

- V. Accordingly, it was also concluded that in the event the injunction is passed it will be more inconvenient to the defendants than to petitioners and cause irreparable loss and injury to the defendants, which cannot be compensated in terms of money.

12. Being aggrieved, the plaintiffs preferred an appeal before the learned Additional District Judge No. 3. The learned Appellate Court by the impugned order dated 05.03.2022 also upheld the decision of the learned trial court and concluded the followings:

- I. The initial order of status quo has not been challenged by either of the parties before any of the forum and if such order of status quo has been disobeyed the option left is to file an application under Order 39 Rule 2A.
- II. The plaintiffs failed to prove that they were in possession of schedule 3 property and they were restrained from entering into the said property by the respondents violating the status quo order.
- III. The learned Appellate Court concluded that the learned trial court has considered the three golden principles while rejecting the injunction petition and while considering the pleading of the parties relating to the possession of schedule 3 property and

while doing so, the learned appellate court opined that the learned trial court has exercised its discretion reasonably in a judicial manner and within the parameter of three ingredients of Order 39 Rule 1 and 2 and therefore, declined to interfere with such decision.

13. Argument advanced by Mr. S Chamaria, learned counsel for the petitioners:

- I. The glaring infirmities committed by the learned forums below by not considering/ appreciating the aforesaid documents annexed with the injunction petition, while passing impugned order dated 22.04.2021 in Misc (J) case No. 108/2021 in TS No. 305/2015 passed by the learned Civil Judge No. 3, Kamrup (M).
- II. Instead of addressing the issue which pertains to existence of registered office and its operational activities, the other irrelevant issues have been taken into consideration.
- III. Assailing the order dated 22.04.2021, Mr. Chamaria submits that the learned appellate court in order dated 05.03.2022 of Misc Appeal No. 42/2021 failed to take up the issue of registered office in right direction since the burden as stated in the said order not only discharged by the petitioner, per contra the same has also been confirmed by the respondents in their different documents/ pleadings.
- IV. Like the learned court below, the learned appellate court also, instead of addressing the issue pertaining to existence of

registered office and its operational activities, the other irrelevant issues have been taken into consideration.

V. The learned appellate court in paragraph 53 in order dated 05.03.2022 passed in Misc Appeal No. 42/2021 stated that it was the burden of the petitioner/ appellants to show or prove that they were also in possession in schedule 3/C property, if they were restrained from entering into the said property by the respondents by violating the status quo order.

VI. In support of his contention, he relies on the decision of ***K. Palaniswamy vs M. Shanmugam & Ors.*** in ***Civil Appeal No. 1392 of 2023.***

14. Per contra, Mr. Srivastava, learned counsel for the respondents submits the following:

I. A bare reading of the plaint and the schedule thereto will clarify that the properties which are the subject matter of the suit are companies and properties belonging to the company. In view of such admitted position the question of maintainability of the suit itself is a question and such question is pending for adjudication before the learned trial court below as on date.

II. Mr. Srivastava further contends that the assignment deed dated 08.03.2007 has not been disputed by the defendants. In fact it has not also been disputed that by virtue of the aforesaid deed of assignment and in execution thereof the defendants have already received their benefits under the agreement what they are agitating is from the share of their deceased mother

plaintiff No. 1. Therefore, they cannot be even said to be an aggrieved party in the suit.

III. Contending that pursuant to a board meeting dated 08.03.2007 on which date deed of assignment was also executed the plaintiff Nos. 2 and 3 resigned from the company, thus they are having no role to play in the company in question inasmuch as by the aforesaid board resolution entire responsibility of the management was entrusted upon the deceased husband of the defendant No. 1 and a specific resolution was taken that the defendants will not interfere nor have any say regarding to the day to day affair of the management of the company. Such documents were before the learned trial court below and therefore, the learned trial court has rightly rejected the injunction petition.

IV. In support of such contention Mr. Srivastava relies on the auditor's report for the year 2001 and auditor's report of 2010 to show that in the year 2001 the defendants were shown to be receiving remuneration as Director whereas in the auditor's report of 2010 their names do not find any place as Directors and these documents were signed by deceased plaintiff No. 1 and the predecessor-in-interest of the defendants. Similar situations are there in all the three companies.

15. Heard the learned counsel for the parties.

16. Law is well settled that to reverse an order in exercise of revisional power this court must come to a conclusion firstly that the subordinate court has

exercised jurisdiction beyond its limit. While exercising such jurisdiction acted illegally, such illegality should confine to the question of law or must relate to material illegality. Until and unless such satisfaction is there a revisional court shall not exercise its power to upset orders of the learned trial court even if it differs with a conclusion made by the learned trial court.

17. In the case of ***Wander Ltd. And Anr. vs Antox India P. Ltd. reported in 1990 Supp (1) SCC 727***, the Hon'ble Apex Court held that ordinarily an appellate court would not be interfering to the exercise of discretion by court of first instance and substitute its own discretion except in cases where discretion was shown to have been exercised arbitrarily, capriciously or perversely or against settled principle of law. It was also held in ***Wander (supra)*** that prayer for grant of an interlocutory injunction is considered at a stage when the existence of legal right asserted by the plaintiffs and is alleged violation are both contested and remain uncertain till they are established at the trial on evidence. The object of passing of interlocutory order is to protect the plaintiff against injury by violation of his right for which he could not adequately be compensated in damages recoverable in action if the uncertainty were resolved in his favour at that time. It was further held that need of such protection must be waited against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated.
18. It was well settled that the learned appellate court will not interfere with the exercise of such discretion of court of first instance and substitute its own discretion except it is shown that discretion has been shown to have

exercised arbitrarily, capriciously or perversely. Now therefore, in the aforesaid backdrop of settled proposition of law regarding exercise of power of a revisional court and exercise of power under Order 39 Rule 1 and 2, this court is look into whether the learned courts below has committed an illegality to an extent that which will amount to be a exercise of power leading to arbitrariness, perversity etc.

19. The refusal of the injunction as discussed hereinabove is based on two documents. Firstly, the deed of assignment and resultant declaration of the plaintiffs by accepting that they have received the money. The assignment deed reflects that the deed was entered between the plaintiff No. 1 and the deceased husband of the defendant No. 1. In terms of the aforesaid deed the defendant No. 3 was to receive an amount of Rs. 60,00,000/- (Rupees sixty lakhs) and the defendant No. 2 was to receive an amount of Rs. 3 Crores for transferring and assigning of their shares in the company described in the schedule 1 and 2 of the deed of assignment. The deceased plaintiff No. 1 was to receive an amount of Rs. 2,00,000/- per month till her demise and onetime payment of Rs. 50,00,000/- (Rupees fifty lakhs) out of the consideration within a period of three years from the date of signing of the agreement. Such assignment deed has not been denied by the plaintiffs rather the plaintiffs prayed for cancellation of such deed for noncompliance of certain part by the predecessor-in-interest of the defendant No. 1.
20. The perusal of the declaration deed shows that the plaintiff Nos. 2 and 3 have acknowledged receipt of the amount determined in the assignment deed and declared that they will have no objection if the predecessor-in-interest of the defendant No. 1 transfers their shares in his name. On the basis of these two documents, the learned court came to the aforesaid

conclusion and granted status quo order and subsequently refused to grant any further injunction.

21. This court is of the view that the way the learned trial court has interpreted the two documents cannot be said to be perverse.
22. The findings of the learned appellate court that even if the plaintiffs were running their registered office from the Property No. 3, then also if they are restrained from entering into such property same will raise a cause of action of violation of injunction and no fresh injunction can be granted also cannot be faulted with inasmuch as Order 39 Rule 2A provides a remedy when an injunction order is violated.
23. If we see the pleading of the plaintiffs, it is more or less a allegation that they were continuing in the premises and they have been restrained after the pandemic was over. Both the learned courts below relying on aforesaid two documents rejected the injunction, this court cannot also interfere with such refusal more particularly in view of the fact that prima-facie the deed of assignment and declaration shows that the schedule No. 1 and 2 company were transferred in the name of the predecessor-in-interest of the defendant No. 1. Therefore, the finding that balance of convenience in favour of the defendants rather than in favour of plaintiffs cannot also be faulted with in view of the aforesaid two documents. The fact prima-facie available on record is that pursuant to execution of the deed of assignment the defendants transferred their shares and resigned from the company. Therefore, such document prima-facie shows that the entire share of the company was assigned and transferred to the predecessor-in-interest of the defendant Nos. 1 and 2. In the aforesaid factual backdrop the refusal of injunction to allow the plaintiff to operate the company from the premises

situated in the property belonging to the schedule company No. 3 cannot be termed as irrational or perverse or capricious or arbitrary.

24. In the considered opinion of this court the injunction is a discretionary and equitable relief and such discretion has rightly been exercised by the learned trial court and affirmed by the learned appellate court and therefore, this court in exercise of revisional power would not like to entertain such issue in exercise of revisional power to once again reopen the factual determination that has already been made by both the learned courts below not being perverted.
25. Law is well settled that even when two opinions are possible in a factual determination the opinion taken by the learned courts below in an injunction matter should be upheld. So far countering the argument of Mr. Chamaria that the vital documents and materials were not considered, it is not a case pleaded in the plaint or in the initial injunction petition they are possessing or smoothly running from the business premises at Property No. 3. Therefore, this court does not find fault in the aforesaid determination made by both the courts below.
26. Accordingly, this court finds no merit in the revision petition and same stands dismissed.

JUDGE

Comparing Assistant