

GAHC010117552022



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

Case No. : CRP(IO)/133/2022

PARIMAL SHYAM
S/O- LATE PRAMOD RANJAN SHYAM,
R/O- SARADA PALLY , WEST SRIPURIA, TINSUKIA TOWN,
P.O, P.S AND DIST- TINSUKIA, ASSAM

VERSUS

BHOLA BHATTACHARJEE
S/O- LATE RAM KRISHNA BHATTARCHARJEE
R/O- SARADA PALLY , WEST SRIPURIA, TINSUKIA MUNICIPAL WARD NO-
1,
P.O, P.S AND DIST- TINSUKIA, ASSAM,
PIN-786125

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : MR. T DEURI

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 10.3.2023

Heard Mr.S. Islam, learned counsel for the petitioner. Also heard Mr. T. Deuri, learned counsel for the respondent.

2. The present application is filed assailing an order dated 26.5.2022 passed in Misc.(J) Case No. 46/2022 arising out of Title Suit No. 109/2021(new)/ Title Suit 69/2021 (old).
3. The respondent claiming to be a tenant under one Parimal Shyam filed a suit for declaration that the plaintiff is a lawful tenant under defendant Parimal Shyam, in respect of the suit land and for permanent injunction restraining the defendant from forcibly/ illegally evicting him.
4. The defendant took a stand that the plaintiff is not a tenant under defendant Parimal Shyam. However, he is a tenant under the wife of the defendant, namely, Uma Shyam.
5. While the suit was pending, the plaintiff respondent filed a petition u/s 151 CPC for restoration of possession of the suit premises on the alleged background fact that the defendant with some 'goons' whose names were specifically mentioned in the petition had forcefully evicted the family of the plaintiff /respondent from the suit premises on 9.3.2022 and was registered as Misc (J) Case No.46/2022. Such petition was filed immediately after alleged forceful eviction i.e 9.3.2022 and an FIR was also lodged before the jurisdictional police station which was registered as Tinsukia P.S. Case No. 219/2022 u/s 143 /448 /325 /354/ 392/ 427 /295 of IPC .
6. The defendants/petitioner filed objection to such petition and has taken a stand that the plaintiffs have been involved in some illegal activities and many local people gathered before the suit premises and upon their persuasion the plaintiff alongwith his family members vacated the suit

property. However, no statement has been made what are the illegal activities, when such illegal activities were carried out and on which date the neighbouring people gathered and persuaded them to vacate the suit premises.

7. In the aforesaid backdrop, the learned trial court came to a conclusion that the defendant has taken the law in its own hand and has dispossessed the plaintiff without due process of law and therefore the intervention of Court is required to meet the ends of justice. The Court also considered that the plaintiff approached the court immediately after the alleged eviction.
8. While coming to such conclusion the learned court below has relied on different authorities of the Hon'ble Apex Court to the effect that a person including a trespasser cannot be evicted from the suit property by any means except under the due process of law.
9. This court is dealing with the present petition in exercising of its power under Article 227 of the Constitution of India. Such power is supervisory in nature and is exercised not to correct any decision of any subordinate court. This court can exercise its power under Article 227 of the Constitution of India when subordinate Court or Tribunal exceeds its jurisdiction, fails to exercise its jurisdiction, or exercises its jurisdiction resulting in failure of justice.
10. In the case in hand, it is an admitted position by the petitioner/ defendant that the plaintiff/ respondent is tenant under one Uma Shyam, though the suit was filed against the husband of Uma Shyam.
11. Be that as it may, it is an admitted position that the respondent was

possessing the suit premises as tenant and apprehending forceful eviction it has filed the suit which is clear from the pleadings and prayer of the suit. The record also reveals that earlier, there were direction issued by the learned trial court for restoration of electricity and water supply.

12. In the aforesaid backdrop and more particularly on the given facts that the defendant has failed to specify when the defendant has left their premises, this court is of the considered opinion that the finding of fact arrived at by the learned Court below has not led to any jurisdictional error or any excess of jurisdiction resulting in failure of justice.
13. In that view of the matter this court is not inclined to interfere with the impugned order in exercise of its power under Article 227 of the Constitution of India. Accordingly the same is dismissed.

JUDGE

Comparing Assistant