

GAHC010131472023



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

Case No. : CRP(IO)/179/2023

BHARAT CH BARMAN
S/O- RUP KANTA BARMAN,
R/O- WARD NO-2, BIJNI TOWN,
P.O- BIJNI,
DIST- CHIRANG, BTAD, ASSAM

VERSUS

SURESH BARMAN
S/O- NABA KANTA BARMAN,
R/O- VILLAGE PUB KHAMPARA, P.O- BAGARGAON,
P.S- BIJNI,
DIST- CHIRANG, BTAD, ASSAM, PIN-783390

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 19.06.2023

Heard Mr. B. J. Mukherjee, the learned counsel appearing on behalf of the Petitioner.

2. The instant application has been filed under Article 227 of the Constitution

challenging the order dated 25.05.2023 on the ground that the Court of the Munsiff, Bijni in Money Suit No.12/2021 had rejected the petition filed by the Plaintiff for calling the Circle Officer, Bijni Revenue Circle to adduce evidence.

3. At this stage, it is relevant to take note of that the case of the Plaintiff/Petitioner is that the Plaintiff had entered into an agreement for sale with the Defendant on 27.04.2019. However, while the process of obtaining the permission was going on, the Plaintiff came to learn that one of the brothers of the Defendant is also a co-owner of the land and there is an objection so filed before the Circle Officer, Bijni for not granting the permission. It is under such circumstances, the Plaintiff has filed the suit being Money Suit No.12/2021 claiming the refund of the earnest money of an amount of Rs.4,20,000/- along with interest @2% per annum w.e.f. 03.09.2019 as well as for future interest @2%.

4. It is however, the case of the Defendant that the Defendant is the sole owner of the suit property and there was no objection filed and as such the Plaintiff is not entitled to the refund of the earnest money. It is under such circumstances, the learned Trial Court has opined in the order dated 25.05.2023 that the question of calling the Circle Officer, Bijni Revenue Circle is not necessary in view of the specific stand being taken by the Defendant that there was no objection filed. This Court upon perusal of the materials on record is of the opinion that the order dated 25.05.2023 does not call for any interference by this Court.

5. Before parting with the records, this Court finds it relevant to take note of the submission made by the learned counsel for the Petitioner, Mr. B. J. Mukherjee that the Plaintiff may be permitted by this Court to file appropriate

application before the Trial Court for calling for the objection, if any, so filed before the Circle Officer, Bijni Revenue Circle. This Court is of the opinion that such directions cannot be given by this Court. Be that as it may, the Petitioner being the Plaintiff is at liberty to file appropriate application before the Trial Court and the Trial Court shall in its wisdom pass such orders as deemed fit.

6. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant