

GAHC010132872022



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

Case No. : CRP/78/2022

CHENI MAHANTA
SON OF LATE KAMAL MAHANTA, RESIDENT OF VILLAGE- GATANGA,
P.S.- TEZPUR, DISTRICT- SONITPUR, ASSAM.

VERSUS

MITRA DEV MAHANTA AND ANR
SON OF LATE PURNA MAHANTA, RESIDENT OF VILLAGE GATANGA, P.S.
TEZPUR, DISTRICT- SONITPUR, ASSAM. PIN- 784154.

2: SURINDER SHARMA
SON OF LATE KHARATI SHARMA
RESIDENT OF VILLAGE GATANGA
KADAL
P.S. TEZPUR
DISTRICT- SONITPUR
ASSAM. PIN- 784154

Advocate for the Petitioner : MR. S P ROY

Advocate for the Respondent : MR. S K SINGH (r-1,2)

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

15.05.2023

1. Heard Mr. S. P. Roy, learned counsel for the petitioner. Also heard Mr.

S. K. Singh, learned Senior Counsel assisted by Mr. B. Pushilal, learned counsel for the respondents.

2. The present application is filed assailing an order dated 04.07.2019, passed in Misc. (J) Case No. 66/2015 by the learned Munsiff No. 1, Sonitpur, Tezpur whereby the petition filed by the petitioner under Order 39 Rule 2A read with Section 94(c) of the Code of Civil Procedure, 1908 seeking action against the respondents herein / defendants / opposite parties in the Misc. Case, was dismissed.
3. The other order under challenge is the order of the learned appellate Court dated 13.02.2020 passed in Misc. Appeal No. 7/2019 whereby the learned appellate Court uphold the decision of the learned trial Court below.
4. The petitioner as plaintiff instituted a suit being Title Suit No. 46/2014 against the respondents/defendants before the Court of learned Munsiff No. 1, Sonitpur, Tezpur for declaration of right, title, interest, over the Schedule-A land and eviction of the defendants from the Schedule-B land.
5. According to the plaintiff, Schedule B land measuring 18 lechas has been encroached by the defendant No. 1.
6. Along with the suit, an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 was filed by the plaintiff which was registered as Misc. (J) Case No. 79/2014.
7. The learned trial Court below after hearing the parties, by its order dated 17.12.2014 directed the parties to maintain status quo over the land

in possession of the respective parties as on the passing of the said order. Both the parties were also directed not to alienate the land in their possession for proper adjudication of the case till disposal of the main suit.

8. Alleging that even after passing of this order, by a registered sale deed being 1652 dated 24.12.2014, the defendant No. 1 sold a plot of land measuring 1 Katha 11.5 Lechas to the defendant No. 2. Accordingly, the application in question was filed alleging violation of the order of injunction. The said application was registered as Misc. (J) Case No. 66/2015.
9. The learned trial Court rejected such application on the ground that the plaintiff himself during his cross-examination admitted that the boundary of the land sold are not part of the disputed land.
10. The learned trial Court below also considered that the plaintiff during cross-examination admitted that as per Survey Commissioner's Report filed in the Title Suit, it was reported that the land measuring 1 Katha 17 Lechas was under the possession of the plaintiff and 1 Katha 11.5 Lechas of land was under the possession of the defendant No. 2. The learned trial Court below thereafter came to a conclusion that the land upon which the order of status quo was passed is not sold out by the defendant No. 1.
11. Such decision was assailed in Misc. Appeal No. 7/2019 and said appeal was also dismissed by the learned appellate Court below i.e. Civil Judge, Sonitpur, Tezpur by the impugned order dated 13.02.2020.
12. Considering the Exhibit-2 and the Schedule, the learned appellate Court also affirmed that the land upon which the injunction order was passed is

different from the land sold by through the sale deed being 1652 dated 24.12.2014. The learned appellate Court also relied on the Survey Commissioner's Report in coming into such conclusion. Thus, the learned appellate Court below affirmed the decision of the learned trial Court.

13. Mr. S. P. Roy, learned counsel for the petitioner submits that both the learned Courts below by giving undue reliance upon the Survey Commissioner's Report has come into a conclusion that the land sold and land alleged to have been encroached are two different land inasmuch as the Survey Commissioner's Report discloses that the land purchased by the plaintiff is in a pond and it is beyond imagination that the party shall purchase the pond by a registered sale deed and the sale deed nowhere discloses that there is a pond inasmuch as in the sale deed of the plaintiff, in the northern side, a public tank was shown but not over the land of the plaintiff. Therefore, the findings of the learned Courts below are perverse.
14. Per contra, Mr. S. K. Singh, learned Senior Counsel for the respondents submits that both the Courts below after proper appreciation of evidence including the cross-examination of the plaintiff has come to a definite conclusion and such finding of fact should not be interfered in a revisional Court inasmuch as the proceeding under Order 39 Rule 2 (a) of the Code of Civil Procedure, 1908 is a quasi criminal proceeding and therefore, on the basis of evidence on record, the learned Courts below has rightly concluded that there is no violation and the Survey Commissioner's Report has not been challenged by either of the parties. Therefore, such point cannot be raised at the revisional stage.
15. This Court has given anxious considerations to the argument advanced

by the learned counsel for the parties. Also perused the materials available on record.

16. After due deliberation and appreciation of evidence, both the learned courts below came to a conclusion that the land sold by the defendant No. 1 to the defendant No. 2 and the land over which the injunction order was operating are two different land. Such concurrent finding of facts, cannot be reversed in exercise of power under Article 227 of the Constitution of India until and unless such conclusions are concluded to be reached without any evidence or misreading of any evidence.
17. The argument of Mr. Roy, learned counsel for the petitioner that the Survey Commissioner's Report has been given undue reliance by both the Court below also donot finds favour of this Court inasmuch as the proceeding under Order 39 Rule 2A of the Code of Civil Procedure is to determine whether there is a violation of injunction and in such proceeding, the Court cannot enter into the merit of the suit regarding actual possession or ownership more particularly in the factual backdrop that the plaintiff himself admitted during cross-examination that the land on which the injunction order was passed and the land sold are two different lands.
18. In that view of the matter, this Court finds no infirmity in the findings of the learned Courts below and accordingly, same is not interfered with. Consequently, this revision petition stands dismissed.
19. However, while parting with the record, it is made clear that any observations made in this case regarding the possession and status of

land shall not influence the learned Courts below during the course of trial. Such observation has been made only for the determination of the present revision petition which arises out of an application under Order 39 Rule 2 A of the Code of Civil Procedure,1908.

JUDGE

Comparing Assistant