

GAHC010144862023



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

Case No. : FAO/37/2023

LEENA SAIKIA
D/O LATE GANESH SAIKIA,
WIFE OF LATE ARABINDA BARUAH,
R/O JAGIROAD, P.O. AND P.S.- JAGIROAD, MOUZA- GOVA, DIST.-
MORIGAON, ASSAM.

VERSUS

STATE BANK OF INDIA AND ORS.
A BODY CORPORATE CONSTITUTED UNDER THE STATE BANK OF INDIA
ACT, 1955 HAVING ITS HEADQUARTER AT STATE BANK BHAWAN,
MADAME CAMA ROAD, NEAR VIDHAN BHAWAN NARIMAN POINT,
MUMBAI 400021 AND DOING THE BUSINESS OF BANKING AT DIVERSE
PLACES ALL OVER INDIA AND IN PARTICULAR STATE BANK OF INDIA,
SARB, GUWAHATI M.R.D. ROAD, BAMUNIMAIDAN, GUWAHATI- 21, AND IS
REPRESENTED BY ITS AUTHORISED OFFICER.

2:THE AUTHORISED OFFICER
STATE BANK OF INDIA
SARB
GUWAHATI M.R.D. ROAD
BAMUNIMAIDAN
GUWAHATI- 781021.

3:SANJIB SAIKIA
S/O LATE GANESH SAIKIA

R/O JAGIROAD
P.O. AND P.S.- JAGIROAD
MOUZA- GOVA
DIST.- MORIGAON- 782410
ASSAM.

4: ESES BIO-WEALTH PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT NEAR SBI JAGIROAD
P.O.- JAGIROAD
DIST.- MORIGAON
PIN- 782410
ASSAM AND IS REP. BY ITS MANAGING DIRECTOR I.E THE RESPONDENT
NO. 3(SRI SANJIB SAIKIA).

5: JULI SAIKIA
W/O DR. PRABHAT DUTTA

R/O JAGIROAD
P.O. AND P.S.- JAGIROAD
MOUZA- GOVA
DIST.- MORIGAON
ASSAM.

6: POLI SAIKIA
W/O UTPAL RAJ SAIKIA

R/O WIRELESS BELTOLA
P.O.- ASSAM SECRETARIAT
P.S.- DISPUR
DIST.- KAMRUP (M)
ASSAM.

7: BOBY SAIKIA
W/O AJIT DAS

R/O UZAN BAZAR
LAMB ROAD
P.O.- UZAN BAZAR
P.S.- LATASIL
MOUZA- ULUBARI
DIST.- KAMRUP (M)
ASSAM.

8: RAMANI BARUAH
HUSBAND OF LATE LUKI SAIKIA

R/O JAGIROAD
P.O. AND P.S.- JAGIROAD
MOUZA- GOVA
DIST.- MORIGAON
ASSAM
PIN- 782410.

9:RISHIRAJ BARUAH
S/O LATE LUKI SAIKIA

R/O JAGIROAD
P.O. AND P.S.- JAGIROAD
MOUZA- GOVA
DIST.- MORIGAON
ASSAM
PIN- 782410.

10:RITURAJ BARUAH
S/O LATE LUKI SAIKIA

R/O JAGIROAD
P.O. AND P.S.- JAGIROAD
MOUZA- GOVA
DIST.- MORIGAON
ASSAM
PIN- 782410

Advocate for the Petitioner : MR. N N JHA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

28.07.2023

Heard Shri NN Jha, learned counsel for the appellant, who has preferred this appeal against an order dated 06.06.2023 passed by the learned Civil Judge, Morigaon in Misc.(J.) Case No. 22/2023 in connection with T.S. Case No. 25/2023. The Suit has been filed for declaration and for permanent injunction.

2. Vide the impugned order, the learned Civil Judge has issued notice in the application filed under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC.

3. Shri Jha, learned counsel has submitted that the Suit property has been inherited from their predecessors, namely, Ganesh Saikia (father) and Renu Saikia (mother) and there are number of siblings. It has been contended that certain

signatures were taken from the appellant by one of the brothers on the pretext to convert a part of the Suit land which was annual patta and also for construction of certain factory. However, the signed papers were misused whereby the name of the petitioner was removed from the record of rights pertaining to the land and the land was given as mortgage for a loan taken by the said brother. He accordingly submits that unless an interim injunction is granted, irreparable loss and injury would be suffered by the appellant as plaintiff and there is a *prima facie* case to go for trial.

4. *Per contra*, Shri KK Nandi, learned counsel, who has entered appearance for the respondent nos. 1 and 2 by filing Vakalatnama today has submitted that there is absolutely no error in the order dated 06.06.2023 and rather he submits that it is a fit case where the prayer of injunction should have been refused. He submits that the Suit appears to be a collusive one inasmuch as, pertaining to the said land there was originally a proceeding under the DRT Act followed by a present proceeding under the SARFAESI Act and the husband of the appellant plaintiff is one of the Directors of the Company which is involved in the borrowing.

5. After hearing the learned counsel for the parties and on perusal of the materials on record, this Court is of the view that since the order dated 06.06.2023 have not discussed anything on merits, this Court will refrain from making any observation on the *inter se* merits of the case. However, this Court has noticed that the prayer of injunction has not been *per se* rejected and rather notice have been issued by fixing a next date. This Court has also been informed that the contesting parties have entered appearance.

6. In that view of the matter, this Court is of the considered opinion that interference by this Court as a Court of Appeal, at this stage, would not be warranted and rather the discretionary power is to be exercised by the learned Trial Court on the next date fixed in accordance with law.

7. The parties would be at liberty to put forward their respective cases while

considering the prayer for injunction.

8. The appeal, accordingly stands disposed of.

JUDGE

Comparing Assistant