

GAHC010150742022



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

Case No. : Crl.Pet./743/2022

PRANJIT BORA
SON OF LATE NALINI KANTA BORA
R/O DAKARGHAT
P.S. NAGAON, P.O. NAGAON
DIST. NAGAON, ASSAM
PIN- 782001

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SRI DIPU GARODIA
S/O PAWAN KR. GARODIA
R/O VILL- THIoTANGANI
P.S. JURIA
DIST. NAGAON
ASSAM

PIN-78212

Advocate for the Petitioner : MR. B K MAHAJAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 14.06.2023

Heard Mr. B. K. Mahajan, learned counsel for the petitioner. Also heard, Ms. S. Jahan, learned Additional Public Prosecutor for the State.

2) This criminal petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973, for setting aside the judgment and order dated 27.06.2022 passed by learned Additional Sessions Judge No. 2, Nagaon in Criminal Revision No. 12 (N)/2022, whereby the order dated 05.05.2022, passed by learned Additional District Magistrate, Nagaon, in MR Case No. 158/2022 was set aside by the impugned judgment mainly on the ground that the records does not disclose any urgency nor there is any need for speedy remedy.

3) The facts averred by the present petitioner in his petition, in brief, are as follows:

(i) That, the respondent no. 2 purchased two plots of land measuring, 1 Bigha, 1 Katha and 4 Katha respectively, from the petitioner's firm.

(ii) That, the contention of the petitioner is that though petitioner had sold 2 Bighas of land in total to respondent no. 2, however, the respondent no. 2 forcefully possessed another 1 Bigha of land belonging to the petitioner along with said purchased land, and started constructing boundary wall over the said plot of land.

(iii) That, after being dispossessed of said 1 bigha of land, which petitioner never sold to the respondent no.2, he approached the learned Additional District Magistrate, Nagaon by preferring an application under Section 107/144/145 of the CrPC, which was registered as MR. Case No. 158/2022.

(iv) That, in the said MR Case, learned Additional District Magistrate by order dated 05.05.2022 directed both the parties to restrain from any construction work on the disputed land and to maintain status quo until further orders.

(v) That, being aggrieved by the order dated 05.05.2022, the respondent no. 2 preferred a revision before the Court of learned Additional Sessions Judge No. 2, Nagaon, which was registered as Criminal Revision No. 12 (9)/2022.

(vi) Ultimately, the learned Additional Sessions Judge No. 2, Nagaon disposed of the Criminal Revision No. 12 (9)/2022 by the order dated 27.06.2022, whereby the order dated 05.05.2022 passed in MR Case No. 158/2022 by learned Additional District Magistrate was set aside.

(vii) That, in the meanwhile, the present petitioner also instituted a total suit against the respondent no. 2 in the Court of learned Munsiff No. 1, Nagaon, which was registered as Title Suit No. 167/2022, wherein reliefs of declaration of right, title and interest, recovery of possession and permanent injunction was prayed for. Along with the said Title Suit, the present petitioner also preferred an application under the Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of

temporary injunction, which was registered as Misc (J) Case No. 78/ 2022.

4) I have heard Mr. B. K. Mahajan, learned counsel for the petitioner, who submits that he is not pressing for the main prayer i.e., setting aside the impugned order dated 27.06.2022, passed by learned Additional Sessions Judge No. 2. However, he submits that the observation made in impugned order at Para 13 of the effect that the record does not disclose "any urgency nor any speedy remedy" may influence the learned Trial Court in Misc (J) Case No. 78/2022, while dealing with the temporary injunction matter under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908, and accordingly prays for an appropriate order to protect the interest of the petitioner.

5) However, Ms. S. Jahan, learned Additional Public Prosecutor submits that the observation made in Para 13 of the impugned order, as regards non-disclosure of urgency and non-requirement of speedy remedy was only the main ground for setting aside the impugned order passed in under Section 144, and it will not otherwise influence the hearing of the injunction matter, pending before the Munisiff No.2.

6) Having gone through the materials on record and having considered the submissions made by learned counsel for both sides, more specifically the submission by learned counsel for the petitioner that he is not pressing the impugned prayer because the said impugned order was passed only in respect of the order passed by learned Additional District Magistrate under Section 144 of the CrPC, this Court is also of the considered view that the observations

made in Para 13 of the impugned order may in no manner influence the Civil Court i.e., Court of learned Munsiff, Nagaon, in dealing with the injunction petition under the Order 39 Rule 1 & 2 pending before it.

7) As the petitioner is not pressing for this main prayer, this instant criminal petition is disposed with the above observations.

JUDGE

Comparing Assistant