

GAHC010151252022



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

**Case No. : FAO/43/2022**

BHABADEV GOSWAMI.  
S/O LATE KAMALESWAR GOSWAMI,  
RESIDENT OF HOUSE NO. 17, PUBERUN PATH, FOREST GATE,  
HENGRABARI, PO AND PS DISPUR, DIST KAMRUP M ASSAM 781006

VERSUS

PRASENJIT KAKATI AND 5 ORS  
S/O LATE LALIT NATH KAKATI, PERMANENT RESIDENT OF HOUSE NO.  
196, TREBANI PATH, GANESHGURI CHARILAI, PO AND PS DISPUR , DIST  
KAMRUP M ASSAM  
PRESENTLY RESIDING AT FLAT NO. 3903, BUILDING BAHAR 1, JUMEIRA  
BEACH RESIDENCE, DUBAI, PO BPX 540299, UAE  
ALTERNATE ADDRESS  
C/O SRI PRAN KRISHNA SARMA BARUAH,  
HOUSE NO. 18, AMBHIKAGIRI NAGAR, 781024, KAMRUP M ASSAM

2:DR. SUMATI CHANGKAKOTI  
W/O DR. PRASENJIT KAKATI

PERMANENT RESIDENT OF HOUSE NO. 196  
TREBANI PATH  
GANESHGURI CHARILAI  
PO AND PS DISPUR  
DIST KAMRUP M ASSAM  
PRESENTLY RESIDING AT FLAT NO. 3903  
BUILDING BAHAR 1  
JUMEIRA BEACH RESIDENCE  
DUBAI  
PO BPX 540299  
UAE  
ALTERNATE ADDRESS

C/O SRI PRAN KRISHNA SARMA BARUAH

HOUSE NO. 18  
AMBHIKAGIRI NAGAR  
781024  
KAMRUP M ASSAM

3:M/S NORTH EAST SUPER SPECIALITY HOSPITAL PRIVATE LTD  
COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT

2013

HAVING ITS REGISTERED OFFICE AT HOUSE NO. 56

SAPTA SAHID PATH

SARUMOTORIA

PO AND PS DISPUR

GUWAHATI 781006

DIST KAMRUP M ASSAM

REPRESENTED BY ITS DIRECTOR SRI RAJESH KUMAR JALAN

4:SRI RAJESH KUMAR JALAN

S/O LATE L.N JALAN

RESIDENT OF HOUSE NO. 17

GAYATRI KUNJ

CHITRALEKHA LAND

USHA NAGAR

DISPUR

GUWAHATI 781006

DIST KAMRUP M ASSAM.

5:M/S HELICON BUILDERS PVT. LTD.

REPRESENTED BY ITS DIRECTOR MRS. SUBRATA KOUR

W/O SRI JARNEL SINGH

OFFICE AT HOUSE NO. 8

S.K BARUAH ROAD

1ST BYE LANE (EAST) RUKMINIGAON

PS DISPUR

GUWAHATI 871006

KAMRUP M ASSAM

6:SMTI SUBRATA KAUR

W/O SRI JARNEL SINGH

OFFICE AT HOUSE NO. 8

S.K BARUAH ROAD

1ST BYE LANE (EAST) RUKMINIGAON

PS DISPUR

GUWAHATI 871006

KAMRUP M ASSA

**Advocate for the Petitioner : MR. R K BHUYAN**

**Advocate for the Respondent : MS. K BARUAH**

**BEFORE  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**23.01.2023**

Heard Mr. R. Bhuyan, learned counsel for the appellant. Also heard Ms. D. Borgohain, learned counsel for the respondent Nos. 1 and 2.

2. The present appeal is preferred under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908, assailing the order dated 21.07.2022 passed by the learned Civil Judge No. 3, Kamrup (M), Guwahati in Misc (J) Case No. 610/2022 arising out of Title Suit No. 442/2022.

3. The appellant as plaintiff preferred the aforesaid suit against the respondents/defendants for declaration and specific performance of contract and for injunction. By the impugned order dated 21.07.2022, learned court below while considering the application filed by the appellant under Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 which was registered as Misc (J) Case No. 610/2022, considering the fact that there are multiple litigations pending amongst the parties pertaining to the suit property, refused to pass any interim injunction without giving the other side an opportunity of hearing. Against the aforesaid order, the present appeal has been filed.

4. The present appellant also filed an application under Order 39 Rule 1 and 2 of the CPC along with present appeal which was registered as I.A.

(Civil)/2228/2022 and this Court by an order dated 12.08.2022, directed both the parties to maintain status quo in respect of the suit property and also clarified that during that period the suit property shall not be alienated in favour of anyone.

5. The injunction petition pending before the learned trial Court was at the stage of consideration of ad interim injunction and the learned trial Court has not made any final determination on the injunction application. That being the position and as a consensus has arrived, this Court is inclined to dispose of this appeal at admission stage itself by remanding back the matter to the learned trial court for determination of the Misc (J) Case No. 610/2022 by giving an opportunity of filing an objection and hearing to the opposite parties.

6. In view of the aforesaid consensus, it is provided that the learned trial court below shall take up the Misc. (J) Case No. 610/2020. In the meantime, the parties shall appear before the learned trial court below on 30.01.2023 on which date, learned counsel for the plaintiff shall furnish the necessary documents and pleadings to the learned counsel for the respondents/defendants and thereafter, the learned trial court below shall proceed as per its own convenience and determine the injunction application.

7. Till such determination, status quo order passed by this Court under its order dated 12.08.2022 shall continue.

8. While parting with the record, it is made clear that this Court has not entered into the merit of the claim and counter claim of the parties relating to grant of injunction and accordingly, the learned trial court below shall decide the matter on its own merit without being influenced by any of the observations

made in the present appeal or in I.A(Civil)/2228/2022.

Accordingly, this appeal stands disposed of.

**JUDGE**

**Comparing Assistant**