

GAHC010161812023



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

Case No. : CRP(IO)/230/2023

AMAR KUMAR SINHA AND 6 ORS
S/O LATE KALAMANI SINHA, R/O MOUZA-BHAJANTIPUR PART-II, P.S.-
SILCHAR, DIST-CACHAR, ASSAM

2: DINO BANDHU SINHA
S/O LATE BIRO SINHA
R/O MOUZA-BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST-CACHAR
ASSAM

3: JAYANTA SINHA
S/O LATE KRISHNA GOPAL SINHA
R/O MOUZA- BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST- CACHAR
ASSAM

4: KUSUM SINHA
S/O LATE KUNJA BABU SINHA
R/O MOUZA-BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST-CACHAR
ASSAM

5: SUMANTA SINHA
S/O SHRI BASANTA SINHA
R/O MOUZA-BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST-CACHAR
ASSAM

6: ACHYUTANANDA MUKHERJEE
S/O LATE PRANKRISHNA MUKHERJEE

R/O MOUZA- BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST-CACHAR
ASSAM

7: SMTI. RADHALEIMA SINHA
D/O LATE YAIMA SINHA
W/O BASANTA SINHA (NOW DECEASED)
R/O MOUZA-BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST-CACHAR
ASSA

VERSUS

BINOY KUMAR SINGHA AND 2 ORS
S/O LATE KRISHNA MOHAN SINHA, R/O VILL- BOALJUR, P.S.-SILCHAR,
DIST- CACHAR, ASSAM

2:LAXMI KANTA SINHA
S/O LATE SENAGAO SINHA @ SUNAI SINHA
R/O VILL-BURUNGA PT. I
P.S.-KATIGORAH
DIST-CACHAR
ASSAM

3:RATHINDRA KUMAR SINHA
S/O LATE RAJ KUMAR SINHA
R/O MOUZA-BHAJANTIPUR PART-II
P.S.-SILCHAR
DIST-CACHAR
ASSA

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent :

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

ORDER

28.07.2023

Heard Shri N. Choudhury, learned counsel for the petitioners, who has filed this petition under Article 227 of the Constitution of India challenging an order dated

12.05.2023 passed by the learned Addl. District Judge, FTC, Cachar in Misc. Appeal No. 03/2020 whereby the appeal has been dismissed and the order dated 11.12.2019 passed by the learned Civil Judge No.2 in Misc. Case No. 04/2019 arising out of Title Suit No. 04/2019 has been affirmed. Vide the initial order dated 11.12.2019, the prayer for temporary injunction has been rejected which has been affirmed by the learned Appellate Court.

Shri Choudhury, the learned counsel for the petitioners has submitted that the land in question is an ejmali land and it appears that the present defendant no. 1 was equipped with a Decree and Sale Deed of September 2018 which the present petitioner were not aware of at all. He has further submitted that there was an earlier litigation between the respondent no. 1 and respondent no. 2 in which, the present petitioners were neither made parties nor they were made aware of such proceedings.

It is also submitted that both the Decree and the consequential Sale Deed executed through the Court appear to be vitiated by fraud.

The learned counsel submits that though an *ad-interim* injunction was initially granted, the same was vacated and the prayer for temporary injunction was rejected which has been upheld by the Appellate Court.

In the instant case, the order dated 11.12.2019 while rejecting the prayer for temporary injunction has made discussions which cannot be said to be without any reasons. In fact, this Court has noticed that it has been held that there is a *prima facie* case made out by the plaintiffs to go for trial. However, it has further been held that there is a Decree in favour of the defendant in the Title Execution case and the temporary injunction has been prayed to restrain the defendants from proceeding with the said execution case. It is on the ground of balance of convenience that the prayer for injunction has been rejected.

The Appellate Court vide the judgment dated 12.05.2023 had considered the said observation and has concurred with the same conclusions.

It is a settled law that the powers and jurisdiction of a revisional court is circumscribed and would be available only on certain conditions which are broadly, exercise of powers without jurisdiction, taking account of materials which are irrelevant and extraneous and not taking into account relevant and germane materials before the Court. The aforesaid conditions which do not appear to be present in the instant case.

The exercise of powers by a Trial Court while deciding an application for injunction is necessarily a discretionary power which is required to be exercised judiciously by taking into account the relevant facts and circumstances. It is a settled position of law that until such discretion appears to have been exercised with gross illegality or there is perversity in the order, it will not be proper for a revisional Court to interfere with such orders.

In the landmark case of ***Wander Ltd. v. Antox India (P) Ltd.***, reported in ***1990 Supp SCC 727***; the following has been laid down:-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion. ...”

In the case of ***Ramdev Food Products (P) Ltd. vs. Arvindbhai Rambhai***

Patel reported in **(2006) 8 SCC 726**; the following has been laid down:-

“125. We are not oblivious that normally the appellate court would be slow to interfere with the discretionary jurisdiction of the trial court.

126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again.

127. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.”

Under those facts and circumstances and being guided by the settled position of law holding the field of grant or non grant of injunction, this Court is of the considered opinion that the instant petition is liable to be dismissed.

Accordingly, the instant petition stands dismissed.

JUDGE

Comparing Assistant