

GAHC010173052021



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

Case No. : FAO/5/2021

PABITRA BORO

S/O- LATE GALENDRA BORO, R/O- WARD NO. 3, TANGLA TOWN, P.O. AND
P.S. TANGLA, DIST.- UDALGURI, BTAD, ASSAM

VERSUS

BALIN SAIKIA AND 4 ORS.

S/O- LATE PREMESWAR SAIKIA, R/O- H/NO. 4, DEBADARU PATH,
ANBIKAGIRI NAGAR, R.G.B. ROAD, P.O. ZOO ROAD, P.S. GEETA NAGAR,
GUWAHATI, DIST.- KAMRUP(M), ASSAM

2:ANIL SAIKIA

S/O- LATE PREMESWAR SAIKIA
R/O- H/NO. 4
DEBADARU PATH
ANBIKAGIRI NAGAR
R.G.B. ROAD
P.O. ZOO ROAD
P.S. GEETA NAGAR
GUWAHATI
DIST.- KAMRUP(M)
ASSAM

3:MONO SAIKIA

S/O- LATE PREMESWAR SAIKIA
R/O- H/NO. 4
DEBADARU PATH
ANBIKAGIRI NAGAR
R.G.B. ROAD
P.O. ZOO ROAD
P.S. GEETA NAGAR
GUWAHATI

DIST.- KAMRUP(M)
ASSAM

4:SMTI. NALINI SAIKIA
W/O- BUDHIN SAIKIA
R/O- H/NO. 4
DEBADARU PATH
ANBIKAGIRI NAGAR
R.G.B. ROAD
P.O. ZOO ROAD
P.S. GEETA NAGAR
GUWAHATI
DIST.- KAMRUP(M)
ASSAM

5:SMTI. SUMI SAIKIA
W/O- ANIL SAIKIA
R/O- H/NO. 4
DEBADARU PATH
ANBIKAGIRI NAGAR
R.G.B. ROAD
P.O. ZOO ROAD
P.S. GEETA NAGAR
GUWAHATI
DIST.- KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. M KASHYAP

Advocate for the Respondent : MR. N ISLAM (R-1,2,3,4,5)

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellants :Mr. R Rabha, Advocate

For the Respondents : Mr. DA Kaiyum, Advocate

Date of Hearing : 15.02.2023, 20.02.2023

Date of Judgement : 20.02.2023

JUDGEMENT & ORDER (ORAL)

Heard Mr. R Rabha, learned counsel for the appellant. Also heard Mr. D A Kaiyum, learned counsel for the respondents.

2. The present appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure is filed against the order dated 27.04.2021 passed in Misc (J) case No. 111/2020 arising out of TS No. 103/2020.
3. The appellant as plaintiff instituted a suit being TS No. 103/2020 against the respondents as defendants for specific performance of contract and for injunction. Along with the said suit, the appellant preferred an application under Order 39 Rule 1 and 2 read with Section 151 of the CPC to restrain the respondents / defendants from transferring/ alienating as well as changing the nature and character of the schedule B suit land, which was the subject matter of the contract of which the plaintiff /appellant seeks specific performance. The said case was registered as Misc (J) Case No. 111/2021.
4. The plaintiff/ appellant pleaded that initially the plaintiff entered into an oral agreement on 04.08.2020 for purchase of a plot of land measuring 11 Bighas 1 Katha 8.66 Lechas out of a plot of land measuring 16 Bighas 3 Kathas 12 Lechas consisting of different dags and patta numbers, which is described as schedule B to the plaint.
5. It is also contended by the plaintiff that the total consideration amount was fixed at Rs. 62 Lakhs per bigha and the appellant paid an amount of Rs. 10 Lakhs to the defendants/ respondents as an advance and it is also pleaded that it was a decision between the parties that the term and condition as stated at paragraph 4 of the plaint should be converted into a

written agreement and will be signed by both the parties.

6. The plaintiff also pleaded that, for purpose of execution of the sale, an application before the competent authority for due permission shall be made by the parties and full and final payment shall be made during the time of execution of the sale deed. The plaintiff further pleaded that the plaintiff has always been ready and willing to perform his part however, the defendants had denied to execute such sale deed.
7. The defendants appeared in the suit and contested by filing written statement as well as filed objection in the misc case.
8. In the written statement, the defendants had admitted the statement made in paragraph 1,2 and 3 of the plaint, which contents the statement regarding verbal agreement, reduction of the verbal agreement into a written agreement and payment of advance Rs. 10 Lakhs. However, defendants had made a specific statement that as the plaintiff never came forward to submit relevant documents necessary for obtaining sale permission and did not pay the defendants, the 50% of the cost for obtaining sale permission the defendants could not executed the sale deed. It is also contended that the plaintiff did not approach the defendants to make the written agreement of the sale.
9. The learned court below while considering the injunction application though came to a conclusion that the plaintiff had been able to make out a prima-facie case and balance of convenience is also in favour of the plaintiff, however, learned Trial Court rejected the prayer of the injunction on the ground that the token money of Rs. 10 Lakhs which was paid as advance can be returned and therefore there will be no irreparable loss

and injury.

10. The learned counsel for the appellant Mr. Rabha submits that return of compensation money cannot be treated as a compensation inasmuch as there will be irreparable loss and injury in view of the fact that the plaintiff has paid the money and he had a plan for the said land and he is still ready and willing to pay the balance amount and get the sale deed executed and therefore only on this ground the learned court below would not have rejected the prayer of injunction. The learned counsel contends that it is the bounden duty for a court to protect the property in dispute, more so in the given fact and circumstance of the present case, where the learned court itself has come to a conclusion that there is a prima-facie case and balance of convenience is also in favour of the plaintiff. In support of the submission Mr. Rabha relies on the decision of the Hon'ble Apex Court in the case of ***Maharwal Khewaji Trust, Faridkot vs Baldev Dass*** reported in ***(2004) 8 SCC 488***.
11. Per contra, Mr. Kaiyum while supporting the decision of the trial court argues that the learned appellate court has rightly decided the issue inasmuch as when the three golden principles are not established, injunction cannot be granted by the learned court below. Mr. Kaiyum further contends that finding of the learned court below shall not be interfered in the appellate stage inasmuch as the injunction order under Order 39 Rule 1 and 2 are discretionary in nature and the learned court below has applied its judicious mind while passing the impugned order.
12. Heard the learned counsel for the parties. From the pleading of the both side, it is clear that the defendants had not disputed about the oral agreement or the receipt of advance of Rs. 10 Lakhs. However, it is the

case of the defendants that because the plaintiff is not coming forward with the written agreement and has not paid the 50% amount required for obtaining sale permission, they had not executed the sale deed. Thus, the contract and the role of the defendants are not in dispute and at the same time the plaintiff has expressed that he is still ready and willing to pay the amount required and submits that he has given written agreement which the defendants are not signing. Such dispute whether the plaintiff is ready and willing to execute the sale deed is a matter of trial.

13. It is by now well settled that prayer for grant for interlocutory injunction is at the stage when existence of legal right asserted by the plaintiff (in the present case his right to get the agreement for sale specifically performed) and its alleged violation (in the present case that the plaintiff has not come forward to pay the cost of obtaining sale permission and the written agreement) are both contested and uncertain and the same will remain uncertain till they are established at trial on evidence.
14. Therefore, as held in ***Wander Limited Vs Antox India (P) Limited reported in 1990 (Supp) SCC 727***, the court at this stage action certain well settled principles of administration of this form of interlocutory remedy, which is both temporary and discretionary. The object of interlocutory injunction, is to protect the plaintiff against injury by violation of his right, for which he could not adequately be compensated in damages recoverable in the action, if the uncertainty were resolved in his favour at the trial. Such right is to be balanced against the right of the defendant to enjoy his own property. As held in ***Antox (supra)***, such remedy is intended to preserve in status-quo, the right of parties which may appear on a prima-facie. And such development is based on balance

of convenience. In the case in hand, the learned court below had rightly found prima-facie case and balance of convenience in favour of the plaintiff.

15. Taking the matter from that stand point on the basis of the pleading made by the parties and as discussed hereinabove, this court is of the view that during pendency of the proceeding the learned appellate court ought to have protected the nature of the property from being changed which includes alienation or transfer of the property and which may lead to loss or damage being caused to the plaintiff who may ultimately succeed and same may also lead to multiplicity of the proceeding. If the disputed land is allowed to be transferred and in the event if the suit is allowed that will create third party right in between and will lead to multiplicity of litigation.
16. In view of the aforesaid finding, this court is of the view that the appellant has also been able to make out a case of irreparable loss of injury and this court is required to protect the property during the pendency of the suit. Accordingly, it is provided that the defendants shall not change the nature and character of the schedule B land or alienate the same to any third party till disposal of the suit.
17. With the aforesaid term, this appeal stands allowed. Parties to bear their own costs.

JUDGE