

GAHC010209612022



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

Case No. : FAO/55/2022

HEMENDRA BHUYAN AND 2 ORS.
S/O LATE PRITHU BHUYAN,
VILL.- BARSHALA,
P.S.- AMRIKHUWA,
DIST.- BARPETA, ASSAM, PIN- 781307.

2: JAMSHER ALI
S/O LATE TASHIM ALI

VILL.- BARSHALA

P.S.- AMRIKHUWA

DIST.- BARPETA
ASSAM
PIN- 781307.

3: BARSHALA VILLAGE UNNAYAN SAMITI
OFFICE AT BARSHALA GAON

P.O.- AMRIKHUWA

DIST.- BARPETA
ASSAM
PIN- 781307 AND IS REPRESENTED BY HEMENDRA BHUYAN
PRESIDENT (ALSO APPLICANT NO. 1)

VERSUS

BAPUJEE COLLEGE AND 2 ORS.
SARTHEBARI, BARPETA, ASSAM AND IS REPRESENTED BY THE
PRINCIPAL.

2:THE DEPUTY COMMISSIONER

BARPETA DISTRICT
BARPETA
ASSAM.

3:THE CIRCLE OFFICER
SARTHEBARI REVENUE CIRCLE SARTHEBARI
BARPETA DISTRICT
ASSAM

Advocates for the petitioner : Mr. S. Dutta, Adv.

Advocates for the respondents : Mr. B.D. Deka, R-1.

Mr. K. K. Bhattacharyya, R-2 & 3.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 31.05.2023

Date of Judgment & Order : 26.06.2023

JUDGMENT & ORDER (CAV)

Heard Mr. S. Dutta, learned counsel for the appellants. Also heard Mr. B. D. Deka, learned for the respondent No.1 and Mr. K. K. Bhattacharyya, learned Government Advocate representing the respondent Nos.2 & 3.

2. This appeal is filed under Order 43 Rule 1(r) read with Section 151 of the Civil Procedure Code, 1908 against the order dated 08.08.2022 passed by the learned Civil Judge, Barpeta in Misc.(J) Case No.56/2022, whereby the prayer for interim injunction was rejected.

3. The brief facts leading to the filing of the present petition is that the appellant Nos. 1 & 2 are residence of Barashala Village and have the

representative capacity as per Order 1 Rule 8 of the Civil Procedure Code, 1908, who preferred a Title Suit *inter alia* with a prayer for grant of Decree declaring that the appellants have the Right, Title and Interest over a plot of land, i.e. 40 Bighas covered by Dag No.230 of Patta No.82 in revenue village, Barashola Bilor Pathar, under Saruketri Mouza in the District of Barpeta along with a prayer for decree of permanent injunction against the respondent, which was registered as T.S. No.27/2022. Along with the said Title Suit, the appellant had also preferred an application under Order 39 Rule 1 and 2 with a prayer for ad-interim injunction restraining the respondents from selling, gifting, alienating and from encumbering in any manner in the aforesaid plot of land, and the said application was registered as Misc.(J)Case No.56/2022.

4. The respondent college which came into existence in the year 1971, was handed over the suit land of 40 Bighas vide Settlement Order passed in 1973. Though settlement was granted in favour of the respondent college, the possession remained with the appellants. It is stated that the aforesaid plot of land measuring 40 Bighas initially belonged to the villagers of Barshala village and it is being utilised as a grazing ground comprising of total land of 72 Bighas, which was created on the collective donation of patta lands belonging to the predecessors. The said ground is identified as "Barshala Bilor Pathor", as well as the residents gets immense benefits from the said land and has been continuously enjoying such benefits since its formation till date. On the other hand on 07.05.1971, the respondent college was set up and the college had erected its own permanent structure in the land belonging to the college.

5. In the year 1972-73, the Government of Assam had taken steps to de-

reserve about 40 bighas of land from the said total of 72 bighas of land from Barshala Bilor Pathar and settled 40 bighas of land in favour of the college. The residents of the said village had resisted the Government from delivering the possession of suit land in favour of the respondent college and challenged the settlement order by filing a writ petition. However, the Court refused to set aside the settlement order and passed the order in favour of the respondent college. Though the settlement was in favour of the college, the said college could not take over possession of the said plot of land measuring 40 bighas, as the appellants have been in continuous and uninterrupted possession of the suit property, and has developed the property by developing fisheries, land for organizing various festivals and all these have been going on without any objection from the college authorities.

6. The appellants are in possession of the said plot of land since 49 years and it has been under the continuous and interrupted possession of the appellant and has become hostile. And by virtue of such possession the appellants have perfected their title over the said plot of land. The appellants had instituted the Title Suit along with a prayer for interim injunction only when the college authorities with the help of the police had carried out demarcation and was continuously trying to dispose the appellants. But, after hearing both the parties, the learned Trial Court refused to grant interim injunction vide order dated 08.08.2022, which was passed in Misc.(C)Case No.56/2022 arising out of the Title Suit No.27/2022 by the Civil Judge, Barpeta. Being highly aggrieved and dissatisfied by the impugned order, the appellants has preferred this present appeal on the following grounds:-

6.1 The impugned order dated 08.08.2022 passed in Misc.(J)Case No.56/2022 arising out of Title Suit No.27/2022 suffers from serious illegalities, infirmities and irregularities and the same has been passed without any reasons to support the findings and as such the impugned order is liable to be set aside and quashed.

6.2. The learned Trial Court passed the order without considering the pleadings of the parties and documents filed in support thereof and also without proper appreciation of the facts of the case, by rejecting the prayer for interim injunction, and as such it is liable to be set aside and quashed.

6.3. The learned Trial Court also failed to appreciate the important principles for governing the injunction i.e. "balance of inconvenience" and also failed to consider the facts of irreparable loss and injury suffered by the appellants.

6.4. The learned Trial Court, while passing the order dated 08.08.2022 had heavily relied on the Settlement Order of 1973 and the order passed by this Court, whereas, subject matter in the suit is completely different and distinct and therefore, the rejection of interim injunction is erroneous and liable to be set aside and quashed.

6.5. The learned Trial Court while coming to a finding that the appellants did not challenge the mutation order has failed to appreciate the fact that the entire suit is based on title perfected through adverse possession and therefore the question of ownership is irrelevant while considering the prayer for injunctions restraining the respondents. Thus, the impugned order dated 08.08.2022 is

liable to be set aside and vacated.

7. The learned counsel appearing on behalf of the appellants has submitted the additional affidavit with some photographs, showing some animals grazing in the said plot of land.

8. It is also submitted by the learned counsel for the appellants that disputed land of 40 Bighas is in continuous and interrupted possession of the appellants for last 49 years and has become hostile by virtue of possession. The appellants has perfected their title over the suit property. The opposite party failed to take steps under Article 65 of the Limitation Act, and they cannot claim title over the schedule property under guise of demarcation the land mutation in the name of the respondent college since 1996. The respondent college, has failed to retain possession though settlement was in their favour in the year 1973 and also failed to initiate any steps for recovery of possession until now. On the other hand the appellants have perfected their title over the suit and by virtue of hostile possession and as such entitled to a decree of right, title and interest over suit land and permanent injunction.

9. It is further submitted that the respondent college are trying to dispose the plaintiffs from the suit property and therefore, the appellants has prayed for permanent injunction against the defendant restraining them from selling, gifting, transferring, mortgaging, leasing, alienating or encumbering or entering into the schedule property.

10. The learned counsel for the appellants relied on the decision of the Hon'ble

Apex Court in the case of ***Ravinder Kaur Grewal and Others and Manjit Kaur and other reported in (2019) 8 SCC 729***, wherein it has held that;

“such adverse possessee/possessory owner can not only seek to protect his title as defendant in a suit but can also file suit for declaration of his title and for permanent injunction restraining defendant from interfering with his possession, where owner whose title stood extinguished, or any other person seeks to disposes him from property. This would include the case where the property is sold away by the owner after the extinguishment of his title; in which case also a suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempted of dispossession-Rulings of Supreme Court holding that person who had perfected his title by adverse possession could only protect his title as defendant in a suit, but could not file a suit for declaration of his title protection of his possession, overruled.”

11. The Judgment referred above in Para 62 and 64 is read as under:-

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of [Article 65](#) of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under [Article 64](#), even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

64. Resultantly, we hold that decisions of [Gurudwara Sahab v. Gram Panchayat Village Sirthala](#) (supra) and decision relying on it in [State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj](#) (supra) and Dharampal (dead) through [LRs v. Punjab Wakf Board](#) (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under [Article 65](#) of the [Limitation Act](#) and there is no bar under the [Limitation Act](#), 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

12. In this context, the learned counsel for the respondent No.1 has submitted that the possession was delivered and the land was settled in favour of the respondent college in the year 1973 which was challenged by the appellants. Accordingly, they also filed a review petition before this Court, but, the same was rejected by this Court by directing the Deputy Commissioner to de-reserve the plot of land for the purpose of college and it is further directed that if it is not required by college then the Deputy Commissioner may consider the case of those villagers, who claimed that their forefathers surrendered their patta land for constituting of a village grazing land.

13. Further, it is also submitted that the petitioner has no right over the suit land and College Authority had already taken steps for developing of the college infrastructures, and has taken various projects for the interest of the student as well as for the society at large. The respondent college authority has prayed for demarcation of the land as the villagers/appellants had encroached some portion of the suit land. The respondent also filed their affidavit-in-opposition along with some documents to prove that the land of 40 Bighas was settled in favour of the respondent college in the year 1973, and the possession was also delivered to the respondent college.

14. It is seen that the land was settled in favour of the college, where, the public interest is involving at large, thus, in such a situation the injunction cannot be granted for the disputed land. The College Authority has already taken some development projects, and if, any order of injunction is passed in favour of the appellants, then, the entire students as well as the public at large will suffer as well as the projects of development of the college will be affected too. Though, some portion of suit land is still lying vacant, however, it also cannot be denied that respondent college has the right over the suit land and the same has been settled in favour of the respondent college in the year 1973.

15. In this context, the learned counsel for the respondent has also relied on the decision of the Hon'ble Apex Court in the case of **Anathula Sudhakar vs. P. Buchi Reddy and others reported in (2008) 4 SCC 594**, wherein, para-16 read as under:-

“16..... But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.”

16. On the other hand, Mr. K. K. Bhattacharyya, learned counsel for the respondent Nos.2 & 3 has submitted that, it is a fact that the land is still using by the villagers as a grazing land and the entire 40 Bighas of land may not be required for college for development projects. Hence, the Government has no objection, if, some portion of land is utilized by the appellants and/or if the status quo is maintained for disposal of suit.

17. After hearing the submissions made by the learned Advocates of both sides and also on perusal of the annexed documents, it is seen that there is no dispute that the entire land of 23 bighas were allotted in the name of the college/defendant. After acquiring a portion of land for construction of the college, the other part of the land remained unutilized for a considerable period, where the villagers used to graze their animals. After the allotment order, the villagers preferred a writ petition before this Court claiming de-reservation as illegal. However, this Court while disposing the writ petition had observed that de-reservation of the land and allotment of land in the name of the college is not illegal and no illegality has been committed by the Government. And thereafter, there was no dispute from any corner, but, the college authority requested the Government for demarcation, then, the villagers filed a title suit along with a prayer for temporary injunction claiming their right over the land through adverse possession. Now, whether the claim of the plaintiff/petitioner over the disputed land through adverse possession is justified or whether, the defendant/college can establish the right on the strength of allotment order etc., are the issues to be decided in the main suit. But, the land was de-reserved in the name of the college only considering the public interest at large. If, the development project of the college is stopped by injunction the future of student

and public at large will be affected. Thus, there is no prima facie case in favour of the plaintiff/petitioner. More so, the balance of convenience and irreparable loss do not lie in favour of the plaintiff/petitioner. More so, the entire land was de-reserved only for the benefit of the public at large for education purpose, where, the futures of the students of that locality are also involved.

“Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary.....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 the 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 Wander Ltd. & Anr. Vs. Antox India P. LTD reported in 1990 SCC 727***].”

18. Hence, considering this entire aspect, I find that the injunction is not justified at present by restraining the college authority to construct their developmental project of the college and also from extending college.

19. So, from the entire discussions made above, I find that the learned Trial Court has committed no error or mistake by rejecting the prayer for injunction. In the result, I find no merit in this petition and accordingly, the appeal filed under Order 43 Rule 1(r) read with Section 151 of the Civil Procedure Code, 1908 against the order dated 08.08.2022 passed by the learned Civil Judge, Barpeta in Misc.(J) Case No.56/2022 stands dismissed.

20. Parties shall bear their respective costs.

JUDGE

Comparing Assistant