

GAHC010225932023



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

Case No. : CRP/159/2023

MD SAHAB UDDIN BARBHUIYA
S/O- LATE FURKAN ALI BARBHUIYA,
R/O- TARAPUR PART IV,
P.O AND P.S- SILCHAR, DIST- CACHAR, ASSAM

VERSUS

MD MOSOBBIR ALI LASKAR
S/O- LATE LHALILUR RAHMAN LASKAR,
R/O- VILLAGE TILLAGRAM, RAMNAGAR PART IV,
P.S- SILCHJAR, DIST- CACHAR, ASSAM, PIN-788003

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.10.2023

Heard Mr. D. Chakrabarty, learned counsel for the petitioner.

2. By this application under Article 227 of the Constitution of India, read with Section 151 CPC, the petitioner, who is the defendant in the proceedings of

T.S. No.350/2021 has assailed the appellate judgment and order dated 28.06.2023, passed by the learned Civil Judge No.1, Cachar, Silchar in Misc. Appeal No. 14/2021. By the said order, the appeal was dismissed and the order of injunction dated 29.11.2021, passed by the learned Munsif No.2, Cachar, Silchar in Misc.(J) Case No. 140/2021 in T.S. No.350/2021 was upheld. It may be mentioned that the learned Trial Court had directed both the parties to maintain *status quo* as to the status of the schedule land, its nature and feature, its possession, right, title and interest as on the date of passing of the order. The parties were further directed not to construct any permanent structure on the schedule land and not to alienate the same without the leave of the Court.

3. The learned counsel for the petitioner has submitted that although there is an observation by the learned appellate Court that the petitioner-defendant was in possession of the suit land measuring 3" X 97", as morefully described in schedule-II of the plaint, but the same was not accepted as it was the subject matter of trial in the suit.

4. It is submitted that in view of the order of *status quo*, the respondent-defendant has been interfering with the right of the petitioner to use the *kaccha* latrine situated in part of the schedule-II land.

5. In this regard, the Court finds that both the learned Courts below had discussed the pleadings of the parties, and upon considering the three principles of grant of injunction, i.e. *prima facie*, balance of convenience and irreparable loss and injury, both the learned Courts below had given concurrent finding that *prima facie* possession of the suit land described in schedule-II was enjoyed by the petitioner-defendant. Nonetheless, the learned trial Court had passed the order of *status quo* for preservation of the suit property by directing both the

parties to maintain *status quo* as regards the status of the suit land, its nature and feature, its possession, right, title and interest as on 29.11.2021, further directing the parties not to construct any permanent structure on the schedule land and not to alienate the same without the leave of the Court. The order of *status quo* passed by the learned trial Court was upheld by the learned first appellate Court.

6. It does not appear from the tone and tenure of the order that there is any restraintment to the petitioner to use a *kaccha* latrine. There is no material available in this revision petition that the right of the petitioner to use the *kaccha* latrine has been infringed in any manner.

7. Therefore, the Court is not inclined to issue notice in this revision petition in as much as the Court does not find that the order of *status quo* is operating in any manner contrary to the interest of the preservation of the suit property. The Court does not find that the orders impugned in this revision, were perverse or that they suffer from any jurisdictional errors.

8. Therefore, this revision stands dismissed at the motion stage without issuance of notice on the respondent.

JUDGE

Comparing Assistant