

GAHC010242752022



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

**Case No. : CRP(IO)/316/2022**

MAHESH MAHANTA AND ANR  
S/O. LT. KAMINI MAHANTA, R/O. RAMPUR, P.O. RAMPUR, P.S.  
PALASHBARI, DIST. KAMRUP, ASSAM, PIN-781132.

2: MALABYA MAHANTA

S/O. LT. KAMINI MAHANTA  
R/O. RAMPUR  
P.O. RAMPUR  
P.S. PALASHBARI  
DIST. KAMRUP  
ASSAM  
PIN-781132

VERSUS

ARUP KAKOTI  
S/O. LT. BASANTA KAKOTI, R/O. RAMPUR, P.O. RAMPUR, P.S. PALASHBARI,  
DIST. KAMRU, ASSAM, PIN-781132.

**Advocate for the Petitioner : MS. R KALITA**

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

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

**ORDER**

**22.02.2023.**

Heard Ms. R. Kalita, learned counsel for the petitioner. Also heard Mr. R. K. Bhuyan, learned counsel for the sole respondent who appears on Caveat. Caveat stands discharged.

2. The present petition is filed under Article 227 of the Constitution of India read with Section 151 of Civil Procedure Code for setting aside the order dated 26.09.2022 passed by the learned Civil Judge, Kamrup in Misc. Appeal No. 1/2022.

3. The background fact of the present litigation can be summarized as follows:-

I. The petitioners as plaintiff instituted a suit being Title Suit No. 52/2019 before the learned Munsiff, Kamrup at Amingaon, against the respondent as defendant for declaration of right, title and interest, recovery of possession and for injunction over the suit land.

II. It is the case of the petitioners/plaintiffs that the defendants are occupying the schedule land as a tenant on the basis of permission granted by the present petitioners.

III. It is the claim of the petitioners/plaintiffs that the original owner of the land was one Kamini Mahanta who is the father of the plaintiffs Mahesh Mahanta and on the death of the Kamini Mahanta, the plaintiffs

inherited the said property and accordingly, his name was mutated in respect of the suit land.

IV. The father of the defendant was the brother in law of the present petitioners and the said brother in law was rented out the suit premises to Basanta Kakati as the said Basanta Kakati was posted in the same village where the suit property is situated on transferred and he was a teacher Rampur Higher Secondary School. Accordingly, the father of the defendant was rented out the suit premises.

V. When the said Basanta Kakati retired from his service in the year 1991, he left for his native village and vacated the house. It is also pleaded case of the petitioners/plaintiffs that thereafter in the year 2013, the defendant approached the petitioners/plaintiffs for rent of the suit premises and the plaintiffs allowed the defendants to stay in the suit premises on rent.

VI. Thereafter the petitioners/plaintiffs requested the defendants/respondents to vacate the suit premises and handover the land, however, the defendants/respondents are denying the same. Accordingly, the suit was filed.

4. The defendants/respondents took a stand by filing written statement that the defendants deny absolute title of the plaintiffs and contended that the land originally belonged to the Kamini Mahanta the predecessor-in-interest of the plaintiffs and maternal-grand-father of the defendants and therefore, the defendants are also entitled for share of the said property.
5. The petitioners further contended that the defendants are trying to construct building in the suit premises during the pendency of the suit and

accordingly, the Misc. Case(J) No. 48/2019 was filed under Order 39 Rule 1 and 2 of the CPC, with a prayer to restrain the defendants not to change the nature and character of the suit land or to alienate the same. On such Misc. Case being filed, the respondents/defendants filed their affidavit in the Misc. Case and contended in the similar line as that of the written statement.

6. The learned Court below after hearing both the parties, came to a conclusion that as there is a contention relating to the title over the suit land and in the said scenario, if the opposite parties are allowed to change the nature of the schedule property, the same will cause irreparable loss and injury to the petitioners/plaintiffs inasmuch as irreparable injury does not mean that there must be no physical possibility of repairing the injury but means only that injury must be material one that cannot be adequately compensated by way of damages. Accordingly, learned Court below relied on the judgment of the Hon'ble Apex Court in the case of ***Dalpat Kumar –Vs- Prahlad Singh*** reported in ***(1992) 1 SCC 719***, allowed the said Misc. case by directing the opposite party/defendant and his men and agents not to change the nature of the scheduled property till final disposal of the suit or till further order. Such order was challenged by the defendant by way of an appeal under Order 41 Rule 1 (r) of the CPC.
7. The learned appellate Court after hearing the counsels for the parties, reversing the decision of the learned trial Court below came to a conclusion that as the appellant has been staying in the suit property for a long time, since the lifetime of his parents. Though the plaintiffs are having a prima facie case by mutating their names in the jamabandi copy

of the suit land, the balance of convenience is not in favour of the respondent and there is no chance of suffering irreparable injury by the respondent.

8. The learned counsel for the appellant relying on the judgment of ***Wander Ltd –Vs- Antox P. Ltd.*** reported in ***1990 (Supp) SCC 727*** contends that the learned Court below has passed the impugned order in total ignorance of settled proposition of law inasmuch as it is the bounded duty of a Court to protect status of a property during the final determination of the claims and counter claims. The learned counsel for the appellant also contends that when a reasoned order has been passed, the learned appellate Court should not have lightly interfered with the same and then committed serious error.
9. Per contra, Mr. R. K. Bhuyan, learned counsel for the respondents submits that prima facie the defendant is also having claim over the property through his mother and the defendant has been in possession of the suit land since long and therefore, the learned appellate Court has rightly interfered with the decision of the learned trial Court inasmuch as during the pendency of the suit, the defendants cannot be deprived of the enjoyment of the property.
10. This Court has given anxious considerations to the argument advanced by the learned counsel for the parties.
11. From the pleadings available on record, it is seen that the plaintiffs claims over the suit property on the basis of inheritance as well as on the basis of the record of rights and claims that the father of the present defendant

was a tenant. The defendant however, claims share of the property on the basis of the inheritance through his mother from the original owner of the land. In view of such, there is a claim asserted by the plaintiffs and its violation at the hand of the defendant and defendant has contested such claim, therefore, an uncertainty remains and such uncertainty will remain till they are established at the trial on the basis of evidence.

12. It is held in *Antox* (supra) that the object of the interlocutory injunction is to protect the plaintiffs against injury by violation of his rights for which he could not adequately been compensated in damages or recoverable in action. The need for such protection must be weighted against the corresponding need of the defendant to be protected against injury resulting from this having been prevented from exercising his own legal rights for which he could not be adequately be compensated.
13. In the given facts of the case, as both the parties claims ownership over the land in question, it is bounden duty of the learned trial Court to protect the property making a balance between the same. Therefore, in the considered opinion of this Court the learned trial Court has rightly directed the defendant not to change the nature and character of the suit land till disposal of the final suit. Therefore, in view of settled proposition of law and in given facts of the present case, this Court is of the considered opinion that the aforesaid order will not affect the right of the defendant, in the way of enjoying their property as on today as well as at the same time, the order will protect interest of both the plaintiffs and the defendants.
14. The Hon'ble Apex Court in ***Antox*** (supra) further held that in an appeal

against an order of injunction, the appellate Court generally should not interfered with the exercise of discretion of the court of first instance and substitutes it's 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 principle of law regulating grant or refusal of interlocutory injunction. In **Antox** (supra), the Hon'ble Apex Court further held that at appeal again exercise of discretion is said to be an appeal on principle and appellate Court will not reassess the materials and seek to reach a conclusion different from one reach by the court below, if the said decision of the learned trial Court is reasonably possible on the material.

15. This Court as held hereinabove is of the considered opinion that the learned trial Court below has properly exercised its discretion and passed the injunction order on the basis of the settled proposition of law and the given facts of the present case. Therefore, the said order not being unreasonable, the appellate Court ought not to have interfered with such decision. However, the learned appellate Court has interfered with the decision of the learned trial Court in ignorance of the aforesaid settled proposition of law. Therefore, this Court is left with no other option but to set aside the appellate order dated 26.09.2022 passed by the learned Civil Judge, Kamrup in Misc. Appeal No. 1/2022.

16. With the aforesaid terms, this civil revision petition is allowed, however, parties shall bear their own cost. While parting with the records, it is made clear that whatever observation on the facts of the case is made out is for the purpose of deciding the appeal only and same shall not influence the learned

trial court below in determining the real controversy before the parties and the subject matter of the suit.

**JUDGE**

**Comparing Assistant**