

GAHC010314452019



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

Case No. : FAO/2/2020

SRI JAJNYA DUTTA LAHKAR AND 6 ORS
SON OF LATE LAKSHMI DHAR LAHKAR, RESIDENT OF HOUSE NO.6,
LAKSHMI PATH, RUPNAGAR, GUWAHATI-32, KAMRUP(METRO)

2: SMTI MITALEE LAHKAR
DAUGHTER OF SRI JAJNYA DUTTA LAHKAR
RESIDENT OF HOUSE NO.6
LAKSHMI PATH
RUPNAGAR
GUWAHATI-32
KAMRUP(METRO)
REPRESENTED BY CONSTITUTED ATTORNEY SRI JAJNYA DUTTA
LAHKAR

3: SMTI GITALI LAHKAR
DAUGHTER OF SRI JAJNYA DUTTA LAHKAR
RESIDENT OF HOUSE NO.6
LAKSHMI PATH
RUPNAGAR
GUWAHATI-32
KAMRUP(METRO)
REPRESENTED BY CONSTITUTED ATTORNEY SRI JAJNYA DUTTA
LAHKAR

4: SMTI PADMAJA LAHKAR
DAUGHTER OF SRI JAJNYA DUTTA LAHKAR
RESIDENT OF HOUSE NO.6
LAKSHMI PATH
RUPNAGAR
GUWAHATI-32
KAMRUP(METRO)
REPRESENTED BY CONSTITUTED ATTORNEY SRI JAJNYA DUTTA
LAHKAR

5: SRI JUBANKAR DUTTA LAHKAR

SON OF SRI JAJNYA DUTTA LAHKAR
RESIDENT OF HOUSE NO.6
LAKSHMI PATH
RUPNAGAR
GUWAHATI-32
KAMRUP(METRO)
REPRESENTED BY CONSTITUTED ATTORNEY SRI JAJNYA DUTTA
LAHKAR

6: SRI SUBHANKAR DUTTA LAHKAR
SON OF SRI JAJNYA DUTTA LAHKAR
RESIDENT OF HOUSE NO.6
LAKSHMI PATH
RUPNAGAR GUWAHATI-32
KAMRUP(METRO)
REPRESENTED BY CONSTITUTED ATTORNEY SRI JAJNYA DUTTA
LAHKAR

7: SRI DIPANKAR DUTTA LAHKAR
SON OF SRI JAJNYA DUTTA LAHKAR
RESIDENT OF HOUSE NO.6
LAKSHMI PATH
RUPNAGAR GUWAHATI-32
KAMRUP(METRO)
REPRESENTED BY CONSTITUTED ATTORNEY SRI JAJNYA DUTTA LAHKA

VERSUS

SRI ASHWIN TEWARI
SON OF SRI RAM KANT TEWARI, RESIDENT OF SRCB ROAD, FANCY
BAZAR, GUWAHATI-781001, DISTRICT KAMRUP(M), ASSAM

Advocate for the appellants : Mr. R. K. Bhuyan, Advocate.

Advocate for the Respondent : None appears.**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 18.01.2023

Date of Judgment : 18.01.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. K. Bhuyan, the learned counsel appearing on behalf of the appellants. None has appeared on behalf of the respondent in spite of the fact

that service has been meted upon the respondent through the counsel appearing on behalf of the respondent in the Trial Court.

2. The instant appeal under Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908 is directed against the order dated 27.09.2019 passed by the Civil Judge No.2, Kamrup (M), Guwahati in Misc.(J) Case No.438/2019 arising out of the Title Suit No.45/2018 whereby the said application seeking injunction was rejected.

3. The case of the appellants, who were the plaintiffs in the suit, in brief is that one Minu Lahkar (since deceased) had entered into a registered Deed of Agreement bearing Deed No.7360 dated 12.11.2010 with the respondent herein for construction of a multistoried building by the respondent. In terms with the said registered Deed of Agreement dated 12.10.2010, Late Minu Lahkar was entitled to be allotted two fully constructed Deluxe Flat comprising of 1200 sq. feet X 2 = 2400 sq. feet (including 20% super buildup area) plus two car parking slots on the ground floor or basement floor. In terms with the said registered Deed of Agreement dated 12.10.2010, it was further mentioned that each flat shall include two bed rooms, drawing-cum-dining room, kitchen and toilet. It was mentioned that the flats shall be handed over to Late Minu Lahkar immediately after completion of the said two flats. In terms with Clause 4 of the said agreement, Late Minu Lahkar was further entitled to an amount of Rs.22,00,000/- from the respondent. In terms with Clause 14 of the said registered Deed of Agreement dated 12.10.2010, the respondent had declared that he would normally take 1 ½ years from the date of obtaining the requisite construction permission from the concerned authority/authorities to complete the type of project, and hence, it was stipulated that save and except any reasonable cause for delay, the respondent confirmed Late Minu Lahkar to

complete her share of buildup space within a period of 1 ½ years. In terms with Clause 24 of the said registered Deed of Agreement dated 12.10.2010, Late Minu Lahkar was required to give an irrevocable General Power of Attorney in favour of the respondents with full right to construct the residential building, sell the units etc. of the proposed multistoried building to any person or persons to receive consideration amount thereof and to execute and sign on any agreement to sell and sale deed or transfer in favour of the intended purchaser/purchasers and all other rights as may be necessary.

4. It is the case of the plaintiffs that in the month of August, 2011, the Competent Authority had granted the building permission. It was further mentioned that the defendant as promised had only paid Rs.18,00,000/- out of Rs.22,00,000/- as stipulated in Clause 4 of the registered Deed of Agreement dated 12.10.2010. It is the further case of the plaintiffs that although the period of 1 ½ years was the time within which the respondent/defendant ought to have been completed the work and delivered possession of the flats, but the defendant failed to hand over and allot the possession of the two flats as well as the remaining amount of Rs.4,00,000/-. In the meantime on 12.12.2016, Late Minu Lahkar had expired. However, as the respondent/defendant had failed to honour his commitment in terms with the registered Deed of Agreement dated 12.10.2010, the said suit was filed by the appellants herein seeking specific performance of the agreement dated 12.10.2010; a decree for compensation of an amount of Rs.19,80,000/-; a decree directing the defendant to pay the remaining amount of Rs.4,00,000/- as well as full cost of the suit. The said suit was filed before the Court of the Civil Judge No.1, Kamrup (M), Guwahati and was registered and numbered as Title Suit No.45/2018. Along with the said suit, an injunction application was filed praying inter-alia for ad-

interim temporary injunction restraining the defendant from selling/alienating any flats constructed over the Schedule-A land, from doing any construction over the Schedule-A during the pendency of the suit and also from changing the nature and character of the suit property. The said injunction application was registered and numbered as Misc.(J) Case No.438/2019.

5. Upon the said suit being filed along with the injunction application, the suit was endorsed to the Court of the Civil Judge No.2, Kamrup (M), Guwahati for disposal. The Trial Court vide an order dated 29.05.2019 issued summons in the suit and as well as notice in the injunction application. It further appears from the record that the defendant has filed the written statement-cum-counterclaim in the suit as well as had filed written objection in the injunction proceedings. It further appears that the plaintiffs have also filed a written statement to the counterclaim.

6. The learned Trial Court vide an order dated 27.09.2009, after hearing the both the parties, dismissed the injunction application on the ground that the three golden principles for granting an order of temporary injunction, i.e. prima-facie case, balance of conveniences and irreparable loss does not favour the petitioner. It is under such circumstances, the instant appeal has been preferred.

7. This Court vide an order dated 24.01.2020, issued notice in the appeal. On the same date, on the injunction application filed before this Court which was registered and numbered as I.A.(C) No.144/2020 and this Court restrained the respondent from selling any of the flats constructed by him over the Schedule-A land till the next returnable date.

8. In the meantime, during the pendency of the instant appeal, the

appellants herein had filed an additional affidavit on 15.07.2022. It has been mentioned that the respondent, i.e. the defendant in the suit on 02.03.2020 had agreed to allot two deluxe flats to the appellants on the first floor of the building constructed over the Schedule-A land. It has also been mentioned that on the same date, the respondent had also agreed to provide two car parking slots marked as "A" and "B". The said endorsements made in the plans have been enclosed as Annexure-I and Annexure-II to the additional affidavit.

9. In view of the said development which had occurred during the pendency of the Appeal whereby the flat "A" and flat "B" in the first floor of the building standing over the Schedule-A along with the two car parking slots marked as "A" and "B" in the basement of the building standing over the Schedule-A land have been properly identified, this Court is of the opinion that taking into account the rights which the plaintiffs have on the basis of the registered Deed of Agreement dated 12.10.2010, there is a prima-facie case for grant of an injunction not to alienate and/or transfer the flat "A" and "B" in the first floor of the building as well as the parking slots marked as "A" and "B" on the basement of the building standing over the Schedule-A land as could be seen from the endorsement in the plans dated 02.03.2020 till the disposal of the suit.

10. This Court further is of the opinion that the balance of conveniences is also in favour of granting the injunction in favour of the plaintiffs/appellants in as much as if the flat "A" and "B" along with the parking slots marked as "A" and "B" in the plans wherein there is an endorsement on 02.03.2020 by the defendant is allowed to be alienate during the pendency of suit, the filing of the entire suit would become infructuous. Further to that, the plaintiffs/appellants would also suffer from irreparable injury if the injunction as stated herein above in so far as flat "A" and "B" in the first floor of the building as well as the parking

slots marked as "A" and "B" in the building standing over the Schedule-A land is allowed thereby restraining any transfer or alienation during the pendency of the suit.

11. Under such circumstances, this Court in view of the subsequent development pursuant to the impugned order passed, sets aside the impugned order dated 27.09.2019 and thereby restrains the defendant/respondent herein from alienating the flat "A" and "B" in the first floor of the building as well as the parking slots marked as "A" and "B" in the basement of the said building standing over the Schedule-A land as could be seen from the endorsement dated 02.03.2020 of the respondent in the plans enclosed as Annexure-I & II to the Additional Affidavit till the disposal of the suit.

12. It is made clear that the observations made in the instant order are only for the purpose of the injunction proceedings and shall not influence the Trial Court in deciding the suit. Further to that the reliance placed in the instant order upon Annexure- I & II to the Additional Affidavit shall not be construed as admission of the said documents in the suit and the same is required to be proved in accordance with law before the Trial Court.

13. With the above observations and directions, the instant appeal stands disposed of. Return the LCR.

JUDGE

Comparing Assistant