

GAHC030002482023



THE GAUHATI HIGH COURT

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

Case No. : FAO/2/2023

Smt.Buangthangpuii and 2 Ors.

W/o Laltanpuia(L)

R/o Saitual Vengthar, Saitual District, Mizoram 2: Lalhminganga(Minor) r/b
The Plaintiff No.1

3: Runrempuii(minor) r/b the plaintiff No.

VERSUS

Smt.Hruaitluangi and 5 Ors.

W/o Lalthlana

R/o Saitual Bawk Veng
Saitual Dist. 2:Sh Lalthlana

3:Smt. Mary Lalnunsangi

4:Sh Engvara

5:Sh.Ngursailova
President
Village Council/Court

6:Smt. Lalbiakkim

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : Mr B Lalramenga for R1, R2, R3, R4 & R6

**B E F O R E
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

21st June, 2023

Heard Mr. C. Lalfakzuala, learned counsel for the appellants as well as Mr. B. Lalramenga, learned counsel for the respondents.

2. This First Appeal is filed by the appellants putting to challenge the Order dated 12.04.2023 passed in CMA No. 460/2021 alongwith Civil Suit No. 85/2021. By the said order, the Court of Senior Civil Judge-II, Aizawl District rejected the application of the appellant praying for grant of temporary injunction under Rule 1, Order 39 CPC.

3. The appellants before this Court has filed Civil Suit No. 85/2021 praying for the following reliefs:-

a) For a decree declaring that the plaintiff is the legal wife of deceased Sh. Laltanpuia (Assam Regiment No. 4363723).

b) For a decree declaring that the plaintiff is the legal heir of deceased Sh. Laltanpuia and is entitled inherit all his properties.

c) For a decree declaring that the plaintiff has the right, title and interest over the land and building covered under LSC No. 214 of 2002 located at Saitual Bawk Veng, Saitual.

d) For a decree directing the defendant No. 1 & 2 to move out of the land and building covered under LSC No. 214 of 2002 at Saitual Bawk Veng and not to continue the construction in respect of shop building located at PWD Kawn, Saitual.

e) For a decree directing the defendant to give back all the moveable properties including pension paper, family ration card and personal documents of the plaintiff illegally detained by the defendants No. 1 and 2.

f) For a decree directing the defendant No. 1 not to sell, alienate, mortgage or dispose of the suit land and building until disposal of the case and for directing the defendants not to do anything detrimental to the interest of the plaintiff.

g) For a decree declaring that the letter dated 30.06.2020 issued by the President, Saitual Village Council/Court is non est in law and is liable to be declared null and void as it is blatant lie and is based on fraud and there is no material or evidence to support the alleged 'Sumchhuah' issued by the plaintiff No. 1.

h) For cost of the suit.

4. The suit was contested by the defendants by filing their respective written statements. During the pendency of the suit, appellant filed application seeking temporary injunction under Order 39 Rule 1 and the application was numbered as CMA No. 460/2021. By the said application, the appellants pray for an order of injunction for restraining the opposite party/defendants and their agents and representatives from damaging, disposing, alienating or doing any act detrimental to the applicants (appellants herein) within the suit land till disposal of the Civil Suit.

5. The said application for temporary injunction was contested by the opposite party by filing necessary objections opposing the prayer made by the applicants. The Court of Senior Civil Judge-II, Aizawl vide the impugned order rejected the application under Section 39 Rule 1 of CPC on the ground that no case for grant of temporary injunction under Rule 1 of Order 39 CPC is made out in the absence of any application/prayer made by the applicants under Section 94(C) of CPC. The Senior Civil Judge-II, Aizawl accordingly held that there was no ground to grant temporary injunction as prayed for and the application praying for temporary injunction being CMA No. 460/2021 was rejected. Aggrieved, the present applicants are before this Court assailing the impugned Order dated 12.04.2023 passed by the Court of Senior Civil Judge-II, Aizawl in CMA No. 460/2021.

6. Learned counsels for the parties have been heard. Pleadings available on record have been carefully perused.

7. Upon careful perusal of the pleadings and upon hearing the submissions of the learned counsels, this Court is of the view that the issues raised in this appeal can be disposed of at this stage.

8. A careful perusal of the Order dated 12.04.2023 reveals that the Court of Senior Civil Judge-II, Aizawl while dealing with the application praying for injunction under Order 39, Rule 1 of CPC had relied upon the judgment of this Court rendered in *Reboti Ray Vs. Sashi Kanta Budhia @Agarwal* reported in (2006) 3 GLR 42. The learned Senior Civil Judge-II, Aizawl while dealing with the application for praying for injunction by placing reliance on the said judgment rejected the application on the ground that no prayer/no application has been made under Section 94 CPC, as it was required to be made in terms of the law laid down in *Reboti Ray Vs. Sashi Kanta Budhia @Agarwal (Supra)*.

9. A careful perusal of the said Judgment rendered by a Coordinate Bench of this Court reveals that the issues involved before the Gauhati High Court in *Reboti Ray Vs. Sashi Kanta Budhia @Agarwal (Supra)* is whether a temporary injunction or any temporary order can be granted or any prayers made under Order 39, Rule 1 and 2 of CPC can be allowed in the absence of any suit being pending or pending an application for restoration of a suit, as Order 39 Rule 1 and 2 itself proceeds on the premise that the Court is empowered to grant injunction only in respect of any suit which is pending. It was urged before the Co-ordinate Bench that unless there is a suit pending, no interim orders or injunctions can be granted by the Court. In the facts of that case the suit was

dismissed for default/non-prosecution and the application for restoration was pending and therefore, it was urged that the application praying for injunction or interlocutory orders cannot be granted until and unless the suit stands revived. The Coordinate Bench of this Court rejected the contentions on the ground that the Code of Civil Procedure inheres in every Court the power to grant ad interim order or injunction in order to prevent miscarriage of justice where required. This Court referred to Section 94 of CPC to trace the powers for grant of ad interim orders or injunctions when necessary read with the provisions of Order 39, Rule 1 and 2 of CPC. It was held by this Court that where the power is inherent, it is for the Court to decide whether temporary injunction or interlocutory orders are necessary to be granted or issued by this Court in order to prevent miscarriage of justice. The Co-ordinate Bench of this Court held that where even in a case where suit is not pending or has come to be dismissed for default, the power to grant injunction or interlocutory orders which flow from Section 94(c) of CPC is available. It was held that the Court on the facts and circumstances of each case is competent to grant injunction or interlocutory orders where necessary.

10. Having carefully perused the judgment rendered by Coordinate Bench of this Court, it is seen that the Senior Civil Judge-II, Aizawl perhaps has misdirected itself in applying a ratio rendered by this Court in *Reboti Ray Vs. Sashi Kanta Budhia @Agarwal (Supra)*. It is seen from the impugned Order that the only ground in which the application praying for interlocutory order

or injunction was rejected was by placing reference on *Reboti Ray Vs. Sashi Kanta Budhia @Agarwal (Supra)* and by declaring that as no application/prayer is made under Section 94(C) of CPC, the prayer for temporary injunction or interlocutory order was rejected and the application being CMA No. 460/2021 was disposed of.

11. Having heard the learned counsels for both the parties and upon careful perusal of the impugned order as well as provisions of CPC and the judgment of the Gauhati High Court rendered in *Reboti Ray Vs. Sashi Kanta Budhia @Agarwal (Supra)*, this Court is of the view that the ground of rejection of the interlocutory application by the Court of the Senior Civil Judge-II, Aizawl was improper.

12. As per the provision of CPC and the catena of judgments rendered by the Gauhati High Court across the country as well as by the Apex Court that while deciding an application for grant of ad interim or interlocutory order, while passing an interim order of injunction under Order 39 Rules 1 and 2 CPC, the court is required to consider three basic principles, namely (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to the abovementioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties¹.

13. Mere perusal of the impugned Order reveals that the Court did not reject the application praying for interlocutory order on any of these grounds. The Court rejected the prayer for interlocutory

¹ Makers Development Services (P) Ltd. Vs. M. Visvesvaraya Industrial Research & Development Centre, reported in (2012) 1 SCC 735

order or injunction only on the ground that no application under Section 94(C) has been made by the applicants. Such reasons for rejection of the application for interlocutory order, in the opinion of this Court, is contrary to the provisions of law and principles as laid down under CPC.

14. As it has been discussed above that the power to grant injunction or any interim order is inherent in every Court under Section 151 CPC, an application praying for grant of temporary injunction or order cannot be rejected on such technical grounds. A Court must exercise its judicial mind to decide as to whether the prayer for grant of temporary injunction or order ought to be allowed keeping in view the three golden principles as discussed above. The impugned order passed by the Court on 12.04.2023 does not refer to any reasons as to why the prayers for injunction was rejected save and except that no application under Section 94(c) of the CPC was filed by the applicant. In the facts of the present case, a Civil Suit being Civil Suit No. 85/2021 is presently pending before the same Court. No reasons are seen from the order as to why the petitioners are required to file their applications under Section 94(c) of the CPC when the Civil Suit filed by the petitioner is presently pending disposal.

15. In view of the above discussion, this FAO is allowed. The impugned Order dated 12.04.2023 passed in CMA No. 460/2021 along with Civil Suit No. 85/2021 is hereby interfered with and set aside.

16. The matter is remanded back to the Court of Senior Civil Judge-II, Aizawl for re-hearing and re-deciding the matter afresh upon giving adequate opportunity of hearing to both parties in terms of the principles laid down under the CPC and provisions of law.

17. Parties are agreed that they will appear before the Court of Senior Civil Judge-II, Aizawl on 17.07.2023 and the Court thereafter will proceed to hear the matter afresh as directed above.

18. The Court of Senior Civil Judge-II will thereafter proceed to hear the matter and pass appropriate orders as deemed proper under the provisions of law in respect of the prayers made in the application by the applicants. The appeal is disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant