

GAHC030004912022



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

Case No. : FAO/2/2022

Lalthanpari
Zemabawk Kawn Veng, Mizoram, Aizawl

VERSUS

F.Zothanbuanga and 3 Ors.
S/o J.Hranglura, Republic Hmar Veng, Aizawl, Mizoram 2:Lalrinsangi

3:Johnsona

4:Lalthlenglian

Advocate for the Petitioner : Mr A.R. Malhotra
Advocate for the Respondent : Mr. J H Ramneihmawia R1-R3

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGEMENT

Date : 14-03-2023

Heard Mr. A.R. Malhotra, learned counsel for the appellant and Mr. J.H. Ramneihmawia, learned counsel for the respondent Nos. 1, 2 & 3.
None appears for the respondent No. 4.

[2.] This is an appeal filed by the appellant under Order 43 Rule 1 (r) of the

Code of Civil Procedure, 1908 (CPC) r/w Section 151 CPC and also Section 17 of the Mizoram Civil Courts Act, 2005 against the impugned Order dated 18.10.2022 passed by the Senior Civil Judge-IV, Aizawl in Civil Misc. Application No. 262/2021 arising out of Civil Suit No. 37/2021.

[3.] Be it stated herein that this is the second time the appellant is before this Court. The earlier appeal being FAO No. 3/2021 was disposed of vide Judgment & Order dated 25.02.2022.

[4.] Brief facts of the case essential for disposal of the instant appeal and as projected by the respondent Nos. 1, 2 & 3 is that they along with 3 (three) other persons, entered into an agreement with the appellant/defendant No. 1 for sharing equally the amount of compensation to be received towards certain plot of land belonging to the respondent No. 4/defendant No. 2 and one Smt. Lalthlamuani and the same was executed on 09.06.2016, and witnessed by the President, Village Council of Sihhmui, Sairang, Aizawl District. However, when the compensation amount was received for the property in question, the appellant/defendant No. 1 failed to abide by the agreement dated 09.06.2016 and instead, she distributed the compensation amount as per her own wishes and in violation of the agreement. Aggrieved, the respondent Nos. 1, 2 & 3 filed Civil Suit No. 37/2021 before the Court of Senior Civil Judge, Aizawl, praying for

a decree for declaring the agreement dated 09.06.2015 (2016) as valid and binding upon the parties and for a direction to the appellant/defendants No. 1 and the respondent No. 2 for immediate payment of money to them as per the said agreement.

[5.] Along with the Civil Suit, the respondent Nos. 1, 2 & 3 filed Civil Misc. Application No. 262/2021 under Order 39 Rule 1 & 2 CPC for grant of permanent and temporary injunction against the defendants (the appellant and the respondent No. 4), to restrain them from disbursing/withdrawing the amount of money from their respective savings bank account in Mizoram Rural Bank, Chaltlang Branch and Sairang Branch respectively. Although the appellant as defendant No. 1 filed her written objection, the learned Court below vide the impugned Order dated 08.12.2021 granted temporary injunction to the respondent Nos. 1, 2 & 3 in the manner as already indicated hereinabove. Aggrieved, the defendant No. 1 as appellant filed FAO No. 3/2021 before this Court.

[6.] This Court vide the Judgment & Order dated 25.02.2022 then remanded the matter back to the learned Trial Court for fresh consideration with a direction to examine as to whether there exist a *prima facie* case and balance of convenience in favour of the plaintiffs and further, whether irreparable injury will

be suffered by them which cannot be compensated in terms of money, if injunction is not granted to them. Upon remand, the learned Trial Court vide the impugned Order dated 18.10.2022 found it necessary that the money in the bank account of the appellant be frozen till disposal of the Civil Suit No. 37/2021. Aggrieved the appellant is again before this Court.

[7.] Mr. A.R. Malhotra, learned counsel for the appellant submits that in passing the impugned order, the learned Trial Court came to its conclusion by only considering the submissions made by the plaintiffs in their plaint. The learned Trial Court did not consider the objections raised by the appellant in her written statement against the civil suit and also in the civil miscellaneous application filed by the plaintiffs. By referring to the written statement filed by the appellant as defendant No. 1 before the Trial Court, the learned counsel submits that the alleged Agreement dated 09.06.2016, executed between the plaintiffs and the defendant No. 1 along with others being not certain or capable of being made certain is void in accordance with Section 29 of the Indian Contract Act, 1872 and not enforceable in law. Further, the agreement does not indicate the source of the money and the total amount of money which was to be divided amongst the signatories to the agreement. The agreement was also executed on a plain piece of paper without any witnesses. Therefore, the Agreement dated 09.06.2016 is liable to be declared void in terms of Section 29

of the Indian Contract Act, 1872.

[8.] The learned counsel further submits that it was specifically pleaded by the appellant in her written statement that the plaintiff Nos. 1 & 3 had violated the terms of the agreement by interfering in the process of conversion of VC Pass into LSC by stealing the concerned file from Revenue Department. Due to this, the appellant had to once again reinitiate the process of converting the VC Pass belonging to the respondent No. 4/defendant No. 2 to Land Settlement Certificate from the beginning before the Revenue Department. In fact Criminal Complaint No. 66/2020 was registered, in which the plaintiff Nos. 2 & 3 in their recorded statements clearly stated that it was the plaintiff No. 1, who stole the file from the Revenue Department. The stand of the appellant in the written statement having not been considered by the learned Trial Court, the impugned order is liable to be set aside.

[9.] Mr. A.R. Malhotra further submits that the learned Trial Court failed to appreciate the authorities cited by the appellant in the correct perspective. The two authorities relied upon by the appellant beside others was:-

(i) *Gadadhar Barman Vs. Ranendra Mohan Paul*, reported in 1998 (1) GLT 137 and

(ii) *Unnayan Builders and Real Estate Developers Vs. Intagali (Md.)*, reported in 2018 (3) GLT 255.

[10.] The learned counsel submits that according to the learned Trial Court the facts involved in *Unnayan Builders and Real Estate Developers (Supra)* were different from the case at hand, inasmuch as, the case at hand pertains to agreement of money and not delivery of property. By referring to paragraph Nos. 4, 14 & 16 of the said judgment, the learned counsel submits that it is clear that the suit was filed by the appellant for recovery of a sum of Rs. 7,84,000/- with 14% interest. Therefore, the learned Trial Court was not correct in observing that the case was regarding delivery of property. Similarly, the learned Trial Court held that the case of *Gadadhar Barman (Supra)* cannot be applied to the case at hand, since the plaintiffs had indeed made a prayer for permanent injunction. The learned counsel submits that the prayer for permanent injunction is to be made in the main suit and which the plaintiffs have not done except in their civil miscellaneous application. Therefore, the learned Trial Court has only misconstrued the decision of this Court in *Gadadhar Barman (Supra)*. Under the circumstances, the learned counsel submits that the impugned order of the learned Trial Court should be set aside.

[11.] Mr. J.H. Ramneihmawia, learned counsel for the respondent Nos. 1, 2 & 3 on the other hand, submits that the plaintiffs had clearly made a prayer for immediate payment of money by the defendants to the plaintiffs as per the Agreement dated 09.06.2016. Though the date of agreement was mistakenly

written as 09.06.2015, the same has been rectified by the plaintiffs by filing CMA No. 153/2022 and which was allowed by the Trial Court vide Order dated 07.03.2023. By filing CMA No. 153/2022, the plaintiffs have also included a prayer for grant of permanent injunction in the prayer portion of the main suit. Therefore, the stand of the appellant has only become infructuous. The learned counsel further submits that the facts involved in *Unnayan Builders and Real Estate Developers (Supra)* are different and at any rate, the same is not binding upon other cases, in view of the clarification made by the same Court at paragraph No. 18 of the judgment.

[12.] The learned counsel further submits that the appellant in her written statement has admitted about the existence of the Agreement dated 09.06.2016. From the contents of the agreement, it is clear that the money received as compensation for acquisition of land was to be equally shared between the parties concerned after deducting the expenses incurred for processing the matter. Instead of dividing the amount of money received as compensation equally as per the agreement, the appellant has divided/apportioned the money as per her own wishes, while keeping a major share of the amount to herself. He therefore submits that the learned Trial Court has rightly passed the impugned order dated 18.10.2022 and the same may not be interfered with by this Court.

[13.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[14.] This Court in remanding back the case back to the learned Trial Court vide Order dated 25.02.2022 passed in FAO No. 3/2021 had recorded certain observations and findings. Paragraph Nos. 12 to 14 may be abstracted below for ready perusal:-

“[12.] To understand the scope of Order XXXIX Rule 1 & 2 of the CPC better, we may fall back to the decision of the Apex Court in the case of Ambalal Sarabhai Enterprise Vs. KS Infraspace LLP Limited (Supra), wherein it was held that in a matter concerning grant of injunction, apart from the existence of prima facie case, balance of convenience, irreparable injury, the conduct of the party seeking the equitable relief of injunction is also very essential to be considered. The Apex Court further went on to refer the case of Dalpat Kumar vs. Prahlad Singh, (1992) 1 SCC 719 on the subject and the same may be abstracted hereunder for ready perusal:-

“5. ...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be

adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

[13.] Besides the above, a Co-ordinate Bench of this Court in Unnayan Builders and Real Estate Developers (Supra) in the given facts of that case held that when the chance of suffering irreparable loss and injury which could not be compensated or computed in terms of money was not in existence, the rejection of the Court concerned to the prayer for ad-interim was justified. Also this Court in Gadadhar Barman (Supra) held that a temporary injunction cannot be granted in the absence of a prayer for permanent injunction.

[14.] It is noticed that the learned Court below failed to take into consideration the above aspects before passing the impugned order. It is further seen that parties have exchanged pleadings before the Trial Court and the dispute raised or the rival claims will have to be considered in the light of the law laid down in this regard. The Lower Court Records are not before this Court and therefore, under the circumstance, I find it to be a fit case for remanding the case back to

the learned Trial Court for re-consideration on the basis of the observations made herein above.”

[15.] On perusal of the impugned Order dated 18.10.2022, it may be seen that according to the learned Trial Court the interlocutory application filed by the plaintiffs is required to be considered along with the main suit in view of the fact that if the agreement claimed does exist and the suit eventually decreed in favour of the plaintiffs, the defendant No. 1/appellant will be liable to pay the plaintiffs whatever is considered due to be paid by her. Therefore, withdrawing the money from the rural bank from the amount of the defendant No. 1/appellant will cost irreparable loss to the plaintiffs. In appreciating the case of *Unnayan Builders and Real Estate Developers (Supra)*, the learned Trial Court observed that the said case was in respect of delivery of property unlike the case at hand which was for payment of agreed sum of money. However, a perusal of the case cited more particularly at paragraph Nos. 4 & 14 would go to show that the suit was for recovery of a certain sum of money with interest. Therefore, it can be seen that the suit was for recovery of certain sum of money with interest. While such is the position, one important aspect of the matter which can be noticed is that the respondent in that case not only was allotted the suit premises but by virtue of ownership of the land, the respondent had title over the land. As such, on the date of filing of the suit by the appellant, the

respondent was found to be entitled to the suit premises and therefore, this Court held that there cannot be an order of injunction against the lawful owner of the property concerned.

[16.] The facts in the present case are otherwise is that on the basis of the alleged agreement, the plaintiffs have claimed division of the land compensation amount amongst the party to the agreement in equal shares after deducting the existence for processing the matter. Although the learned Trial Court has not come to a specific finding that irreparable loss and injury would be caused to the plaintiffs which cannot be compensated in terms of money if injunction is not granted to them, but the fact remains that about 14 crores was received as compensation for the land, out of which a sum of Rs. 5 crores was taken by the respondent No. 4, who is the land owner. The appellant who is said to have distributed the money gave a sum of Rs. 50 lakhs each to the plaintiff Nos. 2 & 3/respondent Nos. 2 & 3 and a sum of Rs. 5 lakhs each to plaintiff No. 1/respondent No. 1 and the two other signatories to the agreement. It is claimed by the plaintiffs that the appellant kept the remaining balance for herself. It submitted at the bar, the bank account statements of the appellant as on 31.03.2022 was submitted before the Trial Court and the amount indicated was Rs. 1,13,21,862.85. Therefore, considering the amount of compensation that was received and the amount already distributed, it appears that a

substantial amount has been withdrawn from the bank account, prior to 31.03.2022. Although the suit is filed for recovery of money but in the absence of any materials to indicate that the amount claimed is recoverable, notwithstanding the challenge made by the appellant in this appeal, the balance amount remaining in the bank account requires to be secured.

[17.] From a perusal of the written statement filed by the appellant before the learned Trial Court, both in the main suit as well as in the civil miscellaneous application, it can be seen that there is no total denial from the appellant about the existence of the Agreement dated 09.06.2016. The appellant has only contended that the agreement cannot be enforced and that the plaintiffs themselves have violated the terms of the agreement. The same however is a subject matter which has to be decided by the Trial Court on merits in the main suit. No doubt, in the event of the plaintiffs succeeding in the suit, the learned Trial Court may direct an apportionment of the compensation amount as per the agreement and also may award compensation or damages to the plaintiffs but unless the appellant has the means to pay such amount, the plaintiffs may not get any relief.

[18.] Thus, in view of above and upon due consideration, the appeal cannot be allowed and the same is accordingly dismissed.

JUDGE

Comparing Assistant