

GAHC030005162022



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

Case No. : FAO/3/2022

Zachhungi
W/o Lalzamlova (L), Falkawn, Hospital Section, Aizawl District, Mizoram

VERSUS

Lalnunmawii
D/o Rotluanga (L), M-Section, Luangmual Venglai, Aizawl, Mizoram

Advocate for the Petitioner : Mr F Lalenglina
Advocate for the Respondent : Mr B Lalramenga

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

06.03.2023
(Monday)

Heard Mr. F. Lalenglina, learned counsel for the appellant along with Ms. Ruthi Vanlalhruii, learned counsel for the opposite party.

This appeal is preferred against the impugned Order dated 11.11.2022 passed by the Court of Senior Civil Judge-IV, Aizawl in CMA No.547/2022 arising out of Civil Suit No.98/2022.

Mr. F. Lalenglina, learned counsel for the appellant submits that present appellant who is the defendant in the Civil Suit No.98/2022, had filed a Caveat Application No.2/2022,

however the learned Lower Court had passed the impugned order dated 11.11.2022 in CMA 547/2022, wherein an ad-interim injunction under Order 39 Rule 1 was passed against him and he was directed to cease carrying on the construction within the disputed property forthwith. The learned counsel further mentions that this order was passed inspite of the fact that the learned Lower Court in its order dated 17.10.2022 in the same CMA 547/2022 had fixed 16.11.2022 for the appellant to file his objection against the application filed by the opposite party under Order 39 Rule 1 read with Section 151 of CPC for temporary injunction as well as an eviction order against the opposite party/appellant, however before the appellant could file any objection, the learned Lower Court had passed the impugned Order dated 11.11.2022 without giving an opportunity of being heard to the Caveator in-spice of the caveat application under section 148/A of CPC. That he was not given a copy of the application filed wherein the learned lower court passed the impugned order dated 11.11.2022.

Ms. Ruthi Vanlalhrui on the other hand submits that the instant opposite party who is the plaintiff in the Civil Suit No.98/2022 had filed an application under Order 39 Rule 1 CPC before the learned lower court for an ad-interim injunction order inspite of the fact that the learned lower court passed an order on 17.10.2022, in the same CMA No.547/2022 wherein the instant appellant was given an opportunity to file his written objection against the application under Order 39 Rule 1 r/w Section 151 of CPC on 16.11.2022, since the instant applicant had continued construction of the building over the disputed land and if an ad-interim order was not passed immediately, the pending Civil Suit No.98/2022 would become infructuous. Thus, they had approached the learned lower court again for granting of ad-interim order under the same Misc. application No.547/2022.

Having heard both the parties, this Court finds that the learned Lower Court had passed the order dated 11.11.2022 in CMA No.547/2022 and granting the prayer of the applicant/the instant opposite party by passing an interim injunction order under Order 39 Rule 1 C.P.C. without giving notice to the opposite party/caveator and had partly disposed of the application. At the same time on 17.10.2022 the court had issued notice and granted time till 16.11.2022 for filing objection to the opposite party/instant appellant in a similar application filed under Order 39 Rule 1 of C.P.C. for ad-interim and injunction order against the opposite party/instant appellant.

In view of the above, this court is of the considered view that the learned lower court had erred in passing the order dated 11.11.2022 in CMA 547/2022 without hearing the caveator, while the same matter with a similar prayer was pending in the court and where the learned lower court had found it fit to fix 16.11.2022 for the opposite party/caveator file their objection

For the above reasons, the order dated 11.11.2022 passed by the learned Senior Civil Judge-IV, Aizawl in CMA No.547/2022 arising out of Civil Suit No.98/2022 is quashed and set aside and in view of the order passed on 17.10.2022 in CMA No.547/2022, both the parties are to appear before the learned Court of Senior Civil Judge-IV, Aizawl on 28.03.2022, wherein the opposite party/instant appellant is to file their written objection and the matter is to be disposed expeditiously.

Meanwhile, *status quo* is to be maintained till the fixed date *i.e.* **28.03.2023**.

JUDGE

Comparing Assistant