

GAHC040015272023



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

Case No. FAO/04(AP)/2023

Dr. Bobby Taipodia,
Age 49 years, daughter of Late Kardu Taipodia and
Smti Akoni Taipodia,
Permanent resident of village- Lipu, PO &
PS- Likabali, District- Lower Siang, Pin-791125
now residing at Mirbuk, Pasighat, Arunachal Pradesh.

.... Appellant

-Versus

Shri Duri Taipodia,
Son of Late Kardu Taipodia, resident of
Village- Lipu, PO & PS- Likabali, District-
Lower Siang, Pin Code- 791125,
Arunachal Pradesh.

.... Respondent

BEFORE:
HON'BLE MR. JUSTICE BUDI HABUNG

For the appellant

: Mr. T. Sunil

For the Respondent

: Mr. R. Sonar

Date of hearing : 03.04.2024.
Date of Judgment : 15.07.2024

:: JUDGMENT AND ORDER ::
[CAV]

- 1.** Heard Mr. T. Sunil, the learned counsel for the appellant. I have also heard Mr. R. Sonar, the learned counsel for the respondent.
- 2.** The present appellant is the plaintiff in the Title Suit No. 17/2023 which is pending before the Court of the Learned Civil Judge (Senior Division), Pasighat for declaration of Right, Title and Interest over the Suit Land; for cancellation of Gift Deed; for recovery of possession and for permanent injunction
- 3.** Along with the said suit, an application under Order 39 Rule 1 and 2 read with section 151 CPC, 1908 was also filed by the appellant for grant of temporary injunction with a prayer for ad interim ex-parte injunction. After hearing the learned counsel for the plaintiff/petitioners, the learned Trial Court vide order dated 09.08.2023 passed ad interim ex-parte status quo order in favour of the plaintiff/petitioner/appellant herein. The said Injunction Application was registered and numbered as Misc (J) Case no. 59/2023 arising out of Title Suit No. 17/2023.
- 4.** The defendant/respondent then filed objection against the Injunction Application filed by the petitioner/appellant herein. On 04.10.2023, the Injunction Application was heard and after hearing the parties and after perusing the materials on record, the learned Trial

Court vacated the ad interim ex-parte status quo order dated 09.08.2023 passed in the Injunction Application for the reasons stated in the said order.

5. Being highly aggrieved and dissatisfied by the impugned vacation order dated 04.10.2023 passed by the learned Court of Civil Judge (Senior Division), Pasighat in Misc (J)/59/2023 arising out of Title Suit No. 17/2023, this appeal has been preferred by the plaintiff/petitioner/appellant herein under order XLIII Rule 1(r) read with Section 151 CPC, 1908 amongst others on the following grounds:

(i) That the appellant was gifted the Schedule Land by her mother by executing a Gift Deed dated 19.05.2022, and the purported Land Possession Certificate (hereinafter referred to as LPC) dated 13.06.2022 possessed by the respondent in respect of the suit land, i.e., 9559 Sq.mtrs out of the Schedule Land was obtained fraudulently by the respondent.

(ii) That while deciding prima facie case, the learned Trial Court failed to appreciate that a perusal of the purported Gift Deed dated 12.04.2013 alleged to have been executed by the mother in favour of the respondent herein goes to show that the Gift Deed dated 12.04.2013 was executed in favour of 3 (Three) sons. However, the respondent on its own, by illegal means obtained LPC in respect of the suit land i.e., 9559 sq.mtrs. Thus, the conduct of the respondent herein was evident for the learned Trial Court to appreciate it, even then, the learned Trial Court was of the view that the appellant has failed to make out a prima facie case in favour of the appellant.

(iii) That the learned Trial Court has also failed to appreciate that all along, the mother of the appellant was protesting or taking steps against the acts and misdeeds of the respondent. On the information of the appellant, the Deputy Commissioner by an order dated 12.09.2022 was pleased to stop the construction work carried out by the respondent as the right of the appellant flows from the mother by virtue of the Gift Deed dated 19.05.2022 and in absence of handing over of the possession of the suit land, the mother was well within her right to file complaint against any illegal activities carried out by the respondent.

(iv) that while deciding prima facie case, the learned Trial Court failed to appreciate that the appellant was well within the 3 (three) years period to seek any declaration against the respondent. That the learned Trial court contradicted herself in as much as the Trial Court by an order dated 09.08.2023 was pleased to pass ad interim ex-parte status quo, after being satisfied of the case projected by the appellant. However, later on by an impugned order dated 04.10.2023, the learned Trial Court came to the conclusion that there is no prima facie case, balance of convenience and irreparable loss in favour of the appellant in a similar situation.

(v) That while deciding an application under Order 39 Rule 1 and 2, the Court needs to decide only prima facie case, not title. That the appellant projected before the learned Trial Court that if injunction is not granted, she shall be deprived to her property and the suit is being filed for right, title and interest and for recovery of possession of land. Moreover, if construction is allowed to be carried out over the suit land

then it will change the nature and character of the suit land, thereby, making it difficult for the learned Trial Court to pass the decree, if the appellant succeeds in the suit.

(vi) That the learned Trial Court while deciding balance of convenience failed to appreciate that the respondent has not been able to show nor annex any valid document by which the learned Trial Court has come to the conclusion that housing loan was availed or expenses were incurred during the construction over the Scheduled Land for the last 1 (one) year. That the learned Trial Court failed to appreciate that the balance of convenience lied with the appellant in as much as that if construction is allowed to be carried out during the pendency of the suit, then it would change the nature and character of the suit land and then it would be difficult to move the clock back.

(vii) That the learned Trial Court while deciding the irreparable loss and injury failed to appreciate that if the respondent is allowed to construct over the suit land, then it would change the nature and character of the suit land.

(viii) That by vacating the status quo order on 09.08.2023, the learned Trial Court has allowed the respondent to carry out the construction over the suit land and also made it difficult for itself to pass any decree in favour of the appellant in as much as eventually if the suit is decreed in favour of the appellant, the decree of recovery of possession would not be executed because of the permanent structure built upon the suit land.

(ix) That the learned Trial Court as regards the consequential relief

or permanent injunction; that it will guarantee the rights of the appellant is absolutely perverse in as much as in the event the suit is decreed in favour of the appellant, the decree of permanent injunction would only restrain the respondent from peaceful possession of the suit land. However, the decree of permanent injunction would not help in recovering the suit land that too without the permanent structure built upon it.

(x) That the learned Trial Court has virtually made the suit infructuous or the decree the suit in favour of the respondent by allowing him to carry out the construction over the suit land to the respondent when the issue of title is the subject matter in lis.

(xi) That the learned Trial Court failed to appreciate that the appellant as plaintiff approached the Court when the construction was at the nascent stage and the respondent was carrying out the construction activities over the suit land, therefore, to come to a finding that the appellant/plaintiff has approached the Court belatedly and the three golden principles were not in favour of the appellant, is absolutely perverse and liable to be interfered with.

6. The learned counsel for the appellant submits that for the reasons stated herein above, the impugned order dated 04.10.2023 is liable to be set aside and quashed.

7. To support his contention the learned counsel for the appellant has taken reliance upon the following decisions of the Hon'ble Supreme Court;

(i) In the case of ***Seema Arshad Zaheer and Ors vs. Municipal***

Corpn. of Greater Mumbai and Ors reported in **(2006) 5 SCC 282**, the Hon'ble Supreme Court held as under:

“30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.”

(ii) In the case of **Wander Ltd. and Anr. Vs. Antox India P.Ltd** reported in **1990 (Supp) SCC 727**, the Hon'ble Supreme Court held as under:-

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“... is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies".

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his

enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

13. *On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.*

14. *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its 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 principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :*

“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

The appellate judgment does not seem to defer to this principle.”

(iii) In the case of ***Dalpat Kumar and Anr Vs. Prahlad Singh and Ors*** reported in **(1992) 1 SCC 719**, the Hon'ble Supreme Court held as under: -

“4. *Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that*

the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause(c) was brought on statute by Section 88(i) (c) of the Amending Act 104 of 1966 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151, C.P.C. to grant ad interim injunction against dispossession. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. *Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. 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."

(iv) In the case of ***Dev Prakash and Anr Vs. Indra and Ors*** reported in ***(2018) 14 SCC 292***, the Hon'ble Supreme Court held as under: -

"13. In the preponderant factual backdrop, as outlined hereinabove, we are of the view that not only the reasons endeavoured to be cited in the impugned order in justification of the direction for public auction of the suit property lack in persuasion, those are apparently speculative and illogical, to say the least. The direction for disposal of the suit property by public auction, in the facts and circumstances of the case, clearly militates against the fundamental precept of preservation of subject matter of any dispute pending adjudication in a court of law, more particularly relatable to a civil litigation, to appropriately decide on the rights of the parties for administering the reliefs to which they would be entitled eventually on the culmination of the adjudication. As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this Court on the issue except referring to the one in [Maharwal Khewaji Trust \(Regd.\) Faridkot vs. Baldev Dass](#), wherein it has been underlined that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been cause to the party who may ultimately succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse."

(v) In the case of ***Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass*** reported in ***(2004) 8 SCC 488***, the Hon'ble Supreme

Court held as under: -

“4. The appeal filed by the respondent herein before the learned District Judge came to be allowed holding that alienation made, if any, will be subject to the law of lis pendens and constructions, if any, put by the respondent will have to be removed at his own risk and cost in the event of the suit being decreed.

7. Mr. R.S. Sachhar, learned senior counsel appearing for the appellant, contended that generally during the pendency of litigation courts protect the status quo existing on the date of the suit and it is only in exceptional circumstances where irreparable damage is feared, the courts permit change of status quo. His further contention was that in the present case no such case is made out by the respondent and the trial court was justified in protecting the status quo as on the date of the suit.

10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.’

(vi) In the case of **Mohd. Arif, Ranjit Saxena, U.P. Power Corporation Ltd Vs. Zakir Hasan and Ors** reported in **2005 0 Supreme (All) 1472**, the Hon’ble Supreme Court held as under: -

“12. When there was a genuine dispute regarding title between both the parties, the proper course for the learned Civil Judge (Senior Division) was to pass such an injunction order as may be non injurious to both the

parties. The parties could be directed to maintain status-quo on the spot. They could also be directed not to demolish any construction which is standing on the spot but the injunction directing the defendants not to cause any interference in plaintiffs act of raising constructions on the disputed land could not be granted. In fact, grant of such an interim injunction permitting the plaintiffs to raise construction on the disputed land, when there is a title dispute, amounts to decreeing the plaintiffs suit in toto and such an order could not be passed at the preliminary stage of disposal of injunction application, because after grant of this injunction, there remains nothing more to be granted in favour of the plaintiffs at the time of disposal of the suit. It may also be mentioned that the order permitting the plaintiffs to raise constructions on the disputed land is going to cause irreparable loss to the defendants, because ultimately if it is found that the defendants are owners of the land, their rights shall be adversely affected by the plaintiffs constructions. Under these circumstances, balance of convenience was also in favour of the defendants not to grant any such injunction in favour of the plaintiffs. "

8. On the contrary, the learned counsel for the respondent submits that the respondent along with two brothers and the appellant are the children born out of the marriage between the late father, Kardu Taipodia and mother Smt. Akoni Gogoi (Taipodia). The suit land in question is a part and parcel of the vast area of land admeasuring at 2.12 hectares (21,200 sq. mtrs) which was self-acquired/ occupied property of their deceased father. Following the second marriage of their father in the year 1998, serious property dispute arose between the father and the mother, when the mother started selling the properties acquired by their father, surreptitiously. The mother also obtained LPC dated 24.07.2003 issued by the Deputy Commissioner, Aalo, qua the aforesaid 2.12 hectares of land without the prior consent and knowledge of the family members. Hence, being highly aggrieved, the deceased father raised serious objection against the issue of LPC to his first wife.

9. That, faced with stiff objection from her deceased husband, the

mother out of her own free will gifted the entire area to her 3 sons, namely, Sh. Duri Taipodia, Dr. Dukong Taipodia and Sh. Durik Taipodia by executing a Gift Deed dated 12.04.2013. On the same day, the mother of the appellant had also executed a Gift Deed by which another plot of land measuring at 1.64 hectares, nearby the suit land in question in favour of her four children including the **respondent** and the **appellant**. Pursuant to which, all the children including the respondent and the appellant have already obtained LPC(s) viz-a-viz their respective shares in the gifted property. It is further submitted that even after having gifted the land measuring 2.12 hectares vide the Gift Deed dated 12.04.2013, the mother secretly sold major portion of the gifted land to others without prior knowledge and consent of the other family members. Not only that, the mother also sold off some other properties for which all together she received more than Rs. 97,50,000/- (approximately) from the sale transactions and the same has been exclusively retained by her.

10. Being highly aggrieved by the above dubious conduct of her wife, the father of the respondent and the appellant warned the mother from selling, claiming and interfering with his properties and had also raised objection against the issue of the LPC in her name by issuing series of letters to her. Even the father raised categorical objection that his wife being not a member of the scheduled tribe of the State of Arunachal Pradesh was not entitled to own land in the State of Arunachal Pradesh and therefore, the LPC in respect of his occupied land had been wrongly and illegally issued in the name of the mother and that too without his prior knowledge and consent. He even

submitted the representation dated 14.03.2015 before the concerned authority and expressed his intention to challenge the said LPC issued in the name of the mother.

11. It is further submitted that the respondent had applied for LPC viz-a-viz 9559 sq.mtrs, of the left out area after the sale from 2.12 hectares area to the Deputy Commissioner, Likabali. It was applied with the concurrence of the deceased father, mother and the consent of his two brothers and in accordance with the extended Acts and rules framed thereunder for the issue of LPC in his name. After proper verification and on finding that the applied land was free from any encumbrances, the Deputy Commissioner, Lower Siang District, Likabali had issued LPC dated 13.06.2022 to the respondent for the remaining area, i.e., 9559 sq.mtrs of land. The original copy of the said LPC dated 13.06.2022 is under the custody of the State Bank of India, Likabali Branch which was submitted by the respondent while availing the housing loan for the construction of a residential house at the suit land.

12. It is submitted that in the month of June, 2022, the respondent applied for a housing loan in the State Bank of India, Likabali Branch and started construction of his RCC residential building from July, 2022 onwards and by the time, the present Title Suit was filed before the learned Civil Judge (Senior Division), Pasighat, the respondent has already completed the foundation work, erected pillar post of the ground floor of the residential building. That the first instalment of the amount of Rs. 35,000,00/- was sanctioned on 14.12.2022 and since January 2023, the respondent has been paying interest to the

concerned bank. Till date, the respondent has approximately invested more than Rs. 81,000,00/- in the construction work including the entire bank loan amount of Rs. 35,000,00/- . The mother and the appellant were fully aware about the fact that the respondent had been undertaking construction of his new RCC residential building at his LPC area since the month of July, 2022 as his mother, the respondent and his family comprising of his children and wife reside together in the same residential house, which is located nearby the construction site and it is within five minutes walkable distance. However, they did not raise any objection during the initial construction period, but, after filing the present suit only, after the completion of major construction work and the investment of substantial amount, which shows that their intention is malicious and not bonafide.

13. It is submitted that since the year 2022, the health of the father of the respondent and the appellant started deteriorating and he ultimately expired on 04.06.2023. Later on it was transpired that during the period while the other family members were busy in the medical treatment of the deceased father, the appellant in connivance with the mother had surreptitiously obtained the LPC bearing no. DC/LSD/LM/LPC-1236 dated 01.05.2023 in respect of the WRC field land measuring 20,700 sq.mtrs which is also located at Lipu, nearby the suit land. Further, in respect of the same land, 4 (four) numbers of LPC(s) had already been issued in the name of the respondent, appellant and two brothers and the said fact was fully known to both the appellant and the mother. Hence, a complaint was lodged on 30.06.2023 before the Deputy Commissioner of Likabali, inter-alia

raising the issue of overlapping of LPC and praying for immediate cancellation of the plaintiff's LPC dated 01.05.2023. Following which, the Deputy Commissioner, Likabali has cancelled the said LPC vide order dated 17.07.2023.

14. It is submitted that surprisingly, the appellant in connivance with the mother had tried to secretly obtain LPC in respect of the land allocated at Bali village, but they failed because of the timely objection made by the respondent and his 2 brothers. They both had jointly lodged a complaint on 14.02.2022 to the District Land and Settlement Officer, Likabali against the issue of LPC in the name of the appellant and the mother, inter-alia stating that the deceased father had already agreed to divide the land equally amongst his sons from the first wife. It appears that following the cancellation of the LPC, the appellant felt offended and therefore, she had filed a Title Suit before the learned Civil Judge (Senior Division) in connivance with her mother for unlawful gain and with ulterior motive and wreck vengeance against the respondent, inter-alia, stating that she has been gifted the said land by her mother.

15. The respondent and the appellant belong to the Galo Tribe, which is a recognized scheduled tribe of the State of Arunachal Pradesh. As per the prevailing customary practice and usage of Galo tribe, only a son is entitled to inherit the land and other immovable properties of their parents and ancestors, and a daughter has no right to make claim over the land and immovable properties of her parents. That the suit land in question is undisputedly an acquired land of the deceased father and, therefore, in view of the prevailing customary

practice and usage of the Galo tribe, the respondent and his brothers are only entitled to inherit the land in question and the appellant cannot claim any right over the suit land in question and since, the mother is not a member of the scheduled tribe of the State of Arunachal Pradesh, she is not entitled to own any land or immovable properties in the State of Arunachal Pradesh. In view of the specific statutory bar under the Bengal Eastern Frontier Regulation Act, 1873 and the Arunachal Pradesh Land Records and Settlement Act, 2000 and the Rules framed therein under, which prohibits the acquisition of land in the State of Arunachal Pradesh by a non-native of the State. Additionally, as per the customary practise and usage of the Galo tribe, a wife is not entitled to own the land and immovable properties of her husband, and, post the death of her husband, a son inherits the land and immovable properties of his deceased father.

16. In view of the above facts and circumstances of the case and considering that the construction of the structure over the suit land was being done by the respondent by availing loan from the bank, the learned Civil Judge (Senior Division), Pasighat has rightly vacated the ad interim ex-parte injunction granted in favour of the appellant.

17. In support of his submission, the learned counsel for the respondent has taken reliance upon the following judgments of the Hon'ble Supreme Court;

(i) In the case of ***Gomtibai (Smt) (dead) through Lrs. And Ors vs. Mattulal (Dead) through Lrs*** reported in ***(1996) 11 SCC 681***, the Hon'ble Supreme Court held as under:-

“4. Thus, it seen that the gift of immovable property should be made only for transferring the right, title and interest by the donor to the donee by a registered instrument signed by or on behalf of the donor and must be attested by at least two witnesses. The pre-existing right, right, title and interest of donor thereby stand divested in the donee by operation of Section 17 of the Registration Act only when the gift deed is duly registered and thereafter the donor would lose title to the property. It must also be proved that the donee had property. It must also be proved that the donee had accepted the property gifted over under the instrument. In this case, though the transfer of gift was acted upon by Kasturibai as per the correspondence and evidence on record, but, admittedly, there is no written instrument executed by donor, namely, the plaintiff and the defendant in favour of their cousin sister Kasturibai and it got attested by at least two witnesses and registered in accordance with the provisions of the Stamp Act and the Registration Act. In the absence of compliance of these formalities, at best what could be seen from the partition deed is that the original plaintiff and the defendant have expressed their intention to gift over the land to their cousin sister Kasturibai. As held earlier, in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred in favour of their cousin sister; in other words, the gift is not complete in the eye of law. Therefore, the District Court has rightly set aside the decree of the trial Court which was later confirmed by the High Court. We do not find any error of law warranting interference.”

(ii) In the case of ***Akella Lalitha vs. Konda Hanumantha Rao and Anr reported in (2022) SCC Online SC 928***, the Hon'ble Supreme Court held as under: -

“16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/ son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

17. In the case of Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

18. *In the case of Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors. held:*

"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

19. *In this case while directing for change of surname of the child, the High Court has traversed beyond pleadings and such directions are liable to be set aside on this ground."*

(iii) In the case of ***M/s Rameshchanda Jamnadas and Co. Vs. State of Andhra Pradesh*** reported in ***1987 (Supp) SCC 166***, the Hon'ble Supreme Court held as under: -

"...when on the finding reached by both the City Civil Court as well as the learned Single Judge the plaintiff was not in possession, the grant of temporary injunction by the learned Single Judge was wholly unwarranted in terms of Order XXXIX, Rule 1 of the Code. We do not find any merit in the review application which is accordingly dismissed. "

18. I have heard the submission advanced by both the learned counsels for the parties. I have also perused the document available on record and the impugned order dated 04.10.2023. By the impugned order, the learned Civil Judge (Senior Division), Pasighat has exhaustively and categorically discussed the three principles of prima facie case; balance of convenience and irreparable loss and injury. It is a well-balanced discussion and marshalling of the facts of the case, and the same need not be repeat here for the sake of brevity. The learned Civil Judge (Senior Division), Pasighat also observed regarding

the prayer for consequential relief, permanent injunction against the defendant and observed that in the event the suit is decreed in favour of the plaintiff/appellant herein, the consequential relief will guarantee the rights of the plaintiff. The learned Civil Judge (Senior Division), Pasighat also observed that in the light of the conduct of the plaintiff, the loss and damages likely to be caused to the defendant/respondent herein is greater than that would be caused to the plaintiff/appellant herein.

19. With regards to the apprehension of the appellant that in the event of the case being decided in favour of the appellant, the respondent would claim compensation for the constructed building, the learned counsel for the respondent clarified and submitted that the respondent would not claim the same. The learned counsel for the respondent further submitted that apart from what has been observed by the learned Civil Judge (Senior Div.) in the impugned order that the balance of convenience is in favour of the respondent, the appellant has not acquired any right whatsoever to claim the land in question, in as much as the Gift deed dated 12.04.2013 executed by their mother Smti Akoni Tapodia whereby the land measuring 2.12 hectares including the suit land has been bequeathed in favour of the respondent and his 2 brothers and the LPC over 9559 Sq.mtrs. have not been challenged by their mother Smti Akoni Taipodia in any authority till date.

20. On consideration of the submissions of the learned counsel for the parties and having regards to the facts and circumstances of the case, I am of the opinion that there is no wrong or improper exercise of discretion on the part of the learned Civil Judge (Senior Division),

Pasighat in vacating the ad interim ex-parte injunction granted in favour of the appellant. The learned Civil Judge (Senior Division), Pasighat has exercised its discretion on appreciation of the facts and circumstances of the case and upon consideration of the relevant materials placed before her. No ex-facie error in the impugned order has been shown by the appellant which would establish exercise on such discretion to be improper. Accordingly, I sustain the order of the learned Civil Judge (Senior Division), Pasighat dated 04.10.2023 vacating the ad interim ex-parte injunction dated 09.08.2023.

- 21.** In view of the above, this appeal stands dismissed.
- 22.** Interim order if any, stands vacated.

JUDGE

Comparing Assistant