

GAHC010019572023



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

Case No. : FAO/3/2023

DR. MAHBUB ALAM KHAN
S/O ATAUR RAHMAN KHAN, R/O VILL- LAKHIPUR PART-I, P.O.-KALAIN,
P.S.-KATIGORAH, DIST- CACHAR, ASSAM, P/R/A VILL- BHAKATPUR (NEAR
MAHARISHI VIDYA MANDIR), P.O.-BHAKATPUR, P.S.-SILCHAR, DIST-
CACHAR, ASSAM, PIN-788005

VERSUS

NAZIR AHMED BARBHUIYA AND 6 ORS
S/O LATE SIRAJ UDDIN BARBHUIYA, R/O VILL-BHAKATPUR, BHAKATPUR
(NEAR MAHARISHI VIDYA MANDIR), P.O.-BHAKATPUR, P.S.-SILCHAR,
DIST-CACHAR, ASSAM, PIN-788005

2:MD. KHALIL UDDIN
S/O LATE IBRAHIM ALI
R/O VILL- LAKHIPUR PART-I
P.O.-KALAIN
P.S.-KATIGORAH
DIST-CACHAR
ASSAM

3:ALHAZ MEHAR AHMED HAZARI
W/O ALHAZ MUSTAFA AHMED HAZARI
R/O MADHURBOND
P.S.-SILCHAR
DIST- CACHAR
ASSAM

4:MUSSTT. REENA ISLAM BARBHUIYA
W/O NURUL ISLAM BARBHUIYA
R/O VILL- AMBICAPUR PART-X (MEHERPUR CO-OPERATIVE)
P.O. AND P.S.-SILCHAR

DIST- CACHAR
ASSAM

5:MST. SAHANARA BEGUM LASKAR
W/O AZMAD HUSSAIN LASKAR
R/O UTTAR KRISHNAPUR PART-II
P.O. AND P.S.-SILCHAR
DIST- CACHAR
ASSAM

6:MST. MUMTAZ BEGUM HAZARI
W/O LATE ATABUR RAHMAN HAZARI
R/O MADHURBOND HAZARIPARA
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSA

For the appellant (s) : Mrs. R. Choudhury, Advocate

For the respondent (s) : Mr. S. K. Ghosh, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

27.05.2024

The instant Appeal is an Appeal under Order XLIII Rule 1 (r) of the Code of the Civil Procedure, 1908 against the order dated 09.11.2021 passed in Misc.(J) Case No.19/2021 by the Court of the Civil Judge No.1, Cachar, Silchar in Title Suit No.9/2021. Vide the impugned order the learned Trial Court had directed both the parties, their men, agents, associates to maintain status quo in respect to the Suit Schedule-1 land regarding physical topography, i.e. construction works etc. in any manner till disposal of Title Suit No.9/2021.

2. This Court has duly perused the copy of the plaint whereby the plaintiff had sought for specific performance on the basis of an agreement dated

11.12.2020 and in equal breadth has also sought for the declaration that his vendors have right, title and interest over the suit property and the principal defendant No.1 has not acquired any semblance of right, title and interest over the respective plot of land on the basis of the Sale Deed executed in their favour as purchasers as described in Item Nos.1 & 2 of the Schedule-II and also for declaring those Sale Deeds described in Schedule-II as false, illegal, fraudulent etc.

3. The entire edifice of the case of the plaintiff is the Deed of agreement dated 11.12.2020 whereby the proforma respondent Nos.6 & 7 had entered into an agreement with the plaintiff whereby the plaintiff would be providing financial assistance to the proforma defendant Nos.6 & 7 in respect of filing civil and criminal cases or any other legal works and for the said financial assistance, the proforma defendant Nos.6 & 7 shall repay the said expenditure in a manner stated therein.

4. This Court has also taken note of the stand of the appellant herein who is the defendant No.1 in the suit. It is the specific stand of the defendant No.1 that the mother of the proforma defendant Nos.6 & 7, during her lifetime transferred the said Schedule land to her brothers vide the registered Deed of Sale in the year 1984 and on the basis thereof in the year 2020, the principal defendant No.1 purchased the same. It is the specific case of the appellant that the plaintiff or even the proforma defendant Nos.6 & 7 have no semblance of any right over the schedule lands and even does not have possession as could be seen very much from the agreement dated 11.12.2020.

5. I have heard the learned counsel for the appellant and also perused the impugned order. For the grant of an injunction, the three requisites are:-

- (i) a prima-facie case for going for trial;
- (ii) balance of convenience in favour of grant of an injunction;
- (iii) an irreparable loss, harm and injury would be caused if the injunction is not granted.

6. In the instant case, this Court upon perusal of the materials on record finds that the plaintiff had no prima-facie case for going for trial in as much as the plaintiff claims his right on the basis of a title belonging to the proforma respondent Nos.6 & 7 without the proforma respondent Nos.6 & 7 claiming the said title over the property. In addition to that, the balance of convenience in the instant case is also not in the favour of grant of any injunction taking into account that the appellant herein is admittedly in possession of the suit property. The irreparable loss, harm and injury which is another facet which needs to be taken note of is also no in favour of the grant of an injunction taking into account that in the circumstance the suit be decreed, the plaintiff herein would be entitled to restitution.

7. Under such circumstances, this Court is of the opinion that the learned Trial Court having failed to take into account the golden principles for grant of an injunction had erred in law as well as on fact in passing the order dated 09.11.2021.

8. Accordingly, the order dated 09.11.2021 passed in Misc.(J) Case No.19/2021 by the Court of the Civil Judge No.1, Cachar, Silchar in Title Suit No.9/2021 is set aside and quashed.

9. The Appeal is accordingly allowed. Return the LCR.

JUDGE