

GAHC010025632022



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

Case No. : WP(C)/933/2022

HRISHIBARDHON BORDOLOI
S/O LATE HEM. CH. BORDOLOI
R/O LB ROAD, TEZPUR TOWN,
MOUZA- MAHABHAIRAB
P.O. AND P.S. TEZPUR
DIST. SONITPUR, PIN-784001, ASSAM
PHONE NO. 917099427363

VERSUS

ANIMA MAHANTA
W/O LATE AJIT MAHANTA
R/O LB ROAD, TEZPUR TOWN,
MOUZA- MAHABHAIRAB
P.O. AND P.S. TEZPUR, DIST. SONITPUR, ASSAM, PIN-784001.

Advocate for the Petitioner : MRS J D KHAUND

Advocate for the Respondent : MR. S K SINGH

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 22.04.2024

Heard Mr. J. D. Khaund, learned counsel for the petitioner.

2. It appears that this matter is wrongly registered as a writ petition because this application has been filed under Article 227 of the Constitution of India, whereby the proceeding of the Title Suit no.34/2018 has been assailed.

3. Be that as it may, it is noticed that the grievance of the petitioner is that between the same parties, proceeding in form of RFA No.1/2015 is pending for adjudication before this Court, which is arises out of judgment and decree dated 15.03.2014, passed by the learned Civil Judge, Tezpur in TS No.3/2009. The said suit was filed for seeking relief of declaration of lawful possession of the petitioner, namely Hrishi Bardhan Bordoloi and for permanent injunction.

4. The defendant no.1 is said TS No.3/2009 namely Anima Mahanta has filed a separate suit before the Court of Munsif at Tezpur which is registered as TS No.34/2018, that was filed for recovery of possession and recovery of rent against the petitioner.

5. Accordingly, by filling this writ petition under Article 227 of the Constitution of India, the petitioner has made a prayer in this writ petition for stay of the proceedings of TS No.34/2018 till disposal of RFA No.1/2015.

6. In the considered opinion of this Court, this writ petition under Article 227

of the Constitution of India is misconceived as there are appropriate provisions in the Civil Procedure Code for stay of subsequent suits and proceeding. The said jurisdiction of the Trial Court cannot be usurped by this Court by entertaining writ petition under Article 227 of the Constitution of India.

7. Therefore, notwithstanding that this matter is wrongly registered as a writ petition under this application under Article 227 of the Constitution of India, but on merit this application is not found to be maintainable and therefore, this writ petition stands closed with liberty to the petitioner to move an appropriate application before the jurisdictional Court.

8. Accordingly, this application stands closed.

JUDGE

Comparing Assistant