

GAHC010059722024



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

Case No. : CRP(IO)/109/2024

BARUN BORO
S/O- LATE DUKHI BORO,
R/O- VILL- SILACHAPORI, IMPUR,
P.O- DURUNG PAHAR, P.S- KHETRI, DIST- KAMRUP (M), ASSAM, PIN-782403

VERSUS

BHADAI BORO AND 5 ORS
D/O- LATE RANESWAR BORO @BANESWAR BORO

2:RAGHUNI BORO
D/O- LATE RANESWAR BORO @BANESWAR BORO

3:PUrNIMA BORO
D/O- LATE RANESWAR BORO @BANESWAR BORO

4:URMILA BORO
D/O- LATE RANESWAR BORO @BANESWAR BORO

5:BHARAT BORO
D/O- LATE RANESWAR BORO @BANESWAR BORO

6:RONGFULI BORO
RESPONDENT NO 1 TO 5 ARE THE D/O- LATE RANESWAR BORO
@BANESWAR BORO AND RESPONDENT NO 6 IS THE WIFE OF LATE
RANESWAR BORO @BANESWAR BORO.

ALL ARE R/O- VILLAGE MURKATA

P.O- DURUNG PAHAR

P.S- KHETRI

DIST- KAMRUP (M)
ASSAM
PIN-78240

For the appellant(s) : Mr. B. Phukan, Advocate

For the respondent (s) : None appears

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

22.03.2024

This is an application under Article 227 of the Constitution challenging the order dated 20.01.2024 passed in Misc. Appeal No.34/2023 whereby the learned First Appellate Court affirmed the order dated 23.09.2022 passed by the learned Munsiff No.2 in Misc.(J) Case No.73/2022 arising out of Title Suit No.93/2022.

2. This Court has duly perused the plaint of the suit which has been filed and it reveals that the claim made by the plaintiffs who are respondents herein is for declaration of their right, title and interest on the basis of the adverse possession as well as also seeking permanent injunction that the petitioner herein who is the defendant in the suit should not disturb the possession of the plaintiff. The learned Trial Court vide the order dated 23.09.2022 in Misc.(J) Case No.73/2022 had restrained the petitioner herein from disturbing the possession of the plaintiffs over the suit premises in any manner till the disposal of the said suit.

3. The learned counsel for the petitioner submits that the petitioner has also filed a counter claim for eviction of the plaintiffs. He, however,

submits that the petitioner is not insisting for the purpose of changing the status quo as regards the possession, but the petitioner seeks an order to the effect that during the pendency of the suit, the nature and character of the suit land should not be changed.

4. This Court is of the opinion that the order which the petitioner herein is asking for has to be based on an injunction application filed by the petitioner before the Trial Court and not in a proceedings under Article 227 of the Constitution challenging the order of granting injunction in favour of the plaintiffs.

5. Consequently, this Court further upon perusal of the impugned order is not inclined to exercise the jurisdiction under Article 227 of the Constitution. However, this Court grants the liberty to the petitioner herein who is the defendant/counter claimant in the suit to file an appropriate application seeking injunction against the plaintiffs restraining the plaintiff from changing the nature and character of the suit land during the pendency of the suit. In the circumstance, such application is filed, the learned Trial Court shall duly consider the same in accordance with law.

6. In view of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant