

GAHC010073212022



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

Case No. : CRP/42/2022

MUSSTT AYESHA BEGUM
D/O LATE MOKBUL ALI MAZUMDER, VILL-UTTARKRISHNAPUR PART III,
P.S.-SILCHAR, DIST-CACHAR, ASSAM

VERSUS

MUSSTT MOINA BEGUM AND ANR
W/O AMIR UDDIN MAZUMDER, D/O MAKBUL ALI MAZUMDER, VILL-
AMBIKAPUR PART-VI, P.S.-SILCHAR, DIST-CACHAR, ASSAM

2:MUSSTT. MOMOTA BEGUM
D/O MAKBUL ALI MAZUMDER
VILL-AMBIKAPUR PART-VI
P.S.-SILCHAR
DIST-CACHAR
ASSA

Advocate for the Petitioner : MR. S P CHOUDHURY, MS K BHATTACHARYYA, MS T J SAHEWALLA, MR H K SARMA, MS. S. TODI, MD ASLAM, MR G N SAHEWALLA, MR K BISWAKARMA, MS B DEVI

Advocate for the Respondent : ,

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 23.04.2024

Date of Judgment & Order : 31.07.2024

JUDGMENT & ORDER (CAV)

Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Mr. H. K. Sarma, learned counsel for the petitioner.

2. None represented the respondents' side, though from the record it reveals that in spite of taking steps on several mode, the respondents/plaintiffs did not appear before the Court to contest the case.

3. This is an application under Section 115 of the Code of Civil Procedure praying for interference of this Court in the Order dated 15.06.2021, passed by the learned Munsiff No. 2, Cachar, Silchar, in Misc. (J) Case No. 123/2018, arising out of Title Suit No. 107/2018, as well as the Order dated 11.03.2022, passed by the learned Civil Judge No. 2, Cachar at Silchar in Misc. Appeal No. 07/2021 thereby dismissing the appeal.

4. The brief facts of the case is that the respondents herein as plaintiffs filed a suit, being Title Suit No. 102/2018, before the Court of learned Munsiff No. 2, Cachar at Silchar for declaration of their right, title and interest and ejmali possession over 2 Kathas, 10 Chotaks and 1 Gonda of land as described in the

Schedule-II of the plaint and also for confirmation of possession over the Schedule-II land. In the said suit, it is also prayed by the plaintiffs for restraining the principal defendant No. 1, petitioner herein, from making any construction over the Schedule-II land although the plaintiffs had mentioned that they are the non evictable tenant in respect of Schedule-II land. The plaintiffs also made a mention in the plaint that the principal defendant No. 1/petitioner had obtained permission for construction of building over the Schedule-II land from the Silchar Development Authority on 12.04.2018, which was later on suspended by this Court in WP(C) No. 3579/2018, vide order dated 15.06.2018, thereby directing the defendant No. 1 not to carry out any construction on the strength of the said building construction permission. It is also stated that if the petitioner/principal defendant No. 1 succeeds in making construction over the Schedule-II land in that circumstances the plaintiff would suffer irreparable loss and injury, but there was no specific averment to show as to how the plaintiffs would suffer from irreparable loss and injury as it is the admitted position that the petitioner is in possession of Schedule-II land exclusively and independently and there is no prayer in the Title Suit for recovery of possession and thus, the plaintiffs could not show as to how the construction work carried out by the petitioner/ defendant No. 1 would result in irreparable loss and injury.

5. The plaintiffs also filed an application under Order XXXIX Rule 1 & 2 *read with* Section 151 CPC, which was numbered as Misc. (J) Case No. 123/2018, praying for grant of interim injunction restraining the petitioner from making any construction work and from changing the nature and feature of the suit land. The petitioner, as defendant No. 1, entered into appearance upon receipt of summon and filed her Written Statement as well as objection to the injunction

prayer. It was the specific case of the petitioner, along with the other contesting defendants, that the petitioner was in exclusive possession over the Schedule-II land and she purchased the maliki right of the land from one Shri Sujash Mazumder, who is the son of the original owner Late Binoy Mazumder, on payment of valuable consideration vide registered Sale Deed No. 756/1995. Further it was pleaded that the said Binoy Mazumder, being the original owner, had leased out 12 Kathas, 2 Chataks of land to one Mokbul Ali Mazumder and the petitioner is the daughter from the first wife of said Mokbul Ali Mazumder. The said Mokbul Ali Mazumder had also purchased the maliki right from Sujash Mazumder in the year 2005 and subsequently Jakir Hussain Mazumder had sold land measuring 1 Katha to the petitioner/defendant No. 1 vide registered Sale Deed No. 5709/2014 and accordingly the possession was handed over to the petitioner with definite boundary. It was specifically mentioned in the Written Statement as well as in Written Objection that the present petitioner/defendant No. 1 is occupying the land peacefully and continuously by exercising her right, title and interest and hence, she prayed for dismissal of the suit as well as the injunction petition, but the learned Trial Court below vide Order dated 09.08.2021 allowed the prayer of the plaintiffs/respondents thereby restraining the petitioner to maintain *status quo* in respect of the Schedule-II land. The learned Trial Court, while issuing the injunction order, did not consider the fact that the land on which the petitioner had started construction was her purchased land through proper registered Sale Deed. More so, the learned Trial Court below, while passing the injunction order, misinterpreted the three cardinal principle of injunction and thereby arrived at an erroneous finding that the plaintiffs would suffer irreparable loss and injury which cannot be compensated in terms of money.

6. The plaintiffs, while praying for order of injunction, had given emphasize in the interim order dated 15.06.2018, passed by this Court in WP(C) No. 3579/2018, wherein the building permission as granted by the Silchar Development Authority in favour of the petitioner was suspended and the learned Trial Court while passing the impugned injunction order had given much stress on the said interim order of this Court. But it was not considered that the order of the learned Single Judge passed in WP(C) No. 2579/2018 was subsequently set aside by the Division Bench of this Court in WA No. 351/2018, which was duly brought to the notice of the learned Court below. But, without appreciating the relevant aspect of the matter, the learned Munsiff had passed the interim injunction order which is not sustainable in the eye of law and as such, the said order is liable to be set aside and quashed.

7. On being aggrieved and dissatisfied with the order of injunction passed by the learned Munsiff No. 2, Cachar, Silchar, the petitioner had preferred an appeal under Order XLIII Rule 1 of the CPC before the Court of Civil Judge No. 2, Cachar, Silchar, which is registered as Misc. Appeal No. 07/2021. But the learned Appellate Court also dismissed the Appeal vide its judgment and order dated 11.03.2022 without appreciating the legal proposition that the learned Trial Court failed to arrive at a specific finding as to how the plaintiffs would suffer irreparable loss and injury if the petitioner/defendant No. 1 would continue with the construction work in the Schedule-II land without any specific prayer for recovery of possession.

8. Accordingly, on being highly aggrieved and dissatisfied with the order

dated 11.03.2022, passed by the learned Civil Judge No. 2, Cachar, Silchar in Misc. Appeal No. 07/2021 and the injunction order dated 15.06.2021, passed by the learned Munsiff No. 2, Cachar, Silchar in Misc. (J) Case No. 123/2018, the petitioner had preferred the present civil revision petition.

9. It is submitted by Mr. G. N. Sahewalla, learned Senior Counsel for the petitioner, that the learned Courts below committed manifest error in passing the temporary injunction order restraining the present petitioner/defendant No. 1 from continuing the construction work although there is nothing on the record to suggest any adverse action on the part of the petitioner while carrying out the construction activities in her own purchased property and as such, the impugned orders are liable to be set aside and quashed. The learned Courts below also failed to consider the fact that the original owner cannot be restrained from making any construction work merely based on some unverified pleadings. More so, the learned Courts below failed to consider the fact that there is no specific prayer on the part of the plaintiffs/respondents for recovery of possession so far as the Schedule-II land is concerned and thus, restraining the petitioner to start construction work is *ex facie* illegal and devoid of any basis and as such, the impugned orders have resulted in miscarriage of justice. The learned Courts below also failed to appreciate the fact that the plaintiffs/respondents failed to make out any case or to establish the balance of convenience or inconvenience in their favour, whereas on the other hand, by staying the construction work, the learned Courts below have acted in a manner to cause undue prejudice to the petitioner. More so, the plaintiffs/respondents could not establish any substantial reason to grant injunction in their favour, but the learned Courts below failed to consider such aspect of the matter and

arrived at an erroneous finding by allowing the injunction petition filed by the plaintiffs restraining the present petitioner/ defendant No. 1 from carrying out further construction over the Schedule-II land. Accordingly, it is submitted by the learned Senior Counsel for the petitioner that the order passed by the learned Munsiff No. 2, Cachar, Silchar, dated 15.06.2021, in Misc. (J) Case No. 123/2018, arising out of Title Suit No. 107/2018, as well as the order dated 11.03.2022, passed by the learned Civil Judge No. 2, Cachar, Silchar in Misc. Appeal No. 07/2021, are liable to be set aside and quashed.

10. After hearing the submissions made by the learned Senior Counsel for the petitioner, I have also perused the case record and the orders passed by the learned Courts below.

11. It is the case of the petitioner/defendant No. 1 that she duly purchased the land mentioned in the Schedule-II of the plaint and the same is also under her occupation and the respondents/plaintiffs filed a Title Suit claiming right, title and interest over the said plot of land and also filed a petition under Order XXXIX Rule 1 & 2 of the CPC for temporary injunction restraining the petitioner/defendant No. 1 from making any construction over the said Schedule-II land. Accordingly, the learned Munsiff No. 2, Cachar, Silchar had passed the injunction order dated 15.06.2021 in Misc. (J) Case No. 123/2018, restraining the petitioner/defendant No. 1 to carry out the construction work over the said Schedule-II land. It is further the case of the petitioner that while passing the order of injunction, the learned Munsiff No. 2, Cachar, Silchar, stressed on the order of this Court passed in WP(C) No. 3579/2018, whereby the permission granted by the Silchar Development Authority was cancelled, but

it was not considered by the learned Munsiff that the order of the learned Single Judge passed in WP(C) No. 3579/2018 was set aside by a Division Bench of this Court in WA No. 351/2018. The learned Civil Judge also without considering the entire aspects of the case had dismissed the appeal of the present petitioner/defendant No. 1 and upheld the order passed by the learned Munsiff No. 2, Cachar, Silchar. Further, the learned Courts below did not consider the fact that the plaintiffs could not establish the fact that the plaintiffs/respondents would suffer from irreparable loss and injury if the construction work is carried out over the Schedule-II land as it is the admitted fact that the Schedule-II land is in continuous possession of the present petitioner/defendant No. 1. More so, the learned Courts below also failed to consider the fact that the balance of convenience and irreparable loss are inclined to the present petitioner/defendant No. 1, who is possessing the entire land continuously and peacefully since her purchasing by executing a registered Sale Deed.

12. It is seen that the learned Munsiff No. 2, Cachar, Silchar, while passing the order of injunction in Misc. (J) Case No. 123/2018, had made a detail discussion considering the view of the Apex Court passed in **Dalpat Kumar Vs. Prahlad Singh (AIR 1993 SC 276)**, and also made a detail discussion in regards to the *prima facie* case and accordingly, it is observed that the predecessor of defendant/petitioner and the plaintiffs/ respondents, namely, Makbul Ali Mazumder, was an occupancy tenant in respect of the Schedule-II land along with some other land and the landlord was one Shri Binoy Mazumder and the said Makbul Ali Mazumder was an occupancy tenant and he resided there by constructing house and he was also issued with a valid Khatian by the Settlement Officer, Cachar, Silchar. The learned Munsiff also discussed in regards

to the shares as per the Mohammedan Law. Further from the order of the learned Munsiff No. 2, Cachar, Silchar, it is also seen that the present petitioner/defendant No. 1 earlier also filed a suit against some suit land initially before the Court of learned Civil Judge, Senior Division No. 2, which was subsequently transferred to the Court of learned Munsiff No. 1, Silchar, Cachar and renumbered as Title Suit No. 540 of 2006, wherein the petitioner/defendant No. 1 specifically admitted that they have share over 2 Kathas 1 Chattak 16 Gondas of land over Schedule-I land and they also prayed for partition of Jote Right on land and the maliki right over the houses thereon. The said suit was dismissed on contest by order dated 25.04.2014 and against that order, the present petitioner/defendant No. 1, along with the defendant No. 2, again filed a Title Appeal before the learned Civil Judge No. 2, which was registered as Title Appeal No. 13/2014, and subsequently withdrawn by the petitioner/defendant No. 1.

13. The learned Munsiff also discussed about the permission obtained by the present petitioner/defendant No. 1 for construction of house from Silchar Development Authority on 12.04.2018 and against the said permission, the present respondents/plaintiffs filed a writ petition before this Court, which was numbered as WP(C) No. 2579/2018, wherein vide order dated 15.06.2018, the building permission obtained by the present petitioner was suspended and the said building permission obtained by the petitioner/defendant No. 1 clouded the Jote Right of the plaintiffs/respondents over the Schedule-II land and maliki right over the old structure of the Schedule-II land and for which, the plaintiffs/respondents was compelled to file the Title Suit.

14. Thus, from the discussion made by the learned Munsiff No. 2, Cachar, Silchar, it is seen that the present respondents/ plaintiffs claimed their right, title and interest over the Schedule-II land, whereas the present petitioner/defendant No. 1 claimed their right over the Schedule-II land as per the share under the Mohammedan law. The learned Munsiff made a detail discussion in regards to the claim of the respondents/plaintiffs as well as the petitioner/defendant No. 1 and accordingly, it is observed that both the parties have been adjudicating by making their respective claim in regards to property mentioned in Schedule-II of the plaint and accordingly it is held that the respondents/ plaintiffs had able to make out a *prima facie* case which is one of the guiding principle and decided the same in favour of the respondents/plaintiffs.

15. Coming to the balance of convenience, it is held by the learned Munsiff that it is an admitted fact that the respondents/ plaintiffs are non-evictable tenants in respect of Schedule-II property having their right, title and interest over 2 Kathas 10 Chattaks and 1 Gonds of land and maliki right over the land and house standing thereon. It is also observed that the petitioner/ defendant No. 1 obtained the permission from the Silchar Development Authority by concealing the entire facts of the case and on the strength of the said permission from the Development Authority, they collected construction materials like rod, brick, cement etc. for making construction over the Schedule-II land. Thus, the learned Munsiff had held that the balance of convenience lies in favour of the respondents/ plaintiffs and in the event of construction over the said land, the respondents/plaintiffs would suffer irreparable loss and injury which cannot be compensated in terms of money. Accordingly, considering the

entire aspects of the case, including the claim over the Schedule-II property, the learned Munsiff No. 2, Cachar, Silchar passed the order by restraining the petitioner/defendant No. 1 from making further construction over the Schedule property and thus, it was directed to maintain *status quo* over the property of the Schedule-II land by both the parties. But it is seen that at the time of passing the order by the learned Munsiff, the order of Division Bench of this Court passed in WA No. 351/2018 was not produced before the learned Munsiff and it was observed by the learned Munsiff that the permission obtained by the petitioner/defendant No. 1 was cancelled as they obtained the permission only suppressing the material facts of the case, though the order of Division Bench of this Court passed in WA No. 351/2018 was passed on 15.05.2019, which is prior to the order passed by the learned Munsiff in application for interim injunction.

16. From perusal of the order dated 15.05.2019, it is seen that the Division Bench of this Court had set aside the order of the learned Single Judge dated 08.10.2018, passed in WP(C) No. 3579/2018, with an observation that “in the absence of the same, an independent writ petition assailing the No Objection Certificate when the very title to the property was challenged in the suit before the court below would not be justified. In fact the appropriate course for the learned Single Judge ought to have been to relegate the writ petitioner to seek all reliefs including the challenge to the No Objection Certificate in the suit that was filed by the respondent No. 5 and another.” Further it was directed that if the writ petitioner/defendant No. 1 desires to seek any order in that regard, he can approach the learned Court below with an appropriate application.

17. Thus, it is seen that the order of the learned Single Judge passed in WP(C)

No. 3579/2018 was set aside by the Division Bench of this Court only on the ground that when there is civil dispute between the parties, it is not appropriate by the writ court to pass the order of that kind by suspending the No Objection Certificate issued by the Silchar Development Authority.

18. Coming to the order passed by the learned Civil Judge in Misc. Appeal No. 07/2021, it is seen that the learned Civil Judge upheld the order passed by the learned Munsiff with an observation that the learned Court below had nicely discussed the three golden principles for grant of injunction, i.e. *prima facie* case, balance of convenience and irreparable loss while granting the injunction order. More so, it is observed that during the pendency of the title suit, the defendants had concealed the material fact and obtained the permission for construction from the Silchar Development Authority, which was subsequently rejected/suspended by this Court in WP(C) No. 3579/2018, vide order dated 08.10.2018.

19. So, from the detail discussion made above, it is seen that the present petitioner had claimed his continuous possession over the Schedule-II land, but from the case record and the order of the learned Munsiff as well as the learned Civil Judge, it is seen that the respondents/plaintiffs also claimed their right, title and interest over the Schedule-II land and maliki right over the same. Rather it is seen that the present petitioner/defendant No. 1 also admitted their right over the Schedule-I land in the Title Suit No. 540/2006, which was filed earlier before the Munsiff No. 1, Silchar, Cachar.

20. Thus, considering all aspects of the case, it is seen that both the parties have claimed their right over the Schedule-II land and which can be determined

only after the recording of evidences and on perusal of the documents etc., but if the construction is allowed to be continued over the Schedule-II property by setting aside and quashing the order of injunction, passed by the learned Munsiff No. 1, Cachar, Silchar as well as the order of the learned Civil Judge, Cachar, Silchar, the respondents/plaintiffs may suffer irreparable loss and injury if they succeeds to establish their right, title and interest over the suit property. And, in the same time, it is seen that as both the parties claimed their right over the Schedule-II land, the learned Munsiff as well as the learned Civil Judge had rightly observed that there is a *prima facie* case in favour of the plaintiffs and the balance of convenience and irreparable loss also lies in favour of the plaintiffs/respondents. More so, from the order of injunction, it is seen that both the parties are directed to maintain *status quo* over the suit property, i.e. Schedule-II land, and it is not the case that the petitioner was restrained from entering into the disputed land, i.e. Schedule-II land. More so, the Division Bench of this Court had set aside the order of learned Civil Judge only on the ground that the parties can seek proper relief before the learned Trial Court below as the suit of the disputed property is pending before the learned Court below and the parties can seek proper relief including the challenge of No Objection Certificate before the civil forum wherein the suit is pending for disposal.

21. So, considering the entire discussions made above, this Court of the view that there is no reason to make any interference in the Order dated 15.06.2021, passed by the learned Munsiff No. 2, Cachar, Silchar, in Misc. (J) Case No. 123/2018, arising out of Title Suit No. 107/2018, as well as the Order dated 11.03.2022, passed by the learned Civil Judge No. 2, Cachar at Silchar in Misc.

Appeal No. 07/2021 and accordingly, the present civil revision petition stands dismissed being devoid of merit. However, there shall be no order as to cost(s).

22. In terms of above, this Civil Revision Petition stands disposed of.

JUDGE

Comparing Assistant