

GAHC010091452024



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

Case No. : FAO/30/2024

RANJIT BORAH @ DEB DAS BORAH
S/O SRI RAHESWAR BORAH,
RESIDENT OF ERA GAON, PO TALAP, PS DOOMDOOMA, DIST TINSUKIA,
ASSAM 786151

VERSUS

JAGAT NAYAK AND ANR
S/O SRI AMIYA NAYAK, RESIDENT OF HANSARA PATHER GAON, PO AND
PS DOOMDOOMA, DIST TINSUKIA, ASSAM 786151

2:SRI SANDEEP SAWASHI
S/O SRI NAKUL SAWASHI
RESIDENT OF TENGA GAON
PO TALAP
PS DOOMDOOMA
DIST TINSUKIA
ASSAM 78615

Advocate for the Petitioner : MR. SAILENDRA DEKA, MR. BHASKAR DUTTA, SENIOR
ADVOCATE,MS L RONGPIPI,MR JITENDRA DAS

Advocate for the Respondent : MR. A K GUPTA.(R-1), MR. R S MISHRA.(R-1)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 24.10.2024

Heard Mr. B. Dutta, learned Senior counsel, assisted by Mr. S. Deka, learned counsel for the appellant. Also heard Mr. A.K. Gupta, learned counsel for the respondents.

2. This appeal, under Order 43 Rule 1(r) of the CPC, is directed against the order dated 04.04.2024, passed by the learned Civil Judge (Senior Division) (In-Charge), Tinsukia, in Misc. (J) Case No. 52/2024, arising out of Title Suit No. 81/2023.

3. It is to be noted here that vide impugned order dated 04.04.2024, the learned Addl. District Judge, Tinsukia, who was the In-charge Civil Judge (Senior Division), Tinsukia, has dismissed the petition filed by the appellant under Section 39 of the Specific Relief Act, 1963, praying for issuance of temporary mandatory injunction against the respondents/opposite parties to demolish the illegally and unauthorisedly started construction of boundary wall on and over the eastern side of the boundary of the Schedule-1 land and also to remove all construction materials used, kept, stored by the respondents/opposite parties over the Schedule-1 land unauthorisedly.

4. Mr. Dutta, learned Senior counsel for the appellant submits that the appellant as plaintiff had instituted a title suit being, Title Suit No. 81/2023 for declaration, confirmation of possession, cancellation of NOC and two registered sale deeds, mandatory injunction, eviction, permanent injunction over the Schedule-1 plot of land. While the said suit was pending for adjudication, the appellant had filed a petition on 03.04.2024, for issuing ad-interim mandatory

injunction against the respondents/opposite parties for restraining them, their dependents, helpers, family members, relatives, workman, representatives, assigns, transferees etc. from illegal construction of boundary wall on the eastern side of the boundary of the Schedule-1 land and for directing the respondents/opposite parties to demolish the illegally and unauthorised construction of boundary wall on and over the eastern side of the boundary of the Schedule-1 land and also to remove all construction materials used, kept, stored by the respondents/opposite parties over the Schedule-1 land unauthorisedly. Upon the said petition, Misc. (J) Case No. 52/2024 was registered and vide impugned order dated 04.04.2024, the learned Civil Judge (Senior Division) (In-Charge), Tinsukia had dismissed the same on the ground that the petition is not tenable under the law.

5. Being aggrieved, the appellant has approached this Court by filing the present appeal.

6. Mr. Dutta, learned Senior counsel for the appellant submits that the learned Civil Judge (Senior Division) (In-Charge), Tinsukia, though stated in the impugned order that he had perused the plaint of Title Suit No. 81/2023 minutely and found that the appellant herein nowhere claimed reliefs of permanent injunction as well as permanent mandatory injunction in the suit, which was claimed in the petition by way of temporary injunction and temporary mandatory injunction, is palpably false. Referring to the plaint, which is enclosed with the appeal as Annexure-1, Mr. Dutta submits that the said prayer is very much there in the plaint of Title Suit No. 81/2023. Mr. Dutta further submits that in the impugned order dated 04.04.2024, the learned Civil Judge (Senior Division) (In-Charge), Tinsukia had observed that the learned counsel for the appellant had submitted that no relief of permanent mandatory injunction and

permanent injunction had been claimed in the title suit and the same is also palpably wrong, inasmuch as no such submission was ever made before the learned Civil Judge (Senior Division) (In-Charge), Tinsukia, and without going through the record and without appreciation of the facts and issues being raised in the petition, the learned Civil Judge (Senior Division) (In-Charge), Tinsukia had dismissed the petition and as such, the impugned order is arbitrary and illegal and the same is required to be set aside and the matter may be remanded back to the learned trial Court for proper adjudication after affording opportunity to both the parties.

7. On the other hand, Mr. Gupta, learned counsel for the respondents has supported the impugned order and submits that in the petition seeking temporary injunction, the reliefs sought for in the title suit have not been mentioned and as such, the learned Civil Judge (Senior Division) (In-Charge), Tinsukia had not committed any illegality or infirmity. Mr. Gupta has also referred to a decision of this Court in the case of **Gadadhar Barman vs. Ranendra Mohan Paul**, reported in **1998 1 GLR 383**.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the impugned order dated 04.04.2024, and also gone through the decision referred by Mr. Gupta, learned counsel for the respondents.

9. Notably, in the case of **Gadadhar Barman** (supra), it has been held that without prayer for permanent injunction, no temporary injunction can be granted.

10. That from a perusal of the cause title and from the prayer portion of the Title Suit (Annexure-1), it appears that the prayer for permanent injunction has

been made therein, besides prayer for declaration, confirmation of possession, cancellation of NOC and two registered sale deeds, mandatory injunction, eviction over the Schedule-1 plot of land. On the other hand, in the petition dated 03.04.2024, based on which Misc. (J) Case No. 52/2024 had been registered, it had also been mentioned issuing ad-interim mandatory injunction against the respondents/opposite parties for restraining them, their dependents, helpers, family members, relatives, workman, representatives, assigns, transferees etc. from illegal construction of boundary wall on the eastern side of the boundary of the Schedule-1 land and directing the respondents/opposite parties to demolish the illegally and unauthorisedly started construction of boundary wall on and over the eastern side of the boundary of the Schedule-1 land and also to remove all construction materials used, kept, stored by the respondents/opposite parties over the Schedule-1 land unauthorisedly.

11. That being so, the finding of the learned Civil Judge (Senior Division) (In-Charge), Tinsukia that it has perused the plaint of Title Suit No. 81/2023 and that the appellant has not claimed reliefs of permanent injunction as well as permanent mandatory injunction in the Title the Suit, which is claimed in the petition by way of temporary injunction and temporary mandatory injunction, is arbitrary and unreasonable also. Besides, the learned counsel for the appellant has also denied making any submission that no relief of permanent mandatory injunction and permanent injunction have been prayed for in the petition and also the finding that the petition is not maintainable is also appears to be arbitrary and illegal on the fact of the record.

12. That being the position, the submission of Mr. Gupta, learned counsel for the respondents is found to be devoid of substance and the decision referred by him also would not come into his assistance.

13. Under the aforementioned facts and circumstances, this Court is inclined to set aside the impugned order dated 04.04.2024, passed by the learned Civil Judge (Senior Division) (In-Charge), Tinsukia, in Misc. (J) Case No. 52/2024, arising out of Title Suit No. 81/2023 and to remand the matter back to the learned Civil Judge (Senior Division), Tinsukia for deciding the petition No. 1476/2024, dated 03.04.2024, afresh after hearing learned Advocates of both the parties.

14. The aforesaid exercise has to be carried out as soon as practicable. The parties are directed to appear before the learned Civil Judge (Senior Division), Tinsukia within a period of 15 (fifteen) days from today.

15. In terms of above, this appeal stands disposed of.

JUDGE

Comparing Assistant