



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

FAO No. 34/2024.

1) Sri Sankar Kumar Das, Age-55.

S/o:- Late Bhaben Chandra Das,

R/o:- Sadilapur, Guwahati-12, P.S:- Jalukbari,

Dist:- Kamrup (Metro), Assam.

2) Sri Dibakar Das, Age-36 yes

S/o:- Late Prabhat Ch. Das,

R/o:- Sadilapur, Guwahati-12,

P.S:- Jalukbari, Dist:- Kamrup (Metro), Assam.

3) Sri Bakul Kaibarta, Age 44

Son of Late Bhabit Kaibarta,

Resident of Padumbari, P.S & Mouza:-

Jalukbari, Guwahati-11,

Dist: Kamrup (Metro), Assam.

..... Appellants.

-Versus-

Sri Bikrom Singha Lahkar,

Son of Sri Khagen Singha Lahkar,

Resident of Jalukbari, Gauhati University,

By-Pass Road, National Highway 17, Guwahati-14,

Dist: Kamrup (M), Assam.

..... Respondent.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Advocates for the appellants	:-	Mr. B.Borah.
Advocate for the respondent	:-	Mr. Bikrom Singha Lahkar, (Respondent-in-person)
Date of Hearing	:-	22.10.2024.
Date of Judgment & Order	:-	11.11.2024.

JUDGEMENT & ORDER (CAV)

Heard Mr. B. Borah, learned counsel for the appellants and Mr. Bikrom Singha Lahkar, respondent-in-person.

2. This appeal, under Order XLIII, Rule 1 (r) read with Section 151 of the Code of Civil Procedure, 1908, is directed against the order, dated 06.04.2024, passed by the learned Civil Judge (Sr. Div.) No.1, Kamrup (M) Guwahati in Misc. (J) Case No.1052/2023 arising out of Title Suit No.619/2023. It is to be noted here that vide impugned order, dated 06.04.2024, the learned trial court had granted temporary mandatory injunction and directed the present appellants to remove the boundary wall from the front side of the building of the respondent herein this case and open up the right of way for free movement of the respondent of this case his vehicles for ingress and egress to his building standing over the Schedule-'B' land which is part of Schedule-'A' land mentioned in the application.

Background Facts:-

3. The background facts leading to filing of present appeal are adumbrated herein below:-

The respondent herein, as plaintiff, had instituted a Title Suit being T.S. No.619/2023, before the court of learned Civil Judge (Sr. Div.) No.1, Kamrup (M), Guwahati, arraigning the present appellants as defendants and also one Sarojini Das, mother of respondent No.2. as respondent No.3, though she had already died before institution of the Title Suit, on 6.7.2023, and also arraigning Amulya Das, son of Late Lalit Chandra Das, Sri Bhaskar Bhusan Das, son of Late Bhabesh Chandra Das, Sri Bijoy Das, son of Late Narayan Chandra Das, Sri Kishore Das, son of Late Bhabesh Chandra Das, Sri Dilip Kumar Das, Son of Late Bhabesh Chandra Das, Sri Jamini Das, son of Late Narayan Chandra Das, Sri Pranab Das, son of Late Narayan Das, Sri Rudreswar Das, son of Late Narayan Chandra Das, Sri Bankim Chandra Das, son of Late Narayan Chandra Das, all are resident of Pandu, Sadilapur, P.S. Jalukbari, Guwahati-12, as pro-forma defendant Nos.5 to 13 in the said suit.

The case of the respondent is that he had purchased 4 kathas of land, more fully described in Schedule- 'B' of the plaint, out of the Schedule-'A', land covered by Dag No.493 of K.P. Patta No.144 of Village Sadilapur, under Mouza Jalukbari in the district of Kamrup(M), Guwahati, from the legal heirs of the said Seniram Das, vide deed No.7690, dated 05.8.2019. Later on, he also had purchased remaining 1 katha land out of the schedule-'A' land

morefully described in the Schedule-‘C’ of the plaint and an agreement for sale was executed on 26.2.2019, by the vendors of the present respondent. Thereafter, obtaining NOC dated 27.10.2017 and a General Power of Attorney dated 12.09.2018, in respect of the entire Schedule-A land comprising the Schedule B and C land empowering the present respondent to develop the said land and to construct a RCC building thereon. Accordingly, the respondent obtained permission for construction of RCC building and had constructed two RCC structures over the portion of Schedule ‘A’ land. At the eastern side of Schedule ‘A’ land, the proforma defendants owns and possess jointly a plot of land measuring 3 Katha 18 lechas covered by dag No.691 (new) 493 (old) and K.P. Patta No.306. The proforma defendants have right, title and interest over the said land by way of inheritance from the original pattadar Kaliram Das.

On receipt of a notice, dated 24.9.2021, the present respondent and the proforma defendants came to know about the mutation order dated 8.9.2015 and 3.2.2020 in favour of the present appellants on the strength of a gift deed executed by one Mouram Koibarta in favour of the predecessor of the present appellants. The present respondent as well as the proforma defendants had filed a Revenue Appeal before the Deputy Commissioner for cancellation of mutation of the present appellants. On 18.08.2023 at around 5 AM the present appellant No.3 along with 20 people and labourers trespassed in the Schedule ‘A’ land and the present respondent had also lodged complaint before the Director General of Police as well

as the Deputy Commissioner, Guwahati. The Additional Deputy Commissioner, Kamrup (M), vide order dated 19.8.2023, passed a prohibitory order restraining the present appellants from constructing anything, from executing any earth filling work, from altering the status of land, from entering as well as disturbing the possession till disposal of Revenue Appeal No.11/2022. Thereafter, on 22.9.2023 the Circle Officer, Guwahati Revenue Circle and other officials went to the suit land for demarcation. The present appellant No.1 and 4 encroached upon some portion of the land of proforma defendants and had constructed 2-3 bamboo fenced house which is described in the Schedule-'D' of the plaint.

Therefore, the respondent has instituted the suit and prayed for the following reliefs:-

- (i) declaring his right, title and interest over the Schedule 'B' land;
- (ii) declaring confirmation of possession over the remaining portion of Schedule 'A' land except the land described in Schedule 'D';
- (iii) recovery of khas possession by evicting the defendant No.1 to 4 their men/agents/attorneys or any person claiming under them from Schedule 'D' land and demolishing the structures standing thereon;
- (iv) permanent injunction restraining the defendant No.1 to 4 their men/agents/attorneys or any person claiming under them from raising any permanent construction and/or

alienating or creating any third party rights over the Schedule 'D' land as well as Schedule 'A' land and also restraining the defendant No.1 to 4 their men/agents/attorneys or any person claiming under them from disturbing the peaceful possession of the plaintiff over Schedule A land and also restraining them from creating any obstruction over the plaintiff's ingress and egress to his land and building standing over Schedule 'A' land; costs any other relief(S) etc.

It is to be noted here that the name of the said defendant No.3 in the plaint was struck off by the learned Trial Court vide order dated 30.11.2023 passed in the Title Suit No. 619/2023, on the basis of an application filed by respondent No.2

In the said suit, the respondent to this case had also filed an application under Order XXXIX, Rule 1 and 2, read with Section 151 of the Code of Civil Procedure, 1908 praying for granting temporary injunction for restraining the opposite parties, their men/agents/attorneys or any person claiming under them from raising any permanent structure and/or alienating or creating any third party rights over the Schedule-'D' land as well as Schedule-'A' land and also restrain the opposite parties, their men/agents/ attorneys or any person claiming under them from creating any obstruction over the appellant/petitioner's ingress and egress to his land and building standing over Schedule 'A' land as described in the Schedule of the

injunction petition. The said application for temporary injunction has been registered as Misc.(J) Case No.1000/2023.

The learned trial Court, vide order dated 06.10.2023 had directed both the parties to maintain status-quo in respect of the suit property till the Circle Officer, Dispur Revenue Circle submits its report even after raising verbal objections to the injunction application by the engaged counsel of the appellant Nos.1 and 4. The learned Trial Court, to ascertain whether there is any encroachment made by the present appellants over the land of the respondent since both the parties are having documents in respect of suit dag and patta as such vide order dated 06.10.2023 appoint an Amin Commission:

- (i) To ascertain the total land of the Dag No.691 of Patta No.306.
- (ii) Whether land described in schedule A, B, C & D is in possession of the petitioner.
- (iii) Whether the land of the petitioner encroached by the OPs.
- (iv) The exact location and position of land of the petitioner as well as of the OP Nos. 1, 2 & 3.

Thereafter, on 30.10.2023, the respondent herein this case had filed an application under Order XXXIX Rule 2 A of the Code of Civil Procedure, 1908 alleging violation of the status quo order dated 06.10.2023, passed in Misc. (J) Case No.1000/2023, arising out of

T.S. No.619/2023 by the defendant no. 1, 2, 3 and 4 to the injunction application by raising construction of concrete wall surrounding the building of the plaintiff/respondent and thereby closed the right of way to his house standing over Schedule- B land. The said application is registered as Misc (J) Case No.1054/2023 and the same is still pending for disposal.

Thereafter, on 30.10.2023, the respondent to this case had also filed another application under Section 151 read with Section 94 (e) of the Code of Civil Procedure, 1908 for a direction to the Officer-In-Charge of Jalukbari Police Station for taking necessary action against the opposite party to the said application and for aiding the petitioner to implement the order dated 06.10.2023, passed in Misc.(J) Case No.1000/2023, which is also pending for disposal.

Thereafter, on 30.10.2023, the respondent had also filed another application under Section 39 of the Specific Relief Act, 1963 for grant of temporary mandatory injunction alleging that the opp. parties to the said application on 10.10.2023, violated the order of status-quo dated 06.10.2023 and raised concrete wall surrounding the building of the respondent to this case and breaking the water bore well, blocking the petitioner's access. The said application is registered as Misc (J) Case No.1052/2023. The present appellant No.1 and 2 have filed their joint written objections and the present appellant No.4 also filed his written objections separately against the aforesaid application filed under Section 39 of the Specific Relief Act, 1963 by the respondent to this case.

In the written objections, the appellants have denied all the allegations made against the present appellants and interalia stated that the petition filed by the present respondent is not maintainable as the present respondent had also filed a violation petition of status-quo order dated 06.10.2023, against the present appellants alleging the same facts. The appellants also stated that the present respondent is not the owner of the Schedule-'D' land and the proforma defendants have their right, title and interest over Schedule-'D' land and thereby the present respondent has no locus-standi and authority to pray for mandatory injunction for removal of the structure. It is also stated that on perusal of the FIR lodged by the wife of the present respondent before the Commissioner of Police much prior to filing of the Title Suit No.619/2023, inter-alia admitted that on 22.09.2023 the Right of Way (ROW) was closed, but the present respondent neither pleaded the said fact nor sought any relief for removal of the said blockade from Schedule-'A' land in the plaint and had suppressed material facts and particulars from the learned Trial Court and the present respondent has not approached the learned Trial Court with clean hand and mind. It is also stated by the present appellants in the said written objections that the present respondent had abandoned the said claim of Right of Way (ROW) and as per mandate of law prescribed under Order II Rule 2 (2) of the Code of Civil Procedure, the petition for temporary mandatory injunction is liable to be rejected as the present respondent intentionally relinquishes the claim at the time of filing the Title Suit No.619/2023. It was also stated that the mother of the

appellant No.1, who is also co- pattadar of the suit dag and patta had not arrayed a party to the suit and if any order of mandatory injunction is passed in that event the other co-pattadar will be highly prejudiced.

The appellant Nos.1 and 2 as defendants had filed joint written statements and the appellant No.3 had also filed his written statements on 05.01.2024. Thereafter, vide order dated 20.03.2024 passed in Misc (J) Case No. 1000/2023, and Misc (J) Case No. 1052/2023 respectively; the names of the pro-forma opp. party Nos. 5 to 13 are struck off.

Thereafter, hearing both the parties the learned trial court, vide order dated 06.04.2024, passed in Misc (J) Case No. 1052/2023, allowed the said application and passed the direction to the present appellants to remove the boundary wall from the front side of the building of the respondent to this case and open up the right of way for free movement of the respondent of this case and his vehicles for ingress and egress to his building.”

Grounds:-

4. Being highly aggrieved and dissatisfied with the impugned order, dated 06.04.2024, the appellants preferred this present appeal on the following amongst other grounds:-

- (i) That, the learned Trial court had passed the impugned order dated 06.04.2024, mechanically and whimsically;

- (ii) That, the learned Trial Court passed the impugned order erroneously and without any application of judicious mind;
- (iii) That, the three golden principle of injunction jurisprudence is not discussed in the impugned order dated 06.04.2024 and thereby caused failure of justice.
- (iv) That, in the case in hand, the respondent fails to prove prima facie case to go for trial and it is not open to the learned Trial Court to grant injunction in his favour even if he has shown balance of convenience in his favour and that he would suffer irreparable loss and injury if no injunction is granted. As such, the impugned order dated 06.04.2024, is liable to be interfered with and set aside;
- (v) That, the learned Trial Court has passed the impugned order without giving any reason and the order is not a well reasoned order and that citing of reason is very much important when the order is a revisional or appealable one so that the revisional/appellate court may know what goes in the mind of the learned Trial Court in passing the order under challenge;
- (vii) That, the learned Trial Court had failed to exercise a jurisdiction so vested in it by passing the impugned order dated 06.04.2024 in as much as it is the requirement of Section 37 (1) of the Specific Relief Act, 1963, that temporary injunction is to continue until a specified time or until the further order of the Court. But the same had not been specified and on such count the order will be in force until the further order of the Court.

- (viii) That, the learned Trial Court under the nomenclature of temporary mandatory injunction, actually granted a perpetual injunction order in violation of the mandate of law prescribed under Section 37 (2) of the Specific Relief Act, 1963 without recording evidence of the parties, since a serious disputed question of fact is also raised by the appellants in their written objections as to the date of construction of the wall in question.
- (ix) That, the impugned order dated 06.04.2024, amounts to granting the decree of recovery of possession and permanent injunction as prayed in the plaint by the respondent to this case without taking any evidence and without proving the case presented by the respondent to this case and travelled beyond the pleaded case of the respondent as the respondent has not specifically pleaded that a wall was constructed on the front side of the building standing over the Schedule-'B' land mentioned in the injunction application;
- (x) That, on the same facts narrated in the application filed under Section 39 of the Specific Relief Act, the respondent here in this case also filed the application under Order XXXIX Rule 2A of the CPC. Now by allowing the application filed under Section 39 of the Specific Relief Act, the learned Trial Court had accepted the versions of the respondent to this case as gospel truth which may seriously affect the case of the appellants in the injunction violation case, thereby causing serious prejudice to the appellants;

- (xi) That, the learned Trial Court had passed the order to issue Amin Commission suo-moto vide order dated 06-10-2023, but, the report furnished by the Amin Commissioner is not accepted by the learned Trial Court, the points raised by the learned Trial Court is also not clarified as on the date of passing the impugned order dated 06.04.2024 and it is not established that the land of the present respondent is encroached by the present appellants;
- (xii) That, the respondent to this case has not approached the learned Trial Court with clean hand and mind. It is also a matter of record that the address of the respondent mentioned in the plaint, injunction application filed under Order XXXIX Rule 1 and 2 of the CPC and in the Mandatory Injunction Application is same, which nullifies the very case of blocking the ingress and egress by erecting one concrete wall after passing the ad-interim injunction order dated 06-10-2023 in Misc (J) Case No. 1000/2023.

Arguments of The Parties:-

5. Mr. B. Borah, the learned counsel for the appellants besides reiterating the grounds mentioned herein above, also submits that the impugned order of injunction is illegal in as much as the learned trial court had granted relief which is permanent in nature as the learned trial court not specified the time as required by Section 37 (1) of the Specific Relief Act, 1963, which provides that temporary injunction is to continue until a specified time or until the further order of the Court. Mr. Borah also submits that while granting

temporary injunction the learned trial court had not discussed the three golden principles which are required in granting injunction, in the impugned order. Further Mr. Borah submits that the respondent herein sought relief in the suit against a dead person also that shows the falsity of his case. Mr. Borah also submits that in view of decision of Hon'ble Supreme Court in the case of **Dorab Cawasji Warden vs. Coomi Sorab Warden And Others** reported in **(1990) 2 SCC 117**, the plaintiff has to show that he has a strong case for trial and it shall be higher standard than a prima-facie case that it is normally required for granting prohibitory injunction. But the respondent herein has failed to satisfy the said requirement and the same has not been considered in the impugned order. It is the further contention of Mr. Borah that the learned trial court had appointed Amin Commission, but it had never taken into account the said report. Therefore, Mr. Borah has contended to set aside the impugned order.

6. Per contra, Mr. Bikrom Singha Lahkar, the respondent-in-person, submits that he and his entire family had not been able to enter into his home and the property since 22-09-2023 (more than one year), because of construction of the concrete wall by the present appellants violating the status quo order passed by the learned trial court on 06-10-2023 was violated by constructing the Concrete Wall. And thereafter temporary mandatory injunction order was passed by the learned Trial Court on dated 06-04-2024, was not complied with and lately, the order dated 06-04-2024 was stayed by this Court on 24-05-2024. Mr. Lahkar has further submits that there is prima-facie case and that the balance of convenience is in his favour and that irreparable loss is being caused to him because of the construction of the wall and he could not enter into his house and takings shelter in a rented house and his vehicles are

lying unused for more than a year and now the same rendered useless. Mr. Lahkar further submits that the impugned order does not amount to partially decreeing the suit. Further contention of Mr. Lahkar is that the contention of the appellant that the wall was constructed before the suit is false and they entered into land (Dag no 691) on 22-09-2023 and they have admitted in blocking the ingress and egress to his house and his family was rescued by Police Commissioner after receiving a letter from his wife and that the learned Trial court had collected (Suo-Moto) Amin Commissioner report and that the Trial Court has not yet decided the ownership of the suit land.

6.1. Referring to the decision of Hon'ble Supreme Court in **Dorab Cawasji Warden (supra)**, specially in para No.2, at page No. 9, Mr. Lahkar submits that in the said decision Hon'ble Supreme Court held that **"The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully take from the party complaining"**.

6.2. Referring to ANNEXURE - 16 (Jamabandi) to his additional affidavit, Mr. Lahkar submits that Mouram Koibarta, son of Jaggu, who is the Pattadar, but not Mouram Keot Medhi, son of late Motiram Keot and as such, Mouram Keot Medhi, son of Matiram Keot and Mouram Kaibarta, son of Jaggu are different person and Mouram Keot Medhi, son of Matiram Keot did not have any legal

right to donate the land under patta No: 38 and it is a baseless argument of the appellant that the gift deed No. 5245/1958, through which the appellant's predecessor had received the suit land about 60 years back has not been challenged. The gift deed No. 5245/1958, was showing as executed by one Mouram Keot Medhi, son of Matiram Keot, who was not a pattader hence the challenging of the gift deed does not arise at all. Under the aforementioned facts and circumstances, Mr. Lahkar has contended to dismiss the appeal.

7. Having heard the submission of learned Advocate for the appellant and the petitioner-in-respondent, I have carefully gone through the petition and the documents placed on record and the impugned order dated 06.04.2024, passed by the learned Civil Judge (Sr. Div.) No.1, Kamrup (M) Guwahati in Misc. (J) Case No.1052/2023, arising out of Title Suit No.619/2023. Also perused the decision referred by both sides.

Mandatory Injunction And The Requirement of Law:-

8. One of the most relied on and unequivocal authority on temporary or interlocutory mandatory injunctions is **Dorab Cawasji Warden vs. Coomi Sorab Warden and Ors.**, reported in **(1990) 2 SCC 117**, wherein Hon'ble Supreme Court has laid down following guidelines in respect of granting temporary mandatory injunction:-

“16. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima**

facie case that is normally required for a prohibitory injunction.

- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

9. In the case of **Tek Singh vs. Sachi Verma and Another** reported in (2019) 16 SCC 678, also it has been held by Hon’ble Supreme Court that much more than a mere prima facie case has to be made out. Thus, application of this **triple test** is a prerequisite for the grant or refusal of such injunctions and other factors such as the suppression of material facts on the part of the plaintiff, the conduct and whether monetary compensation is adequate, need to be taken into cognizance while granting an interlocutory mandatory injunction.

The Power Of Appellate Court:-

10. It is well settled that grant of an interlocutory injunction is in exercise of discretionary power. Usually the appellate court will not interfere with it. But, when the discretion is exercised arbitrarily, capriciously, perversely ignoring the settled principles of law, regulating the grant or refusal of interlocutory injunctions the appellate court can interfere with such order of granting injunction. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Ramdev Food Products (P) Ltd - Vs- Arvindbhai Rambhai Patel and Others** reported in (2006) 8 SCC 726 (Para 128). In the case of **Wander Limited and Another vs. Antox India Private Limited**, reported in 1990 (Supp) SCC 727, Hon'ble Supreme Court has held that unless it has been shown to have exercised the discretion arbitrarily by the learned trial court, the appellate court would not interfere with the discretion exercised by the trial court.

11. In the case of **Wander Ltd.(supra)**, Hon'ble Supreme Court has held that:-

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will

not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

12. Now, advertng to the facts herein this case, I find that the respondent/plaintiff has instituted a title suit, being T.S. No. 619/2023 with prayer for permanent injunction restraining the principal defendants, their men, agents, employees etc. from raising any permanent construction, alienating or creating any third party interest upon Schedule 'D' and Schedule 'A' plot of land and for recovery of possession of Schedule 'D' plot of land.

12.1. The respondent/plaintiff has also filed a petition No. 6737/2023, under Order XXXIX Rule 1 and 2 read with Section 151 of CPC with a prayer for ad-interim injunction restraining the O.P.s, their men, agents, attorneys, or any person claiming under them from raising any permanent construction and/or alienating or creating any third party rights over the Schedule 'D' land as well as Schedule 'A' land and from disturbing the peaceful possession of the plaintiff over Schedule 'A' land and also restraining them from creating any obstruction over the petitioner's ingress and egress to his land and building standing over Schedule 'A' land. Upon the said petition Misc. (J) Case has been

registered. Thereafter hearing both sides, the learned trial court vide order dated 06.10.2023, had granted temporary injunction restraining the appellant/defendants, their men, agents, attorneys, or any person claiming under them from raising any permanent construction and/or alienating or creating any third party rights over the Schedule 'D' land as well as Schedule 'A' land till disposal of the main suit i.e. T.S. No. 619/2023.

13. The pleaded case of the respondent/plaintiff is that from Shri Dhruba Chandra Das, Shri Kunja Dhar Das, Shri Binoy Das and Smti. Binu Das, the legal heirs of Late Harmohan Das, who were the owner of a plot of land measuring 1 Bigha covered by dag No. 493 of K.P. Patta No. 144 of village Sadilapur under the then Ramcharani Mouza, now Jalukbari Mouza, in the district of Kamrup, Guwahati, he had purchased a plot of land measuring 4 kathas covered by dag No. 691 (new) 493 (old) of K.P. patta No. 306 (new) 144 (old) out of schedule 'A' land the petitioner by executing registered deed of sale dated 05.08.2019 vide deed No. 7690 after obtaining due sale permission. Subsequently he had purchased the entire plot of land and acquired possession thereof after executing a sale deed on 26.02.2019. Said Schedule 'A' land comprising of schedule 'B' and 'C' land. Thereafter, obtaining permission he had constructed two RCC structures over the portion of Schedule 'B' and Schedule 'C' land and had mutated his name in the record of rights by the order of the Circle Officer, Guwahati Revenue Circle vide order dated 04.10.2019 and possessed the said land peacefully by paying land revenue regularly.

13.1. Thereafter, at the eastern side of Schedule 'A' land, the defendants/appellants broke the fencing for which one FIR was lodged with

the Jalukbari P.S. and Director General of police. Then the Addl. Deputy Commissioner, Kamrup (M) vide its order dated 19.08.2023 in Revenue Appeal Case No. 11/2022 passed a prohibitory order restraining the appellants/defendants No. 1, 2 and 3 from constructing anything till disposal of the appeal.

13.2. It also appears that on 26.08.2023, the said O.P. No. 4 along with defendant No. 1 and a group of around 30 goons vandalized the property of the respondent/plaintiff standing upon the Schedule 'A' land. The respondent's/plaintiff's wife then immediately rushed outside and sought help from the on duty police personnel and thereafter, the said police personnel accompanied the petitioner's wife went to the said place and asked the appellants/defendants No. 1 to 4 to leave and an FIR dated 27.08.2023 was lodged before the Jalukbari P.S. Thereafter, on 22.09.2023 the appellants/defendants No. 1 and 4 brought the Circle Officer, Guwahati Revenue Circle along with some other officials to the Schedule 'A' land for the purpose of demarcation and due to objection the Circle Officer left announcing that no land has been handed over to the appellant/defendant No.1. And as soon as the Circle Officer left the place then the appellant/defendant Nos.1 and 4 along with some other persons manhandled the wife of the petitioner and snatched her mobile phone. The matter was then reported to police. Thereafter, the appellant/defendant Nos.1 and 4 have created obstruction to the petitioner and his ingress and egress to his land and building standing over Schedule A land.

14. It also appears that the defendants/appellants had filed their written objection. It was being pleaded that the application is not maintainable; there is no cause of action etc. It is stated that the present suit is liable to be stayed or kept in abeyance in terms of the plaintiff/respondents' document No. 27. It further stated that a Title suit, being No. 572/2023 is pending before the court and that the schedule land of the present suit and injunction application covered by dag No. 493(Old)/691 (New) of K.P. Patta No. 144 (Old)/306 (new) of village Sadilapur under Jalukbari Mouza and the plaintiff/respondent had miserably failed to state about the suit land in the instant suit as well as in the injunction application and that the suit land are non-existent one and there is no such suit land in reality and that the gift deed No. 5245/1958 and the registered sale deed No. 3869/1959 have not been challenged and therefore, it is contended to dismiss the prayer of the petitioner/plaintiff.

15. Thereafter, the learned trial court had held that both the parties have asserted their respective rights over the suit land i.e. schedule 'D' land. And because of the bona-fide contentions of the parties, the learned trial court had found that there is a prima-facie case to be heard and decided. It is also held that admittedly, respondent/plaintiff is not in possession over the schedule 'D' land at present and the appellants/defendants have trespassed into the Schedule 'A' land and dispossessed the petitioner/ plaintiff from the Schedule 'D' land which is a part of Schedule 'A' land. It is also held that if the nature and character of the suit property is changed or any 3rd party right is created over the suit land, it will lead to multiplicity of suits/ proceedings and as such, there is likelihood of causing injury or irreparable loss to the petitioner and if temporary injunction is not passed by exercising

its discretionary power, the respondent/plaintiff may suffer during the period of uncertainty with respect to his claim over the suit land, as pleaded in the plaint is resolved. Thus the learned First Appellate Court has found the balance of convenience in favour of the respondent/plaintiff. Thereafter, the learned trial court has restrained the appellants/defendants, their men, agents, attorneys, or any person claiming under them from raising any permanent construction and/or alienating or creating any third party rights over the Schedule 'D' land as well as Schedule 'A' land till disposal of the main suit i.e. T.S. No. 619/2023.

16. Further, it appears that thereafter, the respondent/plaintiff had filed another petition, under Section 39 of the Specific Relief Act, 1963 for an order of temporary mandatory injunction to remove the structures and open the right of way for the respondent/plaintiff's free movement of his vehicles for ingress and egress to his building over Schedule B and part of Schedule-A land. It is stated that on 10.10.2023, the appellants herein violated the temporary injunction order and constructed a concrete wall and broke the bore well and blocked the respondents/plaintiffs access.

17. And thereafter, the learned trial court, vide impugned order dated 06.04.2024, considering the various facts in both the plaint and petitions and the injunction application regarding dispossession of the property both pre and post institution of the dispute, and comprehensive documents presented for consideration before it found that prima-facie case being established by the respondent/plaintiffs and that he is entitled to have access to his property and because of the erection of brick wall his right of way and entry into his property and serious injustice and inconvenience is being caused to

him which resulted in irreparable harm and damages to the respondent/plaintiff and also pose a risk of potential damages to his valuable possessions.

18. And only thereafter, the learned trial court had granted temporary mandatory injunction directing the defendants/appellants to remove the boundary wall from the front side of the building of the petitioner and open up the right of way for free movement of the petitioner through the vehicle for ingress and egress to his building standing over the Schedule-'B' land which is a part of Schedule – 'A' land.

19. It also appears that in the case in hand, though the learned trial court, while granting mandatory injunction, had not specifically weighed the degree of satisfaction, yet, having gone through the materials placed on record, this court is of the considered view that respondent/plaintiff herein, has a strong case to go for trial which is higher in standard than an ordinary prima facie case. Indisputably, there is an ad-interim injunction order dated 06-10-2023, in Misc (J) Case No. 1000/2023. And the same was granted only after deriving satisfaction about existence of a prima-facie case, balance of convenience and irreparable loss in favour of the respondent/plaintiff.

20. Despite the existence of injunction order dated 06.10.2023, the defendants/appellants had constructed a concrete wall and broke the bore well and blocked the respondents/plaintiffs right of way and thereby blocked the entry into his property and thereby caused serious injustice and inconvenience to him which resulted in irreparable harm and damages to the respondent/plaintiff who has now been residing in a rented house with his

family and the same also pose a risk of potential damages to his valuable possessions.

21. It also appears from a perusal of the impugned order that the learned trial court had, before granting injunction had heard both the parties and therefore, had assessed all the three golden principles in granting mandatory injunction. Though, an argument is being advanced by the learned counsel for appellant/defendants that there was no discussion about the three golden principles of granting injunction, yet the same left this court unimpressed in as much as in paragraph No. 36,37,38,39 and 40 of the impugned order, the learned trial court had discussed the same. The learned trial court had also considered the principles of granting temporary injunction as laid down by Hon'ble Supreme Court in the case of **Dorab Cawasji Warden (supra)**.

22. The respondent in-person had categorically submitted before the court that because of the concrete wall constructed around his house by the appellants/defendants he could not enter into his building and he and his family are living in a rented house and his valuable possessions and his vehicles got damaged as for more than one year the same could not be moved out. These submissions of the respondent in person could not be controverted by the learned counsel for the appellant/defendants. These uncontroverted submissions and the materials placed on record, to the considered opinion of this court, furnished the highest degree of satisfaction as required to grant mandatory injunction, in view of the ratio laid down by Hon'ble Supreme Court in the case of **Dorab Cawasji Warden (supra)**.

23. It is however an admitted fact that while granting temporary mandatory injunction, the learned trial court had not specified the period for which the

same will remain force. But, the facts remains that the petition was filed under Section 39 of the Specific Relief Act. The said section read as under:-

39. Mandatory injunctions.— When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

23.1. A careful perusal of the provision indicates that unlike section 37 of the Specific Relief Act, there is no requirement of granting the mandatory injunction for a specified period. That being so, it cannot be said that the learned trial court had committed any illegality in not specifying the time in the impugned order.

24. Though Mr. Borah, the learned counsel for the petitioner submits that the relief granted in the injunction petition is like the relief being sought for in the Title Suit No. 619/2023, and such relief cannot be granted at that stage, yet I find no substance in the same. It is worth mentioning in this context that in the injunction petition, vide impugned order dated 06.04.2024, the learned trial court had only directed to remove the boundary wall from the front side of the building of the respondent/plaintiffs and to open up right of way for free movement of the petitioner to his building standing over Schedule 'B' land which is a part of the Schedule 'A' land. This prayer was not there in the Title Suit as the boundary wall was constructed in violation of the temporary injunction order dated 06-10-2023, in Misc (J) Case No. 1000/2023, after institution of the said Title Suit No.619/2023. This

being the factual position, by no stretch of imagination it can be said that the relief granted in the injunction petition amounts to partly decreeing the suit at the initial stage.

25. It also appears that the learned trial court had recorded its satisfaction in respect of granting mandatory injunction. The discussion in para No. 36, 37, 38, 39 and 40 of the impugned order made it crystal clear the learned trial court had taken note of all the facts and circumstances on the record besides discussing three golden principles in granting temporary injunction. Even for the sake of argument, if it is accepted that the learned trial court had not recorded the higher degree of satisfaction yet, it appears that the learned trial court had exercised its discretion in granting the relief as sought for, and in view of limited scope of appellate court to interfere with the same, as held by Hon'ble Supreme Court in the case of **Ramdev Food Products (P) Ltd (supra)** and also in **Wander Limited and Another (supra)**, this court is of the view that in absence of arbitrariness, being shown in exercising such discretion by the learned trial court, no interference in the same is warranted.

FINDING:-

26. In the result, and in view of foregoing discussion and finding, this court finds no merit in this appeal and accordingly, the same stands dismissed. The interim order of stay, passed earlier by this Court, stands vacated forthwith. The parties have to bear their own cost.

27. Before parting with the record, this court is constrained to take note of the submissions of the respondent-in-person, who had stated that though the

impugned order was passed on 06.04.2023, yet till staying of the same by this court vide order dated 24.05.2024, in I.A. (Civil) No. 1421/2024, the impugned order could not be enforced because of the nexus of police and the appellants/defendants. In his written argument also the respondent/plaintiff had categorically stated that he lost faith in police. This submission is also not been controverted by the learned counsel for the appellants/defendants.

28. If this is the state of affairs and if common people lost faith in police, the law enforcing agency, and if court orders are not implemented because of nexus of police with antisocial elements, then it is a very serious matter. This court is very much concerned with the allegations made by the respondent in person in his submission as well as in his written argument. Accordingly, it is provided that the Registry shall convey concern of the court to the Principal Secretary to the Government of Assam, Home and Political Department and also to the Director General of Police, Assam.

29. We hope and trust that the aforesaid two authorities shall take necessary step to upheld the rule of law by implementing the orders of the court through its machinery so as to restore the faith of the general public upon police and its instrumentalities.

JUDGE

Comparing Assistant