

GAHC010110842023



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

**Case No. : Crl.Pet./492/2023**

KABIR UDDIN BARBHUIYA AND ANR  
S/O LATE AJIR UDDIN BARBHUIYA  
OF VILL- DINANATPUR PART-I, P.O. DINANATHPUR PART-I,  
P.S. KATLICHERRA,  
DIST. HAILAKANDI, ASSAM  
PIN-788161

2: NILIMA CHAKRABORTY  
D/O LATE NOBODIP CHAKRABORTY  
OF VILL-LALAMUKH BAGAN  
P.O.LALAMUKH  
P.S. LALA  
DIST. HAILAKANDI  
ASSAM

PIN-78816

VERSUS

THE STATE OF ASSAM AND 2 ORS  
TO BE REP. BY THE PP, ASSAM

2:NOCHIR AHMED CHOUDHURY @ NOSIR AHMED CHOUDHURY  
S/O LATE TOJOMUL ALI CHOUDHURY  
OF VILL- DINANATHPUR PART-I  
P.O. DINANATHPUR PART-I  
P.S. KATLICHERRA  
DIST. HAILAKANDI  
ASSAM  
PIN-788161.

3:ALI AHMED CHOUDHURY  
S/O LATE TOJOMUL ALI CHOUDHURY  
OF VILL- DINANATHPUR PART-I

PO. DINANATHPUR PART-I  
P.S. KATLICHERRA  
DIST. HAILAKANDI  
ASSAM  
PIN-78816

**Advocate for the Petitioner** : MR. A M S MAZUMDER

**Advocate for the Respondent** : PP, ASSAM

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**Date : 27.05.2024**

Heard Mr. A.M.S. Mazumder, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State/respondent No.1 and Mr. A.H.M.R. Choudhury, learned counsel for the respondent Nos. 2 and 3.

2. The petitioners have filed an application under Section 482 Cr.P.C. praying for quashing the impugned order dated 05.04.2023 passed by the learned Sessions Judge, Hailakandi in Criminal Revision No. 24/2023, whereby the learned Sessions Judge admitted the said revision petition, issued notice to the petitioners and suspended the operation of order dated 30.03.2023 passed by the Additional District Magistrate (herein after ADM), Haikandi in Misc. Case No. 64M/2023.

3. The factual matrix relating to this application is that the petitioner No. 1 is the owner and possessor of a plot of land measuring 6 katha under 2<sup>nd</sup> R.S. Patta No. 1, Dag No. 439 situated at Mouza: Dinanathpur Part-I, Porgona: Saraspur of Hailakandi district which was purchased by the father of the petitioner No. 1. Similarly, the petitioner No. 2 is the owner and possessor of a plot of land measuring 6 katha

under 2<sup>nd</sup> R.S. Patta No. 1, Dag No. 439 situated at Mouza: Dinanathpur Part-I, Porgona: Saraspur of Halakandi which is the ancestral property of the petitioner No.2. Both the petitioners have been enjoying their respective plot of land peacefully.

4. The allegation against the opposite party Nos. 2 and 3 is that they tried to occupy the petitioners' plot of land forcefully, as a result of which the petitioners filed a case before the learned ADM, Hailakandi against the opposite party Nos. 2 and 3 and the case was registered vide Misc. Case No. 64M/2023 under Section 144/107 Cr.P.C. On the same day, the learned ADM forwarded the said case to the officer-in-charge, Katlicherra police station for enquiry and submit report accordingly. Thereafter, the police submitted report vide non-FIR case No. 09/2023 before the learned ADM, Halakandi. Having heard the parties and their engaged lawyers and after perusal of the police report, the learned ADM passed the order dated 30.03.2023 under Section 144 Cr.P.C. by restraining the opposite party Nos. 2 and 3 and their associate(s) to enter into the disputed land and asked them to maintain peace and tranquility in the locality and also has drawn up a proceeding under Section 107 Cr.P.C. and asked the opposite party Nos. 2 and 3 and others to appear before the court to file written statement.

5. Subsequently, the opposite party Nos. 2 and 3 by challenging the said order dated 30.03.2023 filed a criminal revision petition vide No. 24/2023 before the learned Sessions Judge, Halakandi. Thereafter, the learned Sessions Judge, Hailakandi vide order dated 05.04.2023 admitted the said revision petition issuing notice to the petitioners and suspended the operation of the order dated 30.03.2023 passed by the learned ADM, Hailakandi in Misc. Case No. 64M/2023. Being highly aggrieved with the order dated 05.04.2023, the petitioners have preferred this petition.

6. The learned counsel for the petitioners has submitted that the order dated 30.03.2023 passed by the learned ADM, Hailakandi in Misc. Case No. 64M/2023 under Section 144/107 Cr.P.C. is an interlocutory order in nature and accordingly as

per section 397(2) Cr.P.C., the revisionsal court has no jurisdiction to exercise the power of revision in relation to any interlocutory order passed in any appeal, inquiry, or trial in any proceeding. But the learned Sessions Judge, Hailakandi failed to appreciate the provision of law and passed the impugned order dated 05.04.2023 by admitting the said revision petition issuing notice to the petitioners and suspended the operation of the order dated 30.03.2023 passed by the learned ADM, Hailakandi in Misc. Case No. 64M/2023 which is liable to be set aside.

7. On the other hand, the learned counsel for the opposite party Nos. 2 and 3 has submitted that the respondent Nos. 2 and 3 are the owners of the disputed land in Misc. Case No. 64M/2023, which arose on filing of a petition by the present petitioners under Section 144/107 Cr.P.C., which is purely a subject matter of civil dispute and in this regard, a civil case has been instituted in the court of learned Munsiff, Hailakandi, in respect of the same plot of land for declaration of right, title and interest and confirmation of possession over the suit land vide T.S. No. 139/2022.

8. It is further submitted that the opposite parties Nos. 2 and 3 also filed an application for ad-interim injunction against the defendants i.e. the present petitioners and after hearing the parties, learned Munsiff was pleased to grant injunction in favour of the opposite party Nos. 2 and 3. According to the learned counsel for the opposite party Nos. 2 and 3, since the civil suit is now pending before the competent civil court, the original Misc. Case No. 64M/2023 has become infructuous.

9. I have considered the submissions of learned counsel for the parties and also perused the documents available in the record.

10. After hearing the learned counsel for the parties as well the documents available in the court, it reveals that one civil suit is pending between the parties regarding disputed land in which the learned ADM, Hailakandi has drawn proceeding under Section 144 Cr.P.C. by restraining the opposite party Nos. 2 and 3 to enter into

the said plot of land. Subsequently, a civil case has been instituted against the present petitioners for declaration right, title and interest over the said plot of land which is still subjudice before the court of Munsiff, Hailakandi and which is the competent civil court to declare the right, title and interest to the parties. At this stage, the learned counsel for both the parties contended that the matter be remanded back to the court of learned ADM, Hailakandi to pass necessary order on the matter in issue.

11. In view of the above, the order passed by learned Sessions Judge, Hailakandi in Criminal Revision No. 24/2023 is set aside. The parties are directed to appear before the learned ADM, Hailakandi and file appropriate application under the changed circumstances and the learned ADM, Hailakandi after hearing the learned counsel of both the parties, will pass the order in accordance with law.

12. The criminal petition is disposed of accordingly. Stay, if any, is hereby vacated.

**JUDGE**

**Comparing Assistant**