

GAHC010115152023



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

Case No. : FAO/32/2024

KAMAKHYA REALTORS PVT. LTD.
HAVING ITS REGISTERED OFFICE AT 4/1, MIDDLETON STREET, SIKKIM
HOUSE, 4TH FLOOR, KOLKATA-700071, WEST BENGAL.

VERSUS

BHARATI GOGOI AND 11 ORS
W/O- LATE PANKAJ GOGOI, R/O- VILL.- RUDRESWAR, P.O. RANGMAHAL,
P.S. KAMALPUR, DIST. KAMRUP(R), ASSAM, PIN- 781030.

2:ANUP GOGOI
S/O- LATE PANKAJ GOGOI
R/O- VILL.- RUDRESWAR
P.O. RANGMAHAL
P.S. KAMALPUR
DIST. KAMRUP(R)
ASSAM
PIN- 781030.

3:SMTI. RUMI GOGOI
D/O- LATE PANKAJ GOGOI
R/O- VILL.- RUDRESWAR
P.O. RANGMAHAL
P.S. KAMALPUR
DIST. KAMRUP(R)
ASSAM
PIN- 781030.

4:SMT. TILOTTAMA GOGOI
W/O- LATE HEM CHANDRA GOGOI
R/O- PUB-SARANIA
BYE LANE NO. 3A

P.O. AND P.S. CHANDMARI
GUWAHATI-3.

5:SMTI. CHAYANIKA GOGOI
D/O- LATE HEM CHANDRA GOGOI
R/O- PUB-SARANIA
BYE LANE NO. 3A
P.O. AND P.S. CHANDMARI
GUWAHATI-3.

6:SMTI. KANGKANA GOGOI @ KRISHNA GOGOI
D/O- LATE HEM CHANDRA GOGOI
R/O- PUB-SARANIA
BYE LANE NO. 3A
P.O. AND P.S. CHANDMARI
GUWAHATI-3.

7:SMT. CAUVERI GOGOI
D/O- LATE NAGEN CH. GOGOI
R/O- NARENGI TINIALI
NEAR APDCL POWER HOUSE
P.O. NARENGI
P.S. NOONMATI
GUWAHATI-26
DIST. KAMRUP(M)
ASSAM

8:SURJYA KAMAL GOGOI
S/O- LATE NAGEN CH. GOGOI
R/O- NARENGI TINIALI
NEAR APDCL POWER HOUSE
P.O. NARENGI
P.S. NOONMATI
GUWAHATI-26
DIST. KAMRUP(M)
ASSAM

9:KANGKAN GOGOI
S/O- LATE NAGEN CH. GOGOI
R/O- NARENGI TINIALI
NEAR APDCL POWER HOUSE
P.O. NARENGI
P.S. NOONMATI
GUWAHATI-26
DIST. KAMRUP(M)
ASSAM

10:DAMBARU GOGOI

S/O- LATE KANAK GOGOI
R/O- PUB-SARANIA
BYE LANE-3A
P.S. CHANDMARI
GUWAHATI-3
DIST. KAMRUP(M)
ASSAM

11:ARCHANA GOGOI
D/O- LATE KANAK GOGOI
R/O- ANIL NAGAR
SRIPATH
P.S. GITANAGAR
DIST. KAMRUP(M)
ASSAM

12:SMTI. RENU GOHAI
W/O- RAJANI KANTA GOHAIN
R/O- PUB-SARANIA
HOUSE NO. 19
P.S. CHANDMARI
GUWAHATI-3
DIST. KAMRUP(M)
ASSA

For the Petitioner(s) : Mr. G. Khandelvia, Advocate

For the Respondent(s) : Mr. L. K. Borah, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 10.05.2024

This is an appeal under Section 104 read with Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 challenging the order dated 22.11.2022 passed in Misc. (J) Case No.87/2019 arising out of Title Suit No.68/2019 whereby the learned Trial Court had directed the parties to maintain status quo regarding alienation/transfer of the suit land mentioned in the schedule of the plaint till

the disposal of the main suit.

2. Mr. G. Khandelia, the learned counsel appearing on behalf of the Appellants submitted that the said order on the face of it suffers from total non-application of mind taking into account that it was never the case of the plaintiff that the plaintiff was entitled to the entire schedule-A land. The entire claim of the plaintiff was on the basis of Schedule-B land and as such the injunction order could have only been passed, if at all in respect to the Schedule-B land. In addition to that, the learned counsel submitted that the Schedule-B land is not properly described and no injunction ought to have been granted. In that regard, the learned counsel has drawn the attention of this Court to Schedule-B to the plaint wherein it is seen that there is a mention of land measuring 2 Bighas 2 Kathas 10 Lechas covered by Dag No.____. Under such circumstances, the learned counsel submitted that when the Schedule-B is vague, the learned Trial Court ought not to have granted the injunction.

3. On the other hand, Mr. L. K. Borah, the learned counsel appearing on behalf of the Respondents submitted that no doubt there has been an inadvertent error in mentioning Schedule-B land and it was the typographical error in not inserting the Dag Number however the same can be very well discerned from a perusal of paragraph No.8 of the plaint wherein the land measuring 2 Bighas 2 Katha 10 Lechas was in respect to Dag No.121.

4. Upon hearing the learned counsels for the parties, this Court had put a specific query upon Mr. G. Khandelia, the learned counsel appearing on behalf of the Appellant as to whether the Appellant would like to transfer or alienate the suit land pending disposal of the suit. The learned counsel submitted that there is no intention on the part of the Appellant to transfer or alienate the Schedule-B land however he submitted that the right over the schedule-B land

vests upon the Appellant and an injunction restraining the Appellant to exercise its right including the right to alienation, if continued for a long period, would be prejudicial to the interest of the Appellant taking into account that the business of the Appellant is in real estate.

5. Taking into account the above, this Court upon perusal of the impugned order does not find that the learned Trial Court had committed any illegality or the order suffers from non-application of mind or had been passed in violation to the principles for grant of an injunction. Be that as it may, the learned Trial Court ought not to have passed the status quo order in respect of the entire suit land without taking into consideration that the plaintiff's claim is only limited to Schedule-B land. This Court also finds it very pertinent to observe that though Schedule-B land have not been properly described in the Schedule-B to the plaint on account of non-mentioning the Dag Number in respect to the land measuring 2 Bighas 2 Kathas 10 Lechas but the details can very well be seen from a perusal of the paragraph No.8 of the plaint. Under such circumstances, this Court directs that the status quo order which has been passed by the learned Trial Court as regards alienation and transfer shall be limited only to the Schedule-B land and read with the details which have been given in paragraph No.8 of the plaint.

6. This Court further finds it very relevant to take note of that by way of the impugned order as well as the order passed by this Court, there is restraint on the exercise of the rights of the Appellant. Under such circumstances, this Court requests the learned Trial Court to take appropriate measures to arrange its business of the Court in such a manner that the instant suit can be disposed of at the earliest and preferably within a period of 1 (one) year from the date of the instant order.

7. With above observations and directions, the instant appeal stands disposed of.

JUDGE

Comparing Assistant