

GAHC010123482022



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

Case No. : CRP/129/2022

BISHA BARMAN AND 3 ORS
S/O LATE KHAGEN BARMAN, R/O VILL-HATIPOTA PART-I, P.O.-HATIPOTA,
P.S.-CHAPAR, DIST-DHUBRI, ASSAM

2: UTTAM BARMAN
LATE APUSA BARMAN
R/O VILL-HATIPOTA PART-I
P.O.-HATIPOTA
P.S.-CHAPAR
DIST-DHUBRI
ASSAM

3: SMTI. DUPURI SINGHA
W/O LATE AJIT SINGHA
R/O GAURANGARTARI PART-II

4: SMTI PANCHAMI DEVI
W/O NOBIN BARMAN
R/O VILL- PUKHURIPA
PART-III
P.O.-SILGARA
P.S.-CHAPAR
DIST- DHUBRI
ASSA

VERSUS

SYEDUR ZAMAN AND 7 ORS
LEGAL HEIR OF LATE REKEBUDDIN AHMED, R/O VILL-KAZIPARA, P.O.
AND P.S.-CHAPAR, DIST-DHUBRI

2:ZAKIROT ZAMAN
LEGAL HEIR OF LATE REKEBUDDIN AHMED
R/O VILL-KAZIPARA

P.O. AND P.S.-CHAPAR
DIST-DHUBRI

3:HABIBAR ZAMAN
LEGAL HEIR OF LATE REKEBUDDIN AHMED
R/O VILL-KAZIPARA
P.O. AND P.S.-CHAPAR
DIST-DHUBRI

4:KAMRUL ZAMAN
LEGAL HEIR OF LATE REKEBUDDIN AHMED
R/O VILL-KAZIPARA
P.O. AND P.S.-CHAPAR
DIST-DHUBRI

5:JAHIRROT ZAMAN
LEGAL HEIR OF LATE REKEBUDDIN AHMED
R/O VILL-KAZIPARA
P.O. AND P.S.-CHAPAR
DIST-DHUBRI

6:NABIBA ZAMAN
LEGAL HEIR OF LATE MONIRUR ZAMAN
R/O VILL-KAZIPARA
P.O. AND P.S.-CHAPAR
DIST-DHUBRI

7:NASIR UZ ZAMAN
LEGAL HEIR OF LATE MONIRUR ZAMAN
R/O VILL-KAZIPARA
P.O. AND P.S.-CHAPAR
DIST-DHUBRI

8:MIRSAD ZAMAN
LEGAL HEIR OF LATE MONIRUR ZAMAN
R/O VILL-KAZIPARA
P.O. AND P.S.-CHAPAR
DIST-DHUBR

Advocate for the Petitioner : MR. P P DAS

Advocate for the Respondent : MR. B D DEKA

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 06-03-2024

This is an application under Article 227 of the Constitution of India challenging the order dated 22.03.2022 passed by the learned District Judge, Dhubri in Misc Appeal No. 04/2019 whereby the order dated 23.07.2019 passed in Misc (J) Case No. 76/2018 arising out of Title Suit No. 43/2018 was affirmed.

2. It is seen from the records that the petitioners herein as plaintiffs had filed a suit being Title Suit No. 43/2018 seeking declaration of right, title and interest over the suit land described in the schedule to the plaint; for cancellation of various Sale Deeds, for corrections of records of right and for permanent injunction. Along with the said suit an injunction application was filed seeking ad-interim temporary injunction against the defendants who were the opposite parties not to dispossess the plaintiffs/petitioners from the suit land till disposal of the Title Suit. The said injunction application was registered and numbered as Misc(J) Case No. 76/2018.

3. This Court have duly perused the injunction application wherein it is the specific stand of the petitioners that they are in possession of the suit land and in paragraph No. 8 of the said injunction application it was mentioned that the opposite parties therein were threatening the petitioners to dispossess them from the suit land.

4. To the said injunction application, a written objection was filed by the opposite parties who are the respondents herein stating *inter-alia* that the opposite parties being in possession of the suit land since 11.09.1985 as the lawful owners and as such, the question of threatening of the petitioners and the reasonable apprehension of dispossessing the petitioners from the suit land

does not arise. This aspect is seen from the paragraph 13 of the written objection.

5. Pursuant thereto, the learned Trial Court passed the order dated 23.07.2019 thereby rejecting the injunction application. In the said order, the learned Trial Court has observed that how can both the parties be in possession of the suit land at the same time and as the learned Trial Court was unable to know as to who was in possession of the suit land, the prayer for temporary injunction was rejected.

6. Being aggrieved, the petitioners preferred an appeal before the Court of learned District Judge, Dhubri which was registered and numbered as Misc Appeal No. 04/2019. The learned First Appellate Court vide the impugned order opined that the plaintiffs, who were appellants therein, failed to prove the prima facie case that they were possessing the land either by cultivating or through implied possession. The learned First Appellate Court further opined that if the appellants/petitioners herein at all were in possession of the land why the Appellants as plaintiffs did not seek the relief of confirmation of possession as an ancillary relief. It was further opined by the learned Appellate Court that the land in question is the subject matter of dispute since 1970 and the respondents have claimed to be enjoying this land since 1985. It is on that account the Appeal was dismissed thereby confirming the order dated 23.07.2019 passed by the learned Trial Court in Misc(J) Case No. 76/2018.

7. Being aggrieved, the instant proceeding under Article 227 has been filed.

8. This Court having taken note of the relevant pleadings before the learned Trial Court as well as the impugned orders finds it relevant to observe that both the parties claimed to be in possession of the suit land. It is well settled that the status of the property as on the date of filing of the suit is required to be

maintained. Under such circumstances, the learned Trial Court or the learned First Appellate Court ought to have been directed that a status-quo as regards the possession to have been maintained, so that during the pendency of the suit there is no further multiplicity of proceedings. The above principles being well settled for consideration of injunction application, having been disregarded, this Court is the opinion that the same requires to be remedied.

9. Accordingly, this Court therefore, disposes of the instant proceedings directing both the parties to maintain status-quo as regards the possession over the suit land as on today till disposal of the suit. It is made clear that the status-quo order is limited only to possession and nothing further.

10. This Court also finds it very relevant to observe that the orders passed in interlocutory proceedings are only for deciding those interlocutory proceedings and such orders passed shall not affect the merits of the suit which would be required to be decided upon evidence as such the orders impugned in the instant proceedings as well as the instant order shall not influence the learned Trial Court in the disposal of the suit.

11. With the above observations and directions, this Civil Revision Petition stands disposed of.

JUDGE

Comparing Assistant