

GAHC010126222024



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

Case No. : CRP(IO)/217/2024

MALABIKA MAHANTA
W/O- SRI SAURABH MAHANTA, R/O- BANMUKH, JOYRAPAR, P.O.
JOYRAPAR, P.S. AND DIST. SIVASAGAR, ASSAM

VERSUS

NIBIR BORDOLOI AND 4 ORS
S/O- LATE NABAJYOTI BORDOLOI, R/O- A.T. ROAD, WARD NO. 6, P.O., P.S.
AND DIST. SIVASAGAR, ASSAM

2:SAURABH MAHANTA
S/O- LATE NARAYAN MAHANTA
R/O- BANMUKH
JOYSAPAR
P.O. JOYRAPAR
P.S. AND DIST. SIVASAGAR
ASSAM

3:LAXMIKANTA MAHANTA
PROPRIETOR OF INDUSTRIAL ART
R/O- SEUJPUR LANE
OLD AMOLAPATTY
SIVASAGAR TOWN
WARD NO. 10
P.O. AND P.S. SIVASAGAR
DIST. SIVASAGAR
ASSAM

4:RANJIT KUMAR DUTTA
PROPRIETOR OF GO-69 PIZZA
SON OF LANKESWAR DUTTA
R/O- WARD NO. 9

PART-3
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM

5:SUBHASISH GOGOI
S/O- SRI UPEN CH. GOGOI
R/O- OLD AMOLAPATTY
NEAR BAKULBARI L.P. SCHOOL
JIBESWAR CHAKRABARTY PATH
P.O.
P.S. AND DIST. SIVASAGAR
ASSA

Advocate for the Petitioner : MR. P S DEKA, MR. A BORUA,MS. P BHATTACHARYA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 01-08-2024

- 1.** Heard Mr. P.S. Deka, learned counsel for the petitioner/plaintiff. None has appeared for the respondents' side.
- 2.** It appears from record that vide order dated 29.07.2024, this Court has held that the notices issued to respondents were duly served. Hence, this Court proposes to proceed ex-parte against the respondents.
- 3.** This application under Article 227 of the Constitution of India has been filed by the petitioner/plaintiff impugning the order dated 31.05.2024 passed in Misc. Appeal No. 1/2023 whereby the temporary injunction granted in favour of the present petitioner/plaintiff in Misc.(J) Case No. 8/2023 in Title Suit No. 10/2023 was set aside by the Court of learned Additional District Judge, Sivasagar and the said Misc. Appeal was allowed.

- 4.** Learned counsel for the petitioner has submitted that the plaintiff/petitioner had filed a Title Suit for declaration of right, title and interest as well as suit for declaration mandatory injunction and recovery of khas possession before the learned Court of Civil Judge, Sivasagar which was registered as Title Suit No. 10/2023. In the said suit the petitioner/plaintiff filed an application under Order XXXIX Rule 1 & 2 seeking temporary injunction against the respondents. Said misc. case was registered as Misc.(J) Case No. 8/2023 and by order dated 21.03.2023 the Trial Court was pleased to grant temporary mandatory injunction against the respondents directing them to remove the locks of the shutters of shops described in Schedule-C of the plaint.
- 5.** Learned counsel for the petitioner has submitted that the petitioner/plaintiff has valued her suit at Rs. 41,50,000/- for the purpose of jurisdiction as well as for the purpose of Court fee.
- 6.** Learned counsel for the petitioner has submitted that in spite of knowing the valuation of the suit, the respondents preferred the miscellaneous appeal before the Court of learned Additional District Judge, Sivasagar. Whereas, it is submitted that the Gauhati High Court vide Notification No. HC.VII-35/2020/6412/A dated 07.12.2021 has, while clarifying some points regarding the amendments in the Bengal, Agra and Assam Civil courts (Assam Amendment) Act, 2021, has clarified that the appeal from a decree/order of a Civil Judge shall lie to the District Judge only where the value of the original suit is upto Rs. 20 lakhs and beyond that pecuniary value the appeal will lie before the High Court.
- 7.** Learned counsel for the petitioner has submitted that in the instant case the exercise of jurisdiction by the Court of learned Additional District Judge, Sivasagar while entertaining Misc Appeal No. 1/2023 is in violation of the

provisions of Bengal, Agra and Assam Civil courts (Assam Amendment) Act, 2021 as well as the notification issued by Gauhati High Court.

8. I have considered the submissions made by learned counsel for the petitioner and have gone through the materials available on record including the notification cited by learned counsel for the petitioner.

9. It appears from the Cause Title of the plaint filed by the petitioner in Title Suit No. 10/2023, as well as, from the averments made in paragraph no. 32 of the said plaint that the suit of the petitioner/plaintiff was valued at Rs. 41,50,000/- for the purpose of jurisdiction as well as Court fee. Hence under the facts and circumstances, it appears that the appeal against the order dated 21.03.2023 passed in Misc.(J) Case No. 8/2023 by the Court of learned Civil Judge, Sivasagar would lie before this Court and not before the District Judge/Additional District Judge, Sivasagar.

10. Hence, this Court is of the view that as the impugned order has been passed by the Court of learned Additional District Judge, Sivasagar in violation of the provisions of Bengal, Agra and Assam Civil courts (Assam Amendment) Act, 2021 as well as the violation of the notification dated 07.12.2021 referred herein above. As the court of learned Additional District Judge, Sivasagar has acted beyond jurisdiction, the impugned order is hereby set aside.

11. This civil revision petition is accordingly disposed of.

JUDGE

Comparing Assistant