

GAHC010127672022



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

Case No. : CRP/73/2022

RANJIT PANDIT
S/O LATE UPENDRA NATH PANDIT, R/O VILL-DALGAON, P.O. AND P.S.-
GOSSAIGAON, DIST-KOKRAJHAR (BTAD), ASSAM, PIN-783370

VERSUS

NIKHIL GHOSH AND 3 ORS
S/O LATE KUNJA GHOSH, R/O VILL- DALGAON, P.O. AND P.S.-
GOSSAIGAON, DIST-KOKRAJHAR (BTAD), ASSAM, PIN-783360

2:SANJIB GHOSH ALIAS TITU GHOSH
S/O SRI NIKHIL GHOSH
R/O VILL- DALGAON
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR (BTAD)
ASSAM
PIN-783360

3:TAPAN GHOSH
S/O SRI NIKHIL GHOSH
R/O VILL- DALGAON
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR (BTAD)
ASSAM
PIN-783360

4:SANJIB KUMAR DAS
S/O LATE RANJIT DAS
R/O VILL-DALGAON
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR (BTAD)
ASSA

Advocate for the petitioner (s): Mr. H Buragohain

Advocate for the respondent(s): Mr. A A R Karim

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

29.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 26.05.2022 passed in Misc.Appeal No.7/2021, whereby the learned First Appellate Court i.e. the Court of the learned District Judge Kokrajhar had dismissed the appeal filed by the petitioner herein.

2. From the materials on record, it reveals that the petitioner had earlier filed a suit against the proforma respondent No.4 herein alleging that the said proforma respondent wanted to grab the land of the petitioner in connivance with the Revenue Staff and got his name mutated in the record of rights by deleting the name of the father and the uncle of the petitioner. Accordingly, the petitioner filed an application before the ASO Gossaigaon for correction of the land records by inserting his name in the record of right, instead of the proforma respondent No.4. However, the said application was rejected by the ASO Gossaigaon Revenue Circle by the order dated 03.07.2009. Thereupon, an

appeal was preferred before the Settlement Officer, Dhubri and Kokrajhar district which was also dismissed by the Settlement Officer on 15.09.2014. Subsequent thereto, a suit was filed by the petitioner against the proforma respondent No.4 which was registered and numbered as Title Suit No.1/2015 seeking decree for declaration of his right, title and interest in respect of the suit land and also for a decree for correction of the land records/ revenue records, deleting the name of the proforma respondent No.4 and permanent injunction etc. The said suit was initially decreed by the learned Trial Court by the judgment and decree dated 27.11.2017. However, the said decree was set aside by the learned First Appellate Court vide the judgment and decree dated 25.06.2019. Presently, the said appeal is pending before this Court in RSA No.212/2019.

3. While the said second appeal has been pending, it is the case of the petitioner that the defendant Nos.1, 2 and 3 were trying to interfere with the possession of the petitioner over the land and under such circumstances, the petitioner submitted an FIR before the Gossaigaon Police Station on 18.09.2019 which has been registered as Gossaigaon Police Station Case No.410/2019. Although, after lodging of the said FIR, the disturbances made by the defendant Nos.1, 2 and 3 ceased as claimed by the petitioner, but subsequently, they again started doing so, for which, another suit was filed by the petitioner which was registered and numbered as Title Suit No.20/2021 seeking various declarations and permanent injunctions. Along with the said application, an application was filed seeking temporary injunction against the defendant Nos.1, 2 and 3, which application was registered and numbered as Misc.(J) Case No.02/2020 and subsequently has been re-numbered as Misc.(J) Case No.10/2021. The said application was rejected by the learned Trial Court by the order dated

16.10.2021 holding *inter alia* that the petitioner failed to show any prima facie case for grant of an injunction. It was categorically held that the petitioner could not show that the petitioner had any title over the land; the petitioner could not show that the petitioner was in possession of the land and the land was mutated in favour of the proforma respondent No.4.

4. Being aggrieved by the rejection of the application for injunction, the petitioner preferred an appeal being Misc. Appeal No.7/2021 which was also dismissed vide order dated 26.05.2022 by the Court of the learned District Judge Kokrajhar categorically holding that no new facts had been produced to show that the petitioner was in possession of the suit land, *inasmuch as*, the learned First Appellate Court in the earlier proceedings had categorically held that the petitioner was not in possession of the suit land. Further to that, the petitioner having failed *prima facie* to produce any document showing that he had any title over the suit land was not entitled to the injunction. It was also observed by the learned First Appellate Court that though the appeal was filed, but there was no separate application being filed seeking injunction. Against the same, the instant proceeding has been filed under Article 227 of the Constitution.

5. This Court had heard Mr. H Buragohain, the learned counsel appearing on behalf of the petitioner. Also heard Mr. AAR Karim, the learned counsel appearing on behalf of the respondents.

6. The learned counsel appearing on behalf of the respondents has

categorically submitted that the respondents Nos.1,2 and 3 are in due possession of the suit land on the basis of the purchase being made from the proforma respondent No.4 and as such, the question of grant of any injunction does not arise.

7. This Court having taken into account the order which has been passed by the learned First Appellate Court is of the opinion that there is no jurisdictional error committed by the learned First Appellate Court in passing the said order, more so, when there was not even an application seeking injunction in the First Appellate stage. Under such circumstances, it is the opinion of this Court that this is not a fit case for exercise of jurisdiction under Article 227 of the Constitution in the facts of the instant case, for which the instant petition stands dismissed.

8. With the above, the revision petition stands disposed of.

JUDGE

Comparing Assistant