

GAHC010132102024



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

Case No. : CRP(IO)/240/2024

INDIRA DAVE AND 4 ORS.

W/O- SHRI PRAVIN DAVE, R/O- 86, FIRST CROSS, 5TH MAIN, DOMLUR
SECOND STAGE, BENGALURU-560071, STATE- KARNATAKA.

2: KALYANI HAZARIKA

W/O- SRI ROMENDRA NATH HAZARIKA

R/O- HOUSE NO. 34

BASISTHAPUR LANE NO. 2

BELTOLA

GUWAHATI-781028

DIST. KAMRUP(M)

ASSAM

3: BHABANI NEOG

W/O- LATE AMIYO KUMAR NEOG

R/O- HOUSE NO. 9

RAJBARI PATH

GANESHGURI

GHY-781005

DISPUR

DIST. KAMRUP(M)

ASSAM

4: GEETA CHOWDHARY

W/O- LATE MUKUL CHOWDHARY

R/O- 2D

HIRAPRAVA APARTMENTS

M.C. ROAD

UZANBAZAR

GUWAHATI-781001

DIST. KAMRUP(M)

ASSAM

5: MONJUSHREE KAPOOR

W/O- DR. TARA SHANKER KAPOOR
R/O- 25
RATHORE NAGAR
AMRAPALI MARG
QUEENS ROAD
JAIPUR-302021
RAJASTHA

VERSUS

RITA CHALIHA AND 2 ORS
W/O- LATE AJIT CHALIHA, R/O- OLD DC BUNGLOW ROAD, PUB
CHOWKIDINGEE PART, P.S. AND DIST. DIBRUGARH, ASSAM, PIN- 786001.

2:SIDDHARTHA CHALIHA
S/O- LATE AJIT CHALIHA
R/O- OLD DC BUNGLOW ROAD
PUB CHOWKIDINGEE PART
P.S. AND DIST. DIBRUGARH
ASSAM
PIN- 786001.

3:RADHIKA CHALIHA
D/O- LATE AJIT CHALIHA
R/O- OLD DC BUNGLOW ROAD
PUB CHOWKIDINGEE PART
P.S. AND DIST. DIBRUGARH
ASSAM
PIN- 786001

Advocate for the Petitioner : MR. B D DEKA, MR. A I ALI,N CHAUDHURY,MR A BHATRA

Advocate for the Respondent : MR. D SAIKIA(R-1,2,3), MS. PADMINI BARUA(R-1,2,3),MS.
RUKMINI BARUA(R-1,2,3)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 30.10.2024

Heard Mr. B.D. Deka, learned counsel for the petitioners and Mr. R. Borpujari, learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the order dated 28.03.2024, passed by the learned Civil Judge (Senior Division), Sivasagar, in Petition No. 1576/2023, dated 06.11.2023, arising out of Misc. (J) Case No. 22/2023, in Title Suit No. 7/2021

3. It is to be noted here that vide impugned order dated 28.03.2024, the learned trial Court had dismissed the application filed by the petitioners under Order 16 Rule 1 and 6 of the CPC.

4. Mr. Deka, learned counsel for the petitioners submits that in the Title Suit No. 07/2021, pending before the Court learned Civil Judge (Senior Division), Sivasagar, the petitioners had filed a petition No. 1576/2023, dated 06.11.2023, for issuance of direction to the opposite party/respondent No. 1 herein, for production of original documents i.e. (i) agreements on leave and licence dated 30.09.2018, (ii) agreements of leave and licence dated 30.04.2019, (iii) agreements of leave and licence dated 01.09.2019, (iv) agreements of leave and licence dated 01.08.2020, (v) agreements of leave and licence dated 01.08.2020, (vi) agreement of leave and licence dated 01.07.2021 and, (vii) agreements of leave and licence dated 01.06.2022, and the same are required to be produced before the Court in connection with petition filed by the petitioners for violation of the order of temporary injunction, dated 05.04.2021, and that in the said petition, the respondents herein filed written objection stating that the property in Schedule B(v) was given to Samrat Deka under leave and licence prior to passing of the injunction order. But, the respondents had produce copy of the said documents before the Court, but perusal of those documents reveals that there are major discrepancies in the signatures of the opposed parties/respondents, more particularly opposite party Nos. 1 and 3 and

also the said documents reveal continuous serial number of the same series which indicates that the same were purchased in the same year. However, the documents were executed in different years and notarised prior to 01.09.2019 and it gave rise to suspicion that the same were executed subsequent to the order dated 05.04.2021, and the same are in possession of the opposite parties, and that production of original copy of the said documents are essential to verify their authenticity and for proper adjudication of the issue. But, the learned trial Court, vide impugned order dated 28.03.2024, had dismissed the petition on the ground that the documents were irrelevant for disposal of the issue of violation of the order dated 05.04.2021 and the grounds mentioned in the petition are found to be irrelevant, inconsistent and vexatious. Mr. Dekka further submits that by dismissing the Petition No. 1576/2023, the learned trial Court had decided the petition filed by the petitioner for violation of the order dated 05.04.2021, and that in view of the assertion and allegation made in the petition, in respect of forging the signature of the opposite party Nos. 1 and 3, and in view of continuous serial number in the documents, production of original documents are very much necessary and therefore, it is contended to set aside the impugned order dated 28.03.2024.

4.1. Mr. Dekka has referred following case law in support of his submission:

- (i) **C.M. Beena and Ors. vs. P.N. Ramachandra Rao**, reported in (2004) 3 SCC 595.
- (ii) **Associated Hotels of India Ltd. vs. R.N. Kapoor**, reported in AIR 1959 SC 1262.

5. Per contra, Mr. Borpujari, learned counsel for the respondents submits that

there occasioned no scope for violation of the temporary injunction order dated 05.04.2021, as the documents (original copy), which the petitioners had prayed for production before the learned trial Court are not relating to any lease, but the same relates to leave and licence, grant of which is not prohibited in the injunction order and as such, violation of the injunction order dated 05.04.2021, does not arise. Mr. Borpujari further submits that prior to the order dated 05.04.2021, one Samrat Deka was allowed to use the suit property, vide documents No. (i) to (vii) which are agreements of leave and licence, and that the same never amounts to leasing the property so as to make the respondents/opposite parties liable for violating the order dated 05.04.2021, and that the impugned order suffers from no illegality or infirmity and therefore, it is contended to dismiss the petition.

5.1. Mr. Borpurjari has relied upon the decision of Hon'ble Supreme Court in **R.N. Kapoor (supra)**, so relied upon by the petitioners

6. Having heard the submissions of the learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 28.03.2024 and the order dated 22.03.2023, granting temporary injunction passed by the learned trial Court in Misc. (J) Case No. 9/2021.

7. It is not in dispute that in Misc. (J) Case No. 9/2021, the learned trial Court, vide order dated 05.04.2021, had granted ad-interim temporary injunction restraining the respondents from changing/altering the share holding of the Banamali Tea Estate Pvt. Ltd. in any manner and also transferring, alienating, encumbering, changing the nature and character as well as creating third party right over the Schedule B(v) property. And the said order was also

made absolute vide order dated 22.03.2023.

8. It also appears that thereafter, allegations were made by the petitioners in a petition before the learned trial Court, for violation of the temporary injunction order, dated 05.04.2021. Thereafter, upon a subsequent petition filed by the petitioners, the learned trial Court had directed the respondents to produce the document Nos. (i) to (vii) and pursuant to the said order, the respondents had produced the documents before the learned trial Court and having gone through the same, the learned trial Court had found that the documents so produced by the opposite parties reveals granting lease and licence in respect of the Schedule B(v) property and there was no order for restraining the respondents/opposite parties from granting leave and licence of the said property and thereafter, held that the aforesaid documents are irrelevant for disposal of the issue of violation of the order dated 05.04.2021, and thereafter dismissed the petition vide impugned order dated 28.03.2024.

9. Having examined the impugned order dated 28.03.2024, in the light of the facts and circumstances on the record and also in the light of the submissions of learned Advocates of both sides; this Court is of the view that the impugned order dated 28.03.2024 suffers from no illegality or infirmity. If there was no order restraining the respondents/opposite parties from granting leave and licence of the Schedule B(v) property, then by no stretch of imagination it can be said that the learned trial Court had committed any illegality in dismissing the petition filed by the petitioners herein.

10. It is a fact that the aforesaid order was passed while dealing with a petition filed by the petitioners for issuing direction to the respondents/opposite parties for production of the documents No. (i) to (vii) and on production of the aforesaid documents and the learned trial Court had found that the same were

not relevant for disposal of the issue of violation of the ad-interim injunction order, dated 05.04.2021. Since the allegation was granting of lease of the Schedule B(v) property and since the document Nos. (i) to (vii), so produced before the Court reveal that it was not lease, but leave and licence which is not prohibited vide injunction order dated 05.04.2021, then it cannot be said that the learned trial Court had committed any jurisdictional error in passing the impugned order.

11. I have carefully gone through the decisions of Hon'ble Supreme Court referred by learned Advocates of both the parties and also gone through the document Nos. (i) to (vii) with the assistance of Mr. Borpujari and the tone and tenor of the same prima facie indicates that the same is not lease but leave and licence. Thus, this Court left unimpressed with the submission of Mr. Deka, learned counsel for the petitioners that the learned trial Court had pre-judged the application pending for violation of the impugned order, dated 05.04.2021.

12. In the result, I find no infirmity or arbitrariness in the impugned order dated 28.03.2024, requiring any interference of this Court. And accordingly, this revision petition stands dismissed.

JUDGE

Comparing Assistant