



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

CRP (I/O) 248 of 2024

1. Altaf Hussain Tapadar,
S/O- Late Nisar Ali Tapadar
R/O- Village- Bakarshal (Manikpur) P.O.
Jabainpur P.S. and District Karimganj Assam.

.....Petitioner

-Versus-

1. Fakrul Islam,
S/O- Late Muhibur Rahman,
R/O- Village-Bakarshal P.O. Jabainpur P.S. and District
Karimganj Assam, Pin- 788713.
2. Matab Uddin,
S/O- Late Muhibur Rahman,
R/O- Village-Bakarshal P.O. Jabainpur P.S. and District
Karimganj Assam, Pin- 788713.
3. Nazrul Islam
S/O- Late Muhibur Rahman
R/O- Village-Medal (Chandpur) P.O. Kanishail P.S. and
District Karimganj Assam, Pin- 788713.

.....Respondents

For Petitioner : Mr. N. Haque, Advocate
For Respondent(s) : Mr. F. U. Barbhuiya, Advocate

Date of Judgment : 04.11.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

- 1)** Heard Mr. N. Haque, learned counsel for the petitioner. Also heard Mr. F. U. Barbhuiya, learned counsel for the respondent no.1.
- 2)** This application under Article 227 of the Constitution of India has been filed by the petitioners impugning the order dated 20.05.2024 passed by the Court of the learned Civil Judge (Junior Division) No. 3, Karimganj in Misc. Case No. 366/2024 arising out of Title Suit No. 376/2023, whereby the present petitioner was directed not to make any construction over the extended area (on the Western side of the land of the present petitioner) until further orders.
- 3)** The facts relevant for consideration of the instant revision petition are that the respondent No.1 herein had filed a Title Suit as plaintiff which has been registered as Title Suit No. 376/2023 in the Court of learned Civil Judge (Junior Division) No. 3, Karimganj.
- 4)** In the said suit, the respondent No.1, as plaintiff has prayed for a declaration of right of way to the house of the respondent No.1 and pro-forma respondents (who are arrayed as defendant Nos. 2 and 3 in Title Suit) over the second Schedule suit path which is the part of First Schedule suit path. The respondent No.1 has also prayed for demolition of RCC structure made over the second Schedule Path by the present petitioner.

- 5)** The respondent No. 1 has also prayed for a permanent injunction restraining the present petitioner from further construction over the second Schedule suit land and/or any other relief to which the respondent No.1 has found to be entitled to.
- 6)** The respondent No.1 and the pro-forma respondents had purchased a plot of land within Dag No. 280 of Khatian No. 814 of Mouza – Bakarshal Part-II of Porgona – Egarasati.
- 7)** It is contended by the respondent No. 1 in his plaint that the land purchased by him is a residential plot of land it has no path for egress and ingress to the national highway (PWD Road situated towards Southern side of land).
- 8)** The respondent No.1 and pro-forma respondents approached the present petitioner for allowing them to use first Schedule land as path for egress and ingress for national highway to their residential houses and accordingly, an agreement was executed between the present petitioner and the respondent No. 1 and pro-forma respondents for use of road of way over land of the present petitioner by the respondent No.1 and pro-forma respondents (1st Schedule land).
- 9)** It was also agreed that if the petitioner intends to sell the said Schedule path, he would do so in favour the respondent No. 1 and pro-forma respondents as per market price. As per the terms and conditions of the said agreement dated 12.05.2005, the respondent No. 1 and pro-forma respondents have been using the Schedule path for the egress and ingress.

- 10)** It is also contended in the plaint of the respondent No. 1 that during the first part of April 2023 when the respondent No.1 and his family members went out of station for some days, after returning back he found that the petitioner has constructed a CI sheet pakka house on the southern side of the Schedule -2 suit path.
- 11)** It is also contended in the plaint of the respondent No. 1 that while the RCC construction was going on, the petitioner allowed the respondent No. 1 and pro-forma respondent to use his vacant land situated on the Western and Northern side of the construction for temporary house as path during the period of the said construction.
- 12)** During the pendency of the aforesaid Title Suit the respondent No. 1 had also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, praying for grant of temporary injunction restraining the present petitioner from any further construction over the second Schedule suit path to change its nature and feature till disposal of the suit. The said case was registered as Misc Case No. 591/2023.
- 13)** The present petitioner filed a written objection objecting to grant of any such temporary injunction against the present petitioner.
- 14)** During the pendency of the said Misc Case on an application filed by the present petitioner under Order 39 Rule 7 read with Section 151 of the Code of Civil Procedure, 1908 the Trial Court appointed an advocate Commissioner for conducting of local inspection of the suit land. Accordingly, the Advocate Commissioner conducted the

inspection on 10.03.2024 and submitted his report to the Trial Court on 16.03.2024.

- 15)** After hearing both the sides and after considering the report of the advocate Commissioner the Trial Court by order dated 04.04.2024 passed in Misc Case No. 591/2023 directed both the parties to maintain *status quo* over Schedule till the disposal of the name suit.
- 16)** Against the said order dated 04.04.2024, the present petitioner preferred an appeal under Order 43 Rules 1(r) of the Code of Civil Procedure, 1908 before the Court of learned Civil Judge (Senior Division), Karimganj and the said appeal is registered as Misc Appeal No. 08/2024 and is presently pending before the said Court for consideration.
- 17)** It is contended by the petitioner that during the pendency of the Misc. Appeal No. 08/2024, the respondent No. 1/plaintiff had filed an application under Section 151 of the Code of Civil Procedure, 1908, before the Court of learned Civil Judge (Junior Division) No. 3, Karimganj, praying for issuance of a direction to the petitioner/respondent No.1 for not making any further construction over the extended area till disposal of the suit. The said application was registered as Misc Case No. 366/2024. In the said application, the respondent No. 1 had contended that due to the obstruction over the Suit path (Second Schedule land), the respondent No.1 along with his family members and the *proforma* defendants have been using the land of the petitioner, which is situated on the west and north side of the under construction RCC Building as a temporary

path. The said Misc Case was disposed of by the order dated 20.05.2024, which has been impugned in this Revision Petition, whereby the Trial Court directed the present petitioner not to make any further construction over the extended area until further order.

- 18)** Learned counsel for the petitioner has submitted that the impugned order has been passed in respect of the extended area of land which was not subject matter of the suit, therefore, it was passed beyond the scope of the subject matter of the suit and accordingly, illegal.
- 19)** Learned counsel for the petitioner has also submitted that as a *status quo* order is operative in respect of suit land, which is under challenge in Misc Appeal No. 08/2024, the Trial Court has no jurisdiction to issue further injunctive order, under Section 151 of the Code of Civil Procedure, 1908 during the subsistence of the said *status quo* order.
- 20)** Learned counsel for the petitioner has also submitted that as the extended area of land over which injunction has been granted under Section 151 of the Code of Civil Procedure, 1908 has not been described properly either in the petition under Section 151 of the Code of Civil Procedure, 1908 or in the plaint, hence, such an order or injunction is vague and is liable to be set aside.
- 21)** Learned counsel for the petitioner has also submitted that the Trial Court had erred in passing the impugned order without there being any prima facie case, in favour of the respondent No. 1, in respect of the extended area.

- 22)** Learned counsel for the petitioner has also submitted that the respondent No.1 did not file a separate application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 after getting the *status quo* order in Misc Case No. 591/2023. As there are specific provisions in the Code of Criminal Procedure, 1908 for grant of temporary injunction hence, it is submitted that in view of facts and circumstances of this case an application under Section 151 of the Code of Criminal Procedure, 1908 is barred.
- 23)** In support of his submissions, learned counsel for the petitioner has cited the following rulings:
- a. ***Ram Prakash Agarwal and Another Vs. Gopi Krishan and Others*** reported in ***(2013) 11 SCC 296***
 - b. ***Sri Jain Shwetambar Terapanthi Vid Vs. Phundan Singh and Others*** reported in ***(1999) 2 SCC 377***.
- 24)** On the other hand, learned counsel for the respondent No.1 has submitted that under the provisions of Section 151 of the Code of Civil Procedure, 1908, the inherent power of the Court may be invoked by the Civil Courts to meet the ends of justice and to prevent abuse of the process of Court. He has submitted that in paragraph 12 of the plaint filed by the respondent No. 1, he has categorically averred that the respondent No. 1 and other defendants were allowed to use the vacant land of the petitioner situated on the west and north side of the under construction building temporarily during the period of construction, hence, the extended portion of the land where the injunction has been granted under Section 151 of the

Code of Civil Procedure, 1908 is not outside the purview of the subject matter of this suit.

- 25)** Learned counsel for the respondent No. 1 has also submitted that though an order to maintain *status quo* has been passed by the Trial Court in Misc Case No. 591/2023, however, during the operation of the *status quo* order, the petitioner has started extending the construction of RCC Building towards the Western side of his land which was used by the respondent No. 1 and the pro-forma respondents temporarily for egress and ingress from their residences, leaving the respondent No. 1 with no other alternative but to file an application under Section 151 of the Code of Civil Procedure, 1908.
- 26)** Learned counsel for the respondent No. 1 has also submitted that the report of the Advocate Commissioner also shows that the path for egress and ingress from the residence of respondent No. 1 has been blocked by the construction of RCC pillars made by the petitioner, hence, the Trial Court was right in passing the impugned order under Section 151 of the Code of Civil Procedure, 1908.
- 27)** Learned counsel for the petitioner has also submitted that the scope and ambit of exercise of power and jurisdiction by High Court under Article 227 of the Constitution of India is limited and same may be exercised only in case of serious dereliction of duty by the subordinate Courts or where there is flagrant violation of fundamental principles of law and justice and the error is apparent on the face of the record.

28) To support his submissions, learned counsel for the respondent No. 1 has cited following rulings:

- a. ***My Palace Mutually Aided Cooperative Society Vs. B. Mahesh and Others*** reported in ***(2022) 12 Scale 230***
- b. ***Ram Prakash Agarwal and Another Vs. Gopi Krishan and Others*** reported in ***(2013) 11 SCC 296***
- c. ***Padam Sen and Another Vs. State of Uttar Pradesh*** reported in ***(1961) 1 SCR 884***
- d. ***Estralla Rubber Vs. Dass Estate Private Limited*** reported in ***(2001) 8 SCC 97***
- e. ***Ibrat Faijan Vs. Omaxe Build Home Private Limited*** reported in ***(2022) 0 Supreme (SC) 453***

29) I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record carefully.

30) On perusal of the records, it appears that the Trial Court by order dated 04.04.2024 passed in Misc Case No. 591/2023 in Title Suit No. 376/2023 directed the parties to maintain *status quo* over suit land till disposal of the main suit. The suit land as described in the Schedule-1 and Schedule-2 of the plaint is a 7 foot wide "L" shaped path like strip of land in respect of which an agreement was executed between the parties on 12.05.2005 in the sub-registrar Office, Karimganj. It was purportedly agreed between the parties that the said strip of land would be used by the respondent No. 1 and pro-forma respondents for the purpose of ingress and egress from

their residence to the National Highway. It also appears that in the main suit no relief has been claimed in respect of the extended portion of the land on the western side of the suit land over which injunction has been granted by the impugned order. It also appears that in Misc. Case No. 591/2023 also no temporary relief was sought for in respect of western side land of the petitioner over which temporary injunction was granted by the impugned order.

- 31)** Though, there is no dispute over the settled position that injunction may also be granted, in an appropriate case, under Section 151 of the Code of Civil Procedure, 1908, however, before grant of such an injunction, the well settled principles for grant of temporary injunction, namely, (i) a prima facie case, (ii) balance of convenience in favor of the applicant and (iii) the applicant suffering and irreparable injury must exists. However, if we peruse the impugned order dated 20.05.2024 passed in the Misc Case No. 366/2024, it would appear that the Trial Court has not discussed these three essential principles while granting injunction in respect of construction over an area which was not the subject matter of the Title Suit. It is also pertinent to take note of the fact that the petitioner is the owner of the land over which he has been restrained by the impugned order to make further constructions. It is also pertinent to note that no relief has been sought for in the suit in respect of that portion of land over which the temporary injunction has been granted by virtue of the impugned order.

- 32)** There has to be a very strong prima facie case in favour of an applicant for restraining the owner of a property from using his own property, on the basis of an application filed by such an applicant under Section 151 of the Code of Civil Procedure, 1908. More so, when no such relief has been sought for in the suit filed by such an applicant. When specific provisions are there in the Code of Civil Procedure, 1908 for grant of temporary injunction, in a suit, recourse to invoking the inherent power of Court under Section 151 of the Code of Civil Procedure, 1908 can only be taken for the ends of justice and for preventing the abuse of the process of the Court. A party, in a suit, opting to seek no relief of temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, when the fact and situation of the case so demands and when there is no bar in doing so, may not be granted relief of the temporary injunction under Section 151 of the Code of Civil Procedure, 1908 on mere asking for the same.
- 33)** Regarding the scope and ambit of the powers of High Court under Article 227 of the Constitution of India, the Supreme Court of India has observed in the case of ***Estralla Rubber Vs. Dass Estate Private Limited (Supra)*** as follows:

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority

and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

- 34)** In the instant case, the Trial Court, by the impugned order, has granted interim injunction on an application filed by the respondent No. 1, under Section 151 of the Code of Civil Procedure, 1908, during the pendency of the suit filed by him, without discussing the three golden principles required to be discussed before granting the temporary injunction. The owner of a property cannot be restrained to use his own property without there being a strong prima facie case against him for restraining such a use. No such discussion regarding prima facie case and other two essential principles for grant of

temporary injunction was made in the impugned order. The Trial Court has, thus, exercised its inherent jurisdiction without considering the fundamental principles of law which are required to be considered while granting a relief of temporary injunction in a suit.

- 35)** For the reasons discussed in the foregoing paragraphs, this Court is of the considered opinion that the Trial Court has passed the impugned order in out-and-out violation of the fundamental principles of law and justice, hence, same is liable to be set aside, in exercise of the powers of this Court under Article 227 of the Constitution of India. Accordingly, the impugned order is set aside.
- 36)** This Revision Petition is, accordingly, allowed.

JUDGE

Comparing Assistant