

GAHC010148882022



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

Case No. : CRP(IO)/168/2022

SHYAMAL PAUL
SON OF LT. BIJOY KRISHNA PAUL, RESIDENT OF CHANDICHARAN ROAD,
RANGIRKHARI, SILCHAR, P.O. AND P.S. SILCHAR IN THE DISTRICT OF
CACHAR, ASSAM.

VERSUS

MD. ASHIK UDDIN MAZUMDAR AND 4 ORS.
SON OF LT. ISRAKALI MAZUMDAR, RESIDENT OF VILLAGE - UTTAR
KRISHNAPUR PT- I, P.O. UTTAR KRISHNAPUR, P.S. SILCHAR IN THE
DISTRICT OF CACHAR, ASSAM AND PRESENTLY RESIDING AT
PANCHAYAT ROAD, TIKARBASTI, SILCHAR, P.O. AND P.S. SILCHAR IN THE
DISTRICT OF CACHAR, ASSAM

2:MD. HAZI MOZIR UDDIN MAZUMDER
SON OF LATE MOJAID ALI MAZUMDER
RESIDENT OF PANCHAYAT ROAD
TIKARBASTI
SILCHAR P.O. AND P.S. - SILCHAR
DIST- CACHAR
ASSAM.

3:MUSSTT. MONOWARA BEGUM MAZUMDER
WIFE OF MD. HAZIMOZIR UDDIN MAZUMDER
RESIDENT OF PANCHAYAT ROAD
TIKARBASTI
SILCHAR P.O. AND P.S. - SILCHAR
DIST- CACHAR
ASSAM.

5:SRI PUSHPENDRA CHAKRABORTY
S/O PROMODH RANJAN CHAKRABORTY

RESIDENT OF LINK ROAD
LANE NO. 10
SILCHAR
P.O- LINK ROAD
P.S. - SILCHAR
DIST- CACHAR
ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : MS. R CHOUDHURY (r-1)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

26.06.2024

Heard Shri G.N. Sahewalla, learned Senior Counsel assisted by Ms. K. Bhattacharya, learned counsel for the petitioner. Also heard Ms. R. Choudhury, learned counsel for the contesting respondent no.1. The other respondents though served have chosen not to contest this case.

The instant petition has been preferred under Article 227 of the Constitution of India challenging an order dated 10.01.2022 passed by the Addl. District and Sessions Judge, FTC, Cachar in Misc. Appeal No. 7/2018 whereby the appeal of the petitioner has been dismissed.

The appeal was preferred against an order dated 27.06.2018 of the learned Civil Judge No. 2, Cachar in Misc. (J.) Case No. 113/2015 arising out of Title Suit No. 67/2015 whereby temporary injunction under Order 39 Rule 1 and 2 of the CPC was granted.

It is the projected case of the petitioner that initially the petitioner had instituted a suit for specific performance which was decreed and was also

affirmed by the Appellate Court. However, in the year 2015, the present respondent no.1 had instituted the present suit challenging the decree. It is submitted that the suit has proceeded *ex-parte* initially and only in terms of an order passed by this Court, the written statement was filed. However, an *ex-parte* injunction was granted on 27.06.2018 against which the appeal was filed which has been dismissed vide the order dated 10.01.2022.

Shri Sahewalla, the learned Senior Counsel has submitted that under Order XXI Rule 101 r/w Rule 97, the suit itself would be barred and without taking into consideration the aforesaid provision of law, the suit has been allowed to proceed. It is submitted that when the maintainability of the suit is itself a subject matter of dispute raised, without deciding the said aspect, injunction could not have been granted.

Per contra, Ms. R. Choudhury, the learned counsel for the respondent no.1 has submitted that the bar of Order XXI Rule 101 CPC would not operate inasmuch as there are other parties in the suit and in any case, the issue is a contentious issue which her client is contesting. The learned counsel has further disputed that the injunction dated 27.06.2018 is an *ex-parte* one and it is only a fact that the present petitioner had failed to file any objection. It is submitted that the order of injunction was passed by following the due process of law which has also been upheld by the Appellate Court vide order dated 10.01.2022.

It is submitted that the grant of injunction and affirmation of the same by the first Appellate Court are matters of discretion which has been exercised in accordance with law and therefore there is limited scope of this Court to exercise supervisory jurisdiction to interfere with the same.

The rival submissions have been duly considered.

While the subject matter of this revision is the grant of injunction on 27.06.2018 which has been affirmed on 10.01.2022 by the first Appellate Court, this Court has noted that the suit is of the year 2015 and the injunction order in the form of *status quo* is continuing for the last about 6 (six) years.

This Court has also been reminded of the fact that the powers under Article 227 of the Constitution of India being a supervisory power only to oversee whether any orders passed by the Subordinate Courts is in excess of jurisdiction, an order of injunction unless *prima facie* appears to be perverse should not be interfered with in a routine manner. In any case, the order of injunction is of a *status quo* which has protected the interest of both the parties to the *lis*.

In view of the aforesaid facts and circumstances, this Court is of the opinion that instead of deciding the present petition on merits, the suit may be directed to be finalised expeditiously and preferably within a further period of 6 (six) months from today, which is accordingly done.

Parties are accordingly directed to render full cooperation to the Court in the manner of adducing evidence timely and not taking any unnecessary adjournments.

At this stage, Shri Sahewalla, the learned counsel submits that he may be given liberty to file a petition raising the issue of maintainability of the suit and also prays for framing a preliminary issue.

Ms. R. Choudhury, the learned counsel has however submitted that the aforesaid point has not been taken in the written statement and for the first time has been raised before this Court.

In view of the above, in the event any application is filed for framing a

preliminary issue on the ground of maintainability, the same would be decided by the learned Court strictly in accordance with law by giving a proper opportunity and hearing to the respondent – plaintiff.

The order of *status quo* would however be maintained till the disposal of the suit.

JUDGE

Comparing Assistant