

GAHC010163612023



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

Case No. : FAO/43/2023

DILBAR MOLLAH AND ANR
S/O LATE KAMAL UDDIN MOLLAH,
RESIDENT OF VILLAGE JHAGRA PART III, PO JHAGRAPAR PS AND DIST
DHUBRI, ASSAM
PRESENTLY RESIDING AT GTB ROAD(OPP. SIDE OF D.T.O DHUBRI) WARD
NO. 9, DHUBRI, PO , PS AND DIST DHUBRI, ASSAM 783301

2: AZIAL HOQUE
S/O HURMUJ ALI
RESIDENT OF VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI. ASSAM 78332

VERSUS

BHARATI PAUL AND 11 ORS.
D/O BHIM BALLABH PAUL,
RESIDENT OF WARD NO. 15, DHUBRI, ASSAM

2:SNIGDHA HARLALKA
D/O BIMAL KR. HARLALKA

RESIDENT OF H.N ROAD
WARD NO. 7
DHUBRI TOWN
PO
PS AND DIST DHUBRI ASSAM 783301

3:SRADHA HARLALKA
D/O BIMAL KR. HARLALKA

RESIDENT OF H.N ROAD
WARD NO. 7
DHUBRI TOWN

PO
PS AND DIST DHUBRI ASSAM 783301

4:BIMAL KR. HARLALKA
S/O LATE CHANDANMAL HARLALKA

RESIDENT OF H.N ROAD
WARD NO. 7
DHUBRI TOWN
PO
PS AND DIST DHUBRI ASSAM 783301

5:CHAN MIAH
S/O LATE MOHAMMAD ALI

RESIDENT OF VILLAGE JHAGRA PART IV
PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM 783325

6:NOWSHAD ALI
S/O LATE ABUL KASHEM BEPARI
RESIDENT OF B.N COLLEGE ROAD
NAYA MASJID
DHUBRI
PO BIDYAPARA
PS AND DIST DHUBRI
ASSAM 783324

7:HOSSEN ALI SK.
S/O LATE ABDUL KADER DEWANI
VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM 783325

8:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR/DEPUTY COMMISSIONER
DHUBRI
ASASM 783301

9:THE SR. SUB REGISTRAR
DHUBRI
ASSAM 783301

10:MUSSTT. MEHERUN NESSA
W/O LATE AJIT ULLAH
RESIDENT OF VILLAGE JHAGRA PART III

PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM 783325

11:MD. AMZAD HUSSAIN
S/O LATE ASHULLA

RESIDENT OF NEW MARKET
PS AND DIST DHUBRI
ASSAM 783301

12:KAPIL UDDIN
S/O NABI UDDIN

RESIDENT OF NEW MARKET PS AND DIST DHUBRI
ASSAM 78330

Advocate for the Petitioner : MR J MOLLAH

Advocate for the Respondent : GA, ASSAM

Linked Case : I.A.(Civil)/2166/2023

DILBAR MOLLAH AND ANR
S/O LATE KAMAL UDDIN MOLLAH
RESIDENT OF VILLAGE JHAGRA PART III
PO JHAGRAPAR PS AND DIST DHUBRI
ASSAM PRESENTLY RESIDING AT GTB ROAD(OPP. SIDE OF D.T.O DHUBRI)
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RESIDENT OF NEW MARKET PS AND DIST DHUBRI
ASSAM 783301

Advocate for : MR J MOLLAH

Advocate for : GA

ASSAM appearing for BHARATI PAUL AND 11 ORS.

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants	:	Mr. S. Nath, Advocate.
For the Respondents	:	Mr. S. Chauhan. Advocate.
Date of Hearing	:	25.07.2024.
Date of Judgment	:	29.07.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Nath, learned counsel representing the appellants as well as Mr. S. Chauhan, learned counsel appearing for the respondents.

2. This is an appeal under Order 43 Rule 1(r) of the Code of Civil Procedure challenging the order dated 15.07.2023 passed by the learned Civil Judge (Sr. Div.), Dhubri in Misc.(J) Case No.06/2023 arising out of Title Suit No.32/2018.

3. The dispute between the parties revolves around two plots of lands, one measuring 3 Bigha 0 Katha 5 Lechas covered by Dag No. 904(Old), 1055 (New) and the other measuring 4 Bighas 0 Katha and 10 Lechas covered by Dag No.904/1124 (Old), 1075 (New). Both the plots of lands are divided by the Civil Hospital Link Road, Dhubri. These two plots of land are recorded in the name of the District Sports Association, Dhubri. The present appellant is a co-pattadar of both the plots of lands.

4. The Respondent Nos.1, 2, and 3 have their lands by the side of those plots of lands. The Government of Assam ought to have acquired the lands for construction of the Sports Complex.

5. In case of acquisition of the land by the Government and in order to have a smooth determination as well as payment of compensation process, the appellant and the Respondent Nos.1, 2, 3 and 4 had a deed of exchange. According to Government valuation, the price of the land stood at ₹3,60,000/-. The appellant even paid the said sum to the Respondent Nos.1, 2, 3 and 4.

6. The Respondent No.1, on the other hand, gave Power of Attorney to the Respondent No.4 for selling 2 Bighas of land. The appellant agreed to buy the land. There was an oral agreement on 23.09.2011 for a price of ₹55,000,00/-. Twenty lakhs was paid in advance and the remaining ₹35,000,00/- was agreed to be paid at the time of registration of sale deed.

7. On 22.12.2011, the appellant took over possession of the said land and constructed boundary walls.

8. The sale deed was not executed. The appellant came to know that the

respondents sold the land to somebody else.

9. Therefore, the appellant filed the suit praying for confirmation of possession in respect of the suit land and for cancellation of the aforesaid deeds.

10. The appellant filed an application under Order 39 Rule 1 and 2 praying for grant of temporary injunction restraining the respondents not to interfere and disturb the possession of the appellant in respect of the suit land.

11. The respondents denied all the pleadings of the appellant in their written statement. The Respondent Nos.1, 2, and 3 had claimed that they are the lawful owners of the suit land. They came to own and possess the said land through a registered exchange deed. Their names are also mutated in respect of the suit land.

12. The learned trial court has held that there was a *prima facie* case in favour of the appellant. Regarding balance of convenience, the trial court held that the balance of convenience for grant of injunction lies in favour of the appellant.

13. According to the trial court, the suit land is in possession of the appellant and if they are dispossessed from the suit land, they will suffer irreparable loss.

14. Finally, the trial court has held that under the given factual circumstances, the prayer for temporary injunction is maintainable. Even then, the trial court held that according to law, such a prayer is not maintainable.

15. I have considered the submissions made by the learned counsel of both sides.

16. This Court is of the opinion that there are several important facts to be proved and disproved by either of the parties in the suit. Therefore, without expressing any opinion on merit of the appeal, this Court hereby directs both sides to maintain *status quo* in respect of the suit land till disposal of suit. It is clarified that the possession of the appellant in respect of the suit land shall not be disturbed till disposal of the suit.

17. Accordingly, the appeal is allowed. The impugned order dated 15.07.2023 passed by the learned Civil Judge (Sr. Div.), Dhubri in Misc.(J) Case No.06/2023 arising out of Title Suit No.32/2018, is set aside.

With the aforesaid direction, the appeal stands disposed of.

JUDGE

Comparing Assistant