

GAHC010167272024



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

Case No. : CRP(IO)/306/2024

BHARAT CHOUBEY @ BHARAT CHANDRA CHOUBEY
S/O- LATE SUKHDEV CHOUBEY,
R/O- WARD NO-13, SIVASAGAR TOWN,
P.O AND DIST- SIVASAGAR, ASSAM, PIN-785640

VERSUS

MOJIBUR RAHMAN AND 3 ORS
S/O- LATE ABDUL RAHMAN

2:MD. MOHIBUR RAHMAN
S/O- LATE ABDUL RAHMAN

3:MD. SAFIULLAH RAHMAN
S/O- LATE ABDUL RAHMAN

4:MD. MOHIDUL RAHMAN
S/O- LATE ABDUL RAHMAN

SL. NO. 1 TO SL. NO. 4
ALL ARE
R/O- NAHARKATIA TOWN
WARD NO-3
P.O- NAHARKATIA
DIST- DIBRUGARH
ASSAM
PIN-786610

5:THE CIRCLE OFFICER
NAHARKATIA REVENUE CIRCLE
P.O- NAHARKATIA
DIST- DIBRUGARH
ASSAM
PIN-78661

Advocate for the Petitioner : MR. B K DAS, MR H P GUWALA,H P NEOG

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 19.08.2024

Heard Mr. B.K. Das, learned counsel for the petitioner.

2. This petition, under Article 227 of the Constitution of India is directed against the order dated 05.08.2024, passed by the learned Civil Judge (Senior Division), Dibrugarh, in Petition No. 5331/2024, filed in Misc.(J) Case No. 184/2024, in Title Suit No. 91/2024.

3. Mr. Das, learned counsel for the petitioner submits that the respondent Nos. 1 to 4 as plaintiff have instituted a suit, being Title Suit No. 91/2024, against the petitioner and respondent No. 5, for declaration of right, title and confirmation possession of permanent injunction over the suit land and also filed separate Misc.(J) Case No. 184/2024, praying for granting interim injunction restraining the petitioner and his agents from entering into the suit land. Thereafter, the learned Civil Judge (Senior Division), Dibrugarh has fixed the Misc.(J) Case No. 184/2024 for hearing on the point of injunction on 22.08.2024 and for filing written objection. Thereafter, the respondent Nos. 1 to 4 have filed another petition, being Petition No. 5331/2024, under Section 151 of the Code of Civil Procedure ('CPC', for short) in Misc.(J) Case No. 184/2024, on a non-schedule day before the learned Civil Judge (Senior Division), Dibrugarh, for granting temporary injunction, which was taken up by the learned Civil Judge (Senior Division), Dibrugarh on 05.08.2024, without serving

a copy to the petitioner and intimating that the petition will be taken up for hearing on 05.08.2024, and thereafter, vide order dated 05.08.2024, the learned Civil Judge (Senior Division), Dibrugarh has granted injunction illegally and arbitrarily on a non-schedule day behind the back of the petitioner. Mr. Das also referring to a decision of Hon'ble Supreme Court in **My Palace Mutually Aided Co-operative Society vs. B. Mahesh and Ors.**, reported in **2022 LiveLaw (SC) 698**, submits that Section 151 of CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law, and since alternate remedy Order 39 Rule 1 of CPC is available and without resorting to the same, the opposite parties cannot take recourse to Section 151 of the CPC, and the same according to Mr. Das is not at all permissible. Therefore, Mr. Das submits that the impugned order dated 05.08.2024 may be set aside and the matter may be remanded back to the learned trial Court, as the matter has already been fixed on 22.08.2024, for filing objection of opposite parties and hearing on the petition for granting injunction.

4. Having heard the submission of Mr. Das, learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 05.08.2024 and also the order dated 25.07.2024, and the petition filed under Section 151 of the CPC, and the decision of Hon'ble Supreme Court referred by Mr. Das.

5. It appears that learned Civil Judge (Senior Division), Dibrugarh, vide order dated 25.07.2024, has fixed the matter for injunction on 22.08.2024, but, before that day, on the Petition No. 5331/2024, being filed by the respondent Nos. 1 to 4, without serving a copy to the present petitioner and intimating him, has passed the impugned order dated 05.08.2024, behind the back of the petitioner

by invoking the jurisdiction under Section 151 of the CPC, which is not at all permissible, in view of availability of alternate remedy under Order 39 Rule 1 of CPC.

6. It well settled in the decision of Hon'ble Supreme Court in **My Palace Mutually Aided Co-operative Society (supra)**, especially in paragraph No. 28, that Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the CPC. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews and that a party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguard inbuilt in the CPC.

7. Having examined the impugned order, dated 05.08.2024, in the light of the aforesaid decision and also in the light of the submission so advanced by Mr. Das, learned counsel for the petitioner, this Court is of the view that the impugned order dated, 05.08.2024, has failed to withstand the legal scrutiny and accordingly, the same stands set aside and quashed. Consequently, the matter is remanded back to the learned trial Court to consider the same in accordance with law on the date fixed i.e. 22.08.2024.

8. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant