

GAHC010180872024



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

Case No. : I.A.(Civil)/2765/2024

M/S M B I BRICKS
A PROPRIETORSHIP CONCERN
REPRESENTED BY ITS PROPRIETOR SRI RAMANANDA MANDAL
AGED ABOUT 59 YEARS
SON OF LATE NITYA NANDA MANDAL
RESIDENT OF DAKHIN BHELOGURI
MOUZA LAWKHOWA
PS RUPOHIHAT
DIST NAGAON
ASSAM 782120

VERSUS

SURANJAN MANDAL AND 5 ORS
S/O LATE MINNATH MANDAL
RESIDENT OF VILLAGE HARIBHANGA
MOUZA LAWKHOWA
PS RUPOHIHAT
PO HATLAOKHOWA
DIST NAGAON
ASSAM 782120

2:SRI BAPAN MANDAL
S/O SRI SURANJAN MANDAL

RESIDENT OF VILLAGE HARIBHANGA
MOUZA LAWKHOWA
PS RUPOHIHAT
PO HATLAOKHOWA
DIST NAGAON
ASSAM 782120

3:SRI ARPAN MANDAL

S/O SRI SURANJAN MANDAL

RESIDENT OF VILLAGE HARIBHANGA
MOUZA LAWKHOWA
PS RUPOHIHAT
PO HATLAOKHOWA
DIST NAGAON
ASSAM 782120

4:SMTI BASANA MANDAL

W/O SRI SURANJAN MANDAL

RESIDENT OF VILLAGE HARIBHANGA
MOUZA LAWKHOWA
PS RUPOHIHAT
PO HATLAOKHOWA
DIST NAGAON
ASSAM 782120

5:SRI SANJIB MANDAL

S/O THAKUR DAS MANDAL

RESIDENT OF VILLAGE HARIBHANGA
MOUZA LAWKHOWA
PS RUPOHIHAT
PO HATLAOKHOWA
DIST NAGAON
ASSAM 782120

6:SRI NITAI MANDAL

S/O HALADHAR MANDAL

RESIDENT OF VILLAGE HARIBHANGA
MOUZA LAWKHOWA
PS RUPOHIHAT
PO HATLAOKHOWA
DIST NAGAON
ASSAM 782120

Advocate for : MR B S DEKA

Advocate for : appearing for SURANJAN MANDAL AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 11.09.2024

Heard Mr. P.S. Deka, learned Senior counsel, assisted by Mr. B.K. Bhagawati, learned counsel for the applicant.

2. This application, under Order 39 Rule 1 and 2, read with Section 151 of the CPC, is preferred by the applicant/appellant for grant of ad-interim/temporary injunction against the respondents/opposite parties during the pendency of the instant appeal.

3. Mr. Deka, learned Senior counsel for the applicant submits that the applicant as plaintiff, has instituted Title Suit No. 103/2024, before the learned trial Court for restoration of possession of the Schedule 'A' land and to grant status quo as on 18.07.2024, and to restrain the opposite parties/respondents, their men, agents, labourers etc. from disturbing/obstructing the applicant, his men, labourers etc. from running the brick kiln factory in any manner over the Schedule 'A' land. Mr. Deka also submits that the suit land was leased to the plaintiff/applicant and the same was extended from time to time, vide agreement annexed at page No. 34 of the connected appeal. Thereafter, on 19.07.2024, the opposites parties/respondents being armed with deadly weapons entered into the suit land and thereby, caused damages to his property and restrained the plaintiff from entering into the suit premises, wherein a huge stock of finished bricks of worth Rs. 60,00,000/- is lying and in the event the same being damaged it will cause irreparable loss to him.

4. Mr. Deka, further submits that there is prima facie case in favour of the

plaintiff/applicant and that the balance of convenience is also in his favour and unless interim relief is granted, the applicant will suffer irreparable loss. Mr. Dekka also submits that though expressly the learned trial Court had not rejected the petition preferred by the plaintiff/applicant, yet it has denied the relief which amounts to rejection of the petition in view of the decision in the case of **Sajjan Kumar Tharad vs. Smti Deoris Marbaniang**, reported in **2010 2 GauLT 773**.

5. Under the abovementioned facts and circumstances, Mr. Dekka has contended to grant interim injunction restraining the opposite parties/respondents, their men and agents etc. from entering into the suit property. Alternatively, Mr. Dekka suggests that the parties may be directed to maintain status quo as on 18.07.2024. Mr. Dekka has referred following decisions in support of his submission:-

(i) Dorab Cawasji Warden vs. Coomi Sorab Warden and Ors., reported in (1990) 2 SCC 117.

(ii) A. Venkatasubbiah Naidu vs. S. Chellappan and Ors., reported in 2000 (7) SCC 695.

6. Having heard the submissions of learned counsel for the applicant/appellant, I have carefully gone through the application and the documents placed on record and also perused the impugned order dated 08.08.2024, passed by the learned trial Court in Misc. (J) Case No. 213/2024, arising out of Title Suit No. 103/2024, wherein the learned trial Court has not granted any relief in Petition No. 1524/2024, filed by the applicant under Order 39 Rule 1 and 2, read with Section 151 of the CPC and directed to issue notice to the opposite parties.

7. It also appears that the learned trial Court has not in expressed words rejected the prayer of the applicant. But, it has issued notice to the opposite parties/respondents and fixed the matter on 06.09.2024 for S.R./objection. However, in view of the decision in the case of **Sajjan Kumar Tharad** (supra), this amounts to denial to the prayer of the applicant for interim injunction.

8. It also appears from the record that the applicant was a tenant of the principal defendants/opposites parties as per lease agreement dated 01.08.2012. It was for a period of 10 years from 01.08.2012 till 31.07.2022, for the purpose of setting up a brick industry and the consideration was fixed at Rs.50,000/ per annum. It also appears that while the said lease agreement was in force till 31.07.2022, the same was extended for another five years, vide agreement dated 31.07.2021, with effect from March, 2023 till February, 2028 and on the relevant date, the lease agreement was in force.

9. Further, it appears that on 19.07.2024, the opposites parties/respondents armed with deadly weapons entered into the suit land causing damages to the applicant's property and restrained the applicant from entering into the suit premises. It is being claimed that a huge stock of finished bricks of worth Rs. 60,00,000/- is lying in the suit premises and that if the same is damaged, the applicant will suffer irreparable loss.

10. It also appears from the impugned order that the learned trial Court has declined to grant any relief on the ground that a notice was served upon the applicant by the opposites parties/respondents, which indicates that the suit land admittedly was taken over by the opposite parties/respondents on the ground that the applicant has over stayed without renewal of lease after expiry of tenancy and also for non-payment of the rent for the extended period of stay. But, Mr. Deka, learned Senior counsel for the applicant referring to the lease

agreement, submits that on the relevant date, the lease agreement was in force, which was extended till February, 2028.

11. Perusal of the lease agreement, which is annexed with the connected appeal, indicates that on the relevant date, the lease agreement dated 31st March, 2021 was in force. But, a careful perusal of the of the lease agreement dated 31st March, 2021 reveals that the agreement shall come into force with effect from March, 2013 till February, 2028. While the earlier agreement dated 01.08.2012 was in force till 31.07.2022, there is no explanation as to why the agreement was executed on 31st of March, 2021. Besides the same came into force with effect from March, 2023 till February, 2028. This raised a serious doubt about the genuineness of the same and the observation made by the learned trial court that execution of such agreement is denied by the respondent and Advocate Notice was issued for vacating the suit land and payment of arrear rent, further fortified the same.

12. That being so, it cannot be said that a prima facie case is made out here in this case and that the balance of convenience is in favour of the applicant. Now, the applicant is not in possession of the suit land. Though it is stated that a huge stock of finished bricks of worth Rs. 60,00,000/- is lying there and in the event of causing any damage, he will suffer irreparable loss, in view of absence of prima-facie case and absence of balance of convenience and on such count having been failed to satisfy the triple test for granting injunction, this court is unable to favourably consider the prayer being made in the present application.

I have also gone through the case laws referred by Mr. Deka, learned Senior counsel for the applicant and I find that the ratio laid down in the said cases would not advance his argument.

13. In the result, this application stands dismissed.

JUDGE

Comparing Assistant