

GAHC010185682023



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

Case No. : FAO/50/2023

SURENDRA KUMAR MITTAL
S/ LATE MADAN LAL MITTAL
RESIDENT OF NARAYAN NAGAR, KUMARPARA, PO AND PS
BHARALUMUKH, DIST KAMRUP M ASSAM 781009

VERSUS

SAYED KAMALUDDIN AHMED AND 7 ORS
S/O KHASNUR ALI,
RESIDENT OF VILLAGE AZARA, PO SONESWAR, PS KAMALPUR, DIST
KAMRUP ASSAM 781382

2:SAYED FAKARUDDIN AHMED
S/O KHASNUR ALI

RESIDENT OF VILLAGE AZARA
PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 781382

3:JILFIKAR ALI
S/O KHASNUR ALI

RESIDENT OF VILLAGE AZARA
PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 781382

4:SAYED HABIBUR RAHMAN
S/O KHASNUR ALI

RESIDENT OF VILLAGE AZARA

PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 781382

5:ROUCHAN ARA BEGUM
(MENTALLY SICK)
W/O LATE TALMIJAR RAHMAN
REPRESENTED BY HER SON SAYED HABIBUR RAHMAN

RESIDENT OF VILLAGE AZARA
PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 78138

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : MR. P CHOUDHURY

Linked Case : I.A.(Civil)/2462/2023

SURENDRA KUMAR MITTAL
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RESIDENT OF VILLAGE AZARA
PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 781382
6:SRI KAMLESH KAKATI
S/O LATE ANICHARAN KAKATI

RESIDENT OF VILLAGE SENDURISAL
PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 781382
7:SRI AMARESH KAKATI
S/O LATE ANICHARAN KAKATI

RESIDENT OF VILLAGE SENDURISAL
PO SONESWAR
PS KAMALPUR
DIST KAMRUP ASSAM 781382
8:MAINUL ALI
S/O LATE MAKBUL ALI

RESIDENT OF VILLAGE AND PS KAMALPUR
PO BAIHATA
DIST KAMRUP
ASSAM 781380

Advocate for : MR. S SARMA
Advocate for : MR. P CHOUDHURY appearing for SAYED KAMALUDDIN
AHMED AND 7 ORS.

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant	:	Mr. G.N. Sahewalla, Senior Advocate.
For the Respondents	:	Mr. S. Ali, Advocate.
Date of Hearing	:	18.07.2024.
Date of Judgment	:	22.07.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. G.N. Sahewalla, learned senior counsel representing the appellant as well as Mr. S. Ali, learned counsel appearing for the respondents.

2. This is an appeal under Section 104, Order 43 Rule 1(r) and Rule 2 read with Section 151 of the Code of Civil Procedure challenging the order dated 11.08.2023 passed by the learned Civil Judge, Kamrup, Amingaon in Misc.(J) Case No.80/2021 arising out of Title Suit No.58/2021.

3. By the side of the road at Kamalpur, the respondents have a plot of land covered by Dag No.438. Behind this land, the appellant has lands covered by Dag No.439.

4. The respondents claimed that in the year 1977, their predecessors had purchased the land covered by Dag No.438 on execution of registered sale deed.

5. The said land is an agricultural land. The respondents have alleged that the present appellant had constructed a road connecting the main road and their land at Dag No.439 through the land covered by Dag No.438.

6. The appellant on the other hand, claimed that in the year 2021, he had purchased the land covered by Dag No.439 and also along with land covered by Dag No.438 and some other lands from Kamalesh Kakati and Amaresh Kakati on

execution of a registered sale deed.

7. Upon the aforesaid facts, the respondents filed a suit praying for cancellation of the sale deed of the appellant on certain grounds.
8. Along with the suit, the respondents also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for grant of interim injunction.
9. The learned trial court directed both sides to maintain *status quo* in respect of the said road in Dag No.438.
10. The respondents filed a revision petition being CRP (IO) No.87/2021 before this Court. This Court directed the trial court to dispose of the injunction petition and the present appellant was allowed to use the aforesaid passage through Dag No.438.
11. Thereafter, the learned trial court disposed of the injunction petition restraining the appellant and his workers etc. from entering the land covered by Dag No.438.
12. Mr. Sahewalla has submitted that in the land of the appellant they have a mega industrial complex and the impugned injunction order restraining him from using the road situated in Dag No.438 has been causing irreparable loss. According to Mr. Sahewalla, the appellant has been implementing the objects of the Government of Assam by establishing big industrial complex.
13. *Per contra*, Mr. Ali has submitted that the learned trial court has elaborately discussed all relevant aspects before granting the order of injunction.
14. Mr. Ali has relied upon a decision of the Hon'ble Supreme Court that was delivered in *Wander Ltd. and Anr. vs. Antox India P. Ltd.*, reported in (1990) Supp. SCC 727. Paragraph 14 of the said judgment is quoted as under:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it

would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

15. I have considered the submissions made by the learned counsel of both sides.
16. I have found that the learned trial court has considered all the materials as well as legal aspects before granting the order of injunction. It is a beautifully written judicial order.
17. There are several important aspects to be proved and disproved by either of the parties in the suit. The land covered by Dag No.438 is an agricultural land and allowing commercial vehicles to travel over the land, might cause irreparable damage to the land.
18. This Court is of the opinion that the impugned order passed by the trial court does not require interference of this Court. Therefore, this Court refuses to interfere with the impugned order.
19. However, it is directed that the trial court shall make an endeavour to dispose of the suit expeditiously within 6(six) months from the date of receiving this order.

With the aforesaid directions, the appeal and the I.A. stand closed and disposed of accordingly.

JUDGE

Comparing Assistant