

GAHC010193092023



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

Case No. : CRP(IO)/277/2023

PUNYA DEO MISHRA
S/O LT. RAM NARESH MISHRA R/O KOKRAJHAR TOWN DEPOT ROAD
WARD NO. 4 P.O. AND P.S. KOKRAJHAR DIST KOKRAJHAR BTAD ASSAM
PIN 783370

VERSUS

VIVEK SHARMA AND 2 ORS
S/O LT. DWARIKA PRASAD BRAHMIN @ SHARMA R/O KOKRAJHAR DEPOT
ROAD WARD NO. 4 P.O. AND P.S. KOKRAJHAR DIST KOKRAJHAR BTAD
ASSAM PIN 783370

2:AJAY KUMAR SHARMA
S/O LT. DWARIKA PRASAD BRAHMIN @ SHARMA R/O KOKRAJHAR
DEPOT ROAD WARD NO. 4 P.O. AND P.S. KOKRAJHAR DIST KOKRAJHAR
BTAD ASSAM

3:PUROSHOTTAM KUMAR SHARMA
S/O LT. POKARMAL BRAHMIN R/O KOKRAJHAR DEPOT ROAD WARD NO.
4 P.O. AND P.S. KOKRAJHAR DIST KOKRAJHAR BTAD ASSA

For the Petitioner(s) : Mr. G. Baishya, Advocate

For the Respondent(s) : Mr. A. Ikbai, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 03.04.2024

1. This is an application filed under Article 227 of the Constitution challenging the order dated 08.05.2023 in Misc. Appeal No.01/2019 whereby the Court of the learned Civil Judge, Kokrajhar dismissed the appeal.
2. Mr. G. Baishya, the learned counsel appearing on behalf of the Petitioner submitted that in the suit being Title Suit No.01/2017 filed before the Court of the learned Munsiff, Kokrajhar, the Petitioner herein filed an application being Misc. (J) Case No.01/2017 seeking injunction. In the said injunction application i.e. Misc. (J) case No.01/2017, the learned Trial Court had granted a temporary injunction restraining the defendants/respondents from entering into the suit land described in Schedule-D to the plaint. However, the defendants violated the said injunction order for which the Petitioner filed an application which was registered and numbered as Misc. (J) Case No.02/2017. The said application was not only rejected on the ground that the Petitioner did not adduce evidence but also there were various observations made which would affect the petitioner/plaintiff in the trial of the suit.
3. The learned counsel further submitted that the learned Appellate Court vide the impugned judgment dated 08.05.2023 had also made certain remarks which would affect the suit. The learned counsel for the Petitioner further submitted that if these observations are not taken into account at the time of the trial of the suit, then the petitioner would not like to press the instant proceedings. He further submitted that there is a requirement for the inspection of the suit property and as such, certain directions is required to be made by this Court to

that effect. In view of the said submissions, this Court is not interfering with the impugned order dated 08.05.2023 passed in Misc. Appeal No.01/2023.

4. This Court having taken into account that the order dated 10.12.2018 in Misc. (J) Case No.2/2017 as well as the order dated 08.05.2023 in Misc. Appeal No.01/2019 are orders passed in connection with the proceedings under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (for short "the Code"), the said observations has to be restricted to an adjudication of the said proceedings and should not influence the learned Trial Court in deciding the suit.

5. As regards the inspection to status of the suit property, this Court is not inclined to pass any directions in the present proceedings. However, it shall be open to the Petitioner to file an appropriate application under Order XXXIX Rule 7 of the Code before the learned Trial Court for the purpose of inspection etc. of the suit property. It is observed that if such application is filed, the learned Trial Court shall duly consider on merits without being influenced by the observations made hereinabove.

6. With above observations and directions, the instant petition therefore stands disposed of.

JUDGE

Comparing Assistant