

GAHC010195632023



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

Case No. : Crl.Pet./935/2023

ISMAIL ALI
S/O LATE JOHIR ALI
R/O VILL- PASCHIM SAMARALI
P.O. CHOUDHURY BAZAR
P.S. MURAJHAR
DIST. HOJAI, ASSAM
PIN CODE- 782439

VERSUS

FAKHRUL ISLAM AND 2 ORS
S/O LT. ABDUL RASHID
R/O PACHIM SAMARALI,
P.S. MURAJHAR,
DIST. HOJAI, ASSAM,
PIN-782439

2:IBRAHIM ALI
S/O ISHAD ALI
R/O VILL- MADHYA SAMARALI
P.O. CHOUDHURY BAZAR
P.S. MURAJHAR
DIST. HOJAI
ASSAM

PIN-782439

3:THE STATE OF ASSAM

REP. BY THE PP
ASSA

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

01.05.2024

1. Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Mr. S. Hussain, learned counsel for the respondent Nos. 1 and 2.
2. The present criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the MR Case No. 66/2023 under Section 107/145/146(1) of Cr.P.C. and all the consequential orders passed by the learned Additional District Magistrate, Hojai, Sankardev Nagar and also the notice dated 10.06.2023.
3. The respondent No. 1 instituted a proceeding under Section 145 of Cr.P.C. before the learned Additional District Magistrate, Hojai, Sankardev Nagar, in MR Case No. 66/2023 in respect of a plot of land measuring 8 Bighas 1 Katha 9 Lechas and also apprehended breach of peace and tranquility arising out of the dispute relating to the aforesaid plot of land.
4. The aforesaid proceeding is challenged in the present criminal petition filed under Section 482 of the Code of Criminal Proceeding inasmuch as the subsequent order dated 10.06.2023 passed by the learned Magistrate allowing attachment of the plot of land.
5. Mr. Mahmud, learned counsel for the petitioner submits that the petitioner had purchased the disputed land by different registered sale deeds in the year 1973 and they are in possession of the disputed land since then.

6. On the other hand, the learned counsel for the respondent Nos. 1 and 2 submits that they are in possession of the land and the present petitioner is disturbing their possession.
7. However, Mr. Mahmud, learned counsel for the petitioner further submits that in the meantime, the petitioner has preferred a Title Suit being TS No. 52/2023 for declaration of right, title and interest and for permanent injunction in respect of the disputed land. It is further submitted by Mr. Mahmud, learned counsel for the petitioner that an injunction petition is also pending for consideration therein.
8. Such position has not been disputed by the learned counsel for the respondent Nos. 1 and 2.
9. In view of the aforesaid, the learned Magistrate shall have no jurisdiction at this stage to continue with the further proceeding under Section 145 of Cr.P.C., inasmuch as essentially the dispute relates to claim of ownership and possession over the disputed land and the petitioner has already opted to file a suit.
10. In view of the aforesaid, the present criminal petition stands allowed by setting aside and quashing the MR Case No. 66/2023 under Section 107/145/146(1) of Cr.P.C. and all the consequential orders passed by the learned Additional District Magistrate, Hojai, Sankardev Nagar and also the notice dated 10.06.2023.
11. While parting with the record, it is made clear that the observation made in this criminal petition shall not treated as any comment on merit on the claim either of the parties over the disputed land.
12. This criminal petition stands disposed of.

JUDGE

Comparing Assistant