

GAHC010198202024



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

Case No. : FAO/70/2024

INDUMATI TERON
W/O SRI RABINDRA TERON,
RESIDENT OF HOUSE NO. 8, KAHILIPARA, KAYLANI SAGAR PATH,
GUWAHATI 781019, PS DISPUR, DIST KAMRUP M ASSAM

VERSUS

UPEN BASUMATARY AND 2 ORS
S/O BHADO RAM BASUMATARY,
RESIDENT OF SENIRAM KASARI PATH, FATASIL, DATALPARA,
DHIRENPARA, GUWAHATI 781025, DIST KAMRUP M ASSAM

2:SRI HIRALAL BASUMATARY
S/O BHADO RAM BASUMATARY
RESIDENT OF SENIRAM KASARI PATH
FATASIL
DATALPARA
DHIRENPARA
GUWAHATI 781025
DIST KAMRUP M ASSAM

3:SMTI BHARATI BASUMATARY
W/O BHADO RAM BASUMATARY
RESIDENT OF SENIRAM KASARI PATH
FATASIL
DATALPARA, DHIRENPARA
GUWAHATI 781025
DIST KAMRUP M ASSA

Advocate for the Petitioner : MR. A IKBAL, MS. J SARMA,MS S SIDDIQUA,MR. R BARUAH

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

27.09.2024

Heard Mr. A. Ikbal, learned counsel for the petitioner.

2. This appeal, under Order 43 Rule 1(r), read with Section 151 of the Code of Civil Procedure, 1908, is directed against the order dated 31.08.2024 passed by the learned Civil Judge (Senior Division) No.2, Kamrup(M), Guwahati, in Misc.(J) Case No.798/2024, arising out of Title Suit No.450/2024.

3. It is to be noted here that vide impugned order dated 31.08.2024, the learned Trial Court has directed the parties to maintain status quo over the suit land as on that day i.e. 31.08.2024.

4. Mr. Ikbal, learned counsel for the petitioner submits that the respondents herein had instituted one Title Suit, being Title Suit No.450/2024, before the learned Trial Court for declaration of right, title, interest and possession of the respondents/plaintiffs in respect of the suit land described in the schedule and for permanent injunction restraining the appellant/defendant, her men and agents and in the said Title Suit, the respondents have also filed a petition under Order 39 Rule 1 and 2 of the CPC for granting ad-interim injunction and in the said petition, the learned Trial Court, vide impugned order dated 31.08.2024, has directed the parties to maintain status quo by waiving the notice under Order 39 Rule 3 of the CPC considering the urgent nature of the case and thereafter, fixed the case on 24.10.2024, after almost 60 days of passing the impugned order, whereas there is specific provision that the injunction application has to be disposed of within a period of 30 days.

5. Mr. Ikbal further submits that while directing the parties to maintain status quo over the suit land, the learned Trial Court has not discussed the three golden principles of granting ad-interim injunction and the prayer for injunction made in the plaint is vague

and without a prayer for permanent injunction, the learned Trial Court had granted the ad-interim injunction and on these counts, the impugned order passed by the learned Trial Court is arbitrary and illegal and therefore, it is contended to set it aside and remand the matter to the learned Trial Court, wherein the appellant will enter appearance and file her objection to the petition for injunction.

6. Having heard the submission of Mr. Ikbal, learned counsel for the appellant, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the impugned order dated 31.08.2024, passed by the learned Trial Court.

7. It appears that while the ad-interim injunction was granted on 31.08.2024, the learned Trial Court has fixed the matter on 24.10.2024 after more than 60 days, which is in contravention to the provision of Order 39 Rule 3A of the CPC. Further, it appears that the prayer of permanent injunction as made in the plaint, which is enclosed with this appeal at page-20, appears to be vague and on such count also, the impugned order appears to be arbitrary and illegal. Further, it appears that in the impugned order dated 31.08.2024, the learned Trial Court had not discussed the prima facie case, the balance of convenience and the issue of irreparable loss and on such count also, the impugned order fails to withstand the legal scrutiny.

8. Therefore, this Court is inclined to allow the appeal at this motion stage itself by setting aside the impugned order dated 31.08.2024 and the matter is remanded back to the learned Trial Court to hear the appellant and to disposed of the injunction petition within a period of 15(fifteen) days from 24.10.2024.

9. In terms of above, this appeal stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant