

GAHC010218292023



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

Case No. : CRP/154/2023

MAHAMMAD ALI AND ANR
S/O LATE EMAN ALI, R/O VILL- MOIRABARI, P.O. AND P.S.-MOIRABARI,
DIST- MORIGAON, ASSAM, PIN-782126

2: INNAS ALI
S/O EMAN ALI
R/O VILL- MOIRABARI
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM
PIN-78212

VERSUS

MOJIBAR RAHMAN AND 9 ORS.
S/O LT. EMAN ALI, R/O VILL- MOIRABARI, WARD NO. 5, P.O. AND P.S.-
MOIRABARI, DIST- MORIGAON, ASSAM, PIN-782126

2:SAIDUR RAHMAN
S/O MOJIBUR RAHMAN
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM PIN-782126

3:FAKAR UDDIN
S/O MOJIBUR RAHMAN
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM PIN-782126

4:SIRAJUL ISLAM
S/O NURUL ISLAM
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM PIN-782126

5:HARUN-UL-RASHID
S/O NURUL ISLAM
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM PIN-782126

6:THE CIRCLE OFFICER
LAHARIGHAT REVENUE CIRCLE
P.O. AND P.S.-LAHARIGHAT
DIST- MORIGAON
ASSAM PIN NO-782127

7:THE STATE OF ASSAM
REPRESENTED BY THE GOVT. ADVOCATE
ASSAM

8:HAJIBUR RAHMAN
S/O LT. KASHEM ALI
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM PIN-782126

9:ATABAJAN
W/O LT. KASHEM ALI
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON
ASSAM PIN-782126

10:SAIDUR RAHMAN
S/O LT. KASHEM ALI
R/O VILL- MOIRABARI
WARD NO. 5
P.O. AND P.S.-MOIRABARI
DIST- MORIGAON ASSAM
PIN-78212

Advocate for the Petitioners : Mrs. R. Choudhury, Advocate

Advocate for the Respondents : Mr. A. Alam, Advocate
Mr. T. R. Gogoi, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing :10.05.2024

Date of Judgment : 10.05.2024

JUDGMENT AND ORDER (ORAL)

This is an application filed under Section 227 of the Constitution challenging the order dated 19.09.2023 passed in Misc. Appeal No.09/2022 whereby the learned First Appellate Court set aside the injunction so granted by the learned Trial Court in its order dated 23.08.2022 passed in Misc.(J) Case No.73/2022 arising out of Title Suit No.64/2022.

2. I have heard Mrs. R. Choudhury, the learned counsel appearing on behalf of the petitioners and Mr. A. Alam, the learned counsel appearing on behalf of the private respondents as well as Mr. T. R. Gogoi, the learned counsel appearing on behalf of the State respondents.

3. The question which arises is that whether the learned First Appellate Court had exercised the jurisdiction not conferred upon it by law or had exercise its jurisdiction illegally and with material irregularity. For deciding the said aspect of the matter this Court briefly would like to take note of the facts leading to the filing of the instant proceedings.

4. The petitioners herein as plaintiffs had instituted a suit against the private respondents herein as well as the State respondents seeking a decree for confirmation of possession and for permanent injunction. A perusal of the

plaint of the said suit which has been registered and numbered as Title Suit No.64/2022 reveals that the plaintiffs claimed their rights upon the suit land on the basis of an Annual Patta.

5. It is the specific case of the plaintiffs that the defendants who have no right over the suit land are trying to dispossess the plaintiffs from the suit land and in that process has taken help of the Circle Officer, Laharighat Revenue Circle and the said Circle Officer was threatening the plaintiffs of dire consequences and it is on the basis thereof, the suit was filed seeking the reliefs as aforestated. Along with the said suit, an injunction application was filed which was registered and numbered as Misc.(J) Case No.73/2022 seeking ad-interim temporary injunction restraining the opposite party No.6 to evict the plaintiffs from the suit land as well as also other opposite parties from entering into the suit land till the disposal of the suit. The learned Trial Court vide an order dated 23.05.2022 had passed an ex-parte injunction restraining the defendant No.6 in the suit from evicting the plaintiffs from the suit land and also restraining the opposite parties from entering into the suit land. Thereupon, written objections were filed by the opposite parties/defendants stating inter-alia that they were in possession of the suit land and therefore the question did not arise of the opposite parties dispossessing the plaintiffs, and resultantly, the question of granting an injunction not to dispossess the plaintiffs from the suit land did not arise.

6. Be that as it may, the learned Trial Court by the detailed order dated 23.08.2022 considering the well settled principle of law for grant of an injunction restrained the opposite parties from entering into the suit land and also restrained the opposite party No.6 from dispossessing the plaintiffs from the suit land till the disposal of the suit. Being aggrieved, an Appeal was preferred by the private respondents herein challenging the order dated

23.08.2022 passed in Misc.(J) Case No.73/2022. The said Appeal was allowed vide the order dated 19.9.2023 and it is under such circumstances, the instant proceedings has been filed.

7. This Court has heard the learned counsels for the parties and also given due consideration to their respective submissions. This Court has also perused the impugned order dated 19.09.2023. A perusal of the impugned order dated 19.09.2023 reveals that the learned First Appellate Court was in conformity with the order passed by the learned Trial Court in respect to the plaintiffs having a prima-facie case and also the balance of convenience is in favour of the plaintiffs. However, on the question of irreparable loss, harm and injury the learned First Appellate Court decided against the plaintiffs holding inter-alia that if during the pendency of the suit, the plaintiffs are dispossessed, they can very well file an amended plaint. In the opinion of this Court, the said observation made by the learned First Appellate Court, on the face of it, is contrary to the well settled principles of law.

8. This Court finds it very pertinent at this stage to observe that the power conferred upon the Appellate Court in an injunction proceedings is circumscribed and limited power and the same can be only interfered with if the order on the face of it was irrational, illegal, unreasonable, arbitrary and was in violation to the well settled principles for the grant of injunction.

9. In the instant case, the learned First Appellate Court taking into account the respective contentions ought to have been passed an order of status quo as regards the possession in view of the fact that the plaintiffs as well as the opposite parties duly claimed that they were in possession of the suit land. However, on the aspect of irreparable loss, harm and injury, the learned First Appellate Court has held that the plaintiffs did not make out a

case for grant of an injunction for the reasons aforestated which in the opinion of this Court suffers from jurisdictional error as well as the jurisdiction illegally as well as with material irregularities.

10. Consequently, the impugned order dated 19.09.2023 passed in Misc. Appeal No.09/2022 stands set aside and quashed.

11. This Court however finds it very pertinent to take note of that both the parties having claimed that they are in possession and the learned Trial Court is yet to adjudicate as to who is actually in possession of the suit land. The learned Trial Court ought to have exercised the powers under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 and thereupon to pass appropriate order or ought to have directed the parties to maintain status quo as regards the possession. However, the learned Trial Court did not do so and thereby debarred the opposite parties from entering into the suit land without coming to a final decision as to who were in actual possession of the suit land.

12. Taking into account the above, this Court directs the parties in Title Suit No.64/2022 to maintain status quo as regards the possession till the disposal of the suit.

13. It may however be open to the parties to approach the learned Trial Court by filing an application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 for the purpose of inspection, if so advised.

JUDGE

Comparing Assistant