

GAHC010229152023



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

Case No. : I.A.(Civil)/3084/2023

SATIN KALITA
S/O LATE GOPI RAM KALITA, R/O VILL. BALAGAON, MOUZA-PANDURI,
P.S. RANGIA, P.O. TARANI VIA RANGIA, DIST.KAMRUP R, ASSAM, PIN
781354

VERSUS

UPEN DAS
S/O LATE BUTA RAM DAS, R/O VILL. BALAGAON, MOUZA PANDURI, P.S.
RANGIA, P.O. TARANI VIA RANGIA, PIN 781354, DIST. KAMRUP R, ASSAM.

For the Applicant(s) : Mr. Sheeladitya, Advocate

For the Respondent(s) : Ms. F. Intaz, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 29.04.2024

1. This is an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for granting an injunction restraining the appellants/defendants from construction/changing the character of the suit property or altering/transferring the suit land in any manner.

2. This Court duly takes note of that the instant suit was filed by the Respondent as Plaintiff in the year 2003 seeking declaration and for recovery of possession as well as permanent injunction. The suit was decreed in favour of the Plaintiff. An appeal thereagainst was filed which was registered and numbered as Title Appeal No.96/09 before the Court of the Civil Judge No.1, Kamrup at Guwahati. The said appeal was also dismissed vide a judgment and order dated 08.04.2010. Against that, the accompanying second appeal was preferred before this Court which was admitted vide an order dated 29.10.2014 by formulating a substantial question of law.

3. In the accompanying appeal, an Interlocutory Application was filed by the Respondent being I.A.(Civil) No.1323/2016 seeking injunction that the Appellant should not raise any construction over the suit land and this Court vide an order dated 22.02.2017 restrained the opposite party i.e the Appellant from carrying out any construction over the suit land till the disposal of the connected second appeal.

4. During the pendency of the appeal, the instant application was filed alleging that in spite of the order passed by this Court on 22.02.2017, the Appellant has again raised construction over the suit land and in that regard has enclosed various photographs which have been marked as Annexure-Y (series). The relief which have been sought for by way of the instant application is that the Appellant should be restrained from alienating or changing the nature and character of the suit land and raising any construction over the suit land and also for a direction upon the police to take appropriate steps to stop construction (if any).

5. This Court having issued a notice, the Appellant has filed an affidavit-in-opposition stating inter alia that the order dated 22.02.2017 was modified by

this Court vide an order dated 16.03.2018 whereby the Appellant was allowed to make necessary repairs in the existing house as described in the schedule to the plaint.

6. This Court has also taken note of the affidavit-in-opposition wherein it is the specific stand taken by the Appellant that only repairs have been carried out and there has been no fresh constructions being carried out pursuant to the order dated 22.02.2017.

7. This Court upon hearing the learned counsels appearing on behalf of the parties, put a specific query upon the learned counsel appearing on behalf of the Appellant as to whether the construction which have shown to have been carried out on the suit land i.e. Annexure-Y (series) in respect to the suit land taking into account that there is no denial in the affidavit-in-opposition as regards Annexure-Y (series). The learned counsel appearing on behalf of the Appellant submitted that the construction so carried out as mentioned in Annexure-Y (series) was done prior to the injunction order dated 22.02.2017 and the Appellant has only carried repairs and nothing more.

8. This Court having perused the Annexure-Y (series), finds it relevant to observe that the said construction appears to be a recent construction. Under such circumstances, this Court observes that the construction so carried out in the suit land (if any) by the Appellant during the pendency of the suit shall be subject to the outcome of the suit and the Respondent who is the plaintiff would not require any further application at the time of execution of the decree in the circumstance the instant appeal is dismissed inasmuch as both the Courts below have decreed the suit in favour of the plaintiff.

9. This Court further directs that the Appellant in the accompanying appeal

shall not carry out any further constructions taking into account that an order to that effect was passed on 22.02.2017. Only repairs may be permitted and nothing more than that. The Officer-in-Charge, Rangia Police Station is further directed to take effective steps if it is noticed that any new constructions is being made over the suit land.

10. With above observations and directions, the instant Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant