

GAHC010234712023



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

Case No. : CRP(IO)/334/2023

THE SONAPUR TEA CO PVT LTD AND ANR
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE INDIAN
COMPANIES ACT, 1913 HAVING ITS REGISTERED OFFICE AT 61-B, PARK
STREET 2-B NEELAM, KOLKATA-700016 AND ONE OF ITS PLACES OF
BUSINESS AT SONAPUR TEA ESTATE, P.O.-SONAPUR, KAMRUP (M),
ASSAM, PIN-782402 AND REPRESENTED BY ITS ONE OF THE PRINCIPAL
OFFICERS AND POWER OF ATTORNEY HOLDER, SRI SOURABH SARKAR

2: SOURABH SARKAR
S/O LATE KALIPADA SARKAR
THE PRINCIPAL OFFICER AND POWER OF ATTORNEY HOLDER OF THE
SONAPUR TEA ESTATE
P.O.-SONAPUR
KAMRUP (M)
ASSAM
PIN-78240

VERSUS

PRATAP DEY AND 2 ORS
S/O LATE PRABHAT CHANDRA DEY, R/O VILL-BARUAHBARI
SIYALEKHAITI ROAD, P.O.-SONPAUR, KAMRUP (M), ASSAM, PIN-782402

2:PRAKASH DEY
S/O LATE PRABHAT CHANDRA DEY
R/O VILL-BARUAHBARI SIYALEKHAITI ROAD
P.O.-SONPAUR
KAMRUP (M)
ASSAM
PIN-782402

3:ALAK DEY
S/O LATE PRABHAT CHANDRA DEY
R/O VILL-BARUAHBARI SIYALEKHAITI ROAD

P.O.-SONPAUR
KAMRUP (M)
ASSAM
PIN-78240

Advocate for the Petitioner : MR. J. DEKA

Advocate for the Respondent : MR. N HAQUE

Date of Hearing : 13.03.2024

Date of Judgment : 13.03.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. The instant application has been filed challenging the orders dated 07.09.2023 and 29.09.2023 passed by the Civil Judge (Junior Division) No.2, Kamrup (M) at Guwahati in Title Suit No.39/2022.
2. From a perusal of the materials on record, it reveals that the plaintiffs herein had filed a suit seeking ejectment of the defendants, recovery of arrear license fee, realization of pendente lite and future license fees as damages. Upon the said suit being filed, the Defendant Nos. 1 and 3 had filed a written statement. In the written statement more particularly at paragraph No.8 and 9, it has been the stand of the defendants amongst others that the defendants entered into a leave and license agreement with the Plaintiff No.1 on 01.01.2021 and thereupon, the defendants have been duly making the payment. Further to that, in paragraph No.25, it has also been mentioned that the Plaintiff No.2 did not receive the monthly fee for the month of November, 2021 for which the Defendant No.1 started depositing the rent in the Court in the form of N.J. cases in terms with Section 5(4) of the Assam Urban Areas Rent

Control Act, 1972.

3. In the above context, this Court finds it relevant to take note of that there were two applications filed by the defendants. One was the Petition No.368 calling for the records of 14 N.J. Cases and the other application was filed under Order XI Rule 14 read with Section 30 of the Code for production of the various documents. Against both the petitions, the plaintiffs filed objection on 25.05.2023. In the objections filed to the Petition No.368 by the plaintiffs, it was specifically stated that when the defendants claimed that they are licensee, the provisions of the Assam Urban Areas Rent Control Act, 1972 has no relevance. In the objection filed to the Petition No.369, the plaintiffs have also sought for rejection of the said application on the grounds stated therein.

4. Pursuant thereto, the impugned order was passed on 07.09.2023. While passing the said impugned order dated 07.09.2023, the learned Trial Court directed the Sheristadar to furnish those N.J. Case records on or before the next date and the defendants were directed to take steps. In respect to the petition No.369, the learned Trial Court held that the plaintiffs did not file any objection and accordingly allowed the said application directing the plaintiffs to produce the lease deed dated 01.12.1989, tenancy agreement dated 01.04.2012 & leave and license agreement dated 01.09.2017 on the next date. Thereupon, the plaintiffs applied for the certified copy of the objections so filed and when such application was filed, the learned Trial Court vide order dated 29.09.2023 duly acknowledged that the objections were received on 25.05.2023 for which the matter was fixed for submission of the parties on 04.11.2023. Thereupon, the Petitioner approached this Court by filing the instant proceedings and this Court vide an order dated 16.10.2023 stayed further proceedings of Title Suit No.39/2022 till the next date.

5. This Court has duly heard the learned counsels for the parties and given an anxious consideration to the matter. The order dated 07.09.2023 on the face of it appears to have been passed with complete non-application of mind inasmuch as the learned Trial Court did not take into consideration the written objections which were duly filed as well as its contents.

6. This Court also finds substance in the submission of Mr. J. Deka, the learned counsel appearing on behalf of the Petitioners who submitted that when it is the specific case in the written statement filed by the defendants that they are enjoying the premises on the basis of leave and license agreement, the calling for the records of N.J. cases pertains to proceedings under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 have no relevance.

7. This Court has also taken note of that this very aspect of the matter was not taken into consideration by the learned Trial Court while disposing of the application i.e. Petition No.368. The learned Trial Court mechanically directed the Sheristadar of the Court to produce the records of N.J. Cases. In addition to that, the learned Trial Court while deciding the Petition No.369 observed that the plaintiffs did not file objection which on the face of it was perverse. In the opinion of this Court, the learned Trial Court ought to have been more careful.

8. Be that as it may, this Court had put a pointed query upon Mr. J. Deka, the learned counsel appearing on behalf of the Petitioners as to whether the Petitioners who are the plaintiffs are in possession of the lease deed dated 01.12.1989, tenancy agreement dated 01.04.2012 and leave and licence agreement dated 01.09.2017. The learned counsel duly submitted that the Plaintiffs are in possession of those documents.

9. Taking into account that the said documents mentioned in the Petition

No.369 are in possession of the Petitioners/Plaintiffs and the same are mentioned in the written statement, this Court in exercise of the powers under Article 227 of the Constitution is not inclined to interfere with the order dated 07.09.2023 insofar as the direction passed for production of the lease deed dated 01.12.1989, tenancy agreement dated 01.04.2012 and leave and license agreement dated 01.09.2017. The Petitioners herein shall duly produce the same before the learned Trial Court on the next date.

10. Now, let this Court take into consideration the impugned order dated 07.09.2023 insofar as Petition No.368. The said order was passed without taking into consideration the vital aspect of the matter which is heart of the litigation i.e. whether the defendants are tenants or licensee and as such this Court sets aside the order dated 07.09.2023 insofar as Petition No.368 is concerned.

11. This Court had also taken note of that the learned Trial Court had fixed 04.11.2023 for submission on the petition No.368 and Petition No.369 vide its order dated 29.09.2023. This Court is of the opinion that the learned Trial Court is required to decide afresh the Petition No.368 by taking into account the objections filed by the plaintiffs.

12. This Court had vide order dated 16.10.2023 stayed the further proceedings of Title Suit No.39/2022. The said order of stay is vacated.

13. Taking into account that the parties are duly represented, this Court fixes the matter on 08.04.2024 before the learned Trial Court for further hearing on the Petition No.368.

14. The records which have been produced before this Court be forthwith returned by the Registry to the Court below, so that on the next date, the matter could be taken up by the learned Trial Court.

15. With above observations and directions, the instant revision petition stands disposed of.

JUDGE

Comparing Assistant