

GAHC010242202022



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

Case No. : CRP/133/2022

MD ALIM UDDIN LASKAR AND 3 ORS
S/O. LT. HILLAL UDDIN LASKAR,

2: ABDUS SALAM LASKAR

S/O. MD HILLAL UDDIN LASKAR

3: MD. KHAIRUL ISLAM LASKAR
S/O. MD HILLAL UDDIN LASKAR

4: MD. HAFIJUR RAHMAN LASKAR
S/O. MD HILLAL UDDIN LASKAR
ALL ARE VILL. NITAINAGAR PART III
P.O. NITIAINAGAR
P.S. AND DIST. HAILAKANDI
ASSAM

VERSUS

MAHMUD HUSSAIN LASKAR
S/O. LT. BADAR UDDIN LASKAR, VILL. NITAINAGAR PART III, P.O.
NITAINAGAR, P.S. AND DIST. HAILAKANDI, ASSAM.

For the petitioner (s) : Mr. T. U. Laskar, Advocate

For the respondent (s) : Mr. M. J. Quadir, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

06.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 05.08.2022 passed in Misc. Appeal No.1/2021 by the Court of the Civil Judge, Hailakandi whereby the learned First Appellate Court affirmed the order of granting injunction by the learned Trial Court in Misc.(J) Case No.85/2019.

2. From the materials on record, it reveals that the respondent herein as plaintiff had instituted a suit seeking declaration of his right, title and interest as well as for confirmation of possession. In the said suit which was registered and numbered as Title Suit No.41/2019, the plaintiff also filed an application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 seeking temporary injunction restraining the defendants from interfering with the peaceful possession of the suit land by the defendants and to protect the interest of the reliefs sought for by the plaintiff.

3. The learned Trial Court after taking into account the materials on record vide the order dated 25.02.2020 disposed of the Application which was registered and numbered as Misc. (J) Case No.85/2019 by restraining the opposite parties/defendants from dispossessing the plaintiff from the suit land and it will be in force till the disposal of the main suit.

4. An appeal thereagainst was filed by the petitioners herein challenging the said order dated 25.02.2020 passed by the learned Trial

Court which was registered and numbered as Misc. Appeal No.1/2021. The learned First Appellate Court after considering all the materials on record dismissed the Appeal by holding that the learned Trial Court was right in exercising the discretion in passing the injunction in favour of the plaintiff. Being aggrieved, the instant proceedings has been initiated.

5. This Court had duly heard the learned counsels for the petitioners as well as the respondent. The learned counsel for the petitioners submits that the petitioners are in possession of the suit land, and as such, any order of restraintment to dispossess does not arise. The learned counsel for the petitioners further submits that the injunction order so passed thereby restraining the defendants not to interfere with the peaceful possession of the plaintiffs only could have been passed had the plaintiff been in possession of the suit land.

6. On the other hand, Mr. M. J. Quadir, the learned counsel appearing on behalf of the respondent submits that the plaintiff is in possession of the suit land and as the defendants/petitioners herein were interfering with the peaceful possession of the plaintiff over the suit land, the suit was filed seeking declaration of right, title and interest as well as of confirmation of possession and in addition to that, the injunction application was filed.

7. This Court having taken note of the order passed by the learned Trial Court as well as the First Appellate Court finds no infirmity in the orders passed by the learned Courts below. This Court is further of the opinion that from the perusal of the impugned orders, it is seen that the learned Courts below had granted the injunction prima-facie being satisfied with the possession of the plaintiff over the suit land, therefore, whoever is in

possession of the suit land shall continue to remain in possession of the suit land till the disposal of the suit.

8. Accordingly, the instant proceedings stands disposed off thereby directing the parties herein to maintain status-quo in respect to the possession of the suit land till the disposal of the suit.

JUDGE

Comparing Assistant