2026:GAU-AS:16446

IN THE GAUHATI HIGH COURT

HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

FAO/49/2025

1. Khagen Saharia,
S/o-Late Sandhiram Saharia,
R/o-Mangaldai, Near Hotel Madhuban,
P.O. And P.S.-Mangaldai,
Dist. Darrang, Assam,
Pin-784125.

2. Mriganga Saharia,
S/o-Sri Khagen Saharia,
R/o-Mangaldai, Near Hotel Madhuban,
P.O. And P.S.-Mangaldai,
Dist. Darrang, Assam,
Pin-784125.

.....Appellants

-Versus-

Apurba C Saharia,
S/o Sri Khagen Saharia,
R/o-Mangaldai, Near Hotel Madhuban,
P.O. And P.S.-Mangaldai,
Dist. Darrang, Assam,
Pin-784125.

.....Respondent

For Appellants — Mr. B.D. Deka, Advocate.

For Respondent — Mr. S. Sarma, Advocate.

Date of Hearing : **19.08.2026.**
Date of Judgment : **10.11.2026**

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

[1] Heard Mr. B.D. Deka, the learned counsel for the appellants. Also heard Mr. S. Sarma, the learned counsel for the respondent.

[2] This appeal under Order 43, Rule 1(r) read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the appellants impugning the order dated 23.09.2024 passed by the Court of learned Civil Judge (Senior Division), Darrang, at Mangaldai in Misc. (J) Case No. 30/2023, arising out of Title Suit No. 36/2023, whereby the Trial Court granted temporary injunction against the present petitioner in favour of the respondent.

[3] The facts relevant for consideration of the instant appeal, in brief, are that the present respondent is the son of appellant No. 1 and brother of appellant No. 2, and he filed a title suit bearing T.S. No. 36/2023 before the Court of learned Civil Judge (Senior Division) Darrang, Mangaldai seeking a declaration that the Gift Deed No. 223, Sl. No. 257 dated 22.02.2023 executed by appellant No. 1 in favour of appellant No. 2, whereby the property mentioned in the schedule to the plaint was gifted to the present appellant No. 2, was a void

and inoperative deed, and also prayed for cancellation of the said deed. Apart from the above reliefs, the relief of restraining the present appellants (appellant No. 1) from alienating the land mentioned in the schedule to the plaint has also been prayed for.

[4] Admittedly, it is stated in the plaint that the present appellant No. 1 is the absolute owner of the scheduled land *(land measuring 2 Katha 10 Lecha covered by Dag No. 2232 of Patta No. 997 of Mangaldai Town, Sadar, Mouza Chapai under Mangaldai Revenue Circle).* The said land was inherited by the present appellant No. 1 from his father Sandhiram Saharia.

[5] Along with the aforesaid title suit, the present respondent also filed an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908, before the Trial Court, praying for temporary injunction against the present appellants from transferring the scheduled land to a third party and restraining them from causing any disturbance in respect of the suit land in any manner till the disposal of the suit. The said application was registered as Misc. (J) Case No. 30/2023.

[6] However, by order dated 23.09.2024 passed in Misc. (J) Case No. 30/2023, the Trial Court allowed the prayer of grant of temporary injunction by the present respondent and restrained the present appellants from selling or transferring the suit land to third parties and also restrained them from causing any disturbance on the peaceful enjoyment of the present respondent in respect of the dental clinic situated

upon the suit land during the pendency of Title Suit No. 36/2023.

[7] While granting the relief of temporary injunction, the Trial Court held that the present respondent has a strong *prima facie* case with regard to the issue raised by him, and that the balance of convenience in the event of granting of temporary injunction is also in his favour. The Trial Court also found that in the event of refusal to grant the temporary injunction during the pendency of the title suit, the present respondent would suffer irreparable loss, and as such the temporary injunction was granted by the Trial Court finding all the three basic ingredients for grant of temporary injunction, namely existence of a *prima facie* case, balance of convenience, and irreparable loss in favour of the present respondent. The said order of temporary injunction has been impugned in the instant appeal.

[8] Mr. B.D. Deka, the learned counsel for the appellants, has submitted that the Trial Court has erred in granting temporary injunction against the present appellant by wrongly coming to the finding regarding the existence of three golden principles required to be considered before grant of temporary injunction in this case. He submits that though the Trial Court has held that there is a strong *prima facie* case in favour of the present respondent in issuing the temporary injunction, however, in fact, the respondent, as petitioner in the aforesaid Misc. (J) Case, has miserably failed to make out any *prima*

facie case at all in his favour. He submits that, admittedly, the plaintiff as well as the defendants (the parties hereto) are Hindu by faith and governed by the *Dayabhaga* School of Law with regard to the law of succession, and it is also an admitted fact that the suit land is owned absolutely by the present appellant No. 1.

[9] He submits that the respondent, being the son of appellant No. 1, was only having a mere chance to succeed to the said land as per the law of succession in the event of the death of appellant No. 1. However, till appellant No. 1 is alive, the present respondent does not have any accrued right over the suit property. As such, being the absolute owner of the suit property, appellant No. 1 is well within his rights to dispose of the same in any manner in which he desires to do so within the ambit of law. He submits that since the present respondent is not the owner of the scheduled property, hence the question of obtaining any consent from him does not arise.

[10] The learned counsel for the appellants submits that since the present respondent, as plaintiff, has not been able to show anything from which his right over suit property is claimed, apart from the fact that he is the son of the appellant No. 1 and has a chance of succeeding the suit property in the event the appellant No. 1 dies without alienating the same.

[11] He submits that the portion of the suit land over which the respondent is running his dental clinic is also in his possession

only with the permission of the appellant No. 1, and as such the appellant No. 1 cannot be restrained from dealing with the property over which he has absolute right. He submits that there is a catena of decisions of the Apex Court wherein it has held that the courts are not justified in protecting the possession of a relative who was allowed to live in the premises for some time as a relative.

[12] He submits that the injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence cannot be protected by granting injunction.

[13] The learned counsel for the appellants submits that the suit property, of which the appellant No. 1 was the owner, has been gifted to the appellant No. 2 by him by executing a registered deed of gift No. 223 bearing Sl. No. 257 dated 22.02.2023, and same has also been accepted by the appellant No. 2. As such, the transfer of the property mentioned in the schedule to the plaint from appellant No. 1 to appellant No. 2 has been affected in terms of the provision contained in Section 123 of the Transfer of Property Act, 1882.

[14] He submits that the present respondent has assailed the said gift deed only on the ground that his consent was not obtained by the appellant No. 1 before executing the said gift deed. However, he submits that as the appellant No. 1 is the

absolute owner of the suit land, the necessity of obtaining consent does not arise.

[15] He further submits that since the gifted property is an immovable property, necessity of handing over possession is also not there under law, and what is required is only the acceptance on the part of the appellant No. 2, which has been done in this case. He, therefore, submits that the Trial Court has erred in holding that there is a strong *prima facie* case in favour of the present respondent for grant of temporary injunction.

[16] He also submits that since the appellant No. 1 was the absolute owner of the suit property, he cannot be injuncted from dealing with the said property as per his own wishes in accordance with law. And as such, the Trial Court was wrong in granting temporary injunction against the appellant No. 1, who was the erstwhile owner of the scheduled property, and the appellant No. 2, who is the present owner of the scheduled property after the gift deed was executed. He, therefore, prays for allowing this appeal and setting aside the impugned order of the Trial Court. In support of his submissions, the learned counsel for the appellants has cited following rulings:

a) *Maria Margarida Sequeira Fernandes and Others v. Erasmo Jack De Sequeira (Through LRs)*, reported in (2012) 5 SCC 370.

b) *Premji Ratansey Shah and Others v. Union of India and Others*, reported in (1994) 5 SCC 547.

c) *Prasanta Kumar Sahoo and Others v. Charulata Sahu and Others*, reported in (2023) 9 SCC 641.

d) *Prakash Chandra Roy and Others v. Prabhat Chandra Roy and Others*, reported in 1991 SCC OnLine Pat 55.

[17] On the other hand, Mr. S. Sarma, the learned counsel for the respondent, submits that there is no infirmity in the order of the Trial Court whereby temporary injunction has been granted during the pendency of Title Suit No. 36/2023, justifying any interference by this Court in this appeal with the impugned order.

[18] He submits that Trial Court correctly found existence of strong *prima facie* case in favour of the present respondent to grant temporary injunction, and other two essential ingredients for grant of temporary injunction, namely balance of convenience and irreparable loss, were also found in favour of the present respondent.

[19] The learned counsel for the respondent submits that there is no doubt that the parties to this litigation are governed by *Dayabhaga* School of Hindu Law, and as such the father of the present respondent is the absolute owner of the suit property. However, he submits that the suit property was orally gifted by appellant No. 1 to the present respondent, and, accordingly, he has established a dental clinic over the

same and is possessing the same since the year 2014. As such, he submits that the gift deed could not have been executed in respect of the said property without informing and without obtaining the consent of the respondent.

[20] He further submits that the property in question is the ancestral property of the appellant No. 1 and same is not the self-acquired property of the appellant No. 1. As such, without obtaining the consent of the respondent, who is possessing the dental clinic situated over the suit land since the year 2014, the gift deed could not have been executed.

[21] The learned counsel for the respondent further submits that the suit, namely, the Title Suit No. 36 of 2023,has been filed by the present respondent primarily challenging the validity of the gift deed, and as such, if before Trial Court deciding the validity of the gift deed, the suit property is alienated by the appellants, the Title Suit may itself become infructuous. As such, he submits that the Trial Court was right in granting temporary injunction against alienation of the suit property and against disturbance of the peaceful possession of the present respondent over the same during the pendency of the aforementioned Title Suit. As such, he submits that this appeal lacks merit and same is liable to be dismissed with costs.

[22] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited

by learned counsel for both sides in support of their respective submissions.

[23] On perusal of the materials available on record, it appears that the respondent, who is the son of the appellant No. 1, as well as appellants are Hindus and admittedly are governed by *Dayabhaga* School of Law with regard to the law of succession. It also appears that in the plaint filed by the present respondent in the Title Suit No. 36/2023 before the Trial Court, the present respondent has pleaded that the property mentioned in the schedule to the plaint has been inherited by appellant No. 1 from his father. As such, *prima facie*, it appears that appellant No. 1 is the absolute owner of the said property.

[24] Under the *Dayabhaga* School of the Hindu Law, property is transmitted by succession and not by survivorship, which is quite contrary to what is there in the *Mitakshara* School of Law, where son acquires at his birth an equal interest with his father in all ancestral properties. In *Dayabhaga* School, the sons do not acquire any interest in the ancestral property on their birth. Their right arises for the first time on the death of their father, and until then it is only a mere chance of succeeding the ancestral property.

[25] In the instant case, the father (appellant No. 1), who has inherited the property mentioned in the schedule to the plaint from his father, has the right over the suit property and he holds the suit property on his own right, which is not based on

any contingency, and he is entitled to dispose of the property in the manner he deems fit; the respondent does not have any say in the same. Had the appellant had died intestate without disposing of the scheduled property, only in that contingency the respondent would have accrued right in the suit property, and as such, during the lifetime of the appellant No. 1, the respondent does not have any right whatsoever over the suit property. It also appears that the property mentioned in the schedule to the plaint has been gifted by appellant No. 1 to the appellant No. 2 by executing a registered gift deed; as such, *prima facie*, there does not appear to be any infirmity in the said transfer.

[26] The respondent, as plaintiff, has failed to show as to on what basis he is claiming right over the ancestral property during the lifetime of his father (appellant No. 1). Unless the respondent is able to show any infringement of his subsisting rights with regard to the suit property, there does not appear to be any *prima facie* case for grant of any temporary injunction against the appellants, who are the owners of the suit property (*the appellant No. 1 before the execution of the gift deed and the appellant No. 2 after the execution of the gift deed).* Unless the plaintiff (present respondent) is able to show any infringement of his subsisting rights with regard to the scheduled property, injunction may not be granted only for mere asking for such relief by him. As such he has failed to establish the existence of a *prima facie* case with regard to infringement of any of his right with regard to the scheduled

property, under such circumstances the balance of convenience cannot be in favor of a person who has no accrued right over the scheduled property; rather, same would be in favor of the person who are the owners of the said property. Similarly, as the respondent has failed to show any subsisting right over the scheduled property during the lifetime of the appellant No. 1, the question of him suffering an irreparable loss in the event of denial of temporary injunction does not arise.

[27] Restraining the owner of the property who are governed by *Dayabhaga* School of Law from dealing with the said property in the manner as they desire as per law would amount to converting the said property, which is an unobstructed heritage (*apratibandhadaya*), into an obstructed heritage (*sapratibandhadaya*), which is contrary to the law applicable to the parties in this case.

[28] In view of the discussions made and reasons stated in the foregoing paragraphs, this Court is of considered opinion that the Trial Court erred in holding that there is a strong *prima facie* case in favour of the present respondent in granting the temporary injunction with regard to the suit property during the pendency of the Title Suit No. 36/2023. Similarly, the Trial Court also erred in holding the balance of convenience and irreparable loss in favour of the respondent by granting the temporary injunction against the appellants, who are the

owner of the suit property, during the pendency of the Title Suit No. 36/2023.

[29] This First Appeal Against Order is accordingly, allowed, and the impugned order dated 23.09.2024 passed, by the Trial Court, in Misc. (J) Case No. 30/2023 arising out of Title Suit No. 36/2023 is hereby set aside.

[30] The parties are left to bear their own costs.

[31] Send a copy of this order to the Trial Court for information.

JUDGE

Comparing Assistant

Munmun Boruah

Digitally signed by Munmun Boruah
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