
(2016) 05 GAU CK 0023
In the Gauhati High Court
Case No : CRP. No. 65 of 2012

Hobibor Rahman

APPELLANT

Vs

Md. Ibrahim Ali

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Citation : (2016) 3 GauLT 897

Hon'ble Judges : Mr. N. Chaudhury, J.

Bench : Single Bench

Advocate : Mr. M.A. Sheikh, Advocate, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. N. Chaudhury, J. (Oral) - This is an application under Article 227 of the Constitution of India challenging the concurrent findings of the learned courts below vis-a-vis the prayer for injunction made by the present petitioner.

2. The present petitioners, as plaintiffs, instituted title suit being Title Suit No. 20/2009 in the court of learned Munsiff at Bilasipara stating that the suit land originally belonged to their predecessor Asmot Ali. Upon his death, the property devolved on them and the suit property were given to them by Asmot Ali during his life time by way of family arrangement. But subsequently the defendant No. 1 claimed to be in possession of a registered sale deed No. 1394 dated 13.07.1995 whereby he claimed that he had purchased the land from the original owner. He also staked claim of title with respect to the suit land on the basis of a gift deed dated 26.12.2001. According to the plaintiffs, both the deeds are fraudulent and void and were never executed by Asmot Ali. According to the plaintiffs, they are in possession of the suit land and in no point of time was the same handed over to the defendant No. 1 who really resides away from the suit land.

3. In the aforesaid suit, the plaintiff also filed an application under Order 39, Rule 1 and 2 of the Code of civil Procedure praying for temporary and ad-interim

injunction during pendency of the suit. The learned trial court registered the aforesaid application as Misc. Case No. 22/2009 and issued notice to the opposite parties. After hearing objections, the learned trial court by his judgment and order dated 03.02.2010 rejected the prayer for injunction holding that the plaintiff does not have any prima facie case. He does not have a balance of convenience in his favour and that there is no chance of irreparable loss and injury in case injunction is refused. Aggrieved, the plaintiffs preferred Misc. Appeal No. 2/2010 in the court of learned Civil Judge at Dhubri. The learned appellate court by his judgment dated 18.11.2011 dismissed the appeal holding that the defendant No. 1 must be in possession of the suit land as there is mutation in his favour with respect to the suit land. Accordingly, the findings of the learned trial court were upheld and appeal was dismissed. These two judgments and orders have been brought under challenge in the present civil revision petition.

4. This court while admitting the revision petition on 28.02.2012 passed an interim order directing the parties to maintain status quo while issuing notice on the interim prayer. This interim prayer was extended from time to time and I do not find in the records that the respondents filed any objection or that any cause has been shown. Ultimately, by an order passed on 21.08.2015, the earlier interim order has been directed to continue until further orders. This is how the matter has come up for final hearing today.

5. I have heard Mr. MA Sheikh, learned counsel for the petitioner. None appears for the opposite parties. I have perused the order sheet and the pleadings of the parties in addition to the impugned judgments and orders.

6. It is an admitted fact that the suit land originally belonged to Asmot Ali and the plaintiffs are legal heirs of Asmot Ali. While the plaintiffs claimed that during his life time, Asmot Ali had given the land to them and similarly the land was given to the father of defendant No. 1, the plaintiff wants to establish a case of family arrangement. The defendant No. 1, on the other hand, being the grandson of Asmot Ali has been claiming that there is a gift deed and a sale deed in his favour whereby he acquired exclusive title to land covered by schedule B and schedule C to the plaint. According to him, he obtained mutation in the Records of Rights. Plaintiff has challenged such mutation and the sale deed as well. While plaintiff has prayed for declaration of their right, title and interest and confirmation of possession over the suit land, they have also prayed for a decree so as to cancel the aforesaid sale deed and the gift deed. It is stated at the bar that the suit is at the advance stage. The opposite parties herein did not file any objection even on the face of show cause notice issued on 28.02.2012. Since the plaintiff claimed to be in possession and believing on such statement, an interim order was passed by this court on 28.02.2012 while admitting the revision petition and no reply to the show cause has been filed by the opposite parties, there is no reason to hold a different view than the one held by this court at the time of admission of revision petition. Accordingly, the revision petition stands

closed. The interim order passed on 28.02.2015 is hereby made absolute. Parties shall maintain status quo with respect to the suit property till the disposal of the suit.

7. Since it is a suit of the year 2009, the learned trial court shall endeavour to dispose of the whole suit expeditiously preferably within a period of 6 (six) months from today.

8. No order as to costs.

9. Send down LCRs immediately.