

(2024) 03 GAU CK 0064

In the Gauhati High Court

Case No : Civil Revision Petition (IO) No. 285 Of 2022

Mahmodur Rahman Choudhury And 5 Ors.

APPELLANT

Vs

Noor Uddin Choudhury And Anr.

RESPONDENT

Date of Decision : 20-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 6, 6(2)

Citation : (2024) 03 GAU CK 0064

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : M. J. Quadir, S. K. Ghosh

Final Decision : Disposed Of

Judgement

1. This is an application under Article 227 of the Constitution challenging the order dated 24.02.2022 passed in Misc. Appeal No.6/2021 whereby the learned First Appellate Court i.e. the Court of the learned Civil Judge, Hailakandi had set aside the order of injunction dated 28.10.2021 passed by the learned Trial Court i.e. the Court of the Munsiff No.2, Hailakandi.

2. From the materials on record, it reveals that it is the case of the Petitioners herein who were the plaintiffs that they were in possession of various plots of land as described in Schedule to the plaint. On 10.12.2020, the Defendants forcefully dispossessed the Plaintiffs and therefore on 04.01.2021, the suit was filed under Section 6 of the Specific Relief Act, 1963 (for short "the Act of 1963") for recovery of possession. In the said suit which was registered and numbered as Title Suit No.06/2021, an injunction application was filed seeking injunction to a limited extent that the Defendants should not change the nature and feature of the suit. The said application seeking injunction was registered and numbered as Misc.(J) Case No.05/2021.

3. The learned Trial Court after hearing the other side and also taking into

account the written objection, granted the injunction vide an order dated 28.10.2021 to the effect that the Defendants were restrained from changing the nature and feature of the suit land till the disposal of the suit.

4. Being aggrieved, an appeal was preferred being Misc. Appeal No.06/2021 before the Court of the learned Civil Judge, Hailakandi. In the said appeal, the learned First Appellate Court vide an order dated 24.02.2022 set aside the order of injunction on the ground that as the Plaintiffs were not in possession of the suit land and as such the injunction order not to change the nature and feature of the suit land ought not to have been passed by the learned Trial Court. It is therefore against the said order dated 24.02.2022 passed by the learned First Appellate Court in Misc. (J) Appeal No.06/2021, the present proceedings are initiated. This Court vide an order dated 25.11.2022 issued notice and directed that status quo be maintained in respect to the suit land.

5. Mr. M. J. Quadir, the learned counsel appearing on behalf of the Petitioners had submitted that the Petitioners were dispossessed on 10.12.2020 and they have been in possession of the suit land since 1987. Therefore, as rights have been created in respect to the suit land, the Petitioners could not have been evicted in the manner not envisaged under law. The learned counsel for the Petitioners submitted that in the circumstance, the nature and feature of the suit land is changed, it would cause irreparable loss, harm and injury to the Petitioners which the learned First Appellate Court did not consider. Further to that, the learned counsel submitted that the balance of convenience was also in favour of the Petitioners which the learned First Appellate Court failed to take into consideration.

6. Mr. S. K. Ghosh, the learned counsel appearing on behalf of the Respondents submitted that the Respondents were in possession of the suit land all along on the basis of a purchase by constructing dwelling houses. He submitted that the entire case of the Petitioners is fictitious and based on imaginary cause of action. He further submitted that the suit is filed under the Act of 1963 and under such circumstances, the only question involved is whether the Petitioners/Plaintiffs were in possession of the suit land and whether the suit was filed within 6 (six) months from the date of dispossession. The learned counsel submitted that the plaintiffs/Petitioners are delaying the disposal of the suit.

7. I have heard the learned counsel for the Petitioners as well as the Respondents and taken into account the above mentioned submissions.

8. From the materials on record, it transpires that the Respondents herein are in possession of the suit land. It is the specific case of the Petitioners in the plaint which is yet to be adjudicated that the Petitioners have been in possession of the suit land and on 10.12.2020, the Petitioners were dispossessed by the defendants and within a period as stipulated in Section 6(2) of the Specific Relief Act, 1963, the suit was filed. The only prayer for injunction which was sought for is that the Defendants should not change the nature and feature of the suit land

which the learned Trial Court had in exercise of its equitable jurisdiction granted vide the order dated 28.10.2021. It is well settled that granting of injunction by the Court of the first instance is an equitable and discretionary power exercised. The appeal thereagainst which is filed is an Appeal actually in principle and the First Appellate Court's jurisdiction is circumscribed to the extent that only when order of injunction passed by the learned Trial Court is unreasonable, arbitrary, irrational, perverse and against the well settled principles for grant of injunction, then the Appellate jurisdiction is to be exercised.

9. This Court has duly perused the order passed by the learned First Appellate Court and merely on the ground that the Petitioner is not in possession of the suit land have set aside the well reasoned order passed by the learned Trial Court dated 28.10.2021. In the opinion of this Court, the learned First Appellate Court have transgressed its jurisdiction for which the impugned order is required to be interfered with. Accordingly, this Court therefore sets aside the order dated 24.02.2022 passed in Misc. Appeal No.06/2021 and thereby restoring the order dated 28.10.2021 passed in Misc.(J) Case No.5/2021 passed by the learned Trial Court i.e. the Court of the Munsiff No.2, Hailakandi.

10. Before concluding, this Court finds it relevant to take note of the submission of Mr. S. K. Ghosh, the learned counsel for the Respondents that the suit under Section 6 of the Act of 1963 was filed in the year 2021 and till date, the Plaintiffs have not filed their evidence and as such the delay in disposal of the said suit is affecting the rights of the Defendants. This Court having taken into account the provisions of Section 6 of the Specific Relief Act, 1963 wherein the question which requires to be decided are primarily as to whether the said suit has been filed within the time stipulated in Section 6(2) of the Act of 1963 and the second question which arises as to whether the plaintiffs were in possession within 6 (six) months from the date of filing of the suit. Under such circumstances, this Court requests the learned Trial Court to dispose of the said suit as early as possible and preferably within a period of 7 (seven) months from the date the instant order is brought to the notice of the learned Trial Court.

11. This Court for the sake of clarity observes that the order passed by the learned Trial Court dated 28.10.2021 passed in Misc. (J) Case No.5/2021 stands restored.

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