

**(2018) 01 GAU CK 0115**  
**In the Gauhati High Court**  
**Case No : 22 of 2015**

SMTI CHHABI DAS @ CHHABI DEY

APPELLANT

Vs

SRI SHYAMA PRASANNA MUKHERJEE and ORS

RESPONDENT

**Date of Decision :** 05-01-2018

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Section 151](#),  
[Order 39 Rule 1](#), [Order 39 Rule 2](#), [Order 43 Rule 1](#) -  
Saving of Inherent power

**Citation :** (2018) 01 GAU CK 0115

**Hon'ble Judges :** Kalyan Rai Surana

**Bench :** Single Bench

**Advocate :** G N SAHEWALLA, P DEKA, MD. ASLAM, A CHETIA, B. SARMA, S DUTTAR, N MODI, C SHARMA, R N LONG

**Final Decision :** Allowed

## Judgement

1. Heard Mr. G.N. Sahewalla, the learned Senior counsel, assisted by Mr. P. Deka, learned counsel appearing for the appellant as well as Mr. S.

Dutta, the learned Senior Counsel, assisted by Ms. N. Modi, the learned counsel appearing for the respondents No. 1, 2 and 4 to 7. None

appears on call for respondent No. 3. Hence, the matter has been taken ex-parte against them. With the consent of both sides, the matter has been

taken up for hearing as the LCR is available.

2. This appeal under Order XLIII Rule 1(r) CPC is against the order dated 15.05.2015 passed by the learned Civil Judge, Dibrugarh in Misc. (J)

Case No. 96/2014 arising out of T.S. No. 81/2014.

3. By the impugned order, the learned trial court in an application under Order XXXIX Rule 1 and 2 read with Section 151 CPC, inter alia,

arrived at a conclusion that there was no concluded agreement of sale between the parties and held the said fact can only be determined on going through the evidence adduced by the parties for trial and therefore, it was held that no irreparable loss was caused on the appellant-petitioner because the purported agreement for sale had a clear stipulation of refund of money in the event of any difference cropped up between the parties in future. Therefore, although there were triable issues in the suit, the appellant-petitioner was held not to be entitled to relief of injunction. Hence, the said Misc. (J) Case No. 96/2014 was disposed of by vacating the order of statusquo passed on 22.10.2014.

4. The learned Senior Counsel for the appellant has referred to the various material on record and has submitted that although triable issues found in the suit, but the relief of injunction was refused without considering the fact that the appellant was in possession of the entire suit property by virtue of their ownership over one half of the property, which was transferred by its original owner on 05.01.1962 and the remaining part of the suit property described in Schedule-B of the plaint was in their occupation and that they were continuing to occupy the property by virtue of the sale for agreement. It is further submitted that a sum of Rs.1,00,000/- was paid as an advance consideration to the respondent No. 6. It is submitted that as the status-quo order was vacated, there is every likelihood that the appellant may be dispossessed from the suit property during the pendency of the suit and, as such, it is submitted that the order of status-quo which was passed on 18.09.2015 in connection with I.A. No. 1534/2015, which is continuing since then should be made absolute till further orders.

5. Per-contra, the learned Senior counsel for the contesting respondent has submitted that although in the application for injunction, the relief of permanent injunction was sought for. However, in the present application i.e. I.A. No. 1534/2015, the prayer of the appellant is limited to prayer for restraining the respondent, their men, representative, family members, whoever acting under them from alienating, transferring and disposing off the suit land prescribed in the schedule of plaint. It is submitted that as the proceeding of T.S. No. 81/2014 still pending, any transfer made during the subsistence of the suit would be hit by the principles of lis-pendens under Section 52 of the Transfer of Property Act. It is further submitted that

as per the instruction received by him, the appellant was not in possession of the suit property and it is lying in an abandoned condition and submits

that in the event this Court is inclined to touch upon the issue of which of the parties are in possession, he may be permitted to further address this

Court on merit.

6. In reply, the learned Senior counsel for the appellant submits that in the prayer for interim relief in the connected I.A. No. 1534/2015, the prayer

was against dispossessing of the applicant/appellant from the suit property, but due to inadvertence, the word dispossessing was wrongly, typed as disposing.

7. Be that as it may, having perused the material on record, this Court finds that in the main prayer of the connected I.A. No. 1534/2014, the

principal relief as for restraining the respondent from their men, representative, family members, whoever acting under them from alienating,

transferring by disposing the applicant and her men from the said landed property, this Court is required to keep that aspect in mind.

8. The second issue involved in this case is whether the appellant can be said to be in actual physical possession of the suit land described in

Schedule-B of the plaint, which is one of the vital aspects to decide the issue of prima-facie case and balance of convenience. In this connection,

having regard to the submissions made by the learned Senior counsels for both sides, this Court has perused the agreement for sale which is

contained in pages 5 to 7 of File-D of the LCR. The contents of the said agreement does not reflect that possession of the suit land was handed

over to the appellant. Moreover, paragraphs 2 and 3 of the said agreement appears to be very cryptic it shows that the token money of

Rs.1,00,000/- was taken against the sale of the suit land, but it is further mentioned that the said amount does not confirmed that the plot is going to

be sold to the appellant. The said paragraph are quoted below:

This one Lakh (Rs.1,00,000/-) is a token of money for the aforesaid plot. This advance (token) of money does not confirm that the plot is going

to sale to Mrs. Chhabi Das. If all the criteria which is comes across the process is agreed by both the parties then only this money of

Rs.1,00,000/- (one lakh) is acceptable and then only we both go for further advancement i.e. towards sale. It is understood that both the parties

can cancelled or dis-agree with the proposal or any mis-understanding lead to cancel the proposal in such condition. I, Shri Biswabondhu

Mukherjee will returned the money of Rs.1,00,000/- (One lakh) to Mrs. Chhabi Das and the proposal consider as cancelled within 30 days (thirty

days) from the date of received money i.e. one lakh. No further discussion will be taken place between the parties regarding the above matter.

9. Therefore, it appears to this Court that the factual aspect as to which of the parties are in possession of the Schedule-B property and the

intention of the parties to the agreement must be decided on the basis of evidence adduced by the parties, because a prima-facie finding by this

Court may prejudice the interest of either of the parties in the pending suit. Therefore, this Court has restrained itself from making any remark as

regards which of the parties are in possession of the suit land.

10. Having seen that the prayer in the plaint is for declaration of right, title and interest of the plaintiff in respect of the suit land described in the

Schedule-B of the plaint with prayer for executing the formal sale deed in respect of the said land, there appears to be a prima-facie case for trial.

Moreover, as the suit is pending with regard to the Schedule-B land any subsequent dealing with the said suit property including its sale, alienation,

etc., would be covered by doctrine of the lis-pendens within the meaning of Section 52 of the Transfer of Property Act and under the said

doctrine, any subsequent right created in respect of the suit land would be bound by the decree. However, if any subsequent interest is created in

respect of the suit land, it may lead to multiplicity of the litigation. Hence, in such an event, the appellant would suffer greater comparative

prejudice. Therefore, this Court is inclined to interfere with the impugned order dated 15.05.2015 passed by the learned Civil Judge, Dibrugarh in

Misc. (J) Case No. 96/2014 by prohibiting the respondent No. 1 to 7 from transferring/alienating the suit land during the pendency of the suit

without the permission of the learned trial court.

11. As per the materials on record, this Court does not find anything on record by virtue of which any party can be said to be having prima-facie

possession of the suit land. Hence, this Court is not inclined to pass the order of status-quo in respect of the suit land, save and except, a

prohibition on the respondents No. 1 to 7 herein from selling and/or alienating

the suit land during the pendency of the suit as indicated above.

12. Owing to the discussion above, this appeal stands partly allowed to the extent as indicated above.

13. Return back the LCR.

14. The parties, who are duly represented by their respective learned Counsels herein, are directed to appear before the Court of the learned Civil

Judge, Dibrugarh on 05.03.2018 without any further notice of appearance and by producing the certified copy of this order, shall seek further

instructions from the said learned court. As the suit is of the year 2014, it is hoped that the learned trial court shall expedite the hearing.