

GAHC010025172026



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

Case No. : FAO/11/2026

MOHAN CHANDRA DEKA
SON OF LATE SARAT CHANDRA DEKA, RESIDENT OF HOUSE NO. 7,
OPPOSITE DISPUR HOSPITAL, AMRITPUR LANE, GANESHGURI, DISTRICT-
KAMRUP METRO, GUWAHATI- 781006, ASSAM, PRESENTLY RESIDING AT
PANJABARI (MADHUBAN APARTMENT), OPPOSITE SRIMANTA
SANKARDEVA KALAKSHETRA, PANJABARI, GUWAHATI, DIST- KAMRUP
(M), ASSAM

VERSUS

RAJENDRA KUMAR DEKA
SON OF LATE SARAT CHANDRA DEKA, RESIDENT OF HOUSE NO. 27,
JYOTI PATH (11TH BYE LANE), LAKHIMI NAGAR, HATIGAON, GUWAHATI,
DISTRICT- KAMRUP METRO, ASSAM- 781038

Advocate for the Petitioner : MR. A K JAIN,

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.02.2026

[1] Heard Mr. A.K. Jain, the learned counsel for the appellant.

[2] This application under Order XLIII Rule I (r) of the Code of Civil Procedure, 1908 has been preferred by the appellant, Sri Mohan Chandra Deka, impugning the order dated 04.02.2026, passed in Misc(j) Case No. 85/2026, arising out of Title Suit No. 46/2026 by the court of the learned Civil Judge (Senior Division) No. 2, Kamrup (M) at Guwahati.

[3] By the impugned order, the trial court has declined to issue any *ex parte* ad interim injunction on an application under Order XXXIX Rule 1 and 2 filed by the present appellant and instead issued notice to the respondent fixing next date as 05.03.2026 for service of notice.

[4] The learned counsel for the appellant has submitted that the appellant, as plaintiff filed the Title Suit No. 46/2026 before the Court of the learned Civil Judge (Senior Division) No. 2, Kamrup (M) at Guwahati seeking the relief of declaration as well as permanent and mandatory injunction for restraining the defendant from raising any obstruction over the common passage which is described in Schedule-C of the plaint.

[5] It is alleged in the plaint as well as in the injunction application filed by the present appellant before the trial court that the present respondent, who is the defendant in the aforesaid suit has started unlawful construction over Schedule-C land, which is the common passage used by both the parties for the purpose of ingress and egress to their ancestral residence for last 50 years.

[6] The learned counsel for the appellant has submitted that the prayer for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 has been made by the appellant before the trial court with a prayer to issue *ex parte* ad interim injunction restraining the respondent from continuing with the illegal construction over the Schedule-C land.

[7] He submits that the appellant was residing in his ancestral residence till the death of his mother on 29.12.2025. However, as the respondent has started illegal construction over the common passage for ingress and egress to the said residence, he has been residing at alternative address at Panjabari.

[8] He submits that the trial court has erred in ignoring urgency of the matter and issued notice instead of giving *ex parte* ad interim injunction though all the necessary ingredients for granting such a relief are present in the instant case.

[9] The learned counsel for the appellant further submits that even after filing of the title suit by the present appellant, the respondent has been continuing with the illegal construction over the common passage described in Schedule-C of the plaint. Hence, she submits that further construction over the Schedule-C land required to be stopped. Otherwise, the suit filed by the present appellant before the trial court would become infructuous.

[10] Issue notice to the respondent.

[11] The appellant shall take steps for issuance of notice upon the

respondent by speed post as well as through usual mode within 7(seven) days from the date of this order, returnable on 1st April, 2026.

[12] Till the next returnable date, the respondent is directed to maintain status-quo over the suit land. The pendency of this appeal would not be a bar for the trial court to proceed with the Misc(j) Case No. 85/2026 in its normal course.

[13] List accordingly.

JUDGE

Comparing Assistant