

GAHC010033292026



2026:GAU-AS:4596

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

**Case No. : FAO/12/2026**

BINOD HAZARIKA  
S/O LATE BHUBAN HAZARIKA, R/O KHARGULI, GUWAHATI-04, KAMRUP  
(M), ASSAM.

VERSUS

AJIT DAS  
S/O LATE SARASWATI CHARAN DAS, R/O UZAN BAZAR, LAMB ROAD, JUR  
PUKHURI PAR, GHY-01, KAMRUP (M), GUWAHATI, ASSAM.

**Advocate for the Petitioner** : MR. S P ROY, MR.T YADAV,MS. V RAI,JYOTISH DAS,MR. R  
CHOUDHURY

**Advocate for the Respondent** : MR. R K BHUYAN (FOR CAVEATOR), N BHUYAN (FOR  
CAVEATOR),MR A ZAMAN (FOR CAVEATOR)

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**Date : 31.03.2026**

- 1.** Heard Mr. S. P. Roy, learned counsel for the appellant. Also heard Mr. R.K. Bhuyan, learned counsel for the respondent.
- 2.** This appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 has been preferred by the appellant, namely, *Sri Binod Hazarika*,

impugning the order dated 11.02.2026, passed in Misc.(J) Case No. 7/2026, in connection with Title Appeal No. 31/2018, by the Court of District Judge, Kamrup(M), Guwahati, whereby the said court had not granted *ex-parte ad-interim* injunction and fixed the next date in the aforesaid Misc. case as 24.02.2026 for filing written objection by the respondent.

**3.** The facts relevant for consideration of the instant appeal, in brief, are that the predecessor in interest of the present respondent, who were the owners of a plot of land measuring 6 Bighas, 2 Kathas, 19 Lechas covered by K.P. Patta No. 225 under Dag No. 1227 in village Japarigog, Mouza Beltola, Guwahati had instituted a suit, i.e., Title Suit No. 84/85 before the Court of Assistant District Judge No. 1, Guwahati, for declaration of title and recovery of khas possession of the aforesaid land. There were 30 numbers of defendants in the said suit. The said suit was decreed by the trial court. The present appellant is claiming possession over 2 Kathas of the suit land was dispossessed therefrom in execution of the decree passed in Title Suit No. 84/85. It is alleged that the appellant was illegally dispossessed by the respondent in execution of the writ issued by the executing court in Title Execution Case No. 1/1991 in collusion with the civil Nazir of the court.

**4.** Mr. S. P. Roy, the learned counsel for the appellant has submitted that the present appellant was never made a party in Title Suit No. 84/85 and he was a complete stranger to the aforesaid suit. The learned counsel for the appellant further submits that the plot of land measuring 2 Kathas in the land, which was the subject matter of Title Suit No. 84/85 was purchased by the appellant from the constituted attorney of the pattadars of the suit land and thereafter, he had started constructing a building on the suit land, which was

completely demolished in the execution proceeding of the Title Execution Case No. 1/1991.

**5.** The learned counsel for the appellant further submits that the appellant being a stranger to the aforesaid suit and being aggrieved by illegal dispossession from the plot of land covering two Kathas had filed an application under Order 21 Rules 19A and 100 of the Code of Civil Procedure, 1908 before the executing court of learned Civil Judge (Senior Division) No. 2, Kamrup(M), Guwahati. The said application was registered as Misc.(J) Case No. 65/2000.

**6.** However, after considering the evidence adduced by the appellant in the aforesaid Misc. case, the executing court of learned Civil Judge (Senior Division) No. 2, Kamrup(M), Guwahati by its judgment and order dated 06.07.2018, dismissed the Misc.(J) Case No. 65/2000.

**7.** Being aggrieved by the aforesaid order, the appellant preferred an appeal before the Court of learned District Judge, Kamrup. The said appeal has been registered as Title Appeal No. 31/2018. However, as there was some delay in filing the said appeal, the present appellant had filed an application under Section 5 of the Limitation Act for condoning the delay of 85 days in preferring the said appeal. Presently, the application for condonation of delay is pending before the Appellate Court of learned District Judge. In the aforesaid proceeding before the District Judge, the appellant also preferred an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 praying for restraining the respondent from making any construction over the scheduled-A land. On the basis of said application, Misc.(J) Case No. 7/2026 was registered. In the said application, the appellant had also prayed for grant of *ex-parte* ad interim injunction. However, as the counsel for respondent was also present

before the court on the day when the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 was moved by the learned counsel for the appellant before the Appellate Court of District Judge i.e., on 11.02.2026, the said court, on prayer of the learned counsel for the opposite party to file written objection, granted time for filing written objection and fixed the next date on 24.02.2026 for filing the said written objection. The aforesaid order has been impugned in this appeal. The appellant is aggrieved as the Appellate Court of District Judge while allowing the time for filing written objection by the present respondent did not grant ad interim injunction against him.

**8.** The learned counsel for the appellant has submitted that the purpose of issuance of ad-interim relief during the pendency of an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 is to protect the suit property and to maintain *status quo* in respect of the suit property so that in the event of the applicant getting a favorable order in the connected appeal, he need not to suffer loss due to change in the nature of suit property or any damage done to the suit property during the pendency of the connected appeal.

**9.** The learned counsel for the appellant submits that the trial court erred in not granting the ad-interim injunction while allowing time to the opposite party for filing written objection in spite of the fact that the present appellant was able to show a strong *prima facie* case and balance of convenience in his favor as well as the fact that he would suffer irreparable loss if the nature of the suit property is changed during the pendency of the civil proceeding.

**10.** He submits that the respondent has accumulated construction material over the suit property for which reasonable apprehension is there that he may, at any time, change the nature of the suit property by making construction over

the same. In support of his submission, learned counsel for the appellant has submitted an additional affidavit along with some photographs of the suit property to show the accumulation of building materials over the suit property as well as construction over the suit property.

**11.** The learned counsel for the appellant further submits that the trial court has not mentioned any reasons for not granting ad-interim injunction to the appellant and has not discussed the golden principles which are required to be discussed while granting or refusing the interim injunction. He, therefore, submits that the instant appeal may be allowed and the respondent may be directed to maintain *status quo* in respect of the suit property during the pendency of the Title Appeal No. 31/2018.

**12.** On the other hand, Mr. R. K. Bhuyan, the learned counsel for the respondent has submitted that there is no illegality and infirmity in the impugned order passed by the Appellate Court of learned District Judge, Kamrup in Misc.(J) Case No. 7/2026 on 11.02.2026 as it has only allowed the prayer of the present respondent to enable him to file the written objection against the injunction application filed by the present appellant.

**13.** The learned counsel for the respondent submits that since the present respondent has already appeared before the trial court and is contesting the appeal filed by the present appellant as well as the injunction application filed by him, it is not necessary for this court for interfering the impugned order as the matter may be finally disposed of by the Appellate Court after considering the written objections submitted by the respondent and after hearing both sides.

**14.** He submits that there is no arbitrariness or perversity in the impugned order passed by the Court of learned District Judge, Kamrup(M) in allowing the present respondent to file written objection against the injunction application filed by the appellant. He submit that the title appeal filed by the present appellant before the District Judge is yet to be admitted as the application for condonation of delay has not yet been allowed by the Court of learned District Judge.

**15.** The learned counsel for the respondent further submits that even the injunction application filed by the present appellant in the aforesaid title appeal is defective as the schedule of the suit property has not been properly stated in the said application and an amendment application is also pending before the First Appellate Court. He submits that the respondent is not continuing any construction over the suit property. It has only been covered by putting boundaries of tin sheets by the Municipal Corporation.

**16.** He further submits that the respondent had constructed the building of the Court of learned District and Session Judge, Kamrup at Amingaon and after completion of the construction, some waste building materials which were lying in the court campus were directed to be removed by the learned District and Sessions Judge and accordingly, said was removed therefrom and has been kept in the suit property. He further submits that the boundary has been given on the request of the present respondent by the GMC authority as the people of the locality where suit property is situated started dumping garbage over the suit property. He further submits that the possession over the suit property was restored to the respondent in execution of the decree passed in Title Suit No. 84/85. He also submits that in view of dismissal of the application filed by the

present appellant under Order 21 Rules 99 and 100 of the Code of Civil Procedure, 1908 the appellant does not have any *prima facie* case for grant of temporary injunction during the pendency of the connected appeal which is yet to be admitted.

**17.** I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record.

**18.** If we peruse the impugned order dated 11.02.2026 passed by the Court of learned District Judge, Kamrup(M) in Misc.(J) Case No. 7/2026, arising out of Title Appeal No. 31/2018, it appears that the Appellate Court of learned District Judge, Kamrup(M) has fixed the next date of the aforesaid Misc. case for filing objection and objection hearing in view of the fact that it was of the opinion that under the facts and circumstances of the case, the opposite party is required to be given a reasonable opportunity to file the written objection against the prayer made by the present appellant.

**19.** It also appears that though in the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, filed by the present appellant, while praying for dispensing with the notice to the opposite party, it has stated that the matter is of extreme urgency. However, the urgency is not reflected from the materials available on record, inasmuch as, the appeal filed by the present appellant against dismissal of its petition under Order 21 Rules 99 and Rule 100 of the Code of Civil Procedure, 1908 was filed in the year 2018. However, the appeal is yet to be admitted as the delay has not yet been condoned. Further, it also appears that the defendant not only is the decree holder in Title Suit No. 84/85, but also the Misc.(J) Case No. 65/2000 which was filed by the present appellant was dismissed by the executing court. The suit land has already been

delivered to the present respondent and who is having possession of the suit land. As such, this court is of considered opinion that the balance of convenience is not in favor of the present appellant for grant of an *ex-parte ad-interim* injunction and the appellate court rightly allowed the respondent to file written objection against the application for injunction filed by the appellant.

**20.** Moreover, the photographs submitted by the present appellant by filing the additional affidavit shows that old building materials like some TMT rods and scraps appears to be kept in the suit premises. However, no other construction activity is indicated from the photographs. Hence, this court is of considered opinion that the Appellate Court of learned District Judge, Kamrup(M) was not wrong in giving an opportunity to the respondent to file the written objection. However, it could have clarified, in the impugned order, as to why it did not find it justified to issue *ex-parte ad-interim* injunction. However, by not stating the reasons for not granting *ex-parte ad-interim* injunction, in itself, does not vitiate the order of giving an opportunity to the respondent for filing written objection against the injunction application filed by the present appellant.

**21.** For the reasons stated herein above, this court does not find it necessary, for the ends of justice, to interfere in the impugned order dated 11.02.2026, passed in Misc.(J) Case No. 7/2026, arising out of Title Appeal No. 31/2018.

**22.** However, the Appellate Court of learned District Judge, Kamrup(M) is directed to dispose of the Misc.(J) Case No. 7/2026 after hearing both the parties as expeditiously as possible. While disposing of the aforesaid Misc.(J) case, it shall not be influenced in any manner by the observations made by this court in this appeal.

**23.** With above observation, this appeal is hereby dismissed with cost.

**Abhishek  
Prem**  Digitally signed by  
Abhishek Prem  
Date: 2026.04.07  
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**JUDGE**

**Comparing Assistant**