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

Case No. : FAO/16/2026

SMTI SARALA PODDAR
W/O SRI SURESH PODDAR, R/O AT ROAD, NEAR MMC PIOLI NAGAR, P.O.
AND P.S. MORANHAT, DIST. DIBRUGARH, ASSAM, PIN 785670

VERSUS

SRI GAMA PASWAN ALIAS GANGA SAGAR PASWAN AND ANR
S/O LATE RAM LAKHAN PASWAN, R/O PALTAN BAZAR, WARD NO 22, P.O.
JALAN NAGAR, P.S. AND DIST. DIBRUGARH, ASSAM, PIN 786005

2:DEBASHISH CHAKRABORTY
S/O LATE DIGEN CHAKRABORTY
R/O SEUJPUR
BYELANE 3
P.O.
P.S. DIST. DIBRUGARH
ASSAM
PIN 78600

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE, MS L
RONGPIPI,MR JITENDRA DAS,MR. SAILENDRA DEKA

Advocate for the Respondent : MR. A DHAR, FOR CAVEATOR,MD F FARIDI

Linked Case : I.A.(Civil)/801/2026

SMTI SARALA PODDAR
W/O SRI SURESH PODDAR

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Advocate for : MR. BHASKAR DUTTA
SENIOR ADVOCATE
Advocate for : MR. A DHAR appearing for SRI GAMA PASWAN ALIAS GANGA
SAGAR PASWAN AND ANR

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 16.03.2026

- 1.** Heard Mr. B. Dutta, the learned senior counsel assisted by Mr. J. Das, the learned counsel for the appellant. Also heard Mr. A. Dhar, the learned counsel appearing for the respondent No. 1/caveator.

- 2.** This appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 has been preferred by the appellant, namely, Smt. Sarala Poddar, impugning the order dated 24.02.2026 passed by the Court of learned Civil Judge (Senior Division), Dibrugarh in Misc (J) Case No. 140/2025 arising out of Title Suit No. 111/2025, whereby, both the parties i.e., the appellant as well as the respondent herein were directed to maintain status quo in respect of the suit property.
- 3.** By order dated 11.03.2026, with the consent of the learned counsel for the appellant and the respondent No. 1, the notice to the respondent No.2 was waived and this appeal was heard for final disposal.
- 4.** The facts relevant for consideration of the instant appeal, in brief, are that the respondent No. 1 had filed the Title Suit before the Court of learned Civil Judge (Senior Division), Dibrugarh arraying the present appellant and the proforma respondent as defendant therein. The said Title suit has been registered as Title Suit No. 111/2025. In the aforesaid title suit the plaintiff had prayed for relief of declaration, specific performance of contract, cancellation of sale deed as well as the cancellation of the mutation of the name of the present appellant in the records of the rights, the prayer for eviction of the present appellant from the suit premises as well as for permanent (prohibitory) and mandatory injunction has also been prayed for.
- 5.** In the plaint the present respondent No. 1, as plaintiff, has pleaded that, on 11.07.2015, the defendant No. 1 (respondent No.

2 herein) entered into an agreement with the plaintiff informing him that he is the absolute owner of the suit land measuring 10 lochas covering by Dag No. 208 of periodic Patta No. 71 in Gabharu Pather Ward Mouza in District Dibrugarh, which is more fully described in the Schedule to the plaint. It was further stated that the defendant No. 1 (respondent No.2 herein) had communicated to sell the aforesaid plot of land and the plaintiff agreed to purchase the same.

6. Accordingly, the consideration amount of Rs. 3 Lakhs was fixed for the said sale. It is further stated in the plaint that thereafter, the plaintiff and the defendant No.1 entered into a registered agreement for sale bearing deed No. 1899 (Serial No. 2408) dated 11.08.2015. It was further contended in the said plaint that on the date of execution and registration of the aforesaid agreement, the plaintiff paid an amount of Rs. 2,80,000/- in cash to the defendant No.1 and agreed to pay the remaining Rs. 20,000/- at the time of registration of the sale deed.

7. It was further pleaded in the plaint that when the defendant No. 1 did not obtain the land sale permission, the plaintiff approached him, in the month of January 2024 and requested him to do the needful for obtaining the land sale permission. Thereafter, in the first week of November 2024 the plaintiff visited the defendant No. 1 to request him again for doing the needful for obtaining the sale permission in pursuant to the agreement to sale between them, however, he was shocked to see that a boundary wall was constructed over the suit land and the defendant No.1

has taken advance amount from someone for sale of the suit land.

8. Thereafter, when the plaintiff tried to contact the defendant No.1, he avoided the plaintiff. Accordingly, the plaintiff was compelled to approach the Court by filing Title Suit No. 68/2024 before the Court of learned Civil Judge (Junior Division), Dibrugarh seeking relief of specific performance of contract and permanent injunction against the defendant No. 1 in respect of the suit property. The plaintiff has also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 in the aforesaid Title Suit, which was registered as Misc (J) Case No. 80/2024. The Court of learned Civil Judge (Junior Division), Dibrugarh by its order dated 06.06.2025 directed the defendant No. 1 not to create any other party interest over the suit land till the disposal of Title suit No. 68/2024. It is further stated in the plaint that on 23.06.2025 when plaintiff visited the suit land, he found that some construction work was going on over the suit land. Accordingly, he approached the Revenue Authority and obtain Jamabandi of the suit land and came to know that the defendant No.1 had sold the suit land to the present appellant. It also came to the notice of the plaintiff that the defendant No.1 had managed to get the partition of the suit land and new Dag Number i.e., Dag No. 355 and Periodic Patta No. 124 were allotted against the suit land.

9. Thereafter, the plaintiff filed an application for impleadment of the present appellant in the aforesaid Title Suit and also prayed for amendment of the plaint. However, after going through the

documents annexed with the amended plaint by the plaintiff, the Court of learned Civil Judge (Junior Division) Dibrugarh came to finding that since the value of sale deed which was sought to be cancelled was Rs. 26,75,600/- which is beyond the pecuniary jurisdiction of the Court of learned Civil Judge (Junior Division), Dibrugarh the plaint was returned to the plaintiff.

10. Thereafter, the plaintiff filed the Title Suit No. 111/2025 before the Court of learned Civil Judge (Senior Division), Dibrugarh. In the said title suit, the plaintiff also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 praying for grant of temporary injunction.

11. The defendant No.1 (respondent no.2 herein) appeared in the said suit and filed written statement as well as written objection, wherein, the averment made in the plaint as well as the injunction application were denied. It was also stated therein that the defendant No. 1 along with his sisters and brother inherited land measuring 1 katha 0.84 lochas from their mother, namely, Manju Chakraborty. It was also stated that the defendant no. 1 and his siblings had mutated their names in the record of rights and after partition, they became the joint owners of the suit land. It was also stated that he agreed to sell 5 lochas of land for a consideration amount of Rs. 3 lakhs on false assurance given by the plaintiff that the other joint owners have already consented to alienate their respective share. However, he was surprised to know later on, that the agreement to sale was drafted, by the plaintiff, in respect of 10 lochas instead of 5 lochas of land which he agreed

with the plaintiff.

12. The present appellant also appeared before the Court of learned Civil Judge (Senior Division), Dibrugarh and filed written statement as well as written objection denying all the averments made by the plaintiff in his plaint. It was contended by the present appellant that the defendant No.1 along with other co-owners had approached the appellant for selling the entire land measuring 1 katha 0.84 lochas to which the appellant agreed and, accordingly, a sale deed was executed on 07.05.2025 at a consideration amount of Rs. 26,75,600/-. It has also been contended that the entire consideration amount has been paid by the appellant to the vendors including the defendant No. 1 (present respondent No. 2). It was also contended that thereafter, the present appellant applied for mutation of the records of the rights before the Circle Officer and after verifying the title of the appellant and his possession on the suit land, the Circle Officer allowed the mutation in the name of the present appellant in respect of the suit land. It was further contended that thereafter, the appellant obtained the building construction permission from the Dibrugarh Municipality and started construction of over the suit land by investing more than Rs.60 lakhs.

13. However, by the impugned order dated 24.02.2026 passed in Misc (J) Case No. 140/2025, the Trial Court directed both the parties to maintain *status quo* in respect of the suit land till disposal of the suit. Being aggrieved by the aforesaid order, the instant appeal has been filed by the present appellant.

- 14.** Mr. B. Dutta, the learned senior counsel for the appellant has submitted that the Trial Court had erred in passing the impugned order by directing both the parties to maintain *status quo* without considering the legal provisions and without properly assessing the existence of *prima facie* case, balance of convenience and irreparable loss to the plaintiff.
- 15.** He submits that the appellant is the bonafide purchaser of the suit land for valuable consideration. He submits that the appellant has purchased the suit land from its lawful owners (the proforma respondent and his siblings) by paying a consideration amount of Rs. 26,75,600/-. He submits that the Trial Court failed to take into consideration the provision contained in Section 54 of the Transfer of Property Act, 1882 relating to a contract for sale. He submits that it has been categorically provided in the said statutory provision that a contract for sale, does not, of itself create, an interest in and charge on any such property about which the said contract has been made.
- 16.** He submits that the appellant having purchased the suit land by way of registered sale deed for valid consideration and thereafter, his name has also been mutated in respect of the suit property has a better title than that of the plaintiff (respondent No. 1) whose entire claim to the suit land was based on the agreement to sell dated 11.08.2015 executed between him and the respondent no. 2 only, wherein other joint owners were not the parties.
- 17.** The learned senior counsel for the appellant has also submitted that otherwise also the agreement for sale dated 11.08.2015 is not

an executable agreement in as much as the said agreement was in respect of 10 lochas of land, whereas the share of the defendant No. 1 (respondent no. 2) in the land inherited from his mother Manju Chakraborty was only to the extent of 5 lochas and hence, it is beyond the quantum of land inherited by him.

18. He further submits that since the other co-owners of this suit land were not made party in the agreement for sale dated 11.08.2025. The said agreement for sale is an inexecutable agreement, hence, even if a decree is granted in Title Suit No. 111/2025 by the trial court, the said decree would remain inexecutable against the other co- owners of the suit land.

19. The learned counsel for the appellant has further submitted that the order of maintaining *status-quo* being a discretionary relief, the plaintiff (respondent No. 1) is not entitled to said relief in as much as he approached the Court after more than 8 years of the date of execution of agreement for sale. He submits that under Article 54 of the Limitation Act, 1963, the title suit filed by the applicant is barred by limitation.

20. The learned senior counsel for the appellant further submits that though, the respondent No.1 has claimed to have paid sum of Rs.2,80,000/- on the date of execution of the agreement to sell i.e., on 11.08.2015, however, he has failed to produce any valid receipt wherein the pro-forma respondent had acknowledged the receipt of any such advance.

21. The learned senior counsel for the appellant further submits

that the trial court committed perversity in ignoring the materials on record as well as statutory provisions while discussing the existence of three golden principles i.e., *prima facie* case, balance of convenience and irreparable loss in favour of the plaintiff while granting the order of maintaining *status quo* by both the parties.

22. The learned senior counsel for the appellant further submits that the appellant has invested more than Rs. 60 lakhs in the construction under taken over his purchased land and already second floor of the RCC building has been completed and at this stage if the appellant had to stop the construction work over his own land, he would suffer the irreparable loss as such, he is even ready to undertake before this Court in the event of respondent No. 1 (plaintiff) succeeding in the suit pending before the Trial Court, she is ready to demolish the construction made over the suit land.

23. The learned senior counsel for the appellant also submitted that the Title Suit No.68/2024, which was filed by the respondent No.1 at the first instance before the Court of Civil Judge (Junior Division), Dibrugarh proceeded *ex-parte* against the defendant (Respondent No.2) hence, the embargo of Section 52 of the Transfer of Property Act, 1882 would not be applicable against him. He further submits that since the present appellant was not a party to the aforesaid suit the restriction under Section 52 of the Transfer of the Property Act, 1882 is not applicable to him also.

24. He further submits that the Trial Court did not consider the fact that the respondent No.1 was indolent and approached the Court

on specific performance of contract after more than 8 years of execution of the said contract. He submits that the Trial Court did not consider the fact that while seeking an equitable and discretionary relief of temporary injunction, the respondent No.1 was not diligent and that all the conditions necessary for grant of temporary injunction in the form of status quo order were not fully satisfied.

25. The learned senior counsel for the appellant further submits that it is the present appellant who shall have to face more comparative hardship as a result of the restrain put on him by the *status quo* order for thereby putting halt to the construction of building in which he has already invested a huge sum of money. He further submits that since by putting a halt on the construction work of RCC building, it would incur huge loss to the appellant, she is also ready to give an undertaking before this Court that if in the event the plaintiff is able to succeed in the pending Title Suit No. 111/2025, she will demolish the construction made over the suit land at her own expenses. The learned senior counsel for the appellant, accordingly, prays for setting aside the impugned order dated 24.02.2026 passed in Misc (J) Case No. 140/2025 by the Court of learned Civil Judge (Senior Division), Dibrugarh.

26. On the other hand, Mr. A. Dhar, the learned counsel for the respondent No.1/caveator submits that there is no infirmity or illegality in the impugned order dated 24.02.2026 passed by the Trial Court in Misc (J) Case No. 140/2025 and no interference by this Court in exercise of its appellate jurisdiction is warranted in

this case.

- 27.** The learned counsel for respondent No. 1 has submitted that the suit filed by the respondent No. 1 is not barred by limitation in as much as agreement to sell entered into between the respondent No. 1 and the respondent No. 2 does not specify any date of completion of the sale, hence, the three-year limitation does not begin from the date of the contract. Rather, it begins when the plaintiff has noticed that the performance is refused, which was done impliedly by the respondent No. 2. When on 23.06.2024, he found that some construction work was going on in the suit land and the respondent No. 2 had taken advance money from a third party for selling the land. He, therefore, submits that the case of the respondent No. 1 falls within the second limb of Article 54 of the Limitation Act, 1963.
- 28.** He further submits that the question of limitation is a mixed question of fact and law, therefore, the same may be decided only in the suit and not in the miscellaneous proceedings under Order 39, Rule 1 and 2 of Code of Civil Procedure, 1908. In support of his submission, the learned counsel for the respondent No. 1 has cited a ruling of the Apex Court in the case of "***Urvashiben Vs. Krishnakant Manuprasad Trivedi***" reported in **2019 (13) SCC 372**. He has also cited another ruling of the Apex Court in the case of "***Ahmmadsahab Abdul Mulla (dead) By Prop. LRS Vs. Bibijan and Others***" reported in **2009 (5) SCC 46**.
- 29.** The learned counsel for respondent No. 1 has further submitted that since the sale deed in respect of the suit land in favour of the

present appellant was executed by the respondent No. 2 and other co-owners during the pendency of the Title Suit No.68/2024, the aforesaid sale is hit by embargo of Section 52 of the Transfer of Property Act, 1882.

30. He further submits that though, the aforesaid title suit was proceeding ex-parte against the respondent No. 2, however, from the order dated 28.02.2025 passed in Title Suit No.68/2024, it is clear that the defendant (respondent No. 2) was aware about the pendency of the aforesaid title suit as he failed to appear before the Trial Court in spite of receiving of the summons by him. Hence, he cannot take the plea that he was unaware about the pendency of the aforesaid Title Suit, therefore, he submits that the embargo of Section 52 of the Transfer of Property Act, 1882 would be applicable in alienation of the suit property made by the respondent No. 2 during the pendency of the aforesaid suit.

31. The learned counsel for the respondent No. 1 has further submitted that the respondent No. 1 had entered into agreement for sale with the respondent No. 2 in respect of the suit property and has paid the advance amount of Rs. 2,80,000/- as the consideration amount at the time of entering into the said agreement. The learned counsel for the respondent No. 1 has further submitted that the Trial Court had granted the order of maintaining *status quo* in respect of suit property after considering the existence of all the three golden principles for grant of compensation. He submits that while granting the order to maintain *status quo*, the Trial Court has found a *prima facie* case in

favor of the respondent No. 1 and also found that balance of convenience in favour of the respondent No.1. It also found that the respondent No. 1 would suffer irreparable loss and injury if the order of *status quo* is not granted as continuous construction over the suit land would change the nature of the suit land.

32. Hence, he submits that the Trial Court has rightly considered the three golden principles before passing on the status quo order. He submits that in exercise of powers on the Appellate Court under Order 43, Rule 1 (r) of the Code of Civil Procedure 1908, the appellate court cannot substitute its own discretion in place of the discretion of the trial court. It cannot interfere, in the exercise of discretion by the trial court unless said discretion is found to be exercised arbitrarily or in contrary to the accepted principles for granting or rejecting temporary injunction. He submits that in this case, there is no perversity and no flouting of the settled principles of law regulating the grant or refusal of interlocutory injunctions, hence, there is no scope for any interference by the appellate court. In support of his submission, the learned counsel for the respondent No.1 has cited following ruling:

- i. **“*Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and Others*”** reported in **(2024) 11 SCC 351**
- ii. ***Sudha Dugar Vs. Chiranjeeb Sarma Roy*** reported in **(2025) 0 Supreme (Gau) 637.**

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

have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

- 34.** On perusal of the materials available on record, it appears that the agreement to sell between the respondent No. 2 herein and the respondent No. 1 (plaintiff) was executed on 11.08.2015. Though, it was specifically mentioned in paragraph No.6 of the said agreement that the vendor shall execute final sale deed after obtaining sale permission as soon as possible, however, it appears from the plaint filed by the respondent No.1, that he approached the respondent No. 2, for claiming execution of the agreement to sale in the month of January 2024 only. Before the said date, there is no specific mention as to whether the plaintiff had approached the respondent No.2 seeking execution of the agreement to sale on any earlier occasion. Thus, apparently the execution of the agreement for sale was sought by the plaintiff after a delay of more than 8 years. However, as regards the question of limitation in filing the suit by the respondent No. 1 is concerned, since no specific date of execution of the sale deed has been mentioned in the agreement to sell, the period of limitation of 3 years may have to be computed from the date when the plaintiff had the notice of refusal by the respondent No. 2 to execute the said sale deed. Hence, it is a mixed question of law and facts and as such, at the stage of deciding an Interlocutory Application for grant or refusal of temporary injunction under Order 39 Rule 1 and 2, the issue of limitation under the facts and circumstances of this case may not be decided at this stage. The same has to be decided in the suit

after adducing of the evidence by the parties.

- 35.** The same would be the course in deciding the question of applicability of embargo of Section 52 of the Transfer of Property Act, 1882 in this case. As regards the Title Suit No.68/2024 proceeding *ex parte* against respondent No. 2, though, there is a finding by the Trial Court that the summons issued to the defendant in Title Suit No.68/2024 were received by the defendant. However, many other factors like whether the defendant had also received the copy of plaint, whether he was aware about the subject matter of the Title Suit are questions of fact, which can only be ascertained during the trial of the Title Suit No. 68/2024. The fact that ultimately, Title Suit No. 68/2024 was returned and a new suit i.e., Title Suit No. 111/2025 was filed will also have repercussions on the question of applicability of the embargo of Section 52 of the Transfer of Property Act, 1882 in this case.
- 36.** The main question to be considered in this appeal is as to whether the Trial Court while granting the order of *status quo* has rightly considered the settled principles of law regulating the grant or refusal of interlocutory relief. This Court shall also have to consider as to whether there was any perversity or arbitrariness in directing both the parties to maintain *status quo*.
- 37.** On perusal of the materials available on record, it appears that though, the Trial Court had, by the impugned order, directed both the parties to maintain status quo, in respect of the suit land, however, in effect, it was only a grant of temporary injunction against the present appellant. More so, when there is nothing on

record to indicate that the respondent No.1 had possession of a suit land at any point of time. His only claim is that he entered into an agreement with respondent No.2 for purchase of the suit land and had paid an advance amount of Rs. 2,80,000/- against consideration. It also appears for the same, no receipt or any documentary acknowledgment could be shown by the plaintiff/respondent No.1. As the respondent No.1 is in no way having any control or possession over the suit land, he is required to do nothing for maintaining *status quo* in respect of the suit land.

38. Whereas, the appellant had already constructed a building over the scheduled plot of land and to a considerable extent and had already completed the construction of slab of the second floor. Thus, the impugned order of *status quo* has, in fact, only put a restraint on the respondent No.1.

39. One of the basic principles of law is that an owner cannot be enjoined to do any lawful thing over his own property. In this case, whereas, the appellant is claiming ownership right over the suit property by virtue of the sale deed which has been executed in his favor by the respondent No.2 and the other co-owners of the land, on the other hand, the respondent No.1 is claiming right over the suit property on the strength of an agreement for sale dated 11.08.2025.

40. As regards the legal position regarding the difference between a sale deed and an agreement for sale is concerned, the Apex Court in the case of “**Ramesh Chand (D) through legal heirs Vs. Suresh Chand and Another**” reported in **2025 SCC online SC**

1879 has observed as follows:

“15. There is a difference between a sale deed and an agreement for sale, or a contract for sale. A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. While a sale is a transfer of ownership; a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property. Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property. If after entering into a contract for sale of property, the seller without any reasonable excuse avoids executing a sale deed, the buyer can proceed to file a suit for specific performance of the contract.”

- 41.** On a cursory perusal of the aforesaid observation made by the Apex Court, it appears that whereas a sale deed is a deed of conveyance of ownership from one person to another, an agreement for sale is not such a deed of conveyance and does not create any ownership right in respect of the intending purchaser. As such, it appears that under the facts and circumstances of this case, the appellant has the better title over the suit land than that of the respondent No.1 who does not have any ownership right

over the same. His right over the suit land is contingent only upon decreeing of the suit for specific performance of contract filed by him.

42. However, as on today, it is the appellant who has the better title over the suit land than that of respondent No. 1. This aspect was not considered by the Trial Court while discussing the golden principles more specifically, the balance of convenience, while granting the order of *status quo*. As such, an element of arbitrariness appears to be there in the impugned order of the Trial Court while directing both the parties to maintain *status quo* in respect of the suit property.

43. Further, it appears that the appellant has already made a considerable amount of construction over the land over which, as on date, she has the ownership rights. Otherwise also, there is already a construction over the suit land and in the event, the suit for specific performance and eviction against the appellant is allowed, the appellant shall have to deliver vacant possession of the same. The respondent No. 1 would not suffer any loss if ultimately suit is decreed in his favour, as he will have get vacant khas possession of the suit land and the construction thereon shall have to be demolished at the expenses of the present appellant. However, on the other hand, if the suit fails, the appellant who otherwise have all attributes of title over the suit land and presently appears to be owner of the suit land, would suffer unnecessarily in spite of having better title and possession of a suit land. As such, this Court is of considered opinion that the trial

court erred in assessing the comparative inconvenience, of both the parties, in directing both the parties to maintain *status quo* in respect of the suit land. This Court is of the considered opinion that under the facts and circumstances of this case, this is not a fit case for grant of an equitable relief of maintenance of *status quo* in respect of suit land against the appellant during the pendency of the Title Suit No. 111/2025.

- 44.** In view of the discussions made and reasons stated in the foregoing paragraphs, this Court is of considered opinion that the impugned order of directing both the parties to maintain *status quo* in respect of the suit land was passed without considering settled principles of law regulating grant or refusal of interlocutory injunction, as such same is liable to be set aside.
- 45.** Accordingly, the impugned order is hereby set aside, and this appeal is allowed.

JUDGE

Comparing Assistant