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

Case No. : CRP(IO)/241/2025

MUSSTT. MOJIDA BEGUM
D/O LATE MUSTAKIN ALI, W/O MEHBUB ALI THAKURIA, R/O
MORIMUSLIMGAON, P.O. AND P.S.- MORIGAON, DIST- MORIGAON,
ASSAM-782105

VERSUS

KRISHNAKANTA DOLOI AND 3 ORS.
S/O LATE BUKUKHAL LALUNG, R/O VILL- PASCHIM NAGAON, P.O. AND
P.S.- JAGIROAD, DIST- MORIGAON, ASSAM-782140

2:GAURI SANKAR DOLOI
S/O LATE BUKUKHAL LALUNG
R/O VILL- PASCHIM NAGAON
P.O. AND P.S.- JAGIROAD
DIST- MORIGAON
ASSAM-782140

3:SURUJ BORDOLOI
S/O LATE NABIN BORDOLOI
R/O VILL- PASCHIM NAGAON
P.O. AND P.S.- JAGIROAD
DIST- MORIGAON
ASSAM-782140

4:BINAN BORDOLOI
S/O LATE NABIN BORDOLOI
R/O VILL- PASCHIM NAGAON
P.O. AND P.S.- JAGIROAD
DIST- MORIGAON
ASSAM-78214

Advocate for the Petitioner : MR. N N JHA, MR. M UDDIN, MS M SAHOO, MR H DEKA

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 30.06.2025

1. Heard Mr. N.N.Jha, learned counsel for the petitioner Mojida Begum who has filed this petition under Article 227 of the Constitution of India for issuance of writ in the nature of certiorari or any other appropriate writ or order to set aside the impugned order dated 21.06.2025 passed by the learned Civil Judge, Senior Division in Misc. (J) Case No.25/2025 arising out of Misc. Appeal No.04/2025.

2. It is submitted on behalf of the petitioner that she was the defendant in Title Suit No. 104/2024. The plaintiffs have prayed for confirmation of possession over suit land described in the schedule of the plaint. It is submitted on behalf of the petitioner that the plaintiffs were earlier the legal heirs of holder of Rayat Khatian over the plot of land mentioned in the plaint. Meanwhile, on a deed of exchange, the defendant herself i.e the present petitioner took possession over the same plot of land. It is specifically mentioned in the plaint that the deed of exchange was executed between the plaintiff and Mohibanu Begum i.e. the original pattadar.

3. It is also further submitted that the Circle Officer had submitted a report to the Additional Deputy Commissioner that the present petitioner was in possession of the suit land. It has also been submitted that vide order dated 21.06.2025 passed in Misc.(J) Case No. 25/2025, the learned Civil Judge,

Senior Division, Morigaon in an appeal preferred by the present petitioner against the order of the learned Civil Judge, Junior Division in Misc. Case No.131/2024, it was observed as herein below:

“.....The Ld. Counsel for the appellants have stated that they are in actual possession of the suit land which is proved by the report of an enquiry dated 02.04.2024 made by the Circle Officer, Mayong wherein it was stated that the alleged suit land under Patta No.92, Dag No.363 comprising 5 Bighas - 1 Katha 3 Lechas is in the possession of the Pattadar with further suggestion that the names of the respondents be struck out as Rayat from the suit land.

The The Ld. Counsel further submitted that the order of the Ld. Civil Judge (Jr. Div.) No.II prima facie erroneous in a sense that Ld. Civil Judge (Jr. Div.) No.II almost gave a finding that the respondents/plaintiffs are not in possession of the suit land which is beyond the jurisdiction of the Court while deciding the injunction petition.

On perusal of the written statement/written objection filed by the appellant/defendant in the Title Suit No.104/2024, it appears that defendants have taken the plea that in the last part of August, 2023 they became utter surprised to know that Late Bukukhal Lalung, predecessor in interest of respondents, was Rayat under Mahibanu Begum, The appellant has alleged that this fact was suppressed by Mahibanu Begum at the time of alleged exchange of the suit land with the land of the defendant and accordingly they filed an application before the Circle Officer, Mayong with a prayer to strike out the name of Late Bukukhal Lalung as Rayat from the suit land. On the basis of that application, the Circle Officer, Mayong submitted a report on 02.04.2024 stating that the appellants are in actual possession of the suit land not the plaintiffs/respondents. The defendants have also stated that they are contemplating to file a separate suit against Smti. Mahibanu Begum challenging legality and validity of the alleged exchange done by her through her husband Late Abdul Haque.

Let me now delve into the order passed by Ld. Civil Judge (Jr. Div.) No.II and decide whether the operation of the Injunction petition needs to be stayed at the Initial stage of appeal.

It is observed that the Ld. Civil Judge (Jr. Div.) No.II in Misc. (3) Case No. 131/2024 passed an order restraining the appellants from entering into the suit

land along with other directions. The Court below gave the finding that the plaintiffs/respondents are in possession of the suit land. The Ld. Court below also gave the finding that all the three Ingredients I.e., prima facie case, balance of convenience and irreparable loss and Injury has been established.

In the light of the above, it appears to me that the main contention of the appeal praying for staying operation of the injunction petition is that they are in actual possession of the suit land and the Ld. Civil Judge (Jr. Div.) No.II has wrongly appreciated the fact holding that the plaintiffs are in actual possession of the suit land.

The plea taken by the plaintiffs is that in the year 2023 they came to know that the predecessor in interest of the plaintiffs got his name recorded as Rayat in the records of the suit land. Immediately they prayed for striking out the names of the plaintiffs as Rayat from records.

The appellants have relied on a letter issued by the Circle Officer, Mayong in which it has been categorically stated that the land is in possession of the pattadar and not the Rayat and based on the same they have disputed the finding of the Ld. Civil Judge (Jr. Div.) No.II that the respondents are in possession of the suit land.

In this regard it is stated that the letter of the Circle Officer cannot be considered as conclusive proof to decide as to who is in possession over the suit land. It is well known fact that the Revenue Department has to undergo a serious process of issuing notice to all affected parties and then taking necessary evidence before coming to a final finding as to who is in possession of the land to finally come to a conclusion regarding correction of land record. Apart from the aforesaid document, the appellants have merely relied on bare statements in the W/S, WO etc.

In order to give a stay on the operation of the order of injunction, it is necessary to prove on the part of the appellant with sufficient prima facie material that the order passed by the Ld. Civil Judge (Jr. Div) No.II was Illegal and unjust on the face of it."

4. However, despite this observation, the appeal was not allowed.

5. I have considered the submissions at the Bar.

6. The petitioner was directed to vacate the suit premises which is the subject matter of the Title Suit No.104/2024. The learned Civil Judge, Senior Division has in an indepth discussion held that the petitioner is now in possession of the suit land.
7. Considering all aspects, both the parties are at present directed to maintain status quo in respect of possession as of today till the next date of listing.
8. Issue notice to the respondents, returnable within 04(four) weeks.
9. Call for the scanned copy of the trial court records.
10. List accordingly.

JUDGE

Comparing Assistant