

GAHC010237162024



2026:GAU-AS:5445

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRP(IO)/325/2024

1. Samita Rabha,
W/o- Sri Binod Rabha@Rava,
R/o-Village-Paneri,
P.O. And P.S. Paneri,
Mouza-Harisinga,
District-Udalguri,
BTR, Assam, Pin-781123.
2. Sri Binod Rabha@Rava,
S/o-Late Kanti Ram Rabha,
R/o-Village-Paneri,
P.O. And P.S. Paneri,
Mouza-Harisinga,
District-Udalguri,
BTR, Assam, Pin-781123.
3. Jyoti Prakash Rabha,
S/o- Binod Rabha@Rava,
R/o-Village-Paneri,
P.O. And P.S. Paneri,
Mouza-Harisinga,
District-Udalguri,
BTR, Assam, Pin-781123.

.....Petitioners

-Versus-

1. Sushila Talukdar,

- W/o- Late Amiya Talukdar,
R/o-Village-Paneri,
P.O. And P.S. Paneri,
Mouza-Harisinga,
District-Udalguri,
BTR, Assam, Pin-781123.
2. Amaresh Talukdar,
S/o- Late Amiya Talukdar,
R/o-Village-Paneri,
P.O. And P.S. Paneri,
Mouza-Harisinga,
District-Udalguri,
BTR, Assam, Pin-781123.
3. Abinash Talukdar,
W/o- Late Amiya Talukdar,
R/o-Village-Paneri,
P.O. And P.S. Paneri,
Mouza-Harisinga,
District-Udalguri,
BTR, Assam, Pin-781123.

.....Respondents

For Petitioners	:	Mr. S. Chauhan, Advocate
For Respondents	:	Mr. R. C. Saikia, Advocate
	:	Ms. M. Sarma, Advocate
Date of Hearing	:	09.01.2026
Date of Judgment	:	21.04.2026

BEFORE

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

- [1]** Heard Mr. S. Chauhan, the learned counsel for the petitioners. Also heard Mr. R.C. Saikia, the learned Senior Counsel, assisted by Ms. M. Sarma, the learned counsel for the respondents.
- [2]** This application under Article 227 of the Constitution of India has been filed by the petitioners impugning the order dated 12.12.2023, passed by the Court of the learned Civil Judge (Senior Division), Udalguri in Misc(J) Case No. 29/2023, arising out of Misc(J) Case No. 06/2023 in T.S. No.08/2023.
- [3]** The facts relevant for consideration of the instant revision petition, in brief, are that the present respondents, as plaintiffs have filed a title suit bearing T.S. No.08/2023 before the Court of learned Civil Judge (Senior Division), Udalguri praying for declaration of their right, title and interest and recovery of khas possession by evicting the defendants from the suit property as well as cancellation of agreement dated 13.08.2019 and for permanent injunction against the defendants/present petitioners.
- [4]** In the aforesaid title suit, the respondents had also filed an application under Order No. XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 praying for grant of an ad interim injunction during the pendency of the title suit for restraining the present petitioners. The said application was registered as Misc(J) Case No. 06/2023. After receiving summons/notices from the trial court, the present petitioners appeared before the trial court and contested the suit by filing written statement and counter-claim as well as written objection against the injunction petition.

- [5]** Thereafter, after hearing both sides, the trial court, by its order dated 05.10.2023, passed in Misc(J) Case No. 06/2023, passed the order observing that *"to do justice in the present circumstances would be to allow the petitioners to enter the suit land (tea garden) which is obviously their right, title and interest, which is not disputed by opposite parties and to enjoy the produce of tea by both parties equally."*
- [6]** However, thereafter, the present respondents filed an application on 06.11.2023 before the trial court under Sections 152 and 153 of the Code of Civil Procedure, 1908 for correction of order dated 05.10.2023. The said application was registered as Misc (J) Case No. 29/2023. Thereafter, by order dated 12.12.2023, passed in Misc (J) Case No. 29/2023, the trial court modified its earlier order dated 05.10.2023, passed in Misc(J) Case No. 06/2023. By the impugned order dated 12.12.2023, passed in Misc (J) Case No. 29/2023, the words *"and also to enjoy the produce of tea leaves by both the parties equally"* were modified as *"and also to enjoy the produce of tea leaves"* deleting the words *"by both the parties equally."*
- [7]** Mr. S. Chauhan, the learned counsel for the petitioners has submitted that prior to filing the aforesaid title suit, the respondents had earlier also filed a title suit before the Court of learned Civil Judge (Senior Division), Udalguri, which was registered as Title Suit No. 04/2021 as well as an injunction petition filed therein was registered as Misc (J) Case No. 05/2021. He submits that the said

suit was dismissed by the trial court on the ground that same was barred by Section 69 of the Indian Partnership Act, 1932. However, the present respondents instead of filing an appeal against the said order preferred a fresh title suit.

- [8]** The learned counsel for the petitioners submits that the modification made in the order dated 5th May, 2023 by exercising the powers under Sections 152 and 153 of the Code of Civil Procedure, 1908 is not due to any error arising out of any accidental slip or omission rather it has disentitled the present petitioners from enjoying the benefits of the suit land during the pendency of the suit.
- [9]** The learned counsel for the petitioners has submitted that by the impugned order dated 12.12.2023 the present petitioners were restrained from entering into the suit land and enjoying the produce of tea leaves which is beyond the scope of Sections 152 and 153 of the Code of Civil Procedure, 1908.
- [10]** The learned counsel for the petitioners also submits that since the order dated 05.10.2023 was passed in application under Order No. XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 the appropriate remedy against the said order was by filing appeal under the provisions of Code of Civil Procedure, 1908 and not to exercise the powers under Sections 152/153 of the Code of Civil Procedure, 1908 surreptitiously.

- [11] On the other hand, Mr. R. C. Saikia, the learned Senior Counsel appearing for the respondents has submitted that the present respondents have filed an interlocutory application, i.e., I.A.(C) No. 3724/2024 for vacating the stay granted on the impugned order, by order dated 06.09.2024. He submits that the averments stated in the said interlocutory application may be treated as a written objection in this Civil Revision Petition.
- [12] The learned Senior Counsel has raised the question of maintainability of the instant Revision Petition under Article 227 of the Constitution of India. He submits that by the impugned order, the respondents were allowed to enter the suit premises and to enjoy the produce of tea leaves during the pendency of the Title Suit No.08/2023, and as the said order is an order of temporary injunction under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908, same is amenable to appeal under Order 43, Rule 1 (r) read with Section 104 of the Code of Civil Procedure, 1908. He submits that as such the present Revision Petition is not maintainable. In support of his submissions, the learned Senior Counsel has cited a ruling of Full Bench of this Court in the case of **"Akmal Ali & Others Vs. The State of Assam & Others"** reported in **"1984 1 GLR 133."**
- [13] The learned Senior Counsel for the respondents has submitted that after going through the application filed by the present respondents under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 in Misc(J) Case No. 06/2023, the trial court allowed

their application, by its order dated 05.10.2023, by allowing the respondents to enjoy the produce of tea leaves in the suit property. However, a typographical error crept in the said order and the words "by both the parties" were included in the said order and as such the present respondents filed an application under Sections 152/153 of the Code of Civil Procedure, 1908 for rectification of the typographical error in order dated 05.10.2023, passed in Misc(J) Case No. 06/2023.

- [14]** The learned Senior Counsel for the respondents further submits that the present petitioners never filed any objection against the application filed by the present respondents in Misc (J) Case No. 29/2023. He submits that the impugned order has been passed by the trial court correctly without any objection from the present petitioners.
- [15]** I have considered the submissions made by learned counsel for both sides and have gone through the materials available on records. I have also perused the rulings cited by the learned counsel for both sides in support of their respective submissions.
- [16]** On perusal of the records, it appears that the order dated 05.10.2023, passed in Misc(J) Case No. 06/2023, was on the basis of an application under Order XXXIX, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 filed by the present respondents, namely, Srimati Sushila Talukdar and others against the present petitioners, namely, Srimati Samita Rabha and others. It also appears by the aforesaid order dated 05.10.2023, the trial court

allowed both the parties to enjoy the produce of the tea leaves equally.

[17] It also appears that the present respondents filed the application under Sections 152/153 of the Code of Civil Procedure, 1908 for deleting the words “both the parties equally” and to add the word “the respondents are restrained from entering into the suit land and plucking the tea leaves on the suit land”, as same was stated to be an accidental slip or omission.

[18] However, it appears that by the impugned order dated 12.12.2023, passed in Misc (J) Case No. 29/2023, the trial court modified the order dated 05.10.2023, by only deleting the words “by both the parties equally,” and no restrain order was passed against the present petitioners. Thus, the effect of said rectification is that though the respondents were allowed to enter into the suit land (tea garden) and enjoy the produce of the tea leaves, however, the present petitioners were also not to be restrained to do so by the said order.

[19] By the impugned order, the trial court has mentioned that the words “both the parties equally” were incorporated due to accidental and typographical errors. The effect of the impugned order is only to rectify the typographical error mentioned in the said order, which has crept in the order dated 05.10.2023, passed in Misc(J) Case No. 06/2023, and, therefore, the order which will be operative and

which will have force is the order dated 05.10.2023, passed in Misc(J) Case No. 06/2023.

[20] Under such circumstances, this court is of the considered opinion that if the present petitioners have any grievance, it has to be against the order dated 05.10.2023, after its rectification by order dated 12.12.2023. Moreover, as the order dated 05.10.2023 was an order passed under Order XXXIX, Rule 1 and 2, read with Section 151 of the Code of Civil Procedure, 1908 which is amenable to appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908. Hence, the present revision petition is not maintainable under Article 227 of the Constitution of India.

[21] Accordingly, this CRP(IO) is dismissed.

[22] However, it is pertinent to mention herein that by the impugned order or by the order dated 05.10.2023, passed in Misc(J) Case No. 06/2023, the present petitioners have not been restrained in any manner in entering or enjoying the produce of the tea leaves of the suit land along with the respondents.

JUDGE

Comparing Assistant