

GAHC010207472024



2026:GAU-AS:4160

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

Case No. : CRP(IO)/397/2024

M/S SUBHAM BUILDWELL
M/S SUBHAM BUILDWELL,
A DULY CONSTITUTED PARTNERSHIP FIRM HAVING ITS OFFICE AT
SUBHAM VELOCITY, GS ROAD, DISPUR, KAMRUP (M), ASSAM,

REP. BY ITS ONE OF THE PARTNER KAMAL KUMAR JAIN, S/O- LATE
JHUMARMAL JAIN,
R/O- SRCB ROAD, FANCY BAZAR,
P.O- GUWAHATI-01, DIST- KAMRUP (M), ASSAM

VERSUS

PARTHA SARATHI BANERJEE AND 5 ORS
S/O- PRANAB KUMAR BANERJEE, R/O- MATRI BHAWAN, MOTILAL NEHRU
ROAD, PANBAZAR, GUWAHATI-01, KAMRUP (M)

2:M/S CANDIDA ENTERPRISE
A REGD. PARTNERSHIP FIRM
HAVING ITS OFFICE AT KALIRAM MEDHI ROAD
RANIBARI
PANBAZAR
GUWAHATI-01
DIST- KAMRUP(M)
ASSAM.

(REP. BY ITS MANAGING PARTNER SIDDARTH BANERJEE
PROFORMA RESPONDENT NO-6)

3:PRANAB KUMAR BANERJEE
S/O- LATE DURGA CHARAN BANERJEE

4:TUSHARKANA BANERJEE
W/O- LATE GAUTAM BANERJEE

5:SHIBANI BANERJEE
D/O- LATE DURGA CHARAN BANERJEE

6:SIDDHARTHA BANERJEE
S/O- PRANAB KUMAR BANERJEE
(ALL ARE R/O MATRI BHAWAN
MOTILAL NEHRU ROAD
PANBAZAR GUWAHATI-01
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. P HAZARIKA, MR. H S BORAH

Advocate for the Respondent : MR A KAKOTI (R-1), MS. D DAS(R-1),J PEGU(R-1),MS. M BARUAH(R-1)

Linked Case : CRP(IO)/395/2024

M/S CANDIDA ENTERPRISE AND 4 ORS
A REGD. PARTNERSHIP FIRM
HAVING ITS OFFICE AT KALIRAM MEDHI ROAD
RANIBARI
PANBAZAR
GUWAHATI-01
DIST- KAMRUP(M)
ASSAM

2: PRANAB KUMAR BANERJEE
S/O- LATE DURGA CHARAN BANERJEE

3: TUSHARKANA BANERJEE
W/O- LATE GAUTAM BANERJEE

4: SHIBANI BANERJEE
D/O- LATE DURGA CHARAN BANERJEE

5: SIDDHARTHA BANERJEE
S/O- PRANAB KUMAR BANERJEE

(ALL ARE R/O MATRI BHAWAN
MOTILAL NEHRU ROAD

PANBAZAR GUWAHATI-01
KAMRUP (M)

HEREIN THE PET. IS REP. BY SIDDARTH BANERJEE
THE PET. NO-5)
VERSUS

PARTHA SARATHI BANERJEE AND 2 ORS
S/O- PRANAB KUMAR BANERJEE

R/O- MATRI BHAWAN
MOTILAL NEHRU ROAD
PANBAZAR
GUWAHATI-01
KAMRUP (M)

2:M/S SUBHAM BUILDWELL

A DULY CONSTITUTED PARTNERSHIP FIRM HAVING ITS OFFICE AT
SUBHAM VELOCITY
GS ROAD
DISPUR
KAMRUP (M)
ASSAM

REP. BY ITS ONE OF THE PARTNER KAMAL KUMAR JAIN
S/O- LATE JHUMARMAL JAIN

3:SANDEEP MALU
S/O- BIMAL SINGH MALU

C/O- SUBHAM BUILDWELL

SUBHAM VELOCITY

GS ROAD
DISPUR
KAMRUP (M)
ASSAM

Advocate for : MR H DAS

Advocate for : MR A KAKOTI (R-1) appearing for PARTHA SARATHI BANERJEE
AND 2 ORS

**BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS**

ORDER

Date : 20-03-2026

Heard Mr. H. Das, learned counsel for the petitioners in CRP(IO)/395/2024 and Ms. B. Thakuria, learned counsel appearing on behalf of Mr. P. Hazarika, learned counsel for the petitioner in CRP(IO)/397/2024. Also heard Mr. A. Kakoti and Ms. M. Baruah, learned counsels for the respondents.

2. Title Suit being T.S. No. 447/2019 has been filed before the learned Civil Judge (Senior Division) No. 2, Kamrup (Metro), Guwahati where one of the prayers of the plaintiffs is a declaration that on the basis of the deeds mentioned in Schedule- B of the plaint, the defendant Nos. 6 and 7 should be declared to be having no right and authority to alienate/sell the Schedule- A land, and the flats and buildings situated over the Schedule-A land to any person, unless and until the plaintiff gives written consent as the legal heir of late Swapna Banerjee, who was stated to be a partner in a development agreement Deed No. 3613 dated 05.05.2011 and Rectification Deed No. 4305 dated 16.05.2012.

3. The plaintiffs/petitioners filed an application before the learned Trial Court with a prayer that the other side should be directed to submit all information regarding sale of deed property during the pendency of the litigation, including the information of sale deeds, names of prospective buyers, allotment of property to said buyers, number of flats left to sell, before the Trial Court.

4. The opposite party submitted a written objection to the said Suit and after

hearing the parties, the learned Trial Court, Civil Judge (Senior Division) No. 2, Kamrup (Metro), Guwahati passed the impugned order dated 21.08.2024 allowing the said prayer and directing the opposite parties to furnish the names of the prospective buyers.

5. Mr. Das, learned counsel for the revision petitioners submits that no provision of law has been referred to or mentioned in the impugned order under which the said order has been passed, and, therefore, the said order is without an authority of law. It is also submitted that the petition filed in this connection which led to the passing of this order also does not mention about any provision of law. It is submitted by the learned counsel that in such a situation, the impugned order is without jurisdiction and should be interfered with.

6. On the other hand, Mr. Kakoti, learned counsel for the respondents submits that the said order can be passed invoking the provisions under Order 11 Rule 12 and 14 CPC read with Section 151 CPC. It is also submitted that the purported sales of the property/ flats have been done during the pendency of the litigation, thereby violating the provisions of Section 52A of the Transfer of Property Act incorporating the principle of *lis pendens*.

7. I have perused the relevant materials and given my consideration to the matter at hand. I am of the considered view that the matter can be disposed of at this stage itself. It is well settled that Section 151 CPC is residual provision of the Code, wherein orders can be passed for the interest of justice and preventing abuse of the process of the Court. It is well settled that when specific provision is there in the Court, governing a certain power, usually the power under Section 151 CPC is not exercised. It only saves the inherent power of the Court, thereby a residual provision, which are meant to be exercised in

situations where no specific power is conferred is available in the Code and further, in the interest of justice. Order 11 Rule 12 and 14 CPC may be reproduced herein below:

"ORDER XI Discovery and Inspection

12. Application for discovery of documents.—Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

14. Production of documents.—It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

8. Upon considering the matter at hand, and perusing the materials, I find it to be correct that the application which was filed during the impugned order does not reflect any provision under which it was filed and to that extent, the submission of the learned counsel for the petitioners is correct. The impugned order though has narrated some factual matrix of the matter giving rise to the application, has not referred to any provision of law and merely allowed the prayer of the applicants for direction to the defendants to furnish the names of the prospective buyers. It has also not referred to Section 151 CPC.

9. In the given facts and circumstances, I am accepting the contention of the petitioners side. In this regard, I am inclined to set aside the impugned order,

however, giving liberty to the respondent side to ventilate their grievances before the learned Court below, taking recourse to the appropriate provisions of law.

10. In such view of the matter, the impugned order dated 21.08.2024 passed by the Court of learned Civil Judge (Senior Division) No. 2 in Title Suit No. 447/2019 is hereby set aside.

11. However, as indicated above, the respondents side would be at liberty to ventilate their grievances by taking recourse to the appropriate provisions of law.

12. The revision petitions stands allowed and disposed of on the aforesaid terms.

13. No costs.

JUDGE

Comparing Assistant