

GAHC010223382022



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

Case No. : I.A.(Civil)/3323/2022

KAMAL KAKATI and 9 ORS.
S/O LATE LILADHAR KAKATI

2: MOHAN KAKATI

BOTH ARE SONS OF LATE LILADHAR KAKATI

3: SMTI FULMAI KEOT

W/O SRI LALIT CHANDRA KEOT

4: SMTI LILAMAI RAJKHOWA @ KAKATI
W/O SRI MAHENDRA RAJKHOWA

5: SMT. JINTI KAKATI DEVI
W/O SRI HEMEN KAKATI

6: SMTI TARAMAI KAKATI

W/O LATE GUNADHAR KAKATI

7: SMT. KIRAN BORA

W/O JIBAN BORA

8: PUSHPENDRA KAKATI

9: PRAMOD KAKATI

BOTH ARE S/O LATE GUNADHAR KAKATI

10: HIRAN DAS

W/O SRI BIREN DAS
ALL ARE R/O VILL. RANGAGORAH
MOUZA-KACHAMARI
P.S. SADAR
DIST. NAGAON
ASSAM

11: KHAGEN KAKATI

S/O LATE LILADHAR KAKATI
R/O VILL. HUJ RANGAGARAH
MOUZA KACHAMARI
DIST. NAGAON
ASSAM

VERSUS

BISHNU PRASAD BORAH
S/O SRI DURGESWAR BORAH, R/O VILL. KAWAIMARI, MOUZA-
KACHAMARI, P.S.SADAR, DIST. NAGAON, ASSAM.

Advocate for the Petitioner : MR.A C SARMA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 14.12.2022

Heard Mr. AC Sarma, learned Senior Counsel for the applicants /respondents/ plaintiffs and Mr. D Mazumdar, learned Senior Counsel for the opposite party/ appellant/ defendant No.1.

By this interlocutory application under Order 39 Rule 1 and 2 r/w Section 151 of the CPC, the applicants/respondents/plaintiffs have prayed for an *ad-interim* injunction restraining the opposite party/ appellant/ defendant No.1 from changing the nature and character as well as from alienating the suit land as described in Schedule 'A' till disposal of the connected

appeal.

The applicants/respondents/plaintiffs had filed a T.S No. 60/2002 in the Court of learned Munsiff No. 1, Nagaon for declaration of their right, title and interest as well as for recovery of khas possession of the suit house standing over the suit land by evicting the opposite party/appellant No.1 by demolishing an unauthorised structure over 10 feet in breadth and 24 feet in length roofed with CI Sheets having bamboo post and bamboo fencing on the western part of the suit house described in the schedule B and shed with CI Sheets of 8 feet in breadth and 24 feet in length in front of the suit house described in the schedule B contending *inter alia* that the opposite party/ appellant/ defendant No.1 illegally encroached the house. The defendant No.1 contested the suit by filing a written statement. After adjudication, the learned trial court decreed the suit vide Judgment and Decree, dated 29.03.2010. Being aggrieved, the opposite party/ appellant/ defendant No.1 preferred an appeal before the Court of learned Civil Judge, Nagaon which was registered as Title Appeal No.10/2010 and the said learned appellate Court upheld the Judgment and Decree of the learned trial court vide Judgment and Decree, dated 13.03.2013. Being aggrieved, the opposite party/ appellant/ defendant No.1 has preferred the instant second appeal being RSA 157/2013. The applicants/respondents/plaintiffs have alleged that on 09.10.2022, the opposite party /defendant No.1/ appellant started earth filling over the schedule land during the puja vacation holidays, which was immediately reported to the police, but the police refused to interfere as the instant second appeal has been pending without any specific direction. Therefore, it is stated that in the interest of justice, *ad interim* temporary injunction may be granted restraining the opposite party/defendant No.1/appellant from changing the nature and character as well as from alienating the suit land as described in Schedule A till disposal of the appeal.

Mr. AC Sarma, learned Senior Counsel appearing for the applicants / respondents/ plaintiffs submits that the applicants have a strong *prima facie* case to go for trial and the balance of convenience is also for granting injunction and further, if the injunction is not granted the applicants will suffer irreparable loss and injury which cannot be compensated in terms of money. Mr. Sarma further submits that injunction is also necessary in order to avoid multiplicity of suits. Mr. Sarma, however, submits that grant of *status quo* on the suit

land/property as on today till disposal of the appeal may also serve the aforesaid purpose.

Mr. D Mazumdar, learned Senior Counsel appearing for the opposite party/ defendant No.1/appellant submits with reference to the averments made in the affidavit-in-opposition that the alleged earth filling done by him is not on the entire schedule land but on the northern side of the land along with the Srimanta Sankardev Path which connects Nagaon town with Dhing-Moirabari. Mr. Mazumdar further submits that earth filling has become necessary as after the PWD, Government of Assam started widening the breadth of the said road from 65 feet to 120 feet since April-May 2022, the height of the said road was raised by about 3 feet with a footpath over a drain on the sides which is about 5/6 feet above the existing land and as such, in order to enable the entry of his vehicles to his land, it became necessary to raise the level of land. It is also submitted that in order to help an unemployed youth, opposite party/ defendant No.1/appellant has made another most temporary ek-chali tin sheds to allow him to open two wheeler repairing garage where in one room, he has allowed a cancer patient to stay there with his family without charging any rent from him because of his poverty. Mr. Mazumdar submits that the aforesaid structures being temporary in nature, he has no intention of alienating the suit land/property to any third person. For the aforesaid reasons, Mr. Mazumdar submits that the apprehension of change of nature and character of the suit land/property thereby is unnecessary.

I have considered the above submissions made by the learned counsel for both the sides and the averments made by the parties.

Having heard the learned counsel of both the sides and consideration of averments made by the parties, it is noticed that the opposite party/ defendant No.1/appellant have made some improvements on the suit land by earth filling due to raising of the adjoining PWD road as stated above. It is further seen that a temporary Ek-chali tin shade has been raised and used for repairing of two wheelers and another room for rent free accommodation of a distressed family. However, as averred in paragraph No.6 of the affidavit-in-opposition, opposite party/ appellant/ defendant No.1 has stopped all further constructions / erection of any more temporary structures. It is therefore seen that the applicant/ respondent has made some improvements to the suit land/property in the aforesaid compelling situations.

Therefore, balancing all the relevant factors in facts and circumstances stated by both the parties, this Court is of the opinion that there is a *prima facie* case in favour of the applicants/respondents/plaintiffs and as such, if an appropriate prohibitory order is not granted, the applicants/ respondents/plaintiffs may likely to suffer irreparable loss and injury due to probable changes in the nature and character of the suit land/ property which may give rise to avoidable multiplicity of proceedings.

For the above stated reasons, it is provided that both the parties shall maintain *status quo* as on today i.e. 14.12.2022 till disposal of the connected RSA No. 157/2013.

Accordingly, the interlocutory application stands disposed of.

JUDGE

Comparing Assistant