

GAHC040009812023



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

**Case No. : CRP/38/2023**

Talam Har Neelam and 8 Ors.  
S/o Lt. Neelam Teli,  
R/o Neelam Village, PO Deed, PS Yachuli, Lower Subansiri District, Arunachal Pradesh.      2: Neelam Sanjay @ Apo

Age:

Occupation :

S/o Shri Neelam Takhe

R/R/o Neelam Village  
PO Deed  
PS Yachuli  
Lower Subansiri District  
Arunachal Pradesh.

3: Neelam Oley  
Age:  
Occupation :  
S/o Shri Neelam Takhe

R/o Neelam Village  
PO Deed  
PS Yachuli  
Lower Subansiri District  
Arunachal Pradesh.

4: Neelam Obi  
Age:  
Occupation :  
S/o Shri Neelam Taje

R/o Neelam Village  
PO Deed  
PS Yachuli

Lower Subansiri District  
Arunachal Pradesh.

5: Neelam Lachum @ Laxman

Age:

Occupation :

S/o Shri Neelam Talam

R/o Neelam Village

PO Deed

PS Yachuli

Lower Subansiri District

Arunachal Pradesh.

6: Neelam Sonia

Age:

Occupation :

S/o Shri Tatum

R/o Neelam Village

PO Deed

PS Yachuli

Lower Subansiri District

Arunachal Pradesh.

7: Neelam Rajen

Age:

Occupation :

S/o Shri Neelam Sorvi

R/o Neelam Village

PO Deed

PS Yachuli

Lower Subansiri District

Arunachal Pradesh.

8: Neelam Rama

Age:

Occupation :

S/o Shri Neelam Tajam

R/o Neelam Village

PO Deed

PS Yachuli

Lower Subansiri District

Arunachal Pradesh.

9: Neelam Togu

Age:  
Occupation :  
S/o Shri Neelam Totum

R/o Neelam Village  
POD Deed  
PS Yachuli  
Lower Subansiri District  
Arunachal Pradesh

VERSUS

Likha Yana  
W/o Shri Likha Heli,  
R/o New Pania Village, PO/PS Yachuli, Lower Subansiri District, Arunachal Pradesh.

**Advocate for the Petitioner** : T T Tara

**Advocate for the Respondent** :

**BEFORE**  
**HONBLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 25.07.2023**

Heard Mr. T. T. Tara, learned counsel for the petitioners.

**2.** This is an application under Section 151 of the Code of Civil Procedure *read with* Article 227 of the Constitution of India praying for staying the further proceeding of the Money Suit No. 28/2022, pending before the Court of learned Civil Judge (Senior Division), Ziro, Lower Subansiri District, Arunachal Pradesh, as the suit in issue is directly and substantially borne out of Ziro P.S. Case No. 20/2019, dated 27.05.2019, and Charge-Sheet No. 07/2019, dated 10.07.2019, under Sections 447/427/436 of the Indian Penal Code, which is presently

pending for trial before District & Sessions Court, Ziro, as Session Case (Z) No. 07/2021.

**3.** It is submitted by the learned counsel for the petitioner, Mr. Tara, that on 27.05.2019, the private respondent filed an F.I.R. before the Ziro Police Station stating *inter alia* that in the morning hours, the petitioners have entered into her private land and ransacked her garden and destroyed the kiwi, apple and tea plantation and caused a loss to the tune of crores of money. In pursuant to the said F.I.R., the Ziro P.S. Case No. 20/2019 has been registered under Sections 447/427/438 of the Indian Penal Code and on completion of the investigation, the I.O. filed Charge-Sheet against the present petitioner under the said Sections of law. Trial has also commenced in the Court of learned District & Session Judge, Ziro. But, in the meanwhile, the private respondent has also instituted Money Suit No. 28/2022 before the Court of learned Civil Judge (Senior Division) Ziro, Lower Subansiri District, on the issue in question which is directly and substantially borne out of the said F.I.R. and Charge-Sheet. The trial of the Session Case has already been commenced and some of the prosecution witnesses are already been examined except 2 (two) more prosecution witnesses who are not appearing for prosecution evidence. But, during the pendency of the said criminal case, the sole respondent had instituted Money Suit No. 28/2022 before the Court of learned Civil Judge (Senior Division), Ziro, for realization of money amounting to Rs. 49,50,00,000/- along with pendent-lite and future interest accruing thereupon from the petitioners on the basis of F.I.R. lodge by the respondent. The respondent has instituted the Money Suit only on the basis of the F.I.R. and the technical expert report who had never visited the place of occurrence for assessment of alleged damage of the Agri-

Horti garden and assessment was prepared by the District Horticulture Officer at his office chamber at Ziro. The matter was listed on 07.08.2023 for filing written statement by the defendants/petitioners. Further, the Title Suit No. 07/2017 is also pending before the learned Civil Judge (Senior Division), Ziro, Lower Subansiri District, for the title of the land where the incident is alleged to be happened.

**4.** Further it is submitted that after more than 2 (two) years of the alleged incident, the respondent has submitted an application on 25.02.2022 before the Deputy Commissioner, Ziro, for a direction or to pass an appropriate order for commission of an expert/ Horticulture Officers to assess the loss on the basis of the report available in the Charge-Sheet which was also endorsed to ADC, Yachuli. However, on 29.03.2022, the Horticulture Development Officer, Yachuli, has submitted the report only on the basis of the F.I.R. and final report filed by the Investigating Officer without visiting the field and prepared a loss assessment report amounting to Rs. 49,50,00,000/-.

**5.** As the Session Case No. 07/2021 is at the stage of evidence of prosecution witnesses and the next date of recording of evidence is fixed on 26.07.2023 and the present Money Suit is instituted only on the basis of the F.I.R. and the Charge-Sheet filed in the criminal case which is already at the stage of evidence and hence, under the above circumstances, the present application is preferred under Section 151 of the Code of Civil Procedure *read with* Article 227 of the Constitution of India praying for stay of the further proceeding of the Money Suit pending before the learned Civil Judge till the final adjudication of the Session Case No. 07/2021.

**6.** The learned counsel, Mr. Tara, further submitted that without visiting the field or without any proper assessment, the Horticulture Officer has filed the assessment report only on the basis of the F.I.R. and Charge-Sheet filed in the said criminal case. The learned counsel further submitted that as the criminal case has already proceeded and it is at the stage of evidence and hence, the Civil dispute, which is filed only on the basis of the F.I.R. as well as the Charge-Sheet, can be stayed till final disposal of the criminal proceeding and it is a well settled position of law that the criminal proceeding will have primacy over the civil proceeding and from the stage of both the cases also, it is seen that the Money Suit is in very initial stage wherein the defendants/petitioners were asked to file their written statement, however the criminal case has already proceeded and it is at the stage of evidence.

**7.** The learned counsel for the petitioner further relied on a decision of Hon'ble Apex Court reported in **(2009) 5 SCC 528 [Syed Askari Hadi Ali Augustine Imam & Anr. Vs. State (Delhi Administration) & Anr.]** and stressed on paragraph Nos. 21, 22 & 23 of the said judgment, which reads as under:

*"21. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.*

*22. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil*

*proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.*

*23. In M.S. Sheriff vs. State of Madras & Ors. [AIR 1954 SC 397], a Constitution Bench of this Court was seized of a question as to whether a civil suit or a criminal case should be stayed in the event both are pending; it was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment.*

**8.** Further, the learned counsel for the petitioner also relied on another decision of this Court (Agartala Bench) reported in **2009 (4) GLT 366(Subal Kumar Dey & Ors. Vs. Public Prosecutor, West Tripura & Ors.)**, wherein, it has been observed that "Postponement of trial in criminal case on the ground of subsistence of civil suit, not automatic-Question of postponement depends on facts of each case-Principles of law, discussed-Need for speedy trial of criminal case, emphasized-Order of Trial Court, upheld-Petitions dismissed."

**9.** After hearing the submissions made by the learned counsel for the petitioner, I have perused the case record and annexures filed along with the petition.

**10.** It is a fact that an F.I.R. is lodged with the allegation that the petitioners entered into a private land of the respondent and ransacked her garden and destroyed kiwi, apple and tea plantation and caused a loss to the tune of crores

of rupees. Accordingly, on the basis of the said F.I.R., a criminal case has been registered and Charge-Sheet is also filed under Sections 447/427/436 of the Indian Penal Code. It is also a fact that the criminal case is already proceeded and case is at the stage of evidence, but after a lapse of 2 (two) years, the Money Suit has been instituted by the respondent for realization/recovery of amount to the tune of Rs. 49,50,00,000/- which was duly assessed by the Horticulture Officer. In the plaint of the Money Suit No. 23/2022, it is alleged that the defendants have hatched a conspiracy to forcefully take the possession of suit land and entered into the plaintiff's land illegally and ransacked the plaintiff's garden and destroyed kiwi, apple and tea plantation causing a loss to the tune of crores of rupees. On the basis of the same, the respondent lodged an F.I.R. and thereafter she approached the Deputy Commissioner, Ziro, for holding a loss assessment of the damaged property and submitted a Letter on 27.05.2019 praying for constituting a technical loss assessment team comprising officers from the department of Agriculture and Horticulture. Accordingly, the Deputy Commissioner, Ziro, also entrusted the ADC, Yachuli, to perform Magisterial duty on the day of spot verification to be done by District Horticulture Officer, Ziro. Thereafter, the respondent also filed Title Suit No. 07/2019 on 28.10.2019 before the Court of learned Civil Judge (Senior Division), Ziro, praying for recovery of the possession of the land. The respondent, as a plaintiff, also filed Misc Case praying for constituting a commission to carry out the technical assessment of the properties and to submit the report accordingly. The learned Chief Judicial Magistrate-cum-Civil Judge (Senior Division), Ziro, accordingly, issued a commission and directed the Deputy Commissioner, Lower Subansiri District, to constitute a board of experts to carry out technical assessment of the properties and accordingly, in pursuant to the order of the

learned Civil Judge (Senior Division), a report was submitted and as per the said report, total loss incurred to the plaintiff/ respondent came to the tune of Rs. 49,50,00,000/- and thereafter, the respondent, as a plaintiff, also filed a Money Suit for recovery of said amount along with the pendent-lite and future interest of the said loss.

**11.** Thus, it is seen that it is not a case that the Money Suit was simply filed only on the basis of the F.I.R. and Charge-Sheet, but after observing the other formalities and obtaining the loss assessment report, the Money Suit was filed for recovery of the loss which was alleged to have been caused by the present petitioners/defendants. It is a fact that ordinarily a criminal proceeding will have primacy over the civil proceeding as the disposal of the civil proceeding generally takes long time and in the interest of justice, the criminal case should be disposed of expeditiously as possible. But it is also well settled position of law that the civil suit must be determined on its own merit and the facts and circumstances of the case or other proceedings could be stayed depending on several factors including the nature and stage of case.

**12.** Here in the instant case, it is seen that the allegation brought against the present petitioners are not only of damaging the plantation of the respondent, but it is also alleged that they have dispossessed the plaintiff/respondent, for which she had to institute a civil suit and thereafter approached the appropriate forum for assessment of the loss caused to her land and accordingly, on the basis of the assessment report, the present money suit has been instituted for realization/recovery of Rs. 49,50,00,000/- from the present petitioners as defendants. So, from the facts and circumstances of this case, it cannot be

stated that the Money Suit is exclusively filed only on the basis of the F.I.R. and Charge-Sheet filed against the present petitioners, but the same have been filed after proper assessment of the loss and even after filing of the civil suit, wherein it is alleged that the present petitioners/defendants have allegedly disposed the respondent/plaintiff. There is no any legal provision that findings recorded in one proceeding has to be treated as a finding or it should be binding on other. Civil and criminal proceedings are to be decided on the basis of evidence adduced therein, but the judgment passed in one proceeding may have any relevancy with any other proceeding and the stay of the proceeding depend upon the stage and other circumstances of the case and there cannot be any bar to proceed both civil and criminal proceeding independently. From the facts and circumstances of this case, I do not find it appropriate to pass any order for stay of the proceeding in the Money Suit No. 28/2022, pending before the Court of learned Civil Judge (Senior Division), Ziro, Lower Subansiri District, Arunachal Pradesh, without hearing the other side and necessary order may be passed only after hearing the other side.

**13.** Accordingly, issue notice to the respondent side.

**14.** The petitioners side shall take steps for service of notice on respondent through registered post with A/D as well as by usual process.

**15.** List the matter after 4 (four) weeks.

**JUDGE**

**Comparing Assistant**