

GAHC010244752023



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

Case No. : CRP(IO)/342/2023

SURESH KUMAR SHARMA
S/O- LATE GAJANAND SHARMA,
R/O- HOUSE NO. 21A NAMGHAR PATH-2
RUKMINI GAON, GUWAHATI-22.

VERSUS

JOGINDER SINGH AND ANR
S/O- LATE CHUHAR SINGH,
R/O- HOUSE NO. 4, KANAKLATA PATH,
SIX MILE, RUKMINIGAON, GUWAHATI-22.

2: BALJIT SINGH
S/O- SHRI JOGINDER SINGH

RUKMINIGAON
GUWAHATI-22

Advocate for the Petitioner : MR. D MOZUMDER, MS D DEVI, MR. P BORAH

Advocate for the Respondent : MR. D NANDI (R-1 AND 2), MS P SARMAH (R-1 AND 2)

Linked Case : CRP(IO)/102/2023

SURESH KUMAR SHARMA
S/O LATE GAJANAND SHARMA
R/O HOUSE NO. 21A NAMGHAR PATH-2 RUKMINI GAON
GUWAHATI-22

VERSUS

JOGINDER SINGH AND ANR.
S/O LATE CHUHAR SINGH
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RUKMINIGAON
GUWAHATI-22

2: BALJIT SINGH
S/O SHRI JOGINDER SINGH
RUKMINIGAON
GUWAHATI-22

Advocate for : MR. D MOZUMDER
Advocate for : MR. D NANDI (R-1 AND 2) appearing for JOGINDER SINGH AND ANR.

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

02.08.2024

Heard Mr. D. Mozumdar, the learned senior counsel appearing for the petitioners.
Heard Mr. D. Nandi, the learned counsel appearing for the respondents.

2. Both these applications are under Article 227 of the Constitution of India challenging the impugned order dated 03.12.2022 passed by the learned Civil Judge No.3, Guwahati in Misc.(J) Case No.231/2021 and the order dated 21.09.2023 passed by the learned Civil Judge (Sr. Divn.) No.3, Guwahati in Misc(J) Case No.267/2020. Both the miscellaneous cases arise out of the same Title Suit being T.S. No.237/2020.

3. The factual matrix leading to filing of these two revision petitions are as under:

- a) The respondent is the owner of the land measuring 1900 sqft. Dag No.191 (new) 646 (old) under K.P. Patta No.179 situated at Six Mile G.S. Road under Beltola Mouza, Guwahati, Assam. The respondent allowed the present petitioner to carry on business of Marble and related materials on the said plot of land pursuant to a lease agreement dated 21.11.2002. The lease was for one year. The monthly rent was ₹6,100/-.
- b) The petitioner claims that the respondent wanted to construct a big building over the said plot of land but he did not have the financial capacity to that effect. Therefore, the petitioner proposed that he will invest money for construction of a new building and after completion of construction of a building, the petitioner shall be given the possession of the building on monthly rent.
- c) Both sides agreed to that effect and the petitioner invested about ₹28,80,000/- for construction of the said building.
- d) The building was accordingly constructed but according to the petitioner, the respondent backed out of his earlier understanding with the petitioner.
- e) For the aforesaid reason, the petitioner filed a suit praying for specific performance of the agreement dated 20.01.2020 directing the defendant to complete the remaining part of construction of the building and let out the entire building to the petitioner as a monthly tenant by handing over the possession of the same.
- f) The respondent filed a written statement denying the claims of the petitioner. The respondent claimed that he had assured the petitioner to let out only one shop room in the building, not the entire building. The respondent also filed a counter claim praying that a decree should be passed in his favour declaring that the petitioner paid ₹28,80,000/- for clearing arrear rent of the house from where the petitioner is doing his business. The respondent also prayed for a decree for ejection of the petitioner from the tenanted premise.
- g) During the pendency of the suit before the trial court in Misc. (J) Case

No.267/2020, the Court directed the respondent to maintain status quo in respect of the suit property. The court clearly stated that the property shall not be alienated nor any third party interest shall be created in respect of the suit building.

h) In the meantime, the respondent opened a shop on the ground floor of the newly constructed building for selling bicycles.

4. For the aforesaid facts, the petitioner filed an application under Order 6 Rule 17 of the Code of Civil Procedure, which was registered as Misc (J) Case No.231/2021. The petitioner wanted to introduce the aforesaid new development i.e. opening of a bicycle selling shop in the suit building, in the plaint.

5. The trial court refused this prayer on the ground that the respondent did not violate the earlier order directing the respondent to maintain *status quo*.

6. I have considered the submissions made by the learned counsel of both sides.

7. This Court is satisfied that the learned trial court had erroneously oriented itself and arrived at the impugned finding dated 03.12.2022. The petitioner wanted to amend his plaint by incorporating latest facts. But the learned trial court held that the respondent did not violate the earlier order directing maintenance of *status quo* in respect of the suit building.

8. This Court is of the opinion that the proposed amendment for bringing in new facts in the plaint would not change the nature and character of the suit, rather it will help the court to arrive at a correct finding. Therefore, the impugned order dated 03.12.2022 passed by the learned Civil Judge No.3, Guwahati in Misc.(J) Case No.231/2021, is set aside. The trial court shall allow amendment of the plaint for bringing on record the new developments in respect of the suit building.

9. In Misc (J) Case No.267/2020 arising out of T.S. No.237/2020, the trial court directed both sides to maintain *status quo* in respect of the suit building. Thereafter, the trial court held that no prayer for extension of the said status quo order was filed on subsequent occasions. For this reason, the trial court held that since no prayer for extension was filed, the earlier status quo order got automatically vacated on 19.06.2023. On 28.09.2023, the petitioner filed a prayer for extension of the earlier status quo order and it was rejected by

the trial court.

10. After considering the submissions made by the learned counsel of both sides, it is hereby directed that the earlier status quo order dated 02.09.2020 passed in Misc. (J) Case No.267/2020 shall continue till disposal of the suit by the trial court.

11. The prayer for temporary injunction vide Misc (J) Case No.267/2020 is yet to be disposed of finally. Therefore, the trial court is directed to expeditiously dispose of the said application within a period of 6(six) months from the date of receipt of this order, after hearing both sides.

With the aforesaid directions both the civil revision petitions are disposed of.

JUDGE

Comparing Assistant