

GAHC010283192019



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

Case No. : CRP(IO)/377/2019

LOVITA DAS
W/O. LT. KAUSHIK DAS, R/O. WARD NO.5, MANGALDOI TOWN, P.O. AND
P.S. MANGALDOI, DIST. DARRANG, ASSAM.

VERSUS

ROBIN DEY
S/O. LT. SUKHRANJAN DEY, R/O. WARD NO.5, NATUNPARA MANGALDOI
TOWN, P.O. AND P.S. MANGALDOI, DIST. DARRANG, ASSAM.

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : MR J ISLAM

Linked Case : CRP/199/2016

ROBIN DEY
S/O- LT. SUKHRANJAN DEY
R/O- MANGALDAI
WARD NO. 5
NATUNPARA
DIST.- DARRANG
ASSAM
PIN- 784125.

VERSUS

SMTI MINU DAS and 4 ORS
W/O- LT. TARANI DAS.

2:ON THE DEATH OF KAUSIK DAS HIS LEGAL HEIRS
S/O- LT. TARANI DAS
2.1:SMTI. LOVEETA DAS
W/O- LATE KAUSHIK DAS
2.2:MISS MOULI DAS (MINOR)
D/O- LATE KAUSHIK DAS

REP. BY HER MOTHER SMTI. LOVEETA DAS.
3:TANAYA DAS
D/O- LT. TARANI DAS
5:SHYAMAL DAS
S/O- LT. CHITTARANJAN DAS
6:KAMAL DAS
S/O- LT. CHITTARANJAN DAS
ALL R/O- MANGALDAI
WARD NO. 5
DIST.- DARRANG
ASSAM
PIN- 784125.

For the Petitioner(s) : Mr. B. C. Das,Sr. Advocate
: Mr. D. A. Kaiyum, Advocate

For the Respondent(s) : Mr. N. K. Kalita, Advocate

Date of Hearing : **22.03.2024**
Date of Judgment : **22.03.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

1. Both the petitions are taken up together for disposal by this common judgment and order on the ground that both the cases are interlinked. Taking into account that the instant proceedings arises out of T.S. No.7/2013, the parties herein are referred to as per their status in the suit.

2. CRP No.199/2016 is an application filed under Article 227 of the

Constitution challenging the judgment and order dated 16.05.2016 passed by the learned Civil Judge, Darrang, Mangaldoi in Misc. Appeal Case No.3/2015 whereby the order passed by the learned Court of the Munsiff No.2, Mangaldoi in Misc. (J) Case No.6/2013 arising out of Title Suit No.7/2013 was set aside. A perusal of the records reveal that the Petitioner herein in CRP No.199/2016 is the plaintiff in Title Suit No.7/2013. The said suit was filed inter alia on the facts that he owns and possesses a plot of land measuring 2 Kathas 6 Lechas covered by Patta No.390/104 (new) and Dag No.571/797 of Village Mangaldoi Town, Ward No.05 under Rangamati Mouza. Over the said land, the plaintiff alleged that he has three houses and the plaintiff resided in the said houses along with his family members. The said land has been most specifically described in Schedule-A to the plaint. It is the case of the plaintiff that the Schedule-A land was initially occupied by his father in the year 1951 along with his three brothers and the father of the plaintiff expired in the year 1983. It was also mentioned that there is a municipal road running from east to west situated towards the north of the land of the plaintiff where the plaintiff is residing. There is an approach road measuring 10 feet in width and 80 feet in length from the land of the plaintiff to the municipal path. The said road is specifically described in Schedule-B to the plaint. It was the specific case of the plaintiff that the father of the plaintiff and their family members were using the said road for the last 62 years as a means of ingress and egress from their house to the municipal road. The predecessor of the defendants however did not disturb them from using the said suit path. However, the defendants after winning a suit being Title Suit No.38/1998 filed against one Shri Manoranjan Dey claimed to be the absolute owners of the land including the land covered by

suit path. It has been stated in the plaint that the defendants started disturbing w.e.f. 01.09.2012. Under such circumstances, the suit was filed seeking that the plaintiff had an ejmali right on the suit path described in Schedule-B; for the decree declaring that the right, title and interest of the defendant in the suit path, if any, have become barred by adverse possession and further decree declaring that the plaintiff is the owner of the suit land on account of adverse possession and for permanent injunction restraining the defendants their servants, employees or any person at his behest from doing any act of obstruction of the suit path in any manner and/or raising/constructing any house structure and obstructing the plaintiff in any way from using the path.

3. An injunction application was filed on the similar facts seeking temporary injunction which was pari materia to the prayer of permanent injunction sought for in the suit. The said injunction application was registered and numbered as Misc. (J) Case No.6/2013.

4. The learned Trial Court i.e. the Court of the Munsiff No.2, Darrang vide an order dated 26.03.2015 directed both the parties to maintain the suit path in status quo. Apart from that, the parties were also directed not to make any structural changes in the suit path by way of any construction, digging etc. The parties were also directed not to damage and alienate the suit land by way of sale, mortgage, transfer, lease, pledge etc. till the disposal of the main suit.

5. Being aggrieved, an appeal was preferred by the defendants which was registered and numbered as Misc. Appeal Case No.3/2015. The said Misc. Appeal was allowed vide the order dated 16.05.2016 thereby setting aside

the order passed by the learned Trial Court granting injunction. The reason why the learned First Appellate Court interfered with the order of injunction was that the plaintiff had claimed the right over the suit land on the basis of the adverse possession and not on the basis of title and possession and as such the plaintiff did not have a *prima facie* case. It was also opined by the learned First Appellate Court that if the order of injunction passed by the learned Trial Court is not interfered with, then the right and interest of the defendant to enjoy the suit land would be interfered with which can be said to be in the form of a temporary injunction restraining them from using the land. It was opined that this could affect and curtail the rights of the opposite party/defendants in enjoyment of their property. Accordingly, on the basis thereof, the order passed by the learned Trial Court dated 26.03.2015 was set aside and quashed. The said order passed by the learned First Appellate court dated 16.05.2016 was challenged in the instant proceedings by filing the CRP No.199/2016 on 31.05.2016 itself.

6. The said proceedings i.e. CRP No.199/2016 thereupon came before this Court and this Court vide an order dated 17.06.2016 issued notice. This Court further directed vide the said order that till the returnable date, the operation of the impugned appellate judgment and order dated 16.05.2016 passed in Misc. Appeal No.03/2015 by the Court of the Civil Judge, Darrang, Mangaldoi shall remained stayed and the parties shall maintain status quo with respect to the suit path. The record reveals that the interim order which was passed was continued thereafter until further orders.

7. This Court further finds it relevant to take note of the subsequent events which ensued thereupon. Pursuant to the order passed by this Court,

on 17.06.2016, an application was filed by the Petitioner herein under Order XXXIX Rule 2A read with Section 151 of the Code before the learned Trial Court alleging violation of the order dated 26.03.2015 passed in Misc. (J) Case No.6/2013 as well as the order passed by this Court.

8. The record further reveals that in the said proceedings, various applications thereupon were filed from time to time alleging that the defendants had put barricade and concrete wall on the suit path and to restore the suit path as on the date of passing of the status quo order. The learned Trial Court vide an order dated 01.10.2019 taking into account that from the materials on record, it appeared that the defendants have violated the status quo order in respect to the suit path by making construction over the suit path and thus preventing the plaintiff and his family members for ingress and egress through the suit path passed a direction for restoring the suit path to the original position as it stood as on the date of the status quo order. Accordingly, consequential directions were passed thereby directing the Superintendent of Police, Darrang to execute the order in presence of adequate number of police personnel, the Circle Officer, Mangaldoi Revenue Circle in order to prevent deterioration of any kind of law and order.

9. It is also apparent from the records that on 04.10.2019, an application was filed by the defendants before the learned Trial Court seeking stay of the directions which was passed on 01.10.2019 on the ground that the defendants would prefer an appeal. Thereupon, the defendants preferred an appeal before the Court of the Civil Judge, Darrang, Mangaldoi challenging the order dated 01.10.2019 which was registered and numbered as Misc. Appeal No.7/2019 which was admitted for hearing. The directions which

were passed on 01.10.2019 by the learned Trial Court was not stayed by the First Appellate Court as could be seen from the order dated 23.10.2019 by which the application for stay was rejected.

10. It further appears that the learned Trial Court thereupon passed an order on 24.10.2019 to proceed with the execution of the order dated 01.10.2019 and fixed 19.11.2019. Under such circumstances, the Defendant as Petitioner has approached this Court by filing the second proceedings i.e. CRP(IO) No.377/2019 challenging the order dated 01.10.2019 passed by the learned Trial Court as well as 23.10.2019 passed by the learned First Appellate Court whereby the stay application was rejected.

11. This Court had duly heard the learned counsels for the parties and given anxious consideration to their submission.

12. From a perusal of the order passed by the learned Trial Court dated 26.03.2015 in Misc.(J) Case No.06/2013, it transpires that the learned Trial Court by applying the well settled principles of law has passed the said injunction order thereby directing both the parties to maintain status quo in respect to the suit path. It was further directed that both the parties shall not make any structural changes in the suit path by way of any construction, digging etc. and the parties were also directed not to damage or alienate the suit land by way of sale, mortgage, transfer, lease, pledge etc. till the disposal of the main suit. The appeal which was filed against the order dated 26.03.2015 passed by the learned Trial Court was actually an appeal in principle and it is no longer res-integra that when an Appellate Court exercises jurisdiction against an injunction order which has been passed in exercise of the equitable and discretionary jurisdiction of the Court of the

first instance, the interference to the said order is only permissible when the said order suffers from unreasonableness, irrationality, perversity and against the well settled principles of law for grant of an injunction.

13. In the backdrop of the above, if this Court takes note of the order being passed by the learned First Appellate Court, it would be seen that the First Appellate Court interfered with the order passed by the learned Trial Court on the ground that if the injunction is granted, the defendants who are the lawful possessors would be deprived from using the said suit land and it is on the basis thereof held that the plaintiff did not have a *prima facie* case more so in view of the fact that the plaintiff did not base his claim on the basis of any title or possession but rather the plaintiff claimed on the basis of adverse possession. It is no longer *res-integra* that on the basis of adverse possession, a plaintiff can file a suit claiming right, title and interest in respect to a land and as such, the very basis on which the learned First Appellate Court interfered with the order passed by the learned Trial Court was erroneous. The further reason as to why the First Appellate Court had interfered with the order of the learned Trial Court is that if any injunction is granted against the defendants, their right and interest along with the enjoyment of the suit land would be interfered with.

14. This Court in the previous segments of the instant judgment has duly taken note of the order passed by the learned Trial Court wherein the Trial Court has only directed that the *status quo* be maintained as regards the suit path thereby directing either of the parties not to change the *status quo* as regards the right, title and possession including use of the suit path described in Schedule-B. Therefore, the learned Trial Court did not interfere

with the right of the defendants to enter into the suit land but only directed that the suit path which was described in Schedule-B land should not be blocked or interfered with thereby affecting the ingress and egress of the plaintiff over the said suit land. This very aspect of the matter was however not taken into consideration in the proper perspective by the learned First Appellate Court and as such, the said order passed by the learned First Appellate Court on the basis of which the order of injunction passed by the learned Trial Court was interfered with is erroneous. Consequently, this Court therefore sets aside the order passed by the learned First Appellate Court dated 16.05.2016 and thereby restores the order passed by the learned Trial Court dated 26.03.2015.

15. Moving forward, it is also seen that during the pendency of the suit and as submitted by Mr. N. K. Kalita, the learned counsel appearing on behalf of the Respondents that during the period after passing of the First Appellate Court's order and before passing of the status quo order by this Court on 17.06.2016, the defendants have made certain construction by raising a tin chali house. On the other hand, Mr. B. C. Das, the learned Senior counsel for the plaintiffs submitted that the Defendants raised construction by constructing a wall as well as blocking the ingress and egress for which proceedings under Order XXXIX Rule 2A was initiated before the learned Trial Court. He further referred to various applications which were filed before the learned Trial Court complaining as regards the violation of the order not only passed by the learned Trial Court but also the order passed by this Court on 17.06.2016. This Court had taken note of the orders passed by the learned Trial Court on 01.10.2019, 04.10.2019 and 24.10.2019 as well as the order dated 23.10.2019 passed by the learned

First Appellate Court. In the opinion of this Court, when there was a status quo order passed by this Court on 17.06.2016, any construction so made thereupon and thereby blocking ingress and egress of the plaintiff through the Schedule-B land amounts to violation of the order passed by this Court and as such, such constructions if any carried out more so during the pendency of the suit have been rightly directed to be demolished by the learned Trial Court in its orders referred to hereinabove.

16. Be that as it may, this Court upon hearing the learned counsels for the parties is of the opinion that the ingress and egress of the plaintiff through the suit path i.e. the Schedule-B land is required to be maintained during the pendency of the suit. Under such circumstances, this Court disposes of both the petitions with the following observations and directions:

- (i) The order dated 26.03.2015 passed by the learned Trial Court in Misc. (J) Case No.6/2013 is restored. The order passed by the learned First Appellate Court dated 16.05.2016 passed in Misc. Appeal No.3/2015 is set aside and quashed.
- (ii) This Court is not inclined to interfere with the orders dated 01.10.2019, 04.10.2019 and 24.10.2019 passed by the learned Trial Court in Misc. (J) Case No.15/2016 as well as the order dated 23.10.2019 passed in Petition No.2016/19 arising out of Misc. Appeal Case No.7/2019.
- (iii) This Court further directs the learned Trial Court to cause a Commission in terms with Order XXXIX Rule 7 of the Code and thereupon ascertain as to whether the ingress and egress to the plaintiff's land in Schedule-A of the plaint can be maintained without demolishing any of the

structures so constructed. On the basis of the Commission's Report, if it is found that the same can be done without any demolishing of any structure, the learned Trial Court shall pass appropriate orders in that regard.

(iv) In addition to that, this Court further directs the Mangaldoi Police Station as well as the Circle Officer, Mangaldoi Revenue Circle to do the needful so that the orders passed by the learned Trial Court for granting ingress and egress of the plaintiff through the Schedule-B path to the Schedule-A land from the municipal path remains undisturbed during the pendency of the suit.

(v) It is made clear that the observations made herein shall not affect the trial of the suit. The learned Trial Court shall adjudicate the suit without being influenced by any of the observations made hereinabove.

17. Before parting with the records, this Court duly takes note of that the suit has been pending since 2013 and almost 11 years have passed by. Under such circumstances, this Court directs the learned Trial Court to dispose of the suit at the earliest and preferably within a period of 6 (six) months from the date the certified copy of this order is placed before the learned Trial Court.

18. The Registry is directed to forthwith return the LCR to the Court below.

JUDGE

Comparing Assistant