

GAHC010016052023



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

**Case No. : CRP/41/2023**

MD. SALIM KHAN  
S/O MD. SAHABUDDIN KHAN, R/O VILL-BANUGRAM, P.O. AND P.S.-NILAM  
BAZAR, PIN-788722, DIST-KARIMGANJ, ASSAM, P/R/A C/O DR.  
LALRIMAWIA, MC HILL, ZARKWAT, AIZAWL, DIST-AIZAWL, MIZORAM,  
PIN-796007

VERSUS

MD. JAHANUDDIN AHMED @ DULU AHMED AND ANR.  
S/O MD. NAZIMUDDIN AHMED, R/O SANTIPUR, OPPOSITE ASHRAM  
ROAD, GUWAHATI-781009, HAVING OFFICE AT- HOTEL PLAZA INN, NEAR  
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY OFFICE, GMCH  
ROAD, BHANGAGARH, GUWAHATI, DIST-KAMRUP (M), ASSAM

2:NATIVE TREE DEVELOPERS PVT. LTD.  
A COMPANY REGISTERED UNDER THE COMPANIES ACT  
1956  
HAVING ITS REGISTERED OFFICE AT 2ND FLOOR  
GARIMA ROYAL  
DANISH ROAD  
PANBAZAR  
GUWAHATI-781001  
DIST-KAMRUP (M)  
REPRESENTED BY ITS AUTHORIZED SIGNATORY  
SRI VIVEK CHHAWCHHARIA  
S/O SRI BHAGAWATI PRASAD CHHAWCHHARIA  
R/O TARUN NAGAR  
GUWAHATI  
DIST-KAMRUP (M)

**Advocate for the Petitioner : MR. R K BHUYAN, MR A ZAMAN**

**Advocate for the Respondent :** MR R SENSUA (R-2), MD A ISLAM (R-1),MR G J SAIKIA(R-1),MR. N DAS(R-1),MR S BORTHAKUR (R-2)

**BEFORE  
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 06.11.2024**

Heard Mr. R.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. N. Das, learned counsel for the respondent No. 1 and Mr. R. Sensua, learned counsel for the respondent No. 2.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the order dated 05.09.2022, passed by the learned Civil Judge No. 2, Kamrup(M), Guwahati, in Misc. (J) Case No. 393/2022, arising out of Title Suit No. 353/2020.

3. It is to be noted here that vide impugned order dated 05.09.2022, the learned Civil Judge No. 2, Kamrup(M), Guwahati had dismissed the petition No. 1435/22, filed by the plaintiff/petitioner under Order 39 Rule 7 and Section 151 of the CPC for preservation of the suit property.

4. Mr. Bhuyan, learned counsel for the petitioner submits that the petitioner had instituted a title suit, being Title Suit No. 353/2020, before the Court of learned Civil Judge No. 2, Kamrup(M), Guwahati, for declaring right, title and interest and recovery of possession and permanent injunction and also declaring that the development agreement dated 14.09.2016 (deed No. 10788/16) is not binding upon the petitioner in respect of the suit land as described in Schedule-A of the plaint. Along with the title suit, the petitioner had also preferred one interlocutory application for granting injunction under Order 39 Rule 2A, read

with Section 151 of the CPC and vide order dated 30.09.2021, the learned Civil Judge No. 2, Kamrup, Guwahati had restrained the defendants particularly the defendant Nos. 1 and 2 from proceeding with any construction work over the Schedule-A property as well as from alienating and transferring the same to any other intending purchaser till disposal of the suit. Thereafter, the petitioner came to know that the defendant No. 2, in spite of the order dated 30.09.2021, had entered into an agreement for sale with intending purchasers. Thereafter, the petitioner had visited the suit property to know about the present status and found that the defendants had been proceeding with construction work in disregard to the order dated 30.09.2021, passed in Misc. (J) Case No. 387/2020. Thereafter, the petitioner had approached the Bharalumukh P.S. and requested them to enforce the injunction order to stop the construction work. Then, the petitioner had filed one separate application under Order 39 Rule 2A of the CPC, upon which Misc. (J) Case No. 117/2022 was registered and the same is still pending for disposal. Thereafter, the petitioner had filed another application under Section 151 of the CPC with a prayer to direct the police of Bharalumukh P.S. to enforce the order of injunction dated 30.09.2021 and the same is also pending for disposal, and in spite of pendency of the aforesaid two applications, the defendant No. 2 has been proceeding with the construction work over the schedule suit property and thereafter, the petitioner had filed another petition No. 1435/2022, under Order 39 Rule 7, and Section 151 of the CPC for protection and preservation of the suit property by stopping the ongoing construction over the same by enforcing the trial Court's order dated 30.09.2021. Mr. Bhuyan further submits that the respondent No. 1 had filed objection in the said petition and thereafter, hearing the learned Advocates of both the parties, the learned trial Court, vide impugned order dated 05.09.2022,

had dismissed the petition on the ground that the suit is in the initial stage and trial is yet to begin and as such, the petition for local inspection is found to be premature and that necessity of local inspection is subject matter of consideration after evidence of the parties, and that the learned trial Court had misunderstood the petition under Order 39 Rule 7, read with Section 151 of the CPC with that of the provision of local inspection and commission as provided under Order 26 Rule 9. Mr. Bhuyan also submits that till disposal of the title suit, protection and preservation of the suit property is very much necessary and that in the impugned order, the learned trial Court had failed to consider that aspect and as such, the said order is illegal and required to be interfered with.

5. Per contra, Mr. Das, learned counsel for the respondent No. 1 fairly submits that since the learned trial Court, rightly or wrongly, had passed an injunction order in the title suit, the suit property may be preserved till disposal of the suit.

6. However, Mr. Sensua, learned counsel for the respondent No. 2 submits that the prayer being made in the present petition has also been made in some other petitions before the learned trial Court where a direction was issued to the police to enforce the order of injunction dated 30.09.2021 and the same has already been done by the police and on such count, this petition becomes infructuous and therefore, it is contended to dismiss the same.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 05.09.2022 and the order dated 30.09.2021, passed in Misc. (J) Case No. 387/2020, and also gone through the relevant provision of law i.e. Order 39 Rule 7 of the CPC.

8. Order 39 Rule 7 of the CPC is reproduced herein below:

“7. Detention, preservation, inspection, etc., of subject-matter of suit.—(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.”

9. It is not in dispute that the learned trial Court had granted temporary injunction restraining the defendants, particularly respondent/defendant Nos. 1 and 2 from proceeding any construction work in the schedule property as well as alienating or transferring the same to any other intending purchaser till disposal of the title suit. But, in disregard to the aforesaid injunction order of the learned trial Court, the respondent Nos. 1 and 2 proceeded with the construction work, which is not at all permissible while the petition under Order 39 Rule 2A of the CPC and another petition under Section 151 of the CPC are pending before the learned trial Court. Mr. Das, learned counsel for the respondent No. 1 has also agreed that the suit property needs to be preserved till disposal of the suit. Though, Mr. Sensua, learned counsel for the respondent No. 2 submits that the injunction order dated 30.09.2021, has already been enforced and as such, this petition becomes infructuous, this Court is unable to record concurrence to the submission in as much as, enforcement of the order of injunction and preserving and protecting the suit property though related

concept, yet both of them cannot be understood as the same thing. While the petition was filed under Order 39 Rule 7, for protection and preservation of the suit property, the same cannot be understood as under Order XXVI Rule 9.

10. Perusal of the impugned order dated 05.09.2022, indicates that the learned trial Court has failed to understand the objective of the provision of Order 39 Rule 7 of the CPC in its proper perspective and on such count, the impugned order fails to withstand the legal scrutiny and accordingly, the same stands set aside.

11. It is provided that the suit property as described in the schedule of the title suit shall be preserved in accordance with the provision of Order 39 Rule 7 of the CPC till disposal of the suit.

12. In terms of above, this revision petition stands disposed of.

**JUDGE**

**Comparing Assistant**