

GAHC010022382015



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

Case No. : WP(C)/6038/2015

SUSHIL KUMAR VASUDEVA
S/O LT. RAM ASRA VASUDEVA R/O TEMPLE LANE, KALIBARI, P.O. and P.S.
LUMDING, DIST. NAGAON, PIN - 782447.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI- 781006.

2:THE DEPUTY COMMISSIONER
NAGAON
DIST.NAGAON
PIN - 782001.

3:THE SUB-DIVISIONAL MAGISTRATE

HOJAI OFFICE OF THE SUB-DIVISIONAL OFFICER CIVIL HOJAI
SANKARDEV NAGAR
DIST. NAGAON
PIN - 782442.

4:THE OFFICER IN CHARGE

LUMDING POLICE STATION P.O. and MOUZA- LUMDING
DIST. NAGAON
PIN - 782447.

5:SHRI SUBHASH VASUDEVA
S/OLT. RAM ASRA VASUDEVA R/O TEMPLE LANE
KALIBARI
P.O. and P.S. LUMDING

DIST. NAGAON
PIN - 78244

Advocate for the Petitioner : MR.K AGARWAL

Advocate for the Respondent : MR. S C KEYAL (ASSTT. S.G.I., R-5)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 17-02-2024

JUDGMENT & ORDER(ORAL)

The instant writ petition has been filed challenging the order dated 17.09.2015 passed by the Sub-Divisional Magistrate Hojai directing the respondent No.4 to handover the possession of the disputed land to the respondent No.5.

2. From the materials on record, it reveals that there have been certain disputes between the petitioner as well as the respondent No.5 in respect to possession of a land measuring 1 bigha covered by dag No.22 of annual patta No.38 under Mouza Lumding.

3. In view of such dispute, a proceeding under Section 145/146 of the Cr.P.C was initiated by the petitioner which was registered and numbered as MR Case No.209/1999. The said proceeding was disposed of vide order dated 03.12.2001 by declaring the possession of the land in favour of the respondent No.5. The petitioner being aggrieved filed a revision petition being Revision

Pet.No.199/2002 before the Court of the learned Sessions Judge Nagaon, which was, however, dismissed vide judgment dated 31.03.2003. Thereupon, an application was filed under Section 482 of the Code of Criminal Procedure, 1973 before this Court. However, the said revision petition was also dismissed vide order dated 05.01.2006. Thereupon, the petitioner filed a suit before the learned Munsiff at Hojai which was registered and numbered as Title Suit No.5/2008.

4. This Court has perused the plaint of the said suit and from the same it reveals that the said suit pertains to a declaration for setting aside the order dated 19.01.2008. It has been stated at the Bar that the said suit is presently pending. It is also relevant to take note of that in the said suit, injunction application was filed by the petitioner, which was, however, dismissed and an appeal which was filed was also dismissed.

5. The record further reveals that the respondent No.3 had directed the respondent No.4 vide order dated 25.03.2024/31.05.2014 to handover the possession of the disputed land to the respondent No.5.

6. Be that as it may, the petitioner filed an application that the said direction should be kept in abeyance in view of the pendency of the suit being Title Suit No.5/2008. To the said application so filed by the petitioner, the respondent No.5 had filed an objection stating, *inter alia*, that there was no restraint on the respondent No.3 to evict the petitioner from the disputed land and further that the application dated 01.07.2014 filed by the petitioner was a false and frivolous

petition and the order dated 01.07.2014 keeping in abeyance the earlier order dated 31.05.2015 was without jurisdiction and in violation of the orders passed by this Court. Accordingly, the respondent No.5 prayed that the possession of the disputed land be handed over to him. Thereupon, the respondent No.3 passed the order dated 17.09.2015 thereby directing the respondent No.4 to take necessary action to handover the possession of the disputed land to the respondent No.5 as per the order dated 02.03.2010 passed in Misc. (J) Case No.04/2008 in Title Suit No.5/2008. This order dated 17.09.2015 has been assailed in this instant proceedings.

7. The record reveals that by the order dated 01.10.2015, notice was issued, making it returnable by six weeks and further directed that status-quo be maintained in respect to the land, in question.

8. The respondent No.3 had filed an affidavit-in-opposition on 09.02.2016. In paragraph 3 of the said affidavit-in-opposition, it was mentioned that the petitioner had filed Title Suit No.5/2008 and Misc. (J) Case No.04/2008 wherein the said miscellaneous application was dismissed by the learned Munsiff, Hojai at Sankardev Nagar vide order dated 02.03.2010 and subsequently, an appeal was moved by the petitioner which was also dismissed by the appellate court's order dated 03.03.2013. It was also mentioned that MR Case No.209/1999 was disposed of declaring possession in favour of the respondent No.5 and all proceedings initiated challenging the said order were dismissed by the learned Sessions Court as well as this Court.

9. It was also mentioned that the then learned SDJM, Hojai at Sankardev Nagar had passed an order dated 19.01.2008 with a direction to the Officer-in-Charge, Lumding Police Station to hand over the possession of the land, in question, to the respondent No.5 measuring 1 bigha.

10. This Court also finds it relevant to take note of the affidavit-in-opposition filed by the respondent No.5. From a perusal of the said affidavit of the respondent No.5, it reveals that the facts already narrated hereinabove have also been stated and as such for the sake of brevity, this Court is not repeating the same. The record also shows that an affidavit-in-reply has been filed by the petitioner against the affidavit-in-opposition filed by the respondent No.5.

11. In the backdrop of the above, this Court has heard Mr. N Deka, the learned counsel appearing on behalf of the petitioner and Ms. M Deka, the learned counsel appearing on behalf of respondent No.5 and has perused the materials on record.

12. From the materials on record, the issue which arises for consideration is as to whether the impugned order could have been passed by the respondent No.3, thereby directing the respondent No.4 to handover the possession to the respondent No.5 when in the order dated 22.08.2001 there was no direction by the respondent No.3 to handover the possession. The materials on record already discussed hereinabove clearly show that the petitioner had filed the said proceedings being MR Case No.209/1999. The said proceedings culminated with an order passed by the learned Executive Magistrate thereby declaring the

possession in favour of the respondent No.5 until evicted by due course of law. The tenor of the order, therefore, can be assumed that the respondent No.5 was in possession of the disputed land. However, the respondent No.5 had not filed any application thereafter seeking initiation of proceedings under the provisions of Section 145 to the effect that the petitioner had dispossessed the respondent No.5. It is also apparent from the perusal of Section 145 of the Cr.P.C. that the said proceeding has to be initiated within a period of 2(two) months from the date the person alleging dispossession had been forcefully and wrongfully dispossessed. Under such circumstances, it is, therefore, the opinion of this Court that the respondent No.3 could not have directed the respondent No.4 to restore the possession to the respondent No.5 on the basis of the order dated 22.08.2001 passed in MR Case No.209/1999 which was signed on 03.12.2001. Consequently, the impugned order dated 17.09.2015 passed by the Sub-Divisional Magistrate Hojai at Sankardev Nagar is set aside and quashed.

13. However, liberty is given to the respondent No.5, if so aggrieved, to proceed in accordance with law seeking eviction of the petitioner and the observations made hereinabove shall not affect such proceedings, if so initiated.

14. Accordingly, the writ petition stands disposed of.

JUDGE