



GAHC010074212022

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

Case No. : FAO/40/2022

SIKHA BHUYAN
W/O SRI DIBAKAR BHUYAN,
D/O LATE PUNA BORA,
AT PRESENTE A PERMANENT RESIDENT OF JIBAN PHUKAN NAGAR,
NEAR LILA GOGOI PATH, PO C.R BUILDING, PS AND DIST DIBRUGARH,
ASSAM

VERSUS

SABIR AHMED AND 9 ORS.
S/O LATE BOKTIAR AHMED
RESIDENT OF NIRMALI GAON, PO C.R BUILDING, PS MILAN NAGAR, DIST
DIBRUGARH, ASSAM

2:KABIR AHMED @ AHMED KABIR
S/O LATE ANWARUDDIN AHMED
RESIDENT OF BOIRAGIMOTH
NEAR ALL INDIA RADIO
PO BOIRAGIMOTH
PS MILAN NAGAR
DIST DIBRUGARH
ASSAM

3:SRI SHIV CHAND PRASAD SHAH
S/O LATE GOURI SHANKAR SHAH

RESIDENT OF SHIHU KALYAN PATH
LACHIT NAGAR
EAST CHOKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM



4:SRI PRADIP KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH
RESIDENT OF SHIHU KALYAN PATH
LACHIT NAGAR
EAST CHOKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

5:SRI ASHOK KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH
RESIDENT OF SHIHU KALYAN PATH
LACHIT NAGAR
EAST CHOKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

6:SRI MANOJ KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH
RESIDENT OF SHIHU KALYAN PATH
LACHIT NAGAR
EAST CHOKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

7:MRS SABRINA HUSSAIN
W/O LATE DR EKRAMUL HUSSAIN (FRCS)
RESIDENT OF RANGAGORA ROAD
PO
PS AND DIST TINSUKIA
ASSAM

8:MISS SAGUFA AHMED
W/O LATE ALHAZ BAKHTIAR AHMED

RESIDENT OF BAGASA WARE HOUSE RESIDENCE
OPP. SHANTI APARTMENTS
JOTIA
KAHILIPARA ROAD
PO
PS AND DIST DISPUR
KAMRUP
ASSAM

9:MRS. SABIHA AHMED



W/O LATE ALTAF AHMED
RESIDENT OF MASJID ROAD
PO PS AND DIST DISPUR
KAMRUP ASSAM

10:MRS. SOPHIA ANWAR
D/O LATE ALHAZ BAKHTIAR AHMED

RESIDENT OF BAGASA WARE HOUSE RESIDENCE
OPP. SHANTI APARTMENTS
JOTIA
KAHILIPARA ROAD
PO
PS AND DIST DISPUR
KAMRUP
ASSA

Advocate for the Petitioner : MR. P BORAH

Advocate for the Respondent : MR. S BISWAS

Linked Case : FAO/52/2022

SHIV CHAND PRASAD SHAH AND 4 ORS.
S/O LATE GOURI SHANKAR SHAH
RESIDENT OF SHISHU KALYAN PATH
LACHIT NAGAR
EAST CHOWKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

2: SRI PRADIP KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH

RESIDENT OF SHISHU KALYAN PATH
LACHIT NAGAR
EAST CHOWKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

3: SRI ASHOK KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH

RESIDENT OF SHISHU KALYAN PATH
LACHIT NAGAR



EAST CHOWKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

4: SRI SANTOSH KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH

RESIDENT OF SHISHU KALYAN PATH
LACHIT NAGAR
EAST CHOWKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM

5: SRI MANOJ KUMAR SHAH
S/O SRI SHIV CHAND PRASAD SHAH

RESIDENT OF SHISHU KALYAN PATH
LACHIT NAGAR
EAST CHOWKIDINGEE
PO
PS AND DIST DIBRUGARH
ASSAM
VERSUS

SABIR AHMED AND 6 ORS
S/O LATE BOKTIAR AHMED

RESIDENT OF NIRMALI GAON
PO CR BUILDING
PS MILAN NAGAR
DIST DIBRUGARH
ASSAM

2: KABIR AHMED @ AHMED KABIR
S/O LATE ANWARUDDIN AHMED
RESIDENT OF BORAGIMOTH NEAR ALL INDIA RADIO
PO BOIRAGIMOTH
PS MILANNAGAR
DIST DIBRUGARH
ASSAM

3: SMTI SIKHA BHUYAN
W/O DIBAKAR BHUYAN

D/O LATE PUNA BORA

RESIDENT OF JIBAN PHUKAN NAGAR



NEAR LILA GOGOI PATH
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JOTIA KAHILPARA ROAD
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6:MRS. SABIHA AHMED
W/O LATE ALTAZ AHMED
RESIDENT OF MASJID ROAD
SANTIPUR
PO AND PS DISPUR
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ASSAM
7:MRS. SOPHIA ANWAR
D/O LATE ALHAZ BAKHTIAR AHMED

RESIDENT OF BAGASA WARE HOUSE RESIDENCE
OPP. SHANTI APARTMENTS
JOTIA KAHILIPARA ROAD
PO AND PS DISPUR DIST KAMRUP M ASSAM

Advocate for : MR. A K GUPTA
Advocate for : appearing for SABIR AHMED AND 6 ORS

Advocate for the appellants : Mr. D. Mazumdar,
Senior Advocate.
Mr. P. Borah, Advocate
Ms. N. Nirala, Advocate



Advocate for the Respondents : Mr. B. D. Deka, Advocate.
Mr. L. Santam, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 01.11.2022

Date of Judgment : 01.11.2022

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Mazumdar, the learned senior counsel assisted Mr. P. Borah, the learned counsel appearing on behalf of the appellant in FAO No.40/2022 and Ms. N. Nirala, the learned counsel appearing on behalf of the appellants in FAO No.52/2022. I have also heard Mr. B. D. Deka and Mr. L. Sangtam, the learned counsel appearing on behalf of the respondent No.1 in both the appeals.

2. Both the appeals, i.e. FAO No.40/2022 and FAO No.52/2022 arise out of the order dated 11.01.2022 passed in Misc. (J) Case No.54/2017 arising out of the Title Suit No.68/2017 by the Court of the Civil Judge No.1, Dibrugarh and taking into account that both the appeals raise the similar questions of law and facts, both the appeals are taken up for disposal together by this common order.

3. For the sake of convenience, the parties herein are referred to in the same status as they stood before the trial court.

4. The respondent No.1 in both the appeals is the plaintiff in Title Suit No.68/2017. The case of the plaintiff in brief is that the plaintiff is the son of one Gulreihan Ahmed. The said Gulreihan Ahmed together with her sisters-in-law Jaibunnissa Ahmed and Khurshid Ara Rahman jointly purchased a plot of land measuring 2 bighas 4 kathas 19 11/12 lechas equivalent to 43188 sq. feet. more or less, being part of the land of Dag Nos.56 and 154 covered by Tea Periodic Patta No.1 of village-Niz Mankotta Gaon, Mouza-Mankotta Khanikar in the district of Dibrugarh, Assam from their previous

lawful owner, viz. M/S Jalan Nagar South Tea Estate Ltd. for valuable consideration by executing registered Deed of Sale being Deed No.163/1969 before the Dibrugarh Sub-Registry. Out of the said land, 1 bigha 3 kathas 3 11/12 lechas of land was included in Dag No.56 and 1 bigha 1 katha 16 lecha was included in Dag No.154. The further case of the plaintiff is that all the owners, i.e. the plaintiff's mother and her daughters-in-law jointly sold 1 bigha 0 katha 7.39 lechas and the remaining land was jointly possessed by the plaintiff's mother and her daughters-in-law which was equivalent to 1 bigha 4 kathas 8.36 lechas equivalent to 27127.43 sq. feet. It was also mentioned that in the meantime, the cadastral of Dag Numbers and Patta Numbers were changed and the said land was included in Dag No.565 covered by Periodic Patta No.146 of extended Khalihamari Ward of Dibrugarh Town Mouza. Thereupon, the plaintiff's mother and the mother of the defendant No.1 expired and the plaintiff and the defendant No.1 became the joint owners of the land together with Mrs. Khurshid Ara Rahman. There was an amicable settlement amongst the said co-owners on 16.12.2000 and the said land measuring 1 bigha 4 kathas 8.36 lechas was amicably partitioned into three different parts. One part fell into the heirs of Late Jaibunnissa Ahmed, one part to the heirs of the plaintiff's mother and one part to the original owner Mrs. Khurshid Ara Rahman. It has also been mentioned that a map was accordingly prepared through the Lat Mandal of Dibrugarh Town whereby the specific shares which fell to each group was distinctly shown and the said arrangement/partition was further confirmed by the heirs of each group and the defendants including defendant No.1 who put his signature as a token of acceptance of the partition made and of the allotment of the respective shares of each of the group. It has been further alleged that from the arrangement/settlement arrived at amongst the co-owners, the plot marked as A & B fell to the share of Late Jaibunnissa Ahmed. The plot marked as C & D fell to the share of Mrs. Khurshid Ara Rahman (since deceased) and the plot marked as E & F fell into the share of late the heirs of late Gulreihan Ahmed (the plaintiff's mother). The total area of the land of Plot No.A & B measured 7717.55 sq. feet which fell to the heirs of Jaibunnissa Ahmed, i.e. the defendant No.1; the total

share of land measuring 9291.50 sq. feet fell to the heirs of Mrs. Khurshid Ara Rahman which comprised of plot No. C & D and the total area of land measuring 10,750.28 sq. feet which comprised of plot No. E & F fell to the heirs of Late Gulreihan Ahmed, i.e., the plaintiff. The said land of the plaintiff has been most specifically described in Schedule-A to the plaint. It has been further stated that the plaintiff came to learn in the meantime that the defendant partitioned his share of land being the land shown as plot No.A & B in the map measuring 2 kathas 6.5 lechas. i.e. measuring 7,717.55 sq. feet out of the original Patta and got the same included in the new Dag No.904 covered by new Periodic Patta No.626 of the extended Khalihamari Ward of Dibrugarh Town Mouza in the district of Dibrugarh, Assam. It has been stated that the defendant No.1 after having partitioned his land has no right on the land of the plaintiff. It has been alleged that all of a sudden on 10.09.2017 at around 10:00 AM, taking advantage of the absence of the plaintiff, the defendant No.1 forcefully entered into a portion of the land of the plaintiff by taking some of his associates along with 50 numbers of his tea garden labourers and broke a temporary shed which was constructed by the plaintiff on the portion of the land shown as E in the map by entering in the northern side and took away huge quantity of bricks which the plaintiff kept for making construction of the building in the said land. It has been further mentioned that certain threatening were made and the watchman of the plaintiff was also threatened. The plaintiff further stated that the defendant No.1 thereupon encroached upon 1 katha of land of Schedule-A which has been most specifically described in Schedule-B to the plaint. Further to that, the plaintiff also stated that on 20.09.2017 at about 11:00 AM, the defendant taking with him some workers all of a sudden entered the land in Schedule-B land and started to make a Kutcha house and completed the same to show that the land of the plaintiff is under his occupation. It has been further alleged in the plaint that taking advantage of the fact that the Schedule-B land which was the plot E in the map was the entrance to the plot F and there being a wire fencing being put, the plaintiff has been stopped from entering into the Schedule-F land also.

5. During the course of hearing, the parties placed before this Court the original plaint of Title Suit No.68/2017 as well as the original Misc. (J) Application for injunction, i.e. Misc (J) Case No.54/2017. A perusal of the original plaint therein shows that on the ground of encroachment into the Schedule-B land by the defendant No.1, the suit was so filed seeking a declaration that the act of the defendant No.1 of forcefully encroaching the suit premises and occupying parts of the same as shown in Schedule-B of the plaint is wrong and illegal and the said defendant has no right to do so; for recovery of the suit premises by breaking and removing whatever constructions have been made therein including removing of fencing and bamboo shed/house; mandatory injunction for removing fencing from the plot of land shown as E in the map and the bamboo shed/house shown in the plot marked F in the map; for permanent injunction restraining the defendant from making any constructions in the suit premises and handing over the same to any other person or allowing any other person to utilize the same and also restraining him from selling the suit premises. A further perusal of the unamended plaint would show that the suit premises have been described as Schedule-A and Schedule-B. A perusal of the unamended plaint, more particularly at paragraph No.11 would show that the Schedule-B land has been described to be the suit premises. Further to that, in paragraph No.12 it has been mentioned that the suit premises therefore includes the part of the land of the plaintiff which the defendant took from the part of the land mentioned in E of the map and also the portion of the land of F where the defendant constructed the bamboo house/shed and the plaintiff described the suit premises in the Schedule-A and B of the plaint. At this stage it may be relevant herein to take note of paragraph No.4 of the unamended plaint wherein it is mentioned categorically that the entire land measuring 1 bigha 4 kathas 8.36 lechas is included in Dag No.565 covered by Periodic Patta No.146 of extended Khalihamari Ward of Dibrugarh Town Mouza. It is also relevant to take note of that in paragraph No.9 of the unamended plaint wherein it has been specifically mentioned that the plot A & B in the maps measuring 2 kathas 6.5 lechas out of the original Patta, the defendant got the same included in a new Dag

No.904 covered by Periodic Patta No.626 of extended Khalihamari Ward of Dibrugarh Town Mouza in the district of Dibrugarh, Assam. It has also been mentioned that after the partition, the defendant had no right over the land of the plaintiff. Therefore, it would be clear that as per the unamended plaint, the land of Dag No.904 covered by Periodic Patta No.626 of extended Khalihamari Ward of Dibrugarh Town Mouza in the district of Dibrugarh, Assam was outside the purview of the suit premises as described in the plaint. Along with plaint, an injunction application was filed which was registered and numbered as Misc. (J) Case No.54/2017. For the sake of brevity, this Court is not repeating the statements and allegations made in the said application as the same are verbatim repetition of the statements made in the plaint save and except the statement made in paragraph Nos.6 & 7 wherein the plaintiffs has mentioned that there is a strong prima-facie case fit for trial and the balance of convenience is in favour of granting an injunction as prayed for. Further to that, it has also been mentioned that if the defendant is not restrained from making further encroachment of the land of the plaintiff and for making further construction as well as restrained from selling the suit premises or any part thereof to anybody or to induct any outsider thereto, the plaintiff shall suffer irreparably. It may also be relevant herein to mention that the ad-interim temporary injunction so prayed in the injunction application was to pass an order of temporary injunction restraining the defendant from making further encroachment of the suit premises and also in making construction therein and also to restrain him from selling any part of the suit premises and/or inducting any person thereto. It has also been prayed that the defendant be restrained from prohibiting the plaintiff from entering into the remaining part of the suit premises.

6. The Trial Court vide an order dated 22.09.2017 passed an ad-interim ex-parte injunction directing that till the next date, the opposite party shall not raise any further construction over the suit land and further the opposite party was restrained from alienating, letting out or creating any charge in respect of the suit property. The next date

was fixed on 21.10.2017 for SR/written objection in the injunction proceedings.

7. It has been brought to the attention of this Court that on 21.10.2017, the defendant No.1 appeared and sought for time for filing written statement and written objection. The interim order dated 22.09.2017 was extended by the court below on the basis of the petition No.4794/2017.

8. Subsequent thereto by a registered Deed of Sale bearing No.2728 dated 23.10.2017, the defendant No.1 sold a plot of land measuring 1 katha 3 lechas bearing Dag No.904 covered by PP No.626 of Barddhit Khalihamari Ward under Dibrugarh Town Mouza of Dibrugarh East Revenue Circle within the district of Dibrugarh to the appellant in FAO No.40/2022. The boundaries of the said land shows that on the north and the west there are land which fall in the part of Dag No.565; on the south, it is the land of part of Dag No.568 and on the east it is the road. Subsequent thereto vide another Deed No.2226 dated 06.12.2017, the defendant No.1 sold another plot of land measuring 1 katha 3.38 lechas bearing Dag No.904 covered by PP No.626 of Barddhit Khalihamari Ward under Dibrugarh Town Mouza of Dibrugarh East Revenue Circle within the district of Dibrugarh, Assam to the appellants in FAO No.52/2022.

9. Relevant herein to mention that the boundaries of the said land conveyed to the appellants in FAO No.52/2022 was that on the North-road; South-Dag No.565; East-Dag Nos.565 & 904 and West-Dag No.565.

10. It further appears from the records that the plaintiff filed two petitions being petition No.3977/18 and petition No.3981/18. The appellant in FAO No.40/2022 and the appellants in FAO No.52/2022 also filed independent application seeking impleadment which were registered and numbered as petition Nos.3980/18 and 3981/18 respectively.

11. At this stage it is relevant to take note of that the petition filed by the plaintiffs were a petition seeking impleadment of the appellant in FAO No.40/2022 and the appellants in FAO No.52/2022. The other petition is a petition seeking amendment of the

pleadings taking into account that there were transfer by way of sale made by the defendant No.1 during pendency of the suit. The court below vide the order dated 04.01.2019 allowed the impleadment of the appellant in FAO No.40/2022 and arrayed as the defendant No.2 whereas the appellants in FAO No.52/2022 were impleaded as defendant Nos.3, 4, 5, 6 & 7 respectively. Interestingly, the court below vide the same order allowed the amendment of the plaint by only observing that the petition seeking amendment requires due consideration and accordingly allowed the amendment of the plaint without assigning any reason whatsoever.

12. The plaintiff thereupon filed an amended plaint as well as also an amended application seeking injunction. From the perusal of the amended plaint, and more particularly, from paragraph No.15 onwards the plaintiff had developed a distinct and a separate case whereby it would be seen that it has been alleged that the defendant No.1, after the amicable partition, sold 7717.65 sq. feet to different persons and completely exhausted his share of land and thereupon taking advantage of the fact that the said persons have not mutated their land in the Jamabandi, the defendant No.1 got an area of land measuring 2 kathas 6.38 lechas partitioned from the original Patta bearing No.146 by filing a Partition Case bearing No.DIBE/2016-17/405/O-Pt. and got the said area of land included in Dag No.904 covered by new PP No.626 of extended Khalihamari Ward under Dibrugarh Town Mouza. This is completely distinct and different stand from the original unamended plaint or even upon a conjoint reading of paragraph Nos.4 & 9 of the amended plaint itself. Further to that, various reliefs were added including a declaration that the act of the defendant No.1 in obtaining a new Patta being Patta No.626 of Barddhit Khalihamari Ward under Dibrugarh Town Mouza and including the land of Schedule-A of the plaint in the new Dag Number being Dag No.904 of the said Patta being Patta No.626 by partitioning the said land from the original Patta is wrong and illegal and the said new Patta be set aside and the land in question be included in the old Patta being Periodic Patta No.146 of extended Khalihamari Ward under Dibrugarh

Town Mouza of Dibrugarh, Assam was added. The injunction application, i.e. Misc, (J) Case No.54/2017 was also amended by incorporating certain statements against the newly impleaded opposite party Nos.2, 3, 4, 5, 6, & 7. The defendant No.2 who is the appellant in FAO No.40/2022 filed her written statement as well as her written objection. Similarly, the defendant Nos. 3, 4, 5, 6, & 7 who were the appellants in FAO No.52/2022 have also filed their written statement and written objection.

13. The court below vide the impugned order dated 11.01.2022 on the ground that there was a standing order of injunction and there was a violation by the defendant No.1 in executing the Deed of Sale has made the order dated 22.09.2017 absolute till the disposal of the main suit and the opposite parties were restrained from further encroachment of the suit premises and also with respect to the construction therein or selling any part of the suit premises or persons thereto till the matter is decided in the main suit.

14. Being aggrieved and dissatisfied, the present appeals have been filed challenging the exercise of jurisdiction by the court below.

15. I have perused the materials on record including the unamended copy of the plaint and the unamended copy of the injunction application. I have also heard the learned counsel for the parties at length.

16. This Court is a Court of limited jurisdiction being a First Appellate Court against an order passed in exercise of the equitable and discretionary jurisdiction by the Court of the First Instance. Reference in this regard can be made to the paragraph No.14 of the judgment of the Supreme Court in the case of *Wander Ltd. v. Antox India (P) Ltd.*, reported in (1990) *Supp SCC* 727 wherein the Supreme Court had categorically observed the limited scope of jurisdiction of the First Appellate Court against an order passed in exercise of the equitable and discretionary jurisdiction by the Court of first instance. The paragraph No.14, being relevant, is quoted herein below:-

*“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph*:*

*“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”*

The appellate judgment does not seem to defer to this principle.”

17. From the facts narrated herein above, it would appear that the court below vide an order dated 22.09.2017 passed an order of injunction in respect to the suit property thereby directing the defendant No.1 not to raise any further construction over the suit land and also restrained from alienating, letting out or creating any charge in respect to the suit property as already observed herein above. The land in Dag No.904 of PP No.626 admittedly as would be seen from a perusal of the paragraph Nos.4 & 9 of the unamended plaint was outside the scope of the suit. This aspect of the matter would be further clear from a reading of paragraph Nos.11 & 12 of the unamended plaint wherein the plaintiff has categorically mentioned that it is only the Schedule-A & B plots of land

which would come within the ambit of the suit premises. Therefore, the injunction dated 22.09.2017 would be only operational so far as the suit premises as could be seen from the unamended plaint of Title Suit No.68/2017 as well as the unamended application for injunction, i.e. Misc. (J) Case No.54/2017. However, upon a perusal of the Deeds of Sale which have been executed in favour of the defendant No.2 vide the Deed No.2002 dated 23.10.2017 as well as of the Deed of Sale executed bearing Deed No.2226 dated 06.12.2017 it would be seen that that sale has been made in respect to plots of land which are included in Dag No.904 covered by PP No.626 which was admittedly outside the scope of the suit premises. Therefore, the alienation made by the defendant No.1 in favour of the defendant No.2 as well as the defendant Nos.3, 4, 5, 6 & 7 cannot be said to be in violation to the injunction order dated 22.09.2017.

18. Now upon perusal of the impugned order, it would be seen that the court below had proceeded with the case on an assumption that the Sale Deed in question and the transfer of rights to the defendant No.2 as well as the defendant Nos.3, 4, 5, 6 & 7 were at the teeth of the injunction order which is nothing but perversity on the face of the record. Another aspect of the matter which needs to be taken note of is that the plaintiff has tried to develop a distinct and different case by way of the amendment of the pleadings. From a conjoint reading of paragraph Nos. 4 & 9 of both the amended as well as unamended plaints it is clear that the land measuring 2 kathas 6.38 lechas was partitioned and a new Dag No.904 of Patta No.626 was created which was the exclusive land of the defendant No.1. However, in paragraph No.18 of the unamended plaint, a new case has been sought to be developed to the effect that the land measuring 2 kathas 6.38 lechas and measuring 7717.65 sq. feet has also been sold to some other persons and thereafter taking advantage that the said persons have not mutated the land, the defendant No.1 again partitioned the same quantity of land from a part of the Schedule-A land by filing a partition case Partition Case bearing No.DIBE/2016-17/405/O-Pt. and it is on the basis of the said partition case that this new Dag Number had been allotted to

the defendant No.1. It would be seen that the court below did not at all take into consideration the said aspect of the matter while making the order dated 22.09.2017 absolute as well as passing the ad-interim injunction order against the appellants herein. It would therefore be seen that the order being passed by the trial court is solely on the basis that the order dated 22.09.2017 has been violated by the defendant No.1 which as already observed herein above suffers from perversity apart from being illegal, arbitrary, irrational and also violates well settled principle of law for grant of injunction. It is also relevant to note that the amended plaint is completely vague as to whom the defendant No.1 had earlier sold the land and by what Deed(s) of Sale the said land was transferred to other persons. Merely making vague allegation without material particulars, in the opinion of this Court, do not lead to the existence of a prima-facie case.

19. Consequently, this Court is of the opinion that the impugned order dated 11.01.2022 passed in Misc. (J) Case No.54/2017 arising out of the Title Suit No.68/2017 by the Court of the Civil Judge No.1, Dibrugarh suffers from perversity as well as non-application of mind for which the same is set aside and quashed.

20. Before concluding it is also relevant to take note of the submission made by the learned counsel for the respondent that the court below ought to have taken into consideration the case of the plaintiff which was set out in the amended plaint as regards the sale being made by the defendant No.1 to some persons and thereafter again obtaining separate Patta which is in respect to the Schedule-A plot of land.

21. Taking into account the said aspect of the matter has not been considered by the court below, this Court is of the opinion that it would be a fit case for remand of the matter back to the trial court for deciding afresh the injunction proceedings on the basis of the amended plaint as well as the amended injunction application.

22. Taking into account the urgency shown by the learned counsel for the respondent, this Court directs the court below to decide the injunction proceedings within 60 (sixty) days from the date of appearance of the parties. This Court directs that the parties shall



appear before the trial court on **15.11.2022** and on the basis of the certified copy of the instant order being produced, the trial court shall decide the injunction application afresh in accordance with law.

23. The parties herein would be at liberty to file additional application or written objection before the court below on 15.11.2022.

24. The court below shall decide the injunction application independently without being influenced by the observations made herein above.

25. In view of the above, both the appeals stand allowed subject to the observations and directions mentioned herein above.

JUDGE

Comparing Assistant