



GAHC010203352022

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

Case No. : CRP(IO)/235/2022

ABDUL SUKKUR AND 6 ORS.
S/O- LATE MUHIB ALI,
RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR),
P.O.- CHATOL,
P.S. AND DIST.- KARIMGANJ, ASSAM.

2: KAMAL UDDIN
S/O- LATE MUHIB ALI

RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR)

P.O.- CHATOL

P.S. AND DIST.- KARIMGANJ
ASSAM.

3: YEAKUB ALI
S/O- LATE FAYJUR RAHMAN

RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR)

P.O.- CHATOL

P.S. AND DIST.- KARIMGANJ
ASSAM.

4: NOMAN UDDIN
S/O- LATE FAYJUR RAHMAN

RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR)

P.O.- CHATOL

P.S. AND DIST.- KARIMGANJ



ASSAM.

5: ALTAF HUSSAIN
S/O- LATE FAYJUR RAHMAN

RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR)

P.O.- CHATOL

P.S. AND DIST.- KARIMGANJ
ASSAM.

6: ABDUL MATIN
S/O LATE AIN UDDIN

RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR)

P.O.- CHATOL

P.S. AND DIST.- KARIMGANJ
ASSAM.

7: SAMSUL HAQUE
S/O- LATE AIN UDDIN

RESIDENT OF VILL- FATEPUR (FARIRMU KH UTTARPAR)

P.O.- CHATOL

P.S. AND DIST.- KARIMGANJ
ASSAM

VERSUS

ABDUL MANIK AND 4 ORS.
S/O- LATE AKHOL MIA,
PRESIDENT, FARIRKUKH DAKSHINGRAM JAME MASJID COMMITTEE.
VILL- FATEPUR,
PO- CHATOL,
PS AND DIST- KARIMGANJ, BY CASTE- MUSLIM.

2:JOHIR ALI
S/O- LATE SARKUM ALI

SECRETARY
FARIRKUKH DAKSHINGRAM JAME MASJID COMMITTEE.
VILL- FATEPUR



PO- CHATOL

PS AND DIST- KARIMGANJ
BY CASTE- MUSLIM.

3:THE STATE OF ASSAM
REPRESENTED BY THE DEPUTY COMMISSIONER
KARIMGANJ

P.O. AND DIST- KARIMGANJ
ASSAM.

4:THE DEPUTY COMMISSIONER
KARIMGANJ
PO AND DIST- KARIMGANJ
ASSAM.

5:THE CIRCLE OFFICER
NILAMBAZAR CIRCLE
PO- NILAMBAZAR
DIST- KARIMGANJ
ASSAM

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. P. K. Roy, Sr. Advocate.
Mr. S. Chakraborty, Advocate.

For the Respondents : Mr. H. R. Choudhury, Advocate.
Ms. U. Das, Govt. Advocate.

Date of Hearing : 24.03.2023

Date of Judgment : 24.03.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. P. K. Roy, learned Senior Counsel assisted by Mr. S. K. Chakraborty, learned counsel for the petitioner. Also heard Mr. H. R. Choudhury, learned counsel for the respondent/plaintiff Nos. 1 and 2 and Ms. U. Das, learned Government Advocate, Assam appearing for the respondent Nos. 3, 4 and 5.
2. The present petition is filed assailing an order dated 02.03.2022, passed by the learned appellate Court (Civil Judge, Karimganj) in Misc. Appeal No. 06/2020, whereby the aforesaid appeal was allowed granting injunction, which was refused by the learned trial Court (Munsiff No. 3) in Misc.(J) Case No. 132/2019 under its order dated 24.01.20220.
3. The respondent Nos. 1 and 2 as plaintiffs instituted a suit being Title Suit No. 102/2019 primarily with the following prayer:-
 - a. For a decree declaring that suit land is the Wakf property of the Farirmukh Dakshingram Jame Masjid and having right, title, interest and confirmation of possession.
 - b. For giving a direction to the defendants Nos. 9 & 10 to mutate the name of the Farirmukh Dakshingram Jame Masjid in respect of the suit land and issue patta accordingly.
 - c. For setting aside the ex-parte decree and judgment passed by the then Civil Judge (Junior Division), No.-1, Karimganj vide Judgment and decree dated 01.07.2002 in Title Suit No. 185/2000.
 - d. For perpetual injunction restraining the defendant Nos. 1 to 7 from creating any disturbance in using, occupying the suit land by the

Farirmukh Dakshingram Jame Masjid and from the aforesaid illegal acts and deeds in respect of the suit land.

- e. For perpetual injunction restraining the defendant Nos. 9 & 10 from mutation of the names of the defendant Nos. 1 to 7 in respect of the suit land.

4. The basic facts pleaded by the plaintiffs are that:

- I. The scheduled land measuring 171 decimals 6 Kedars and 3 Jasties is Jalatak type of land and is the Wakf property under the plaintiff No. 1. According to the plaintiff, such land was recorded in the name of Masjid during the first settlement survey operation. The father of the defendant Nos. 1 to 7 was the Mutawalli and accordingly got his name recorded in respect of the suit property. Subsequently, the plaintiffs came to learn that the name of the Masjid has been removed from the chitha book and the suit land has been wrongly recorded as government khas land.
- II. When the plaintiffs detected such defect, they approached the Revenue Authorities and the Revenue Authorities advised them that until and unless a decree is passed by a Civil Court, such correction cannot be made.
- III. The further case of the plaintiffs is that the plaintiffs came to learn that the respondent Nos. 1 and 2 has obtained an ex-parte decree from the Court of learned Civil Judge No. 1 (Junior Division), Karimganj, against the State Government and got the decree by mentioning imaginary boundary of the suit land and claim the land

by virtue of a registered sale deed dated 01.09.1948.

IV. According to the plaintiffs, the said ex-parte decree was obtained fraudulently by misguiding the court and accordingly, prayed for setting aside the ex-parte decree.

V. It is also the pleaded case that the defendants are trying to grab the land which belongs to the Masjid in terms of the settlement under 1st settlement survey operation.

5. The private defendants contested the suit by filling written statement and their basic stands were to the following effect:

I. There was no settlement at any point of time in favour of the Masjid.

II. The land in question was purchased by the predecessor-in-interest of the defendants by way of registered sale deed in the year 1948.

III. As the Government has wrongly converted the land as a government khas land, suit was filed and accordingly a decree was passed in their favour. They have denied that the decree was obtained fraudulently etc.

6. The Government of Assam also filed written statement and took a stand that the suit filed by plaintiffs is a collusive suit and the said suit has been filed in collusion by the plaintiffs and the defendant Nos. 1 to 7 and their predecessor-in-interest. The State defendants also denied that the name of the Masjid was recorded during the 1st settlement and contended

that the land is Govt. Khas land and relied on a Chitha copy as Annexure-A.

7. Along with the plaint, the plaintiffs filed an application under Order 39 Rule 1 and 2 of the CPC, 1908 which was registered as Misc. Case No. 132/2019. Similar pleadings were taken in the aforesaid Misc. Case and it was the further contention that the defendant Nos. 1 to 7 are very cunning and greedy type of person in the locality having money and muscle power and they are trying to dispossess the Masjid from the suit land. The defendants filed objection in the aforesaid Misc. Case and took similar stand as stated in their written statement and denied the plaintiffs are having any prima facie case or balance of convenience lies in their favour or irreparable loss or injury will be caused to them if injunction is not granted.
8. Thereafter, the learned trial Court below after considering the pleadings and the arguments rejected such prayer of injunction though held that there is a prima facie case. The finding of the learned trial Court in rejecting the injunction can be summarized as follows:-
 - I. As the State Government has satisfied the Court by bringing the Chitha copy of the land that the land is a Government Khas land and not a Wakf property.
 - II. The balance of convenience was not in favour of the plaintiffs. Further, the learned trial Court also considered the claim of the defendant Nos. 1 to 7 that they are possessing the suit property.
 - III. Coming to the irreparable loss and injury, the learned trial Court

came to a finding that the basic concern of the Masjid that if injunction is not granted, production of fishes from the fishery and money generated from it shall be disturbed, can be compensated in terms of money inasmuch as the suit property is recorded in the name of the Government. Accordingly, the learned trial Court rejected the prayer of injunction.

9. Being aggrieved, the appeal was preferred by the plaintiffs which was registered as Misc. Appeal No. 06/2020 and such appeal was allowed by the learned Appellate Court under its order dated 02.03.2022. The same is under challenge in the present petition. The findings of the Appellate Court can be summarized as follows:

- I. While reversing the judgment and dealing with the balance of convenience, the learned appellate Court held that in the event suit is eventually decided against the plaintiffs, they will have to leave the possession of the suit fishery, but if the prayer for temporary injunction is refused and the suit is eventually decreed, the petitioner/plaintiffs Masjid will be subjected to more inconvenience in getting back the possession of the suit property. Therefore, the learned appellate Court held that the balance of convenience was in favour of the plaintiffs.
- II. Coming into irreparable loss or injury, the learned appellate Court came to a finding that the Masjid has been rearing fishes over the suit fishery inasmuch as the Government has not denied specifically that the petitioners/plaintiffs Masjid is not rearing fishes in the suit land. As the rearing of fishes require monitoring and if the

temporary injunction is refused, the fishery will remain unattended thereby causing loss to the Masjid, and therefore, there will be irreparable loss and injury if injunction was refused. Accordingly, the injunction as sought for was granted.

10. Submission of Mr. P. K. Roy, learned Senior Counsel for the petitioner:
11. The learned counsel for the respondent Nos. 1 and 2 submits the following:
 - I. The suit land is owned and possessed by the Masjid since 1780 and in the First settlement Survey Operation the suit land was recorded in the Chitta Book in the name of Masjid and recently, the plaintiffs came to learn that the suit land has been made khas in the recent survey operation. The said fact is not denied by the learned trial Court below as well as the learned appellate Court while deciding the application under Order XXXIX Rule 1 and 2 of the CPC, 1908.
 - II. Both the learned Court below found that there is prima facie case in favour of the plaintiffs.
 - III. Government is not possessing the suit land which is fishery type land although they are claiming that this is a khas land.
 - IV. The title, right, possession and interest of the suit land are the subject matter of trial. Since the Masjid committee is facing disturbance from the defendants No. 1 to 7, hence the injunction application is filed, as by way of fishing the Masjid is meeting up its

expenses since time immemorial. The learned appellate Court below rightly observed such facts and if the Masjid is not protected, the functioning of Masjid will be disturbed. Hence, Masjid should be protected.

V. The Ex-parte decree of the private defendants does not cover the suit land. The boundary mentioned in that decree does not include the instant suit land. The said suit of the defendants is instituted incorporating false imaginary boundary which is described in the para-No. 8 of the plaint.

12. By now, law is well settled and as held by the Hon'ble Apex Court in the case of ***Wander Ltd and Anr. –Vs- Antox India Pvt. Ltd.*** reported in ***1990 Supplementary SCC 722***, that the prayer of grant of an interlocutory injunction is considered at a stage when the existence of the legal right asserted by the plaintiffs and its violation are both contested but uncertainty remains till, they are established at the trial on the basis of evidence. Therefore, the Court, at that stage act on certain well settled principle of administration of such kind of interlocutory remedy, which is both temporary and discretionary. The object of the interlocutory injunction is to protect the plaintiffs against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in action, if the uncertainty was resolved in his favour at the trial. The need of such protection must be weighted against the corresponding injury which may result to the defendant from being prevented from exercising of his own legal right, for which he could not adequately be compensated. This is what balance of convenience is.

It was further held in **Antox** (supra) that in restraining a defendant from exercising what he considered his legal rights which the plaintiff wants to be prevented, it is to be seen whether the right of defendant has yet commenced or whether he has continuing such enjoyment.

13. Another aspect of the matter is that an injunction order is passed on the basis of equitable principle and it is an exercise of discretion. It is also well settled proposition of law that, in an appeal against such equitable and discretionary order passed under Order 39 Rule 1 and 2 of the CPC, 1908, the appellate Court generally shall not interfere with the exercise of discretion of the Court of the 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 principle of law regulating grant or refusal of interlocutory injunction.

Again in **Antox** (supra), it was held that an appeal against exercise of discretion is an appeal on principle, appellate Court will not re-assess the materials and seek to reach a conclusion different from one reached by the Court below, if the decision so reached by the Court of first instance was reasonably possible on the materials available before it.

14. Now on the basis of aforesaid settled proposition of law, let this Court consider whether the learned Appellate Court was right in following such principle and reversing the judgment of the learned trial Court.
15. The fact remains that the defendants has got a declaratory decree, over the suit land, against the Government and the plaintiff wants such

decree to be set aside. The basic case of the defendant in filing the suit were that the suit property was purchased by their predecessor-in-interest through registered sale deed way back in 1948 and they have been enjoying the suit land, however, the Government has incorrectly made the said land as a Government Khas land though the defendants have been enjoying the suit land from the days of their predecessor-in-interest.

16. Such suit was decreed by the learned trial Court. Admittedly, the State has not preferred any appeal till date. Thus, the right of possession and ownership has been affirmed by a competent Court upon the defendant by virtue of judgment and decree dated 01.07.2002 passed in Title Suit No. 185/2000. Therefore, it has been asserted by a Court of Law the continuous enjoyment of the property by the defendants.
17. On the other hand, the pleading and reading of the prayer of the suit in question filed by the respondents will show that they prayed for a direction to the State Government to record the land in question in their name and their further prayer is to set aside the ex-parte judgment and decree passed in favour of the defendants.
18. This Court has to balance the two interests one which has already matured and other not yet matured and subject to the decree that may be passed in the suit. Therefore, in the aforesaid context, this Court approves the finding of the learned trial Court below and not the learned appellate Court inasmuch as the appellate Court presumed possession of the plaintiffs over the land and concentrated more on rearing of the fishes and has not even discussed the stand of the government and the decree passed already by the competent Court. Therefore, in the considered

opinion of this Court that the learned appellate Court has decided the issue of balance of convenience erroneously and in ignorance of settled proposition of law which result in miscarriage of justice.

19. If we see the present case, the learned appellate Court has done what law prohibits and interfered with the decision of the learned trial Court, without coming into a conclusion that the learned Trial Court passed the judgement arbitrarily, capriciously or perversely or in ignorance of settled proposition of law rather in the considered opinion of this Court the learned trial Court has dealt with the relevant facts available before it including the decree passed in favour of the defendants and the status of right of the plaintiffs and the stand of the Government and came to a reasonable conclusion.
20. The argument advanced by the learned counsel for the respondents/defendants basically involves the merit of the claim made in the suit and do not answer the effect of the decree in favour of the defendants and the stand of the Government and has failed to show that judgment of the learned trial Court was arbitrary, capricious or perverse or passed in ignorance of law.
21. In that view of the matter, the present revision petition stands allowed by setting aside the order dated 02.03.2022, passed by the learned appellate Court (Civil Judge, Karimganj) in Misc. Appeal No. 06/2020.
22. While parting with the record, it is made clear that whatever observation has been made in the present order is for the purpose of determination of the present challenge and any of the observation made



herein shall not influence the learned trial Court in dealing issue before it in the suit filed by the respondents.

JUDGE

Comparing Assistant