



GAHC010112682023

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

Case No. : CRP(IO)/154/2023

PURNIMA MALAKAR AND 3 ORS

**W/O LT. GOVINDA MALAKAR R/O VILL. HAJO MALITOLA P.O. AND PS.
HAJO DIST. KAMRUP (R) ASSAM PIN 781102**

2: UJJAL MALAKAR

**S/O LT. GOVINDA MALAKAR R/O VILL. HAJO MALITOLA P.O. AND P.S.
HAJO DIST. KAMRUP (R) ASSAM PIN 781102**

3: NITYA MALAKAR

**S/O LT. RATNESWAR MALAKAR R/O VILL. HAJO MALITOLA P.O. AND P.S.
HAJO DIST. KAMRUP (R) ASSAM PIN 781102**

4: NITYA MALAKAR @ NITYANANDA MALAKAR

**S/O LT. RATNESWAR MALAKAR R/O VILL. HAJO MALITOLA P.O. AND P.S.
HAJO DIST. KAMRUP (R) ASSAM PIN 781102**

5: GITA MALAKAR

**D/O LT. RATNESWAR MALAKAR R/O VILL. HAJO MALITOLA P.O. AND P.S.
HAJO DIST. KAMRUP (R) ASSAM PIN 78110**

VERSUS

RITA MALAKAR AND ANR.

**D/O LT. RATNESWAR MALAKAR R/O VILL. HAJO MALITOLA P.O. AND P.S.
HAJO DIST. KAMRUP (R) ASSAM PIN 781102**

2:JANARDAN MALAKAR

**S/O LT. RATNESWAR MALAKAR R/O VILL. HAJO MALITOLA P.O. AND P.S.
HAJO DIST. KAMRUP (R) ASSAM PIN 78110**



B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners: Shri B. D. Deka, Advocate.

Advocate for respondents : Shri G. Choudhury, Advocate,

Date of hearing : 27.07.2023

Date of judgment : 27.07.2023

JUDGMENT & ORDER

Heard Shri B. D. Deka, learned counsel for the petitioners. Also heard Shri G. Choudhury, learned counsel for the respondent.

2. Considering the facts and circumstances of the case and since the contesting parties are represented, this Court is of the view that instead of keeping this petition pending, the same is required to be disposed of which is being done today.
3. The petitioners are the plaintiffs in the suit which has been filed for declaration of right, title, interest and partition.
4. It is the case of the petitioners, as submitted by Shri Deka, learned counsel that along with the suit numbered as Title Suit No. 28/2021, Misc (J) Case No. 28/2021 was filed under Order XXXIX Rule 1 & 2 of CPC for injunction and on 01.03.2021, the learned Munsiff, Amingaon, Kamrup had passed of an order of ad-interim injunction. The matter was thereafter taken up for consideration and after hearing the parties on 22.03.2022, the learned Trial Court had passed an order confirming the injunction and has directed the defendants not to change the nature of the schedule property till the disposal of the suit or until further orders. The said order of injunction dated



22.03.2022 was the subject matter of challenge in an appeal preferred by the defendants before the Court of the learned Civil Judge, Kamrup which was registered as Misc. Appeal No. 3/2022. The learned First Appellate Court vide the judgment dated 02.05.2023 had allowed the appeal and had set aside the order of injunction dated 22.03.2022.

5. Shri Deka, the learned counsel for the petitioners has submitted that the role of an Appellate Court while adjudicating an order pertaining to grant or non-grant of injunction is circumscribed. The settled law is that the Appellate Court is required to maintain self-imposed restriction as injunction orders are matters of discretion and until such discretion is exercised in a manner which is wholly opposed to the settled principles of law or the principles of nature justice, such interference is not to be made in a routine manner.

6. Coming to the subject matter of dispute, the learned counsel has submitted that the petitioners as plaintiffs have a good case on merits and if the injunction is vacated, the whole purpose for filing the suit would be frustrated and therefore he prays for an interference with the order dated 02.05.2023.

7. *Per contra*, Shri G. Choudhury, learned counsel for the respondents has submitted that there was no ground at all to pass an injunction order as there was no *prima facie* case able to be made out by the petitioners as plaintiffs. He submits that there is a registered sale deed in favour of the defendant no. 1 which is not even the subject matter of challenge. He submits that the defendant no.1 is constructing a 3 storey house on the said plot of land after taking loan and if the order of injunction is maintained, she will suffer irreparably as there would be grave difficulty to repay to the bank.

8. By drawing the attention of this Court to the affidavit-in-opposition filed on 13.06.2023, Shri Choudhury has submitted that alongwith the said affidavit, the



photograph of the structure which is under construction has been annexed and the same would reflect that the constructions are at a half done stage and with difficulty, the defendant no. 1 is residing on the 2nd floor even without the same being completed. He accordingly submits that the Appellate Court having applied its mind before passing the order dated 02.05.2023, there should not be any interference with the said order.

9. There is no dispute that the role of an Appellate Court with regard to an order of grant or non-grant of injunction is a restricted one wherein the Appellate Court should go slow unless a case of gross illegality or perversity is made out. In this connection one may refer to the landmark case of ***Wander Ltd. v. Antox India (P) Ltd.***, reported in ***1990 Supp SCC 727***, and the subsequent cases including the case of ***Ramdev Food Products (P) Ltd. Vs Arvindbhai Rambhai Patel*** reported in ***(2006) 8 SCC 726***.

10. In the landmark case of ***Wander Ltd.*** (supra), the following has been laid down:-

“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. ...”

11. In the case of ***Ramdev Food Products (P) Ltd.*** (supra), the following has



been laid down:-

“125. We are not oblivious that normally the appellate court would be slow to interfere with the discretionary jurisdiction of the trial court.

126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again.

127. The appellate court may 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.”

12. However, at the same time, this Court has found that the Appellate Court in the impugned order dated 02.05.2023 has made some discussions justifying the interference which cannot be said to be wholly irrelevant.

13. Therefore, balancing the equities, this Court is of the considered opinion that interest of justice would be served if the order of injunction which has been set aside by the Appellate Court is modified in the following manner.

14. The respondents/defendants are accordingly directed not to alienate the property in question or change the nature and character of the same. However, considering the submissions that the construction is being undertaken after taking financial assistance, there is no embargo on completion of the construction. There is also no embargo for the respondent no. 1 to start/do any business from the said premises which, however would be subject to the outcome of the suit.

15. Shri Choudhury, the learned counsel prays for further liberty that part of the



property may be allowed to be let out so that his client would be in a position to refund the loan.

16. This Court is of the opinion that instead of the said prayer being considered by this Court, a prayer of this nature may be made to the learned Trial Court for consideration which may be done after taking all the relevant facts and circumstances into account and the parties may also be allowed to adduce evidence in that regard.

17. Under the facts and circumstances would request the learned Trial Court to take up the matter expeditiously as the suit was instituted in the year 2021 and make an endeavour to dispose of the same by an early date.

JUDGE

Comparing Assistant