



GAHC010147502023

Page No.# 1/6



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

Case No. : CRP(IO)/211/2023

PRAFULLA SARMA
S/O- LATE MAHENDRA NATH SARMA, R/O- VILL. AND P.O. BAMUNDI,
DIST. KAMRUP, ASSAM

VERSUS

DIBAKAR NATH AND 4 ORS.
S/O- LATE BHELUA NATH, R/O- VILL. AND P.O. HALOGAON, DIST.
KAMRUP, ASSAM-781103.

2:GULUK NATH
S/O- LATE BHELUA NATH
R/O- VILL. AND P.O. HALOGAON
DIST. KAMRUP
ASSAM-781103.

3:JAGANNATH KALITA
S/O- KRISHNA KALITA
R/O- VILL. AND P.O. BAMUNDI
DIST. KAMRUP
ASSAM-781103.

4:BISHNU KALITA
S/O- KRISHNA KALITA
R/O- VILL. AND P.O. BAMUNDI
DIST. KAMRUP
ASSAM-781103.

5:TILAK KALITA
S/O- KRISHNA KALITA
R/O- VILL. AND P.O. BAMUNDI
DIST. KAMRUP
ASSAM-781103

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner: Shri R. Sharma, Advocate

Date of hearing : 05.08.2023

Date of judgment : 05.08.2023

1. Heard Shri R. Sarma, learned counsel for the petitioner, who has filed this petition under Article 227 of the Constitution of India read with Section 115 of the CPC.

2. The grievance of the petitioner is against a judgment and order dated 08.05.2023 passed in Misc. Appeal No. 05/2017 by the learned Civil Judge, Kamrup whereby the appeal filed under Order XLIII Rule 1(r) of the CPC has been dismissed and the order of the learned Trial Court passed in the injunction application has been affirmed.

3. The facts projected is that the petitioner, as plaintiff had instituted Title Suit No. 90/2015 before the learned Court of the Munsiff, Kamrup for declaration of right, title and interest, confirmation of possession and specific performance. Along with the said Suit, Misc. (J) Case No. 95/2015 under Order 39 Rule 1& 2 of the C.P.C. was filed for injunction. Though initially, and *ad interim* injunction in the form of *status quo* was



passed, vide the order dated 11.08.2016, the said application has been rejected and the order of *status quo* has been vacated and against such rejection, the appeal was preferred before the learned Civil Judge, Kamrup which was registered as Misc Appeal No. 5/2017.

4. The learned counsel has submitted that the findings arrived at by the learned Trial Court as well as the First Appellate Court regarding possession is perverse and in this regard, he has relied upon a Report by the Lat Mandal dated 02.04.2015 from which it appears that possession was with the petitioner-plaintiff. It is also submitted that since the year 2000, the petitioner is in possession of the land and is cultivating the same. However, taking advantage that the Sale Deed made by his vendor was not registered, in the year 2014, the same land was sold to third parties by the vendor vide registered Sale Deed which is the subject matter of the suit.

5. At the outset, this Court is of the opinion that a petition for revision cannot be filed by invoking both the constitutional provisions under Article 227 of the Constitution of India and Section 115 of the CPC parallelly. After the amendment of the CPC in the year 1999, the powers to be exercised under Section 115 have been restricted and only upon fulfillment of certain conditions, such powers can be exercised which are mainly for the purpose to have supervision over the Subordinate Courts.

6. The powers of revision to be exercised by this Court is circumscribed and is dependant upon certain conditions which are broadly given as follows:

- i. When the Subordinate Court exercises jurisdiction not vested by law.
- ii. When there is a failure to exercise a jurisdiction vested by law.

iii. When there is exercise of jurisdiction illegally or with material irregularity.

The Amendment of 1999 has added a further restriction that such powers should not be exercised by the High Court except where the order, if made in favour of the party applying of the revision would have finally disposed of the suit or other proceedings. It is perhaps of the restrictions imposed by the Amendment that petitions are being filed under Article 227 of the Constitution of India.

7. Further, the Hon'ble Supreme Court in the case ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors Vs Tuticorin Education Society and Ors.*** reported in ***(2019) 9 SCC 538*** has specifically laid down that whenever the provisions under the Code is available, constitutional provisions cannot be invoked. The relevant paragraph is extracted herein below:

*“12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] pointed out in *Radhey Shyam v. Chhabi Nath* [(2015) 5 SCC 423] that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.*

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the

High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

8. Be that as it may, even treating the application to be one under Article 227 of the Constitution of India, this Court is required to examine whether the discretion vested in the Court while considering an application for injunction has been done by following the due process of law.

9. The impugned judgment dated 08.05.2023 passed by the learned First Appellate Court has elaborately discussed the facts and circumstances under which the injunction petition was rejected. The said Court has also taken into account the law holding the field and there is discussion of the case laws of the Hon'ble Supreme Court in the case of **Wander Ltd. v. Antox India (P) Ltd.**, reported in **1990 Supp SCC 727** and also a decision of this Court.

10. The appellate Court has also come to a finding that the trial court has exercised such powers by due care and attention and there does not appear to be any arbitrary or capricious exercise of powers.

11. The law as laid down in the case of **Wander** (supra) and also reiterated in the case of **Ramdev Food Products (P) Ltd. vs. Arvinbhai Rambhai Patel** reported in **(2006) 8 SCC 726** is that an appellate court should be circumspect in exercising jurisdiction in matters concerning grant / non - grant of injunction and such orders are to be interfered only when there is patent error or perverse findings which however does not appear to be there in the present case. The approach of the learned First Appellate Court appears to be impugned with the settled law regarding such powers to be exercised by the appellate Court.



12. In the case of **Ramdev** (supra), the Hon'ble Supreme Court has laid down as follows:

***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."*

13. As indicated above, the powers of a Revisional Court is also restricted and supervisory in nature and only when a case of jurisdictional error or gross illegality is made out, interference is not warranted.

14. In view of the above, the instant petition stands dismissed.

JUDGE

Comparing Assistant