

FORM NO. (J)3.

HEADING OF JUDGEMENT ON APPEAL

DISTRICT : **MORIGAON**

In the First **Appellate** Court of the **CIVIL JUDGE** at Morigaon.

PRESENT : **Mrs. MILI HUSSAIN**, LL.M., A.J.S.
Civil Judge, **Morigaon**.

The **9th** day of **January**, 2020.

Misc. Appeal No. 9 of 2019

1. **Md. Mospil Hussain**,
2. **Md. Hasen Ali**,
both s/o Late Hafiz Uddin.
both are r/o Village – Parasutangani,
Mouza – Mikirbheta,
Morigaon.

... Appellants/O.P/defendants.

-Versus -

1. **Nadim Musrafa Habib @ Pinku**,
2. **Mahibur Rahman**,
both s/o Late Habibur Rahman,
r/o Village – Baligaon.
Mouza – Mikirbheta.
Morigaon.
and 5 **others**.

... Respondents/petitioners/plaintiffs.

This appeal coming on for final hearing on **25.11.2019 and 4.01.2020** in the presence of –

Mr. Maidul Hussain, Learned Advocate for the Appellants.

Mr. M. Islam, Learned Advocate for the Respondents.

AND having stood for consideration to this day, the Court delivered the following judgment.

JUDGMENT

1. This is an appeal by opposite parties/defendants filed U/O-43 Rule-1(r) CPC challenging the legality and validity of order dated 26.06.19 passed by learned Munsiff No.1,

Morigaon in M. J. No. 14/2019 (arising out of T.S. No.10/19), vide which learned Court below granted status-quo/injunction until further order.

The petitioners/plaintiffs filed T.S. No.10/19, with prayer for declaration of right, title, interest, recovery of possession and permanent injunction along with M.J. No. 14/2019 U/O-39, Rule-1 & 2, r/w Section 151 CPC.

2. Being highly aggrieved and dissatisfied with the said impugned order in M.J. No.14/19, the appellants/O.P./defendants preferred this appeal agitating following amongst other grounds.

i. That the learned trial Court committed illegality due to misconception on whole scope of enquiry and accordingly, come to a wrong finding.

ii. That the learned trial Court ignored the plea of adverse possession, placed by the opposite parties/defendants.

iii. That the learned trial Court in utter violation of the three golden principles for grant or refusal of injunction, passed the aforesaid order.

3. Upon admission of this Misc. appeal, LCR of M.J.No.14/19 (T.S.No.10/19) was called for and received. Notices were issued to the respondents No.1 to 6. They entered appearance through learned engaged counsel.

4. Both sides participated in argument. The appellant sides also submitted written argument during hearing. Copy furnished to other side.

5. I have perused the materials in case record including the LCR.

DISCUSSION, DECISION AND REASONS THEREFOR:

6. Learned counsel for appellants/OPs/defendants submitted during argument that they are the recorded pattadar of schedule-A and order passed by the learned Court below interferes with their ownership right, as learned Court below enjoined O.Ps/defendants not to carry on any construction, if any over the suit land or to alienate or dispose it off in any manner until further order. Per contra, learned engaged counsel for respondents/plaintiffs submitted that the suit land was in possession of their predecessor since 1968 on strength of sale deed executed by appellant's forefather and said fact not reckoned by learned Court below while passing the impugned order.

7. Scrutiny of order dated 26.06.19, impugned here in, shows that learned Court below discussed all the three settled principles governing the field of interim injunction. Learned Court below found existence of prima-facie case. The pleaded case of petitioner shows that O.P/defendant's forefather Hafizuddin sold Schedule-A land vide registered sale deed

No.6562/1969 and delivered possession in favour of petitioner/plaintiff's forefather Habibur Rahman, while it was Annual Patta No.80 and Dag No.81(old)/13(new). Later on, said Hafizuddin (seller) converted schedule-A land to Periodic patta in his name. Plaintiffs/respondents filed this suit for declaration of right, title, interest, eviction of O.P./defendants/appellants from schedule-A and for permanent injunction. Appellants/defendants denied respondent/plaintiffs/petitioners case, amongst others stating that long back in the year 1977 they have recorded their names as legal heirs and as of now they are in possession of the schedule-A land. There is complain of breach of civil right. Allegation and denial obviously gives right to prima facie case. There is a substantial question which needs investigation and decision on merit. I am in concurrence with learned Court below that in the given fact existence of prima facie case is under questionable.

8. Averments in the petition and specifically vide para No. 6 of plaint shows that OPs/defendants/appellants on 30.10.18 dispossessed petitioner/ plaintiffs/respondents from the suit land. Perusal of documents in case record shows that photo copy of jamabandi in respect of PP No. 139 and Dag No.13 covering 1B-2K-8 Ls has been recorded vide order dated 22.08.1977 in the name of appellant Mosfi Hussain and Hasen Ali, (both sons of Hafiz Uddin) on strength of inheritance. Registered sale deed No. 6562 dated 12.11.69 shows that petitioners/plaintiffs/respondent's father Habibur Rahman purchased 1B-2K-8Ls from Hafizuddin, father of OPs/ defendants/appellants, while said land was covered by A.P. No.80 and Dag No.81/13 situated in Mikirbheta Mouza, Morigaon. One photocopy of order dated 25.07.18 passed by Addl. District Magistrate, Morigaon in MR Case No.63/18 borne in case record shows vide its contents that even though petitioner/plaintiffs/ respondents have been in possession of schedule land for long time, but OP/defendants/appellants side tried to disposes them and there is apprehension of breach of peace and tranquility. Reading para No.6 of petition in harmony with this documents shows that as of now suit land's possession lies with OP/defendants/appellants. There is every possibility that OP/defendants/appellants on strength of their possession and also being recorded owner in respect of schedule-A, may transfer the suit land or may create third party interest there in which may frustrate the suit. Purchaser for consideration seem s to have been deprived off. In view of same, existence of irreparable loss in favour of petitioners/plaintiffs/ respondents as held by learned Munsiff No.1, appears to be right.

9. We may fruitfully remind of Hon'ble Apex Court in [Wander Ltd. and another vs. Antox India P. Ltd.](#) , **1990 (SUPP) SCC 727** by quoting the following-

"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 the court was reasonably possible on the material."

9A. We may also aptly refer to our own Hon'ble High Court in *Radhabari Tea Company (P) Ltd. vs. Mridul Kumar Bhattacharjee and others*, **2010(1) GLT 189**;

" Thus, an appeal against exercise of discretionary jurisdiction is really an appeal in principle and that is why, unlike a regular appeal, in ordinary sense, where whole evidence on record is examined anew by the appellate Court, what is really examined, in an appeal against exercise of discretionary jurisdiction, is the legality and validity of the order and it can be set aside and should be set aside only when there is a patent error on the face of the record or the order is against the established or settled principles of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a trial Court, the other view, howsoever appealing, would not be allowed to be substituted in place of the trial Court's views, which are, otherwise, reasonable and logical."

9B. In *Sharmila Vijay Shetty vs. Hemendra Prasad Barooah and others*, **(2016) 3 GLR**

50. Our Hon'ble High Court held that –

"Injunction is a discretionary relief pending adjudication of the suit. Discretion has to be exercised on sound principals

keeping in mind the golden principles governing grant of injunction. Appeal against exercise of discretion is an appeal on principle. Appellate Court would normally not interfere with the exercise of discretion if the conclusion reached by the trial Court is reasonably possible based on the materials on record."

10. It appears to me that learned Munsiff No.1, Morigaon contended that "the inconvenience that the petitioner will have to bear if injunction is not granted outweighs the amount of substantial mischief that would be caused to defendants/O.Ps, if the same is refused". Learned trial Court rightly held in the facts that plaintiffs/petitioners/ respondent's case bears element of irreparable loss in favour of respondents/plaintiffs/ petitioners. However, learned Munsiff No.1 granted *Status-quo* over the suit land until further order but omitting to clarify what said *Status-quo* is. To my understanding the word *Status-quo* is the status of thing. However, learned Munsiff No.1 injuncted O.Ps/defendants/ appellants not to carry on any construction, if any, over the suit land, also injuncted from alienation and from transfer. Construing the entire order impugned here in, it is pellucid that learned Court below has taken care of that no third party interest is created during the interregnum. Order itself speaks loud that preservation of suit property has been directed. It appears learned trial court discussed all the three golden principles for grant/refusal of injunction. Order does not suffer from perversity nor has been passed usurping jurisdiction of said learned court.

11. In view of ratio laid down by Hon'ble Apex Court and judgment of our own Hon'ble High Court as laid above, unless trial Court is found to have exceeded its jurisdiction, or is found to have acted illegally or with material irregularity, this first Appellate Court is reluctant to interfere in this exercise of discretion by learned trial Court.

12. As a result, based on above discussion, this Misc. Appeal stands dismissed on contest. In view of peculiar situation, no cost imposed.

GIVEN under my hand and seal of this Court on this 9th day of January, 2020, in open Court.

(MILI HUSSAIN)
Civil Judge, Morigaon.