

GAHC010316402019



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

**Case No. : CRP(IO)/12/2020**

ALAUDDIN MAZUMDAR AND 4 ORS  
S/O- RAJEN ALI MAZUMDAR, R/O- BAWERGHAT PART-II, P.O-  
BAWERGHAT, PIN- 788155, DIST- HAILAKANDI, ASSAM

2: JAMIRUDDIN MAZUMDAR  
S/O- RAJEN ALI MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

3: MUSSTT. FATIMA BEGUM MAZUMDAR  
W/O- LATE SIRAJ UDDIN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

4: DILWAR HUSSAIN MAZUMDAR  
S/O- LATE SIRAJ UDDIN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

5: GULEH AHMED MAZUMDAR  
S/O- LATE SIRAJ UDDIN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI

ASSAM

VERSUS

MUSSTT. SAMSUN NESSA MAZUMDAR AND 4 ORS  
W/O- LATE HABIBUR RAHMAN MAZUMDAR, D/O- LATE HABIBUR  
RAHMAN MAZUMDAR, R/O- BAWERGHAT PART-II, P.O- BAWERGHAT, PIN-  
788155, DIST- HAILAKANDI, ASSAM

2:ABDUL KUDDUS MAZUMDAR  
S/O- LATE HABIBUR RAHMAN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

3:MUSSTT REHANA BEGUM MAZUMDAR  
S/O- LATE HABIBUR RAHMAN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

4:MUSSTT FARHANA BEGUM MAZUMDAR  
S/O- LATE HABIBUR RAHMAN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

5:MUSSTT ASIYA BEGUM MAZUMDAR  
S/O- LATE HABIBUR RAHMAN MAZUMDAR  
R/O- BAWERGHAT PART-II  
P.O- BAWERGHAT  
PIN- 788155  
DIST- HAILAKANDI  
ASSAM

**Advocate for the Petitioner** : MR. M H RAJBARBHUIYAN

**Advocate for the Respondent** : MS. R CHOUDHURY

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of hearing : 15.12.2021.

Date of judgment : **15.12.2021.**

**JUDGMENT AND ORDER (Oral)**

Heard Mr. M. H. Rahbarbhuiya, learned counsel appearing for the petitioners and Ms. R. Choudhury, learned counsel appearing on behalf of the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the judgment and order dated 03.10.2019 passed in Misc. Appeal No.4/2018 by the learned Civil Judge, Hailakandi whereby the order of injunction passed by the learned Munsiff, Hailakandi in favour of the plaintiffs/respondents herein by the order dated 15.05.2018 in Misc. Case No.85/2017 arising out of Title Suit No.55/2017 was upheld.

3. The brief facts of the instant case is that the respondents, who are the plaintiffs, had filed the suit which was registered and numbered as Title Suit No.55/2017 whereby the plaintiffs had sought for declaration of their right, title, interest and confirmation of possession of over the suit land as well as permanent injunction restraining the defendants, who are the petitioners herein, from causing any interference/disturbance /threat etc. to the plaintiffs. Along with the said suit an injunction application was also filed which was registered and numbered as Misc. Case No.85/2017 whereby an ad-interim temporary injunction was sought for to restrain the defendants/Ops from threatening to dispossess the plaintiffs by force, alienating the suit land to anybody else or change the nature and feature of the suit land till disposal of the main suit. It is the specific contention of the plaintiffs in the said suit that the plaintiffs are in possession of the suit land since 1975 by right of purchase.

4. The defendants, who are the petitioners herein, filed their written statement as well as the written objection. In their written objection, amongst others, it was specifically pleaded that the plaintiffs did not have any prima facie and the question of injunction as sought for did not arise in as much as the petitioners were in possession of the suit land. It was also the specific stand taken that the petitioners were the owners of the suit land.

5. At this stage it may be relevant herein to mention that there was a proceeding initiated before the Executive Magistrate by the plaintiffs which was registered and numbered as Case No.135<sup>M</sup>/2017 wherein a police report was submitted on 08.08.2017 and in the said police report it was mentioned that the respondent No.2 herein was in possession of the suit land.

6. The learned trial court by the order dated 15.05.2018 in Misc. Case No.85/2017, after hearing the parties, allowed the injunction application filed by the respondents thereby restrained the defendants/petitioners herein from changing the nature and feature of the suit land by way of dispossessing the plaintiffs or alienating the suit land to others etc. till the disposal of the main suit.

7. Feeling aggrieved, an appeal was preferred by the petitioners herein before the court of learned Civil Judge, Hailakandi which was registered and numbered as Misc. Appeal No.4/2018. The court of the Civil Judge, Hailakandi vide an order dated 03.12.2018 had set aside the order of injunction and directed that the parties should maintain status-quo on the ground that as both the parties are claiming to be in possession of the suit land, it would not be proper to restrain the OPs from entering into the suit land if at all they are in possession. The said judgment dated 03.12.2018 passed in Misc. Appeal No.4/2018 was put to challenge before this Court under Article 227 of the Constitution of India, which was registered and numbered as CRP(I/O) No.17/2019. This Court, after hearing the parties, set aside the said order dated 03.12.2018 passed in Misc. Appeal No.4/2018 and remanded the matter back to the appellate court for appropriate adjudication and determine the prima-facie case made out by either of

the parties and thereupon after considering the balance of convenience and irreparable loss that may be suffered and adjudicate the appeal in an appropriate manner. This Court further directed that till the First Appellate Court arrives at a decision, the order dated 15.05.2018 passed in Misc. Case No.85/2017 by the court of the Munsiff No.1, Hailakandi shall prevail. Thereupon the First Appellate Court again decided the said appeal i.e. Misc. Appeal No.4/2018 and by the impugned judgment and order dated 03.10.2019 confirmed the injunction order passed by the learned trial court on 15.05.2018. It is against the said judgment and order dated 03.10.2019 passed in Misc. Appeal No.4/2018 the petitioners, who are the defendants in the suit, are before this Court under Article 227 of the Constitution of India.

8. Mr. Rajbarbhuiya, learned counsel appearing for the petitioners, submits that both the courts below while passing the orders have relied upon a police report dated 08.08.2017 in a proceeding bearing No. 135<sup>M</sup>/2017 which is a report obtained behind the back of the petitioners and it does not show the accurate picture. He further submits that taking into consideration that it was the duty of the trial court as well as the First Appellate Court to look into as to who was in possession by issuing appropriate commission as is envisaged under Order XXXIX Rule 7 of the CPC to see as to who is actually in possession of the suit land rather than believing on an unsubstantiated report dated 08.08.2017 of the police. He further submits that a perusal of the injunction order, which has been upheld by the First Appellate Court, would show that there was an injunction restraining the petitioners herein from changing the nature and feature of the suit land by way of dispossessing the plaintiffs or alienating the suit land to others etc. which, on the face of it, is not only contradictory to the prayer made in the petition but is also ambiguous in its language inasmuch as the said order reflects that the dispossession can happen but after dispossession there should not be any change of the nature and feature of the suit land. He further submits that a conjoint reading of the injunction granted and the prayer made in the injunction application pre-supposes that the petitioners are in possession of the suit land inasmuch as without the petitioners in possession the question of asking the petitioners not to

change the nature and feature of the suit land did not arise.

9. On the other hand, Ms. R. Choudhury, learned counsel appearing for the respondents, submits that the learned courts below were justified in passing the order of injunction inasmuch as the plaintiffs were the owners of the suit land and as such had a prima-facie case for going for trial. Further to that, the plaintiffs were also in possession of the suit land and they have been threatened to be dispossessed by the defendants in violation to the well established principles of law and consequently there is a balance of convenience in favour of the plaintiffs for the grant of an injunction. She further submits that as the plaintiffs have a valuable right in respect of the suit land, if the defendants are permitted to dispossess the plaintiffs or alienate the suit land during the pendency of the suit, it shall cause irretrievable injury to the plaintiffs and taking into account the above three golden principles, Ms. Choudhury submits, that the courts below were justified in passing the order of injunction. Ms. Choudhury further submits that although the order of injunction ought to have been more properly worded but in effect it is an injunction upon the defendants that they should not dispossess the plaintiffs from the suit land as well as not to alienate the suit land and also not to change the nature and character of the suit land. She also submits that the courts below has the power under Order XXXIX Rule 7 to look into the aspect as to who is in possession. Ms. Choudhury further refutes the contention made by Mr. Rajbarbhuiya, learned counsel for the petitioner, to the effect that the report dated 08.08.2017 submitted by the police before the Executive Magistrate is an unsubstantiated report made behind the back of the petitioners. She further submits that neither the report nor the initiation of the proceedings under Section 145 Cr.P.C. before the Executive Magistrate has been put to challenge in an appropriate proceeding by the petitioners and as such, the petitioners cannot make any submission as regards the legality and validity of the said report submitted by the police.

10. I have heard the learned counsel for the parties at length and have gone through the materials available on record.

11. The petitioners have claimed ownership over the suit land on the basis of a registered deed of sale bearing Deed No.4338 dated 12.04.1976 and have also alleged that the defendants are threatening to dispossess the plaintiffs from the said suit land. The said question is a debatable question and consequently there is a prima-facie case for going for trial. The next question that arises, which is the moot question, is that whether there is a balance of convenience to grant the injunction as prayed for which in effect means that the petitioners shall not be entitled to enter into the suit land.

12. Ms. R. Choudhury had submitted that both the orders passed by the courts below holding that the plaintiffs are in possession of the suit land is on the basis of the report dated 08.08.2017 submitted by the police before the Executive Magistrate and the said report, Mr. Rajbarbhuiya submits that the said report is unsubstantiated, manipulated and fabricated to suit the needs of the plaintiffs before the Executive Magistrate. Mr. Rajbarbhuiya further submits that the said report could not have been taken into consideration as the sole basis for granting of the injunction, more so, when the court had the power under Order XXXIX Rule 7 of the CPC to look into the said aspect of the matter. He further submits that if the injunction order is continued in the manner which has been done by the trial court, it would affect the rights of the petitioners in respect of their possession over the suit land inasmuch as he claims that the petitioners are in possession of the suit land.

13. The law as regards grant of an injunction is at a stage when the existence of a legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established in trial on evidence. The court at the time of considering an application for injunction, acts on certain well settled principles of administration in the form of interlocutory remedy which is both temporary and discretionary. The said interlocutory remedy is intended to preserve any status-quo, the rights of the parties which may appear on a prima-facie case. The court also in restraining a defendant from exercising what he considers his legal rights but what the plaintiff would like to be prevented, puts into the scales as a relevant consideration whether the defendant is in possession of the suit land or

not and to put a restraint upon the defendant when the facts are yet to be established as to who is in possession and more particularly in a case of instant nature where both the parties claim to be in possession of the suit land. An injunction directing the defendants not to enter the suit land, if the defendants are in possession, would lead to serious consequences pending disposal of the suit. However, it needs to be taken note of that a direction not to dispossess the plaintiff would not mean that if the defendants are already in possession of the suit premises, it would amount to dispossessing the plaintiff.

14. At this stage, it may also be relevant to take note of the question as to whether non-granting of an injunction in favour of the plaintiffs would cause irreparable loss, harm and injury. Taking into consideration that the plaintiffs asserts that they are in possession of the suit land since the year 1975 on the basis of a deed of sale executed in their favour and if they are dispossessed by the defendants/the petitioners herein during the pendency of the suit, it would definitely cause irreparable loss, harm and injury to the plaintiffs. At this stage, it is also pertinent to mention that the report dated 08.08.2017, being disputed by the petitioners, it would not be proper to accept the same without the veracity of the report being proved in accordance with law.

15. Therefore, the question which arises while granting an interlocutory remedy, more so, taking into consideration that both the parties allege that they are in possession of the suit land and further taking into consideration what has been observed herein above, I am of the opinion that it would be in the interest of justice that the injunction order which have been passed ought not to be interfered with, however, with certain modifications. As the parties before this Court alleges that they respectively are in possession of the suit land, it is directed that if the plaintiffs are in possession of the suit land, the defendants shall not interfere with the possession of the plaintiffs over the suit land and similarly, if the defendants are in possession of the suit land, the plaintiffs shall not interfere with the possession of the defendants over the suit land. Further, taking into consideration that an interlocutory remedy is

intended to preserve the status quo as regards the rights of the parties, it would be also in the interest of justice that both the parties are directed herein not to alienate the suit land and also not to change the nature and character of the suit land. This Court has passed this injunction taking into consideration that as both the parties alleges that they are in possession and have their right, title and interest over the suit land and as such, it would be in the interest of justice that both the parties, during the pendency of the instant suit, should not transfer and/or alienate the suit land in any manner whatsoever and also should not change the nature and character of the suit land.

16. Taking into consideration the provisions of Order XXXIX Rule 7 of the Code of Civil Procedure, the parties are at liberty to file appropriate application before the Court for the purpose of inspecting which party is in possession of the suit land.

17. With the above observation, the instant petition stands disposed of.

**JUDGE**

*T U Choudhury*

**Comparing Assistant**