



GAHC010051722025



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

Case No. : FAO/14/2025

AYESHA KHATUN AND ANR
D/O. KUSUMUDDIN SHEIKH, RESIDENT OF VILLAGE- GARIKHANA
SHILLONG, P.O.BARABAZAR, P/S. LOMDENGIRI, DISTRICT- EAST KHASHI
HILLS (MEGHALAYA), PIN- 793002.

2: SOIDUR RAHMAN
S/O LATE ASRAF ALI

RESIDENT OF GOALPARA
WARD NO. 7
PO BALADMARI
P/S. AND DIST. GOALPARA
ASSAM- 783121

3: DELOWARA KHANAM
D/O. MONNAF ALI

RESIDENT OF GOALPARA
WARD NO. 7
P/O. BALADMARI
P/S. AND DIST. GOALPARA
ASSAM-783121

VERSUS

ABU BAKKAR SIDDIQUE
AGED ABOUT-37, S/O LATE ABDUL KADER, RESIDENT OF VILLAGE-
PALLIRTAL, CHEDAMARI, PO- CHALANTAPARA, P/S- JOGIGHOPA,
DISTRICT- BONGAIGAON, PIN- 738338, ASSAM.



B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the appellant(s) : Mr. BD Deka

Advocates for the respondent(s) : Mr. AZ Ahmed

Date of hearing & judgment : **01.05.2025**

JUDGMENT & ORDER(ORAL)

Heard Mr. BD Deka, the learned counsel appearing on behalf of the appellants. Mr. AZ Ahmed, the learned counsel appears on behalf of the respondents.

2. This is an appeal filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for short, the Code), challenging the order dated 29.01.2025 passed by the learned Civil Judge (Senior Division) Bongaigaon in Misc.(J) Case No.82/2024 arising out of Title Suit No.79/2024 by allowing the application under Order XXXIX Rule 1 and 2 of the Code.

3. It is seen that vide the impugned order dated 29.11.2025, the Court of the learned Civil Judge (Senior Division) Bongaigaon (hereinafter to be referred to as the 'learned Trial Court') directing the appellants herein who are the defendants, their men, agents etc. were directed not to dispossess the plaintiff from the suit land till the disposal of the main suit and further directed both the



sides to maintain status-quo in respect to the suit land.

4. A question arises in the instant proceedings as to whether this Court is required to interfere with the said injunction order, which is a discretionary order passed in exercise of the equitable jurisdiction of the learned Trial Court. The law in that regard is well settled that an order of injunction passed by the Court of the first instance ought not to be interfered with sans, such discretion suffers from perversity, unreasonableness, irrationality and is contrary to the well settled principles for grant of an injunction. In the backdrop of the above parameters of the settled position of law, this Court would like to deal with the facts which led to the filing of the instant appeal.

5. The respondent herein as plaintiff filed a suit being Title Suit No. 79/2024 against the appellants who were the Defendants. For the sake of convenience, the parties herein are referred to in the same status as they were before the learned Trial Court.

6. It is the case of the plaintiff in the suit that a plot of land ad measuring 3 bighas, which is more specifically described in Schedule A to the plaint is the subject matter of the said suit. It is the further case of the plaintiff that the defendant No.1 is the owner of the said suit land. It was also mentioned that the defendant No.1, since the date of the purchase permitted the plaintiff to remain in possession over the said suit land as a caretaker and the plaintiff, accordingly, possessed the said suit land by plantation of vegetables, orchards and sometimes by cultivating jute cultivation. In the year 2022, the defendant



No.1 expressed her willingness to transfer the said Schedule suit land. Under such circumstances, the plaintiff approached the defendant No.1 in the month of October 2022, and it was agreed to that the suit land would be sold at a consideration of Rs.1,26,00,000/- i.e. at the rate of Rs.42,00,000/- per bigha.

7. It is the further case of the plaintiff that on 10.10.2022, an amount of Rs.13,00,000/- was paid to the defendant No.1 in presence of witnesses. Subsequently, the plaintiff further went to the defendant No.1 and offered another amount of Rs.13,00,000/- as the second installment and requested the defendant No.1 to sign the application form for land sale permission and also to provide the necessary required documents for the purpose of application of the land sale document permission. The defendant No.1 replied that she would need the money in eight/nine months. The plaintiff reposing faith on the defendant No.1 returned home. Later on, in the month of September 2023, the defendant Nos.2 and 3 had visited the suit land and forcefully asked the plaintiff to vacate the suit land. On inquiry being made, the plaintiff came to learn that the entire suit land was transferred to the defendant Nos.2 and 3 by the defendant No.1 by the registered deed of sale dated 05.08.2023.

8. The plaintiff could obtain the certified copy of the said sale deed on 06.07.2024 and thereupon filed the said suit. It is the case of a plaintiff that the plaintiff is still in possession of the suit land and the plaintiff was threatened by the defendant No.2 to dispossess the plaintiff and it is under such circumstances, the suit was filed seeking specific performance of the agreement dated 10.10.2022 as well as for cancellation of the two sale deeds being deed No.1441/2023 and sale deed No.1442/2023, both dated 05.08.2023 and for



issuance of necessary precept. The plaintiff also sought for a permanent injunction against the defendants, their men etc., not to disturb the peaceful possession of the plaintiff in respect to the suit land.

9. The plaintiff also filed an injunction application which was registered and numbered as Misc.(J) Case No.82/2024. This Court for the sake of brevity is not repeating the contents of the said application. Taking into account that the contents of the said application is *pari materia* to the contents of the plaint, except the statements made to the effect as to how the plaintiff has a *prima facie* case, the balance of convenience is in favour of the plaintiff and the plaintiff would suffer irreparable loss, harm and injury.

10. It is further pertinent to mention that in the said injunction application the plaintiff sought for a grant of temporary injunction thereby to restrain the opposite parties not to enter into the suit land and not to disturb the peaceful possession of the plaintiff for the ends of justice.

11. It is seen from the records that the appellants herein have filed their written objection. In the said written objection, the appellant No.1 had categorically denied entering into the agreement for sale on 10.10.2022 on the ground that she was at Shillong on the date, on which, the said purported agreement for sale dated 10.10.2022 was executed. It was denied that an amount of Rs.13,00,000/- was received from the plaintiff by the Defendant No.1. It was also stated that after taking the land sale permission both the sale deeds bearing deed Nos.1441/2023 and 1442/2023 dated 05.08.2023 were



executed by the Defendant No.1 in favour of the Defendant Nos.2 and 3 and both the physical and symbolic possession were handed over to the defendants Nos.2 and 3 being the rightful purchaser.

12. The learned Trial Court on the basis of the materials on record passed the impugned order dated 29.01.2025, thereby restraining the defendants herein, their men, agents, etc., from dispossessing the plaintiff from the suit land till the disposal of the main suit.

13. Mr. BD Deka, the learned counsel appearing on behalf of the appellants submits that the learned Trial Court without ascertaining as to who is in possession of the suit property directed the appellants not to dispossess the plaintiff, *inasmuch as*, as per him the appellants are in possession of the suit land. He further submitted that the plaintiff has no right to claim any right over the said suit land. Taking into account that the plaintiff even cannot claim rights under Section 53A of the Transfer of Property Act, 1882 (for short, 'the Act of 1882') in view of the fact that the purported agreement for sale dated 01.10.2022 is not a registered document, the question of seeking injunction does not arise.

14. The learned counsel appearing on behalf of the Appellants referring to the purported agreement for sale dated 10.10.2022 submitted that the said agreement for sale also do not state that possession was handed over. The learned counsel for the appellant further submitted that the plaintiff himself had stated that his possession was that of a care taker and as such, he had no



independent right to remain in possession even assuming that the plaintiff was in possession and as such, the learned trial court could not have granted the injunction.

15. *Per contra*, Mr. AZ Ahmed, the learned counsel for the respondents submitted that the learned Trial Court had applied all the three golden principles while granting of the injunction. He submitted that if the petitioner is dispossessed during the pendency of the suit proceedings, the petitioner would suffer irreparable loss, harm and injury. He, therefore, submitted that this is not a case, wherein this Court is required to interfere with the impugned order.

16. This Court has given an anxious consideration to the respective submissions and has also taken into account the materials on record. From the impugned order, there is nothing to show that the learned Trial Court had ascertained who is actually in possession over the suit land. Under such circumstances, at the time of granting of an injunction, the learned Trial Court at best could have passed an order directing both the parties to maintain status quo as regards the possession. However, the learned Trial Court could not have directed the defendants (Appellant Nos.2 and 3) who claim to be already in possession not to dispossess the plaintiff. It is relevant to observe that temporary injunction is granted to maintain the status as on the institution of the suit and granting an injunction being not a matter of charity the Courts are, therefore, required to properly apply the three principles well established for granting an injunction. Herein the instant case, without ascertaining who is in possession of the suit property injunction was granted not to dispossess the Plaintiff which renders the impugned order irrational and unreasonable.



17. This Court further takes note of that for the purpose of grant of an injunction to protect the possession of the person with whom the agreement of sale had been entered into, there has to be possession handed over on the basis of the said agreement for sale and then only rights would accrue in terms with Section 53A, subject to the said agreement for sale being registered. However, in the instant case, the purported agreement for sale dated 10.10.2022 is not a registered document.

18. Considering the above, the said agreement for sale dated 10.10.2022 can at best be said to be a document which will enable the plaintiff to get a decree for specific performance and nothing more. In that view of the matter, the question of granting of an injunction in favour of the plaintiff did not arise in respect to the possession.

19. On the basis of the above analysis and determination, this Court is of the opinion that the impugned order dated 29.01.2025 passed by the learned Civil Judge (Senior Division) Bongaigaon in Misc.(J) Case No.82/2024 arising out of Title Suit No.79/2024 is unreasonable, irrational and also is contrary to the well settled principles for grant of an injunction.

20. Accordingly, the impugned order dated 29.01.2025 passed by the learned Civil Judge (Senior Division) Bongaigaon in Misc.(J) Case No.82/2024 arising out of Title Suit No.79/2024 is set aside and quashed.



21. Before parting with the record, it relevant to observe that this Court during the course of hearing enquired with the learned counsel for the plaintiff as to how the amount of Rs.13,00,000/- was purportedly paid to the Defendant No.1. The learned counsel submitted that the said amount was paid in cash. In this regard, this Court finds it relevant to take note of the observations and directions of the Supreme Court in the case of ***RBANMS Educational Institution Vs. B Gunashekar and Another***, reported in ***2025 SCC Online SC 793***, wherein the Supreme Court at paragraph No.18.1 issued certain direction. The directions issued were:

“However, when the Bill was passed, the permissible limit was capped under Rupees Two Lakhs, instead of the proposed Rupees Three Lakhs. When a suit is filed claiming Rs. 75,00,000/-paid by cash, not only does it create a suspicion on the transaction, but also displays, a violation of law. Though the amendment has come into effect from 01.04.2017, we find from the present litigation that the same has not brought the desired change. When there is a law in place, the same has to be enforced. Most times, such transactions go unnoticed or not brought to the knowledge of the income tax authorities. It is settled position that ignorance in fact is excusable but not the ignorance in law. Therefore, we deem it necessary to issue the following directions:

(A) Whenever, a suit is filed with a claim that Rs. 2,00,000/-and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any,

(B) Whenever, any such information is received either from the court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,

(C) Whenever, a sum of Rs. 2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,

(D) Whenever, it comes to the knowledge of any Income Tax Authority



that a sum of Rs. 2,00,000/-or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the Chief Secretary of the State/UT for initiating appropriate disciplinary action against such officer who failed to intimate the transactions."

22. The learned Trial Court shall comply with the above directions of the Supreme Court and more particularly, Clause (A) and (B) quoted hereinabove.

23. Accordingly, the appeal stands allowed.

JUDGE

Comparing Assistant