

GAHC010225192024



2025:GAU-AS:1547

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

**Case No. : FAO/81/2024**

MONIR ALI @ MORINUDDIN AHMED AND 3 ORS  
S/O. LATE MUMTAZ ALI.

2: MOBARAK ALI  
S/O. LATE MUMTAZ ALI.

3: REZINA BEGUM  
D/O. LATE MUMTAZ ALI.

4: MORZINA BEGUM  
D/O. LATE MUMTAZ ALI.  
ALL ARE R/O. VILL. SATGAON  
P/O. BARBAKA  
P/S. BAIHATA CHARIALI  
DIST. KAMRUP  
ASSAM

VERSUS

HASHIM ALI AND 7 ORS  
S/O. LATE AKBAR ALI @ AKBAR SHIEKH

2: MOKIBUDDIN ALI  
S/O. LATE AKBAR ALI @ AKBAR SHIEKH

3: MAJIRUDDIN AHMED  
S/O. LATE AKBAR ALI @ AKBAR SHIEKH

4: DILBAHAR ALI  
S/O. LATE CHAIBAR ALI

5: MAJIBAR RAHMAN  
S/O. LATE CHAIBAR ALI

6:MOKBUL ALI  
S/O. LATE SOLEMAN ALI

7:JEHIRUL ISLAM  
S/O. LATE SOLEMAN ALI

8:AFSAR ALI  
S/O. LATE SOLEMAN ALI  
ALL ARE R/O. VILL.- SATGAON  
P/O. BARBAKA  
P/S. BAIHATA CHARIALI  
DIST. KAMRUP  
ASSAM

For the Appellant(s) : Mr. R. K. Bhuyan, Advocate

For the Respondent(s) : Mr. M. Dutta, Advocate

Date of Hearing : **14.02.2025**

Date of Judgment : **14.02.2025**

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. R. K. Bhuyan, the learned counsel appearing on behalf of the Appellants and Mr. M. Dutta, the learned counsel appearing on behalf of the Respondents.

2. This is an appeal challenging the order dated 24.09.2024 passed in Misc (J) Case No.10/2024 arising out of Title Suit No.7/2024 whereby the Court of the learned Civil Judge (Senior Division), Kamrup at Amingaon (hereinafter referred to as 'the learned Trial Court') passed an order of injunction thereby restrained the appellants herein who were the opposite parties in the injunction proceedings from alienating or encumbering the suit

land in any manner till the disposal of the Title Suit. In addition to that the learned Trial Court further directed both the parties to maintain status quo with respect to their respective possession over the suit land.

3. It is a settled principle of law that an appeal preferred challenging an order passed in exercise of equitable jurisdiction is limited. It is only when the said order on the face of it is erroneous, arbitrary, irrational and violates the well settled principles of the law of injunction, the Appellate Court can exercise jurisdiction. Keeping in mind the aforesaid principle of law, this Court would like to deal with the facts which led to the filing of the instant appeal.

4. The respondents herein as plaintiffs filed a suit seeking declaration of right, title and interest and confirmation of possession over the suit land of the plaintiffs along with other consequential reliefs as well as for permanent injunction, restraining the defendants, their servants, agents and persons who take interest in the defendants from interfering with the possession of the plaintiffs over the suit land as well as restraining the defendants from entering into the suit land as described in the schedule. Further to that, the plaintiffs also sought for a precept to the Circle Officer, North Guwahati Revenue Circle to mutate the names of the plaintiffs being the legal heirs of their respective fathers and delete the names of the defendants from the records.

5. It is the case of the plaintiffs that a plot of land admeasuring 7 Bigahs 1 Katha 6 Lechas covered by Dag No.6 and 9 of K.P. Patta No.116 situated at

revenue village Satgaon under Mouza Borbongshar, Revenue Circle North Guwahati in the district of Kamrup, Assam was originally recorded in the revenue records in the names of the plaintiffs' respective deceased fathers. It was further mentioned that during the lifetime of the respective father of the plaintiffs, he sold 2 Bighas of the land to the father of the defendants Late Mumtaz Ali out of the land measuring 7 Bighas 1 Katha 6 Lechas covered by Dag Nos. 6 and 9 of K. P. Patta No.116. However, when the plaintiffs went to the Office of the Circle Officer, North Guwahati Revenue Circle, after the death of their respective fathers for mutation of the names in the land records being the legal heirs, they came to learn that the legal heirs of the deceased Late Mumtaz Ali, i.e. the defendants have fraudulently mutated their names in the land records in connection with the suit land i.e. Dag No.6 admeasuring 6 Bighas 1 Katha vide mutation order dated 23.09.2019 and Dag No.9, land measuring 1 Bigha 1 Katha 6 Lechas vide another mutation order dated 23.09.2019.

6. It was also mentioned that the plaintiffs could come to learn that the defendant No.1 had also filed an application for partition of Dag No.6 and an order was passed on 30.12.2021 and a new Dag No.529 and Patta No.427 was allotted. The plaintiffs thereupon filed objection before the Circle Officer, North Revenue Circle for the cancellation of the names of the defendants from the land records but unfortunately nothing was done. It was further mentioned that the defendants are also trying to sell the suit land by showing it to different intending customers. It is under such circumstances, the reliefs which have been already mentioned hereinabove were sought by filing the suit.

7. Along with the said suit which was registered and numbered as Title Suit No.7/2024, the plaintiffs also filed an application for temporary injunction which was registered and numbered as Misc. (J) Case No.10/2024. In the said injunction application, the plaintiffs sought for an ad-interim temporary injunction thereby restraining the defendants/opposite parties, their men, agents who take interest in the opposite parties from interfering with the possession of the petitioners over the suit land as well as restraining the opposite parties from entering into the suit land as described in the schedule below.

8. Pursuant to the filing of the suit, the learned Trial Court passed ad-interim ex-parte temporary injunction dated 09.01.2024 thereby restraining the appellants herein from alienating and encumbering the suit land till the next date. Subsequent thereto, the defendant Nos. 1 to 4 appeared and filed the written statement as well as the written objection. In the said written objection, it is the case of the defendants as would appear that the predecessor of the petitioners/plaintiffs namely one Akbar Sheikh alias Akbar Ali and one Solemon Ali had sold the entire 7 Bighas 2 Kathas 6 Lechas to the predecessor of the answering opposite parties namely Late Mumtaz Ali who got his name mutated in respect to the said land in the year 1982-83 and thereafter on the death of Late Mumtaz Ali, the opposite parties got their names mutated in respect to the land by way of inheritance. It was further mentioned that after purchasing the land i.e. 6 Bighas 1 Katha of Dag No.6 and 1 Bigha 1 Katha 6 Lechas of Dag No.9 both covered by Patta No.116 by the predecessor of the opposite parties vide different registered sale deeds from the predecessor of the petitioners, the predecessor of the

opposite parties Late Mumtaz Ali vide mutation order dated 22.09.1982 passed in Mutation Case No.387/1981-82 as well as the Chitha Mutation dated 25.10.1983 passed by the Circle Officer, North Guwahati Revenue Circle got their names mutated and the record of rights were corrected. It was further mentioned that Late Soleman Ali, the predecessor of the Petitioner Nos.6, 7 and 8 had preferred an Appeal being Revenue Appeal No.1/2001-02 before the then Additional Deputy Commissioner, Kamrup challenging the said orders of mutation passed in favour of Late Mumtaz Ali in respect of the land in question. However, the learned Additional Deputy Commissioner, Kamrup vide order dated 03.09.2002 had dismissed the said appeal and there was no further challenge made to the order dated 03.09.2002.

9. In the backdrop of the above pleadings, this Court has also heard Mr. R. K. Bhuyan, the learned counsel appearing on behalf of the appellants who submitted that the plaintiffs have not challenged those deeds of sale. He further submitted that what is being challenged out here are only subsequent mutation orders though the original mutation orders which were being passed still remains. He submitted that the original mutation order was challenged by the predecessor of the plaintiffs which was dismissed vide order dated 03.09.2022. He therefore submitted that though the jurisdiction of this Court is limited but while considering the three golden principles, the learned Trial Court ought to have taken into account that there was no challenge to the deeds of sale. He therefore submitted that the right which accrues upon the opposite parties on the basis of the said deeds of sale could not have been restrained without a challenge substantively to the

deeds of sale by the opposite parties/appellants who purchased the land.

10. Per contra, Mr. M. Dutta, the learned counsel appearing on behalf of the respondents submitted that though in the plaint there is no challenge to the deeds of sale, however, upon coming to learn about the deeds of sale which are fraudulent, appropriate steps are being taken seeking amendment of plaint. He submitted that in view of the filing of the amendment application, this Court has to take into account that there is a substantive challenge to the deeds of sale.

11. This Court has heard the learned counsels appearing on behalf of the parties. It is also relevant to take note of that both the parties claimed that they are in possession of the lands in question.

12. This Court has perused the impugned order dated 24.09.2024. On that very date, there was no challenge to the deeds of sale. Even as on today, when this Court is passing the present order, there is no challenge to the deeds of sale unless and until the amendment sought for to the plaint is allowed.

13. It is further relevant to take note of that very opening words of Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 states that an injunction can be granted when it is proved by affidavit or otherwise in a suit. As on date, there is no challenge to the Deeds of Sale executed in favour of the Defendants/Appellants herein. Under such circumstances, the title of the appellants which they acquired on the basis of the Deeds of Sale is not a

subject matter of dispute. This very aspect of the matter was not taken into consideration which in the opinion affects the decision of the learned Trial Court in arriving at the adjudication insofar as the principles of the balance of convenience as well as the irreparable loss, harm and injury are concerned which are required to be taken into consideration while adjudicating an application for temporary injunction. In other words, without there being a challenge to the deeds of sale, there could not have been a balance of convenience in favour of granting an injunction. Rather, the balance of convenience was in favour of the opposite parties/appellants herein not to grant an injunction as they would be restrained from exercising their rights over the land which they have duly purchased. Apart from that, the principles as regards irreparable loss, harm and injury was not taken into consideration in the proper perspective. It is relevant to take note of that the learned Trial Court did not take into consideration that without a challenge to the title of Appellants insofar as their Deeds of Sale are concerned, the rights of a title owner ought not to be restrained. Apart from that, the learned Trial Court failed to take into account the principles of *lis pendens* enshrined in Section 52 of the Transfer of Property Act, 1882.

14. Consequently, this Court is of the opinion that the learned Trial Court was not justified in passing the impugned order dated 24.09.2024 thereby restraining the defendants from alienating or encumbering the suit land till the disposal of the suit.

15. It is however relevant to observe that as both the parties claim that they are in possession and there is a dispute as to who is actually in possession, the learned Trial Court in the opinion of this Court was justified

in granting injunction in the form of a status quo thereby directing both the parties to maintain status quo as regards the possession.

16. Accordingly, this Court disposes of the instant appeal with the following observations and directions:

- (i) The impugned order dated 24.09.2024 is interfered with insofar as the injunction granted by the learned Trial Court thereby restraining the opposite parties from alienating or encumbering the suit land in any manner till the disposal of the suit.
- (ii) This Court is not interfering with the impugned order dated 24.09.2024 whereby both the parties were directed to maintain status quo with respect to their respective possessions over the suit land.

17. Before parting with the records, this Court makes it clear that in the circumstance the amendment application is allowed, the instant order so passed shall not preclude the plaintiffs to prefer a further application for injunction and in the circumstance such application is being filed, the learned Trial Court shall decide the same in accordance with law without being influenced by the order passed herein.

18. Appeal accordingly stands disposed of.

**JUDGE**

**Comparing Assistant**