

**Serial No. 01**  
**Supplementary List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CRP No. 1 of 2022 with  
CRP No. 10 of 2022

Date of Decision: 29.09.2023

Helen Dkhar & Anr.

Vs.

Emily Synrem & 4 Ors.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. L. Khyriem, Adv.

For the Respondent(s) : Mr. K.S. Kynjing, Sr. Adv. with  
Ms. A.D. Syiem, Adv. (For R 2 & 3)  
Mr. E. Lalsangluaia, Adv. (For R 4)  
Mr. S. Sengupta, Addl. Sr. GA (For R 5)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

**COMMON JUDGMENT**

1. Two applications under Article 227 of the Constitution of India read with Rule 36A of the Constitution of India read with the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 have been preferred before this Court assailing the proceedings before the court of the learned Assistant to the Deputy Commissioner(J), Shillong wherein the

impugned order dated 30.10.2017 passed in Misc. Case No. 90(T) of 2017, order dated 22.10.2021 passed in Misc. Case No. 85(T) of 2021, order dated 16.12.2021 in Misc. Case No. 100(T) of 2021 and finally order dated 22.12.2021 passed in Misc. Case No. 105(T) of 2021 was assailed in CRP No. 1 of 2022.

2. Another application assailing the judgment/order dated 04.03.2022 passed in FAO No. 8(T) of 2017 passed by the learned Additional Deputy Commissioner(J), Shillong whereby the learned Additional Deputy Commissioner(J) upon hearing the appeal filed by the petitioner herein assailing the order dated 30.10.2017 in Misc. Case No. 90(T) of 2017 of the learned Assistant to the Deputy Commissioner(J), the same having been dismissed, was also preferred by the petitioners.

3. This Court on examination of the two applications filed, finding that the same subject matter is involved and is inter-connected, to the extent that this Court while passing the order in one case, the same would also cover the issues raised in the other case. It is, therefore, deemed expedient to take up both the two cases and after hearing the parties, to pass a common order therein.

4. Heard Mr. L. Khyriem, learned counsel for the petitioners who has submitted that the factual matrix of the petitioner's case is that the deceased father of the respondent No. 4 (L) Himadri Purkayastha being the sole owner of a landed property measuring about 16,650 sq. ft. situated at Nongrim Road, Laitumkhrah Shillong sold a portion of the said property to (L) Gilbert Siangshai, the deceased husband of the petitioner No. 1, measuring about 11,187 sq. ft., who had then assumed title and possession of the same on execution of a Sale Deed dated 04.06.1997.

5. Out of the land measuring about 16,650 sq. ft. another portion of about 5,563 sq. ft. was sold to the deceased husband of the petitioner No. 1 on execution of a Sale Deed dated 17.11.2000. However, the said property being under the possession of (L) Rana Purkayastha, the husband of the respondent No. 1, the said land being under the possession of the respondents No. 1, 2 and 3 respectively, at the relevant point of time, (L) Himadri Purkayastha and (L) Gilbert Siangshai had instituted a suit for recovery of possession from (L) Rana Purkayastha being Title Suit No. 11(T) of 1997 (old)/Title Suit No. 224(T)/Eject T.S. No. 9(T) of 2013 (new). The same is still pending disposal before the court of the learned Assistant to the Deputy Commission(J), Shillong.

6. On account of the fact that the Sale Deed dated 17.11.2000 executed between (L) Himadri Purkayastha and (L) Gilbert Siangshai, pertaining to the plot of land measuring about 5463 sq. ft. or so, the same being refused to be registered by the Registrar, East Khasi Hills District, a Title Suit being T.S. No. 39(T) of 2001 renumbered as T.S. No. 236(T) of 2013 was preferred before the court of the learned Assistant to the Deputy Commissioner, Shillong which is a suit under Section 77 of the Registration Act, 1908 with a prayer for direction to the Registrar, East Khasi Hills District, the proforma respondent No. 5 herein to complete the registration formalities. This suit is pending disposal before the trial court.

7. In the meantime, the respondents No. 1 (since deceased), 2 and 3 respectively had filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC seeking for grant of ad-interim injunction against the petitioner No. 1 or any person or persons, agent or associates acting on her behalf from erecting any gate at the main entrance of the path/approach road

towards the compound and house of the said applicants/respondents herein.

8. The said application being numbered as Misc. Case No. 90(T) of 2017 was taken up for hearing by the learned Assistant to the Deputy Commissioner (J), Shillong who, vide order dated 24.08.2017 was pleased to pass an ad-interim injunction and has restrained the petitioner No. 1 or anyone acting on her behalf from erecting or constructing any gate at the entrance of such path.

9. Again, after hearing the parties, the learned Assistant to the Deputy Commissioner(J), Shillong has, vide order dated 30.10.2017 made the ad-interim injunction order dated 24.08.2017 absolute till final disposal of the suit.

10. Being aggrieved by the order dated 30.10.2017 the petitioners herein preferred an appeal before the court of the learned Additional Deputy Commissioner(J), Shillong, the same being registered as FAO No. 8(T) of 2017. The lower appellate court on admission of the said appeal was pleased to call for the records of Title Suit No. 236(T) of 2013 along with Misc. Case No. 90(T) of 2017. This was done vide order dated 17.04.2018.

11. During the pendency of the appeal that is, FAO No. 8(T) of 2017 the respondents No. 1, 2 and 3 had filed an application under Order 39 Rule 2A read with Section 151 CPC bringing to the notice of the court an alleged violation of the order dated 24.08.2017 passed in Misc. Case No. 90(T) of 2017 by the petitioners. This petition was filed before the court of the learned Assistant to the Deputy Commissioner(J), Shillong being registered as Misc. Case No. 85(T) of 2021 arising out of Title Suit No. 236(T) of 2013 and Misc. Case No. 90(T) of 2017.

12. The learned Assistant to the Deputy Commissioner (J), Shillong vide order dated 22.10.2021 in Misc. Case No. 85(T) of 2021 had, on the appearance of the parties, passed an order restraining further construction of the said gate. However, this order was also said to have been violated by the petitioners herein/opposite parties for which, the respondents No. 1, 2 and 3 had filed another application being Misc. Case No. 100(T) of 2021 arising out of Misc. Case No. 85 (T) of 2021 and the learned Assistant to the Deputy Commissioner(J), Shillong vide order dated 16.12.2021 had again directed that the petitioners herein are not to carry out any further construction in the suit premises.

13. The petitioners herein on coming to learn about the order dated 16.12.2021(supra) had raised the issue of jurisdiction, following which the learned trial court had observed that no written objection or otherwise was filed in this regard. Accordingly, an application filed on 20.12.2021 by the petitioners was registered as Misc. Case No. 105(T) of 2021 raising the issue of jurisdiction and objecting to the trial court taking up the hearing on Misc. Case No. 85(T) of 2021.

14. The learned Assistant to the Deputy Commissioner(J), Shillong had then passed the order dated 21.12.2021 after hearing the parties in Misc. Case No. 105(T) of 2021 and had, in effect dismissed the petition on the ground that in the absence of any stay order explicitly passed by the appellate court, the Misc. Case No. 85(T) of 2021 and Misc. Case No. 100(T) of 2021 cannot be dismissed at that stage.

15. Looking into the many orders passed by the learned Assistant to the Deputy Commissioner(J), Shillong dated 30.10.2017, 22.10.2021, 16.12.2021 and 22.12.2021 the learned counsel for the petitioners has submitted that the

same was passed with material irregularity and beyond jurisdiction inasmuch as when the initial order dated 30.10.2017 wherein the ad-interim injunction order was made absolute while disposing of Misc. Case No. 90(T) of 2017 and such order being impugned and under appeal before the appellate court for which all the relevant records from the trial court was called for, therefore, without perusal of the relevant records the trial court could not have passed the impugned orders as indicated above.

16. In due course, the said appeal was heard by the learned Additional Deputy Commissioner(J) and the same was disposed of vide the impugned judgment/order dated 04.03.2022, rejecting the prayer of the appellants/petitioners herein.

17. The learned counsel for the petitioner has reiterated that the subject matter of T.S. No. 236 (T) of 2013 pertains to the prayer to direct the Registrar, East Khasi Hills District to cause registration of the said Sale Deed executed on 17.11.2000 which suit is for an exclusive remedy and not a comprehensive suit, since the same was a suit under Section 77 of the Registration Act, 1908, thereby an application under Order 39 Rule 1 and 2, CPC in itself is not maintainable.

18. The learned Additional Deputy Commissioner(J) without looking into this aspect of the matter as to the maintainability of the process by which the impugned order dated 30.10.2017 was passed by the learned Assistant to the Deputy Commissioner in an application under Order 39 Rule 1 and 2, has rejected the appeal which renders the impugned judgment/order unsustainable in law, submits the learned counsel.

19. The learned counsel has again submitted that the learned lower

appellate court has failed to take note of the fact that the alleged dispute is with regard to the proposed gate sought to be erected by the petitioners over their land which is not in dispute or the subject matter of the suit that is, T.S. No. 236(T) of 2013. In fact, the concerned respondents would not be deprived of their right of free access of ingress and egress to their compound as the said path is a common path used by the parties without any interruption.

20. Yet another argument raised is that the learned courts below have failed to appreciate the fact that the impugned orders were passed based on the pleadings and documents put in by the respondents No. 1, 2 and 3 which are not part of their pleadings in the title suit and has come to a finding that there exists a 6 ft. wide approach road within the suit land. Since issues in the suit have already been settled by the concerned court in the year 2002, the respondents could not have been allowed to come with new pleadings after a gap of about 16(sixteen) years or so. Therefore, the trial court or for that matter, the learned lower appellate court ought not to have passed the impugned order dated 30.10.2017 and the order dated 04.03.2022 respectively.

21. In support of his case, the learned counsel has cited the following authorities:

- i. Mathai Ouseph Panackal v. Joseph & Anr, AIR 1970 Ker 261, para 8 & 9;
- ii. Hira Singh & Anr. v. Budh Singh & Ors.,1985, SCC Online All 99, para 12 & 13
- iii. V.K. Thanikachalam v. Parameswari Ammal & 2 Ors., 1997(II) CTC 746, para 13

- iv. Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy, (1999) 7 SCC 114, Para 10 & 11
- v. Abdul Kalam Azad v. Ananthalakhami, 2012 (2) MWN (Civil) 63, para 12
- vi. Iqbal Mohammed Bijili v. K. Arumugam & Ors, 2005 (3) CTC 420, para 28 & 29.

22. In view of the submission made, the learned counsel has submitted that the impugned orders dated 30.10.2017 and 04.03.2022 are patently illegal and was passed without jurisdiction, the same are required to be set aside and quashed.

23. Per contra, Mr. K.S. Kynjing, learned Sr. counsel appearing for the respondents No. 1, 2 and 3 has submitted that the order dated 30.10.2017 passed in Misc. Case No. 90(T) of 2017 was passed to preserve the nature of the suit property from being wasted or damaged or alienated by restraining the plaintiffs/petitioners herein to set up or to erect a gate within the said suit land. The same being passed under the relevant provision of Order 39 Rule 1 and 2, there is no irregularity or illegality or even lack of jurisdiction exercised by the trial court while passing the orders in question.

24. In the same breath, the learned Sr. counsel has also raised the issue of maintainability of these applications by submitting that the exercise of power under Article 227 of the Constitution, may be necessary only if it is shown that grave injustice has been done to a party since under Article 227, the High Court is not supposed to interfere into any order passed by a subordinate court or by a tribunal even if there are some defects therein, the power principally being limited only to issues of want of jurisdiction, errors of law, perverse



findings, gross violation of natural justice or if any grave injustice has been done. In support of this contention, the case of Chamnur Ali & Ors v. Loknath Upadhaya, (2022) 4 Gauhati Law Reports, 678, para 5 as well as the case of Ouseph Mathai & Ors v. V.M. Abdul Khadir, AIR 2002 SC 110, para 8 & 10 was cited.

25. Going on to deal with the facts and circumstances of the case between the parties, the learned Sr. counsel has submitted that the history of the suit land dates back to the year 1934, when on 22.12.1034, (L) Nishi Sekhar Purkayastha and (L) Chandra Sekhar Purkayastha, both brothers jointly purchased a plot of land measuring about 14,110 sq. ft. from one Ramola Bose. On 16.10.1946, the adjacent land measuring about 2500 sq. ft. was also purchased from Ka Kyndong Mawrie in the name of (L) Chandra Sekhar Purkayastha as the Karta of the family.

26. Out of the total plot of land measuring about 16,650 sq. ft., a portion of the same was sold by (L) Himadri Purkayastha, the son of (L) Chandra Sekhar Purkayastha to (L) Gilbert Siangshai vide Sale Deed dated 04.06.1997. However, on the southern part of the original land sold by Mrs. Bimola Bose, the area is 135 ft., whereas on the said sale deed dated 04.06.1997, the area shown is 129 ft., the approach road of about 6 ft. was therefore, not included in the said Sale Deed dated 04.06.1997 as it is the entrance to the residence of the respondents No. 1, 2 & 3 from the Laitumkhrah main road which at its end measures about 10 ft.

27. The learned Sr. counsel has further submitted that the said approach road has been used by the respondents No. 1, 2 & 3 and their family members for the last two decades and the intention of the petitioners to erect or construct a gate at the entrance of the same would put the suit property in

danger and would cause damage to it as well as it would disturb the right of way for egress and ingress of the respondents No. 1, 2 & 3 to their property. To maintain status quo and to preserve the suit property, it is imperative that a formal order from the court is required so as to prevent the petitioners to dig the earth and to install the said gate at the said place.

28. In this regard, the learned Sr. counsel has submitted that even Manik Purkayastha, the grandson of (L) Chandra Sekhar Purkayastha, while deposing as P.W. -1 in the said Eject Title Suit No. 9(T) of 2013 had admitted to the existence of the said approach road from the Laitumkhrah main road toward the suit property.

29. It is the further submission of the learned Sr. counsel that the impugned order dated 30.10.2017 and the dismissal of the appeal vide order dated 04.03.2022 have been passed by the respective courts whereby by applying the principles of Order 39 Rule 1 & 2 CPC, peace and harmony may be maintained between the parties till disposal of the suit. The same are therefore, justified and may not be disturbed by this Court.

30. In support of his contention, the learned Sr. counsel has referred to the following cases:

- i. Dr. Ashis Ranjan Das v. Rajendra Nath Mullick, AIR 1982 Cal 529, para 28;
- ii. Liberty Sales Services v. Jakki Mull & Sons, 1997 SCC Online Del 220;
- iii. Tofiz Uddin v. Eusob Ali & Ors, (2020) 4 GLR 678 and
- iv. B.F. Varghese v. Joseph Thomas, AIR 1957 Travancore-

Cochin 286.

31. Mr. S. Sengupta, learned Addl. Sr. GA appearing on behalf of the proforma respondent No. 5/Registrar has submitted that as far as the Registrar is concerned, since it has been brought to the notice of this authority that there is a dispute as regard the proposed land for which the sale deed in question is to be registered, therefore, the same could not be registered unless the matter is resolved by way of a decree from a court of competent jurisdiction.

32. The proforma respondent No. 4 has appeared through learned counsel, Mr. E. Lalsangluaia, who has, however refrained from making any submission on the merits of these petitions.

33. It may be mentioned that during the pendency of these proceedings, the respondent No. 1, Emily Synrem has expired on 26.08.2022. The fact of her death was brought on record by way of an affidavit wherein the copy of the Death Certificate dated 13.09.2022 was produced. This fact was also corroborated by the petitioners herein.

34. However, since there are three principal respondents in these two cases, the respondent No. 2 and 3 respectively being the sons of the deceased respondent No. 1, therefore, no application or prayer for substitution was made. Accordingly, the matter as far as the deceased respondent No. 1 is concerned has abated.

35. This Court has carefully considered the arguments of the parties herein and has come to understand that the main dispute between the relevant parties is with regard to a path/approach road measuring about 6 ft. wide which adjoin the Laitumkhrah main road to the property of the petitioners and continuing towards another property, measuring about 5,563 sq. ft., which is

now under the possession of the respondents No. 2 and 3 and which property is the subject matter of Title Suit No. 236 of 2013 and Title Suit No. 224 of 2012 as records would show.

36. During the pendency of the abovementioned Title Suits, the petitioners during the process of erection of a gate over the said 6 ft. wide land, the respondents No. 1 (since deceased), 2 and 3 had raised objection to the same and has accordingly approached the court of the learned Assistant to the Deputy Commissioner(J), Shillong before which court the said aforementioned Title Suits are pending by way of a miscellaneous application being registered as Misc. Case No. 90(T) of 2017 seeking injunction as provided under Order 39 Rule 1 and 2 CPC.

37. As detailed herein above, the said Misc. Case No. 90(T) of 2017 was finally disposed of vide order dated 30.10.2017 making the ad-interim injunction passed earlier in the case absolute. Upon which against such order an appeal was filed by the petitioners herein before the court of the learned Additional Deputy Commissioner (J), Shillong in FAO No. 8(T) of 2017.

38. It is also the case of the relevant respondents that in spite of the order dated 30.10.2017 the petitioners have violated the same prompting the respondents to file a number of miscellaneous applications before the trial court upon which relevant orders and directions have been passed, such orders as indicated above, are also assailed herein.

39. The FAO No. 8(T) of 2017 was finally disposed of vide order dated 04.03.2022 rejecting the prayer made by the petitioners herein and upholding the impugned order passed by the trial court which has again prompted the petitioners to prefer the relevant application before this Court under Article

227 of the Constitution of India read with Rule 36A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937.

40. What is noticed by this Court at the threshold is that in a suit to cause registration of the sale deed by the Registrar, East Khasi Hills District, Shillong, purportedly executed by (L) Himadri Purkayastha and (L) Gilbert Siangshai, an application under Order 39 Rule 1 and 2 CPC has been preferred by the relevant respondents herein.

41. As has been submitted by the learned counsel for the petitioners, the suit filed under Section 77 of the Registration Act, 1908 is for exclusive remedy pertaining only to the prayer to cause registration of the said sale deed and as such the only relief the plaintiff therein can get is one of a decree directing registration of the said sale deed. This has been observed in the case of Hira Singh (supra) at paras 12 and 13 and is now also commonly understood that the relief for injunction sought for in the suit is outside the purview of an action under Section 77 of the Registration Act.

42. It is reiterated that a suit under Section 77 of the Registration Act has to be confined only to the claim for registration of the document, which proposition of law is evident in the case of Mathai Ouseph Panackal(supra) referred to by the petitioners. In the case of the petitioners, the suit pertains to prayer for causing registration of the said Sale Deed dated 17.11.2000. All the cases cited by the petitioners also centers on the issue pertaining to Section 77 of the Registration Act, which issue has been dealt with herein accordingly.

43. It is also a fact that the relevant respondents have preferred the application for injunction under Order 39 Rule 1 and 2 CPC in the suit being T.S. No. 236(T) of 2013 which is a suit filed under Section 77 of the

Registration Act. Now, on the question as to whether a defendant can move an injunction against the plaintiff without filing a counter claim to seek relief against the action of a plaintiff in the suit which though not related to the cause of action raised in the plaint, but which, according to the defendant is detrimental to the cause of the defendant, the Hon'ble High Court of Karnataka in the case of Suganda Bai v. Sulu Bai & Ors., AIR 1975 Karnataka 137 has answered such a query, which in the respectful opinion of this Court, the principle enunciated therein would also be applicable to the pertinent issue raised in these petitions. The judgment in its entirety is found relevant and merits reproduction herein below as:

*“1. This revision preferred by the plaintiff arises out of an application made by defendant 1 for temporary injunction restraining the plaintiff from interfering with her alleged possession of the suit properties.*

*2. The plaintiff brought a suit in the Court of the Munsiff at Aland for a permanent injunction restraining the defendants from interfering with her possession. The cause of action as stated in the plaint is that the defendants began to interfere with the plaintiff's possession in the year 1970. After the suit was filed, the plaintiff did not ask for any temporary injunction. In the year 1973, defendant 1 made an application under Order XXXIX, Rules 1 and 2, read with Section 151, Code of Civil Procedure, for grant of a temporary injunction restraining the plaintiff from interfering with the defendants' possession of the suit property. That application was allowed by the trial Court and the said order was confirmed by the appellate Court. It is against the said order of the Court below that this revision petition has been filed.*

*3. Now the principles, under which a defendant may seek and obtain an order of temporary injunction against the plaintiff, are stated in Collision v. Warren, (1901) 1 Ch 812 where Buckley, J., after referring to a number of earlier decisions of the English Courts, quoted Lopes, LJ, in (1824) 2 Ch 541 at p. 545:-*

*"The question is this - whether the defendant can move for an injunction against the plaintiff without filing a counter-claim or*

*issuing a writ in a cross-action. In my opinion, he can in some cases, but only in cases where the defendant's claim to relief arises out of the plaintiffs cause of action, or is incidental to it."*

*Buckley, J., also referred to the decision of Davey, L.J., in the same case wherein it is stated thus:-*

*"In my opinion, it must be relating to or arising out of the relief sought in the action which, is before the Court, and that any other injunction cannot properly be granted in the action."*

*The principles stated in the above decision have been followed by this Court and it is only in cases where the defendants' claim to relief arises out of the plaintiff's cause of action or is incidental to it that he can ask for a temporary injunction against the plaintiff.*

*4. In the instant case, the cause of action for the plaintiffs suit, as stated earlier arose in the year 1970, whereas the cause of action for the defendants arose in the year 1973. The two causes of action are different. Therefore, the courts below were wholly in error in granting temporary injunction prayed for by defendant 1.*

*5. For the reasons stated above, I allow this revision petition, reverse the orders of the Courts below and dismiss defendant-1's application, with costs throughout.*

***Petition allowed."***

44. In the context of the issues raised in these petitions, while on the subject, it would be again useful to refer to the aforementioned judgment and to note that the relevant observations in this regard goes along the line that a defendant may move for an injunction against the plaintiff where the defendant's claim to relief arises out of the plaintiff's cause of action or is incidental to it. Any other injunction cannot be properly granted if the same is not relatable to the relief claimed in the suit. In fact, the authorities cited by the relevant respondents in this regard also speaks of the same principle of law, that is, that the defendant can prefer an application for injunction in a suit where the plaintiff's cause of action is incidental to the relief claimed. However, the respondents failed to notice that in the case in hand as observed

above, the claim is to cause registration of the said Sale Deed dated 17.11.2000. Nothing in the pleadings of the parties is mentioned about the 6 ft. path or road. Therefore, there is no nexus between the claim made in the suit and the alleged proposed erection of the gate within the said 6 ft. path or road.

45. Now, coming to the question of maintainability of these petitions as far as applicability of Article 227 of the Constitution is concerned, what has to be understood is that the High Court while exercising its power under Article 227, the same is supervisory in nature. Superintendence over all subordinate courts and tribunals within its jurisdiction in this regard is exercised both administratively and judicially as is warranted. One of the main concerns while exercising this power is to ensure that the subordinate courts and tribunals are functioning within the limits of their authority.

46. Be that as it may, in a given situation, the High Court in appropriate cases can convert petitions or applications, especially one under Section 115 CPC into an application under Article 227. In this regard, the case of Col. Anil Kak (Retd.) v. Municipal Corpn. Indore & Ors., (2005) 12 SCC 734, paras 1 and 2 is worthy of mention inasmuch as the same would somewhat be similar to the question raised herein. The relevant paras reads as follows:

*“1. These two petitions arise from the claim for an interim injunction by the petitioner before us in a suit filed by him. The suit was for a permanent injunction restraining the respondents, the defendants in the suit, from interfering with the possession of the suit land allegedly held by the petitioner including the school buildings constructed thereon and not to demolish or take any steps for removal of the constructions. An interim injunction along the same lines to enure during the suit was sought. That application was opposed. Respondent 3, in turn sought an injunction restraining the petitioner plaintiff from putting up any construction outside an area of 16,000*



sq ft. The trial court granted an interim injunction in favour of the petitioner but confined it to an area of 16,000 sq ft and the construction thereon and also restrained him from putting up any construction outside it but included in the plaint schedule. The petitioner appealed against those orders and the Additional District Judge allowed the appeals and modifying the order of injunction granted by the trial court, made the injunction operative in respect of the entire plaint schedule property and the structures thereon. The respondents originally filed a revision invoking Section 115 of the Code of Civil Procedure (for short "the Code") before the High Court challenging the order of the first appellate court. In view of a decision rendered by the High Court that no revision under Section 115 of the Code could be entertained against an order of injunction since the order was purely interlocutory in nature, the respondents herein sought a conversion of their revision into a petition under Article 227 of the Constitution. This prayer was allowed by the High Court which decided to treat the proceedings as one under Article 227 of the Constitution. It is challenging that order that the petitioner before us has filed Special Leave Petition(C) No.11771 of 2003. Proceeding on the merits thereafter, the High Court modified the order of the first appellate court and restored the order of the trial court and thereby confined the interim order of injunction to an area of 16,000 sq ft and the structures thereon. Feeling aggrieved by this modification, the petitioner before us, the plaintiff in the suit, has filed SLP(C) No.11940 of 2003. Since both the matters arise from the same proceedings, they are taken up together for final disposal.

*SLP(C) No.11771 of 2003*

2. All that the High Court has done is to treat the petition filed before it under Section 115 of the Code as a proceeding initiated under Article 227 of the Constitution. The respondents had filed the revision originally and during the pendency of that revision the High Court appears to have taken a view that an order in an appeal arising from a proceeding under Order 39 Rules 1 and 2 of the Code, could not be challenged under Section 115 of the Code since the order was in the nature of an interlocutory order. In such a situation, in our view, the High Court rightly decided to permit the revision petitioners before it, to convert the same as a proceeding under Article 227 of the Constitution. After all, the court could have done it on its own, even without a motion in that behalf by the petitioner. We see absolutely no ground to interfere with the said order on the

*grounds raised in this special leave petition. Hence, this special leave petition is dismissed.”*

47. In any case, even if the relevant respondents would insist that the impugned orders are appealable, the fact that the provision of Rule 36A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 has been resorted to, these petitions would have been maintainable as this provision allows appeal against orders passed by the Additional Deputy Commissioner under the said Rules.

48. This Court has also noticed that there is a Title Suit No. 27 (T) of 2017 said to have been instituted by the relevant respondents herein before the competent court, which assertion was also made by the learned Sr. counsel for the relevant respondents and the same duly noted by the trial court in the order dated 30.10.2017 in Misc. Case No. 90(T) of 2017. Copy of the said Title Suit No. 27(T) of 2017 is annexed with the petition in CRP No. 1 of 2022 as Annexure 12. On perusal of the same, it is seen that the subject matter of the suit is the said 6 ft. portion of the land which forms part of the said path/road leading from the Laitumkhrah Main Road toward the land of the parties which is in dispute. The plaintiff therein who is the deceased respondent No. 1 herein has sought for a decree inter alia, that the said approach road/path is the right of way for the plaintiff/respondent No. 1 and her family members for egress and ingress towards their house and property and that the defendants/petitioners herein are enjoined from obstructing the peaceful movement and right of way for egress and ingress thereto.

49. An application under Order 39 Rule 1 & 2 read with Section 151 CPC was also preferred by the petitioner/respondent No. 1 before the trial court seeking ad-interim injunction to restrain the opposite

parties/defendants/petitioners herein from interfering with the right of way for egress and ingress of the petitioner therein and the same was registered as Misc. Case No. 98(T) of 2017 in T.S. No. 27 (T) of 2017.

50. It is the considered opinion of this Court that the proper remedy for the relevant respondents to agitate the matter and to seek adequate relief as far as their grievance over the said 6 ft. land is concerned would be to pursue the same in the said T.S. No. 27 (T) of 2017 and Misc. Case No. 98(T) of 2017. Pursuing it in T.S. No. 236 (T) of 2013 by preferring the Misc. Case No. 90(T) of 2017 is not the proper platform or forum.

51. The action of the learned trial court in passing the order dated 30.10.2017 in Misc. Case No 90(T) of 2017 as well as the subsequent order dated 22.10.2021 passed in Misc. Case No. 85(T) of 2021, order dated 16.12.2021 in Misc. Case No. 100(T) of 2021 and finally order dated 22.12.2021 passed in Misc. Case No. 105(T) of 2021 can be said to have been orders passed irregularly and illegally and without jurisdiction by not taking into account the fact that the relevant records were not before the trial court when such petitions were filed by the parties.

52. The impugned judgment/order dated 04.03.2022 passed in FAO No. 8(T) of 2017 passed by the learned Additional Deputy Commissioner(J), Shillong could not have been passed since the order under appeal has been passed without jurisdiction which has escaped the notice of the first appellate court and therefore, by extension, the order passed in the appeal has also been passed without jurisdiction.

53. In view of the observations made above, this Court finds that the impugned orders in both the two sets of petitions have been passed by the

concerned court without jurisdiction and the same are liable to be set aside and quashed which is done so herein. The prayer made in these petitions is accordingly allowed.

54. Let the lower courts records called for by this Court be returned.

55. Petitions disposed of. No costs.

**Judge**

Meghalaya  
29.09.2023  
"Tiprilynti-PS"

