

Misc(J) Case No 46/12

**ORDER**

**PRESENT-**

**Mrs A. Rahman**

**AJS,Munsiff No – 1**

**Jorhat.**

25.03.2013

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 158/13.

This order arises out of a petition filed U/O 39 Rule 1&2 of CPC, which was registered as Misc (J) Case no 7/13, wherein petitioner/plaintiff has prayed to pass an order of temporary injunction restraining the opposite parties,their workers,etc from entering into the suit land,doing any brick works in an around the suit land , and selling the suit land to any other perspn till disposal of the case.

Petitioners case in brief is that he has instituted the instant Title suit for declaration of right,title and interest of the plaintiff over the suit land and cancellation of name of o.ps/defendants from record of right. It is stated that plaintiff has a pucca dwelling house consisting of twelve rooms which stands North South in a row in his 1 katha 8 lochas of land covering the suit land which is a part of the said 1 katha 8 lochas of land. That plaintiff is the owner of the entire 1 katha 8 lochas of land.It is further stated that on 16.12.12 taking advantage of absence of plaintiff and his two sons the O.Ps entered into the suit land and demolished eight rooms, driving the inmates out of these rooms, leaving four rooms of the southern part where the plaintiff is still residing with the family.It is further stated that O.P/defendant no 1 and 2 fraudulently entered their names in the record of right showing their husbands as sons of Deo Kishen Sahu.It is further stated that O.Ps have collusively entered the names of their husband after their death and on the same they they got their names entered in the record of right .It is further stated that the O.P/defendant no 3 and 4 are collecting bricks, broken stone, sands after demolition of the rooms on and from 9.01.13 to raise boundary walls around the suit land on war footing to prevent the plaintiff from entering into the suit land and as such the instant petition.

O.Ps filed written objection denying and challenging inter alia the claims of the petitioner and further stated that the main suit of the plaintiff is barred by specific provisions of law so as the misc (j ) case being a part of the main suit is not maintainable in law and further prayed for dismissal of the petition.

Perused the petition under order 39 Rule 1 &2 read with section 151 C.P.C, written objection, plaint, Written objection and copies of documents submitted by the parties.

Perusal of documents reveals that apart from the plaintiff the name of defendant no 1 and 2 appears in the jamabandi in respect of land measuring 12 lecha covered by dag no 295 of patta no 179. It also appears that defendant no 1 and 2 names further appears in the jamabandi showing them to be pattadar in respect of 1 katha 6 lechas of land covered by patta no 179 Kha and dag no 295 which was renumbered as patta no 295 and dag no 1652 and that defendant no 1 and 2 sold their aforesaid land to defendant no 3 and 4 i.e O.P no 3 and 4 vide registered sale deed no 3318/2761 dtd 12.12.12 .Petitioner/ plaintiff though has stated that he is the sole owner of 2 kathas of land covered patta no 179 and dag no 295 being the only legal heir of the original pattadar Deo Kishan sahu. As per his claim husband of defendant no 1 and 2 are not the sons of Deo kishan sahu and as such they can't inherit the property of late Deo kishan Sahu , consequently their wives can,t inherit the property. At present, available materials on record are not sufficient to prima facie satisfy this court about the above contention of the plaintiff/petitioner.

From the discussion made above I am of the opinion that defendants have prima facie right over the disputed land along with the plaintiff. Plaintiff has though stated that defendant /o.ps have demolished some houses over their land and started construction over there but at present the said claims are mere averments without any documentary prove and as such I am of the opinion that plaintiff has failed to show prima facie case in their favour.

So far as balance of convenience is concerned defendants being prima co owners in respect of disputed land have right to enjoy their shares unless and until restrained by following due procedure and under such fact and situation if the petition is allowed restraining them from enjoying their rights then the defendants / ops would be in more inconvenient state than that of the petitioner .

In view of the above I am of the opinion that the question of irreparable loss and injury to the plaintiff/petitioner does not arise.

In view of the above findings, prayer of the petitioner is rejected.

Misc (j) case is disposed off on contest .

It is pertinent to mention here that all my findings ,observations ,decisions made in the present case are my prima facie opinions, it would in no way effect the merit of the case.

(Achma Rahman)

Munsiff No 1, Jorhat.