

Misc(j) Case No:-4/12

22.04.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 163/12 filed under order xxxix rule 2A r/w section 94(e) and section 151 of C.P.C. which was registered as Misc (j) 4/12.

Petitioners case in brief is that petitioner filed Title suit no 12/10 against defendants /O.Ps (1) Rumena Begum, (2) Md Sehid Ali (3) Ms Rezina Begum (4) Ms Mofida Begum for declaration, khas possession, eviction and injunction. It is stated that he had also filed a petition U/O 39 rule 1 and 2 read with section 151 of C.P.C which was registered as misc (j) case no 5/10, wherein injunction order dtd 23.08.10 was granted restraining the O.Ps from causing any damage to the suit land as described in the schedule of the plaint.

It is stated that after the injunction order the O.P N 2, violated the injunction order and started construction of kutchra part house and also completed the new construction. It is further stated that from 27th January 2012 all the three opposite parties engaged themselves and their agents started earth filling on the suit land and also started collecting building materials such as bamboo, wood over the suit land to construct a house therein.

O.Ps filed written objection wherein it is stated that O.Ps are not trespassers of the suit land and that they are legally occupying the suit land and that they have not violated the injunction order.

Petitioner in support of his petition adduced evidence of himself as PW1. From his evidence alone it can't be concluded that Ops have made earth filling and collected building materials after the passing of order in question i.e order dtd 23.08.10. Moreover his evidence is neither supported by any independent witness nor by any documentary evidence. Therefore I am of the opinion that those averments of PW1 is not believable to hold the fact that the OPS have disobeyed the injunction order dtd 23.08.10.

It is a settled proposition of law that for alleged disobedience of an order under order 39 rule 2(A) the act of disobedience has to be proved beyond all reasonable doubt.

Upon perusal of the entire evidence on record as discussed above I have come to the conclusion that it is not proved beyond all reasonable doubt that o. p in disobedience of order dtd 23.08.10 started earth filling over the suit land or collected building materials over the suit land.

Petition stands rejected.

Misc (j) case is accordingly disposed off on contest.

**Mrs Achma Rahman,
Munsiff No 1, Jorhat.**

