

Misc (j) Case No:-15/10

22.04.13

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 434/12 filed under order xxxix rule 2A, of C.P.C. which has been registered as Misc (j) case No 15/10.

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 was granted vide order dtd 23.08.10, 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.Ps, Ms Rezina Begum, violated the injunction order and started construction of kutchra part house over the suit land and almost completed the new construction.

O.P filed written objection wherein it is stated that she is not trespassers of the suit land and that she is legally occupying the suit land. She further stated that she is legally occupying the land and residing over there by constructing kutchra house since 23.07.09 and that she has not violated the injunction order.

Petitioner in support of his petition adduced evidence of himself as PW1 and evidence of Lutfur Rahman as PW2. PW2, during his cross-examination stated that Rejina Begum constructed the house in the year 2010 but he does not know the exact date when the construction was made. Thus from his evidence it can't be concluded that the construction was made after the passing of order in question i.e order dtd 23.08.10. Though PW1 the petitioner has stated that the OP has constructed the house after passing of the injunction order but the same is not supported by the other witness i.e PW2 and /or any other independent witness or documentary evidence. Therefore I am of the opinion that those averments of PW1 is not believable to hold the fact that the OPS have constructed after passing of the injunction order.

It is a settled proposition of law that for allege 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 raised construction work over the suit land and as such I hold that no action as prayed by the petitioner is required to be taken against the opposite party.

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

Mrs Achma Rahman,

Munsiff No 1, Jorhat.