

Misc(J) 21/12

24.05.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 134/12.

This order arises out of petition filed by the plaintiff under order 39 rule 1 and 2 read with section 151 of C.P.C with a prayer to restrain the O.Ps/defendants and his agents from constructing pucca structure on of the suit property & not to alter the nature & character of the suit property described in schedule A & A(1) of the plaint.

Petitioners case in brief is that he and the OP are the sons of Lt Umarani Sor & Nirmalkanti Sor . That the parents of the parties are the original pattadar & owner of the suit property . It is stated that the O.P defendant is preparing to construct pucca structure over the suit land without the consent of the petitioner/plaintiff and as such he may be restrained from raising construction as well as from selling any part of the suit property and from changing nature and character of the suit property during pendency of the suit.

O.P filed written objection denying and challenging inter alia the claims of the petitioner and stated that he never constructed any structure over the land in question.It is further stated that plaintiff failed to bring any triable issue prima facie to go for trial and as such prayer has been made to dismiss the petition. It is further stated that suit is filed by the plaintiff/petitioner against the defendant/O.P. for some wrongful gain and to cause disturbance to the O.P. in his occupation and possession over the suit property.

O.P, in support of his case, has relied upon a decision passed by Hon'ble Gauhati High Court reported in 2010(I) Gauhati Law Journal 433, Radhabari Tea Co. Pvt. (Ltd.) – vs- Mridul kr. Bhattacharjee & others wherein it was held that unless court is prima facie satisfied that it has jurisdiction to try the suit, it cannot pass an interlocutory order of injunction. Grant of injunction is within the discretion of the court as such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by a order of injunction, an irreparable cause or damage will be caused to the plaintiff during the pendency of the suit.

It is further held that since an effective decree cannot be passed in absence of necessary party hence, no question of granting an interlocutory order of injunction arises if there is non-joinder of necessary parties. In other words unless necessary party is

brought on record or is impleaded in a given suit, no interlocutory order of injunction against the interest of such a necessary party can be passed.

Perused the plaint, W.S and available materials on record which reveals that mother of the plaintiff Smti Umarani Sor is the original owner of the suit property and it is admitted position that the suit land is not yet partitioned amongst the legal heirs of the original owner. Perusal of W.S. further reveals that apart from the parties to the instant suit the original owner was having 6 more legal-heirs being the sons and daughters and as such defendant has taken the plea of non-joinder of necessary parties in his W.S. The said fact was not denied till date by the plaintiff/petitioner and as such I am of the considered opinion that for effective adjudication of suit the legal-heirs of the original owner are to be impleaded in the main suit. However it is also seen that the issuance of injunction, as prayed, will not be against the interest of the party not yet impleaded. Therefore, I am of the opinion that the instant factual position is not identical for bringing a bar in issuance of injunction for this court on the basis of the aforesaid decision. That apart protecting suit property till its adjudication is one of the important duty of the court. Till the date when the court may come to a conclusion that the suit is not maintainable for non joinder of parties, it is the duty of the court to protect the suit property.

In view of the factual context and legal position, I am of the considered opinion that plaintiff/petitioner able to show prima-facie case in his favour.

So far as balance of convenience is concerned it is stated by the defendant that they have not raised any type of construction over the suit land and as such no question of inconvenience to the petitioner would arise in the event of allowance of the petition whereas in the event of construction being raised it would certainly place the petitioner in more inconvenient stage and may also cause irreparable loss and injury which could not be compensated in terms of money.

In view of the above discussion prayer for injunction is allowed. O.P/defendant is restrained agents from constructing pakka structure on of the suit property and also from altering the nature & character of the suit property described in schedule A & A(1) of the plaint, till disposal of the suit. Misc(j) case is accordingly disposed of on contest.

(Achma Rahman)

Munsiff No 1, Jorhat.