

MISC(J) CASE NO-9/13

06.04.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 259/13.

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 from altering the nature & character of the suit premises & from entering into the suit premises.

Petitioners case in brief is that he has filed the suit against the O.P defendant u/s 6 of Specific Relief Act, 1963 for recovery of possession, compensation & permanent injunction. It is stated that he had instituted a suit for ejection of her then tenant Dr Biren Ch. Dutta vide T.S No- 63/09 in the court of Munsiff No-I, Jorhat in respect of the present suit premises. The said suit was decreed in favour of the plaintiff. It is stated that the execution case filed for execution of the decree was also disposed off on satisfaction & possession of the suit premises was delivered to the plaintiff. It is stated that after taking possession over the suit premises on 06-9-12 the petitioner put the said premises under lock & key .But on 10-09-12 the O.Ps/Defendants illegally entered the suit premises by breaking the lock damaging the doors & windows & destroying the properties inside the premises. It is stated that after taking illegal possession they are trying to destroy some of the valuables in or over the suit premises and that it has also come to his knowledge from reliable sources that the o.ps are planning to let out the suit premises to a third party. And such the instant petition.

O.P filed written objection denying and challenging inter alia the claims of the petitioner and stated that they are in no way connected with the suit premises and they have no knowledge about T.S case No-63/09 or about the T. Ex. 4/12. That they have never received any summon or other correspondence regarding the said cases at any point of time. OP further stated that from the injunction petition he came to know that subject matter of the said case were a part house covered by Patta No-34 of block-5, Jorhat Mauza. The Actual owner of the said land was not made a party to the suit & this petition hence no effective relief can be passed without hearing the actual owner of the land. In view of the above, O.Ps have prayed for dismissal of the petition.

Perused the plaint, W.S and available materials on record which reveals that plaintiff has filed a suit for eviction of the Dr. Biren Ch. Dutta before court of the Munsiff No-I, which was numbered as T.S. 63/09 in respect of the present suit premises. Record further reveals that Dr.Biren Ch.Dutta has contested the suit by filling W.S.In the said suit judgment was pronounced in favour of the present plaintiff declaring Dr Biren Ch Dutta as his tenant and for recovery of the suit premises by eviction of the defendant. It also appears that Title Execution case- 4/12 was filed by present plaintiff & said case was disposed of on satisfaction by evicting wherein possession of the suit premises was delivered to decree holder Smt Subarna Rajkhowa on 06-09-12.It also prima facie appears from the copy of F.I.R.that on 10-09-12 the O.Ps/ defendants forcefully entered into the suit premises and also demolished some valuables.

In view of the above I am in the opinion that there is a prima facie case to go for trial.

So far as balance of convenience is concerned petitioner being the prima facie possessor of the suit land has every right to enjoy the property unless & until he is restrained in due process of law. Moreover O.P/defendant has averred that they are in no way connected to the suit land, and as such allowance of the petition in my opinion would in no way put them in more inconvenient stage as compared to that of the petitioner/plaintiff.

It also prima facie appears that petitioner/plaintiff has got a decree in their favour in respect of the suit land. Therefore it is the duty of this court to protect his right of enjoying the fruit of a lawful decree unless and until decree passed in her favour is altered by a competent court of law. Under such situation rejection of petition would obviously cause irreparable loss and injury to the petitioner which cannot be compensated in terms of money.

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

(Achma Rahman)

Munsiff No 1, Jorhat.