

Misc.(J) 28/13

18/9/2013

Instant Misc. (J) case arises out of a petition bearing No.1112/13 dated 26.4.13 filed by the plaintiff/petitioner, under order 39, Rule 2 A for breach of injunction order by O.P/Defendant .

Petitioner's case in brief is that this court on 15-10-12 granted temporary injunction restraining the o.p's from causing disturbance in the peaceful possession of the suit land till disposal of the present suit i.e. TS 34/12. It is stated that o.p/defendant in violation of the order forcefully dispossessed the plaintiff with the help of his men on 22-4-13 and presently the o.p's are wrongfully possessing the suit land in violation of the injunction order of the court.

In view of the above prayer has been made to take appropriate action against the OP for violation of the injunction order passed by this court on 15-10-12 in Misc(J) 25/12.

O.P's filed written objection denying & challenging inter alia the claims of the petitioner and further stated that there is no question of dispossessing the petitioner/plaintiff prior to grant of temporary injunction as the O.P/ defendant & other defendants of TS 34/12 were in continuous possession of the suit land since time immemorial. And as such prayer has been made to dismiss the petition.

I have already heard the petitioner/plaintiff .OP didn't turned up for hearing the petition. Perusal of record reveals that instant suit was filed for declaration of right title interest and recovery of khas Possession by eviction of defendant. From the pleading of the plaintiff it reveals that plaintiff along with the defendants were in joint possession of the suit land and both of them were ploughing the suit property and receiving produces therefrom since 1966 onwards. In the year 2011 when the plaintiff intimated the defendants, that from 2012 he is intending to plough individually, the defendant strongly reacted and threatened the plaintiff of dire consequence .

Pleadings reveals that plaintiff has instituted the suit in order to avoid violence and deterioration of relationship in future with defendants in respect to absolute physical possession over the suit property. From the above averment it is prima facie clear that both the parties were jointly in possession of the suit land.

Perusal of petition filed under order 39 Rule 1 & 2 reveals that petitioner/plaintiff in the said petition has prayed to pass order of injunction restraining the OP/def from interfering/obstructing the peaceful possession of the petitioner. And in the W.s as well as in the objection defendants/o.p.s have taken plea that they were under continuous possession of the suit land and cultivating thereon.

From the above averments it reveals that Ops were admittedly in possession of a part of the suit land. As such from the statement of the plaintiff/ petitioner it could not be specifically ascertain as to whether ops have violated the injunction order by trespassing into the part of the suit land which is in possession of the plaintiff/ petitioner.

In view of the aforesaid, fact situation, I am of the considered opinion that plaintiff failed to prove beyond reasonable doubt that ops have violated the injunction order. Therefore, petition filed under order 39 rule 2A stands rejected.

**Munsiff No.1,
Jorhat.**