

Misc(J) 50-13

ORDER

12-09-2013 : Parties are represented. Today is fixed for passing order on petition 1985/13 filed under section 47 read with sec 151 of CPC filed by the plaintiff. Plaintiff case in brief is that he is a permanent residence of Panbari Bagharchuk Gaon, Mauza -Thengal, District -Jorhat. That the O.P/defendant, the brother of the plaintiff is also resident of the same locality. It is further stated that the ancestral immovable properties including properties acquired by the father of both the parties have been divided and mutually partitioned between them , long back. And that the dispute which arose regarding area and boundary of the land had been settled and decided and confirmed in order and decree of T.S no 17/07. It is further stated that in the said decree permanent injunction was granted in respect of the decretal land against the defendant. The said decree was executed by the bailiff of this court and in the execution, physical possession of the suit land was delivered to the plaintiff. That after the execution of the decree, in Execution case 5/09, the plaintiff/petitioner have been enjoying the land . But defendant has again started interfere the possession the suit property by encroaching and obstructing the agricultural works. In this respect C.R case before the CJM, Jorhat has also been filed. It is stated that OP/defendant and his wife and sons committed trespass over the decretal land inspite of the knowledge of family partition and decree of declaration of confirming the share of the petitioner over the ancestral land and also of permanent injunction granted against them. In view of the above facts and circumstances present petition have been filed with a prayer to prevent the opposite party from violating damaging the properties of the petitioner and to grant police aid for preventing the OP and his men of the obstructing the cultivating works of the petitioner etc.

Heard perused the available materials on records which prima facie reveals that plaintiff has filed TS 17/07 , in respect of the present schedule land in question with a prayer for declaration of right title interest and delivery of Khas possession and for permanent injunction. Perusal of the certified copy

of the decree reveals that the said suit was decreed in favour of the plaintiff and execution case being no T.Ex - 5/09 was registered which was disposed of on full and final satisfaction vide order dtd 24-5-13.

From the materials submitted by the petitioner it is apparent that at present, suit property is not subjudice before this court and a fresh cause of action has arisen, in respect of the land in question, therefore this court at present has become functus officio to pass order in connection with the execution proceeding as well as decree which has already been disposed off on satisfaction.

Accordingly the petition stands rejected.

Munsiff No. 1, Jorhat.