

Misc(J) Case No 5/2013

ORDER

PRESENT-

Mrs A. Rahman

AJS,Munsiff No – 1

Jorhat.

08.05.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing necessary order on petition No 114/13.

This order arises out of a petition filed U/O 39 Rule 1&2 CPC Read with section 151 CPC. Petitioner's case in brief is that he has been in exclusive possession of land measuring 3 Bigha 1 Katha 19 Locha covered by original government Dag no-260, 273 & 378 of Charigaon Mouza, Gohaintekela Gaon. That possession was delivered by the O.P and his mother to the petitioner in the year 1998 by selling its possessory right. That after obtaining possession, petitioner used to occupy the land by demarcating its boundary and continued to pay revenue to the govt as Tojubahi Khazana. It is stated that since 1998 till date the suit land is under possession of the petitioner. It is further stated that O.P concealing such material facts, fraudulently got the suit land settled in his name on 4-08-2008 and obtained periodic Patta no-435. That on 7-01-13, numbers of persons visited the suit land and discussed about purchase of land and to make construction thereon, and as such the instant application to restrain the OP from selling the suit land.

O.P filed written objection wherein it is stated that there was a deed of agreement as stated by the petitioner. But practically, no possession was delivered. It is stated that to meet financial crisis he had executed the agreement, but entire amount was returned back to the petitioner and the agreement was cancelled. But due to some mistake and excess amount, of Rs 3000 was paid to the petitioner. The petitioner agreed to return back the surplus amount by way of adjusting the same by paying revenue of the land. It is further stated that petitioner had never handed over the possession of the land to any person including plaintiff and that he had obtain the periodic patta from proper authority by observing all formalities.

I have already heard both the parties, perused the available materials of the records including the documents submitted by the parties. Perusal of Annexure I, the agreement for sale reveals that defendant executed the deed of agreement for sale in favour of the petitioner and received Rs 40,000/ as consideration. Deed further reveals that possession of land was handed over to the petitioner. The execution of the agreement is not denied by the opposite party. Document further reveals that petitioner is paying the Tojubahi

Khazana in respect of the suit land till 26-12-12. Record further reveals that although ,in the mean time, periodic patta was issued in the name of father of the defendant ,but materials available on the record prima facie reveals that petitioners are in possession of the land, as such I am of the considered opinion that there is a prima facie case to go for trial.

So far as balance of convenience is concern, petitioner being the prima facie possessor of the land has right to enjoy the land unless and until they are restrain following due procedure of law. In the event of rejection of this petition there is every possibility that defendant may try to dispose the land which would definitely place the petitioner in more inconvenient stage and may give rise to multiplicity of proceeding.

In view of what has been discussed above, I am of the considered opinion that rejection of the petition, at this stage, would also cause irreparable injury to the petitioner which can't be compensated in terms of money.

In view of the above facts and circumstances injunction is issued restraining the OP from selling the suit land till disposal of the suit.

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

(Achma Rahman)

Munsiff No 1, Jorhat.