

Assam Schedule VII Form No.143

DISTRICT – JORHAT

COURT OF : MUNSIFF NO.1, JORHAT

PRESENT: MRS. ACHMA RAHMAN, MUNSIFF NO.1, JORHAT

CASE NO.: Misc.(J) 22/2013

Smti Minoti Dey & anr. –Vs- Sri Gauranga Dey & Sri Dayal Dey.

Sl. No.	Date of order or proceeding	Order or other proceeding	Signature of court	Office action taken on order with date and ex-dated signature of pleaders or parties when necessary
1	2	3	4	5
	5/8/2013	<p>Instant Misc. (J) case is registered in view of petition No.917/13, filed U/O -39 Rule 1 &amp; 2 of CPC R/W Sec.151 of CPC with a prayer to restrain the O.P. from entering into the suit land and from raising any kind of permanent structure and digging pond, fence boundary and to do any other acts and deeds which may impair the suit land.</p> <p>Petitioner's case in brief is that she has instituted the suit for recovery of possession and for eviction of the O.P. from the suit land. It is stated that her husband Sri Umananda Dey and his three brothers i.e. O.P. No.1 and 2 along with Late Nimai Dey has been enjoying the total land measuring 2 Kathas 1 Locha covered by Dag No.2098 and 2099 of Annual patta No.766 of Katonibari Gaon, Mariani town under Titabor Mouza by raising their residential building since the days of their father. That Late Nimai Dey, i.e. one of the brothers of petitioner's husband was unmarried and he had been living with the family of the petitioner. Out of love and affection said Nimai Dey during his life time handed over possession of his share of land to the petitioner by executing a document on 26/5/2003.</p> <p>That O.Ps./Defendants for their illegal and wrongful gain ousted the petitioner from the suit land by showing muscle power and as such petitioner having no other alternative option has to file the instant petition. O.Ps. have filed written objection wherein they have admitted the land measuring 2 Kathas 1 lochas to be in their joint possession whereas the remaining part of the contents of petition was denied and prayer has been made for dismissal of the petition.</p> <p>Perused the plaint, Written statement, petition, written objection and available materials on record.</p>		

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		<p>Perusal of available materials on record reveals that admittedly the entire land measuring 2 Kathas 1 Locha covered by Dag No.2098 and 2099 of Annual Patta No.766 of Katonibari was in joint possession of the plaintiff/ petitioner and the O.Ps and all of them are enjoying their respective shares. Documents submitted by petitioner further reveals that one of the co-owners Sri Nimai Dey, since deceased had delivered possession of his share to the petitioner, out of love and affection. From the submission as well as contents of plaint, petition and written objection it prima-facie reveals that O.Ps have denied the right of possession of the petitioner in respect of the suit land which was handed over by Late Nimai Dey to the petitioner. O.Ps. by denying the right have claimed joint possession over the suit land and as such I am of the considered opinion that there is a prima-facie case to go for trial.</p> <p>So far as balance of convenience is concerned, it prima-facie reveals from the materials that at present O.Ps. are in possession of the suit land and are claiming the suit t land to be the part of entire 2 Kathas 1 lecha of land, i.e. the land under their joint possession and as such I am of the considered opinion that until and unless O.Ps are evicted in due course, they have right to use and enjoy the suit land, therefore, allowance of the petition under prevailing fact, situation would place them in more inconvenient stage than that of the petitioner and may also cause irreparable loss and injury which can't be compensated in terms of money.</p>		

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		<p>So far as later part of the prayer of the petition is concerned, it is the duty of the court to protect the suit property from being damaged, alienated etc. till disposal of the suit and as such I deem it fit and proper to restrain the O.Ps. from changing the nature and character of the suit land till disposal of the suit. Accordingly, O.Ps. are hereby restrained from raising construction of permanent structure and digging pond and from doing any act which may effect the suit land.</p> <p>Misc.(J) case is accordingly disposed off on contest.</p>		

**Munsiff No.1,  
Jorhat**