

**MISC. (J) 16/2014**

**08/04/2014**

Order arises out of petition No.552/14 filed U/O 39 Rule 1 & 2, R/W Sec 151 CPC for ad interim injunction to restrain the O.P., his workmen, agents and any other persons claiming through him to raise any permanent structure, digging pond, fence the boundary and to do any other illegal acts and deed till the disposal of the main suit.

Petitioners' case in brief is that they have filed the suit for recovery of possession, eviction of O.P. from the suit land. It is stated that Late Bhola Sharma was the original owner of the entire suit patta land i.e. P.P. No.130 of Ailamukhia Gaon, Charigaon Mouza, P.S. & Dist.- Jorhat and after his death, his three sons viz. Late Tuaram Sharma, Late Krishna Sharma and Late Ratna Sharma inherited and enjoyed the property as per the right of inheritance after amicably dividing the land into three portions. That as per village customs, all the three successors enjoyed their respective shares till their death. That Late Brojen Sharma Borthakur had three sons viz. Sri Ranjit Borthakur, Sri Debajit Borthakur and Sri Indrajit Borthakur and they have equal right, title, interest over 1/3<sup>rd</sup> share of land covered by Dag No.273 and 274 of the said patta. That the petitioners' share in Dag No.273, is measuring 1 Katha 4 Lochas out of 3 Kathas 13 Lochas and in Dag No.274, their share is measuring 1 Bigha 3 Kathas 6 lochas out of 5 Bighas 5 Lochas which is situated in the northern side of P.P. No.130. Likewise the other co-pattadars viz. Late Rajat Borthakur and Sri Sushil Borthakur were enjoying their share by right of inheritance over same quantum of land in the suit dags. That after death of Rajat Borthakur, his successors have been enjoying their shares without any dispute and differences till date. That on 7/2/2014, the O.P. illegally and wrongfully encroached upon the suit land by raising pucca post with iron fencing for his wrongful gain and also filled up the earth which impairs the value of the suit land. On being protested the O.P. has threatened the petitioners with dire consequences and as such the instant petition.

Perusal of record reveals that O.P. refused to receive the notice of this Misc. case and accordingly, vide order dtd.26/3/2014, this court after examination of the process server was pleased to proceed ex-parte against him. Perusal of plaint, petition and available materials on record, reveals that petitioners are recorded pattadar in respect of the land covered by Dag No.273 and 274 of P.P. No.130. Materials on record further reveals that they are inheritors of original pattadar Sri Tuaram Sharma.

In the instant case, as the O.P. has neither appeared nor contested the proceeding, hence, I am of the considered opinion that they have not disputed the claims of the petitioner to the effect that on 7/2/2014, the O.P. illegally and wrongfully encroached upon the suit land by raising pucca post with iron fencing for his wrongful gain and also filled up the earth which has impaired the value of the suit land of the petitioners. Situated thus I and as such there is a prima-facie case to go for trial.

Being the owner of the suit land, petitioners have every right to enjoy the property and as such rejection of the petition would not only put them in more inconvenient stage in comparison to the O.P. but would also cause irreparable loss and injury which cannot be compensated in terms of money.

Situated thus the injunction petition is allowed. O.P. his workmen, agents and any other persons is hereby restrained to raise any permanent structure, digging pond, fence the boundary and to do any other illegal acts and deed till the disposal of the main suit.

Misc(j) case is accordingly disposed off.

**MUNSIFF NO.1, JORHAT**