

Misc.(J) 38/13

8/8/2013

Instant Misc. (J) case arises out of a petition bearing No.1452/13 filed by the plaintiff/petitioner U/O 39 Rule 1 & 2, R/W Sec. 151 of CPC with a prayer to restrain the O.P. No.1 to 7 from entering into the suit land.

Petitioner's case in brief is that she purchased a plot of land measuring 5 lochas covered by Dag No.237, P.P. No.195 of Gohaintakela Gaon, in Charigaon Mouza from Proforma defendant No.8, Md. Kamruj Jama Khan by a registered sale deed on 9/4/2013. That O.P. No.1 to 7 have filed a petition on 13/5/13 before Addl. District Magistrate, Jorhat alleging that plaintiff/petitioner closed their road standing over the suit land which they have been using from last 20 years. The petition was registered as Misc. (J) case No.99/13, U/S 133 Cr.P.C. and learned Addl. District Magistrate, Jorhat without making any enquiry through the concerned Lat Mandal had passed an ex-parte order on 14/5/13 declaring the right of use of defendants/O.Ps. of the said road standing over the land of the petitioner/plaintiff and also directed demolition of the petitioner's bamboo house through concerned police personnels. It is stated that plaintiff/petitioner is the absolute owner of the suit land and defendants/O.Ps. have no any right, title and interest and possession thereof and as such the order passed by Addl. District Magistrate is illegal in the eye of law. In view of the above facts and circumstances, instant petition is filed.

The defendants/O.P. No.1 to 7 filed written objection denying and challenging inter alia the claims of the petitioner and further stated that land shown in the schedule of petition does not tally with the land which was alleged to be purchased by the petitioner from Kamruj Jama Khan. It is stated that land shown in the petition is a public path connecting the residence of O.P. No.1 to 7 and other people of the locality with the main road. That the petitioner/plaintiff

on 13/5/13, all of a sudden with the help of some hired miscreants forcibly blocked the public road (suit land) on the plea that the said land was purchased by her and under such compelling circumstances, O.Ps. had approached the Addl. District Magistrate, Jorhat and learned Addl. District Magistrate on being satisfied and also considering the urgency of the matter passed the ex-parte conditional order and as such there is no any irregularity, illegality in passing the said order and as such prayer has been made to dismiss the petition.

I have already heard learned counsels of both the parties. Perused the plaint, petition, written objection and available materials on record. Perusal of materials on record reveals that petitioner has purchased land measuring 5 lochas covered by Dag No.237 of P.P. No.195, situated at Charigaon Mouza, Gohaintakela Gaon. Record further reveals that the said Sale Deed was rectified by changing the four boundaries of the land on 4/6/13 i.e. two days just before filing of the instant suit and after passing of ex-parte order U/S 133 Cr.P.C. Record reveals that rectification was done not for correction of Dag No., Patta No. or any one of the boundary rather, by virtue of the rectification, the plot of land shown in the sale deed is completely replaced by a separate plot of land which certainly requires following due procedures, rules and regulations of concerned authorities in respect of sale and purchase. Available materials on record are silent as to whether petitioner has opted to obtain any such permission from concerned authority. In absence of the formalities such as necessary permission/valuation, it is quite reasonable and believable that there may be some foul play on the part of the petitioner/plaintiff either to rectify her stand in the proceeding U/S 133 Cr.P.C. or to nullify the effect of order of Addl. District Magistrate, passed in the proceeding U/S 133 Cr.P.C. In view of the above position, I am of the prima-facie opinion that there is probability that in order to grab the public path petitioner has taken such steps and as such I am of the prima-facie opinion that petitioner/plaintiff failed to show prima-facie case in her favour.

So far as balance of convenience is concerned, it prima-facie appears that O.P. No.1 to 7 and other people of the locality have been using the suit land as public path for last 20 years which connect their residences with the main road and as such I am of the considered opinion that in the event of allowance of the instant petition O.Ps. would be in more inconvenient stage in comparison to that of the petitioner and the same would also cause irreparable loss and injury which cannot be compensated in terms of money. In view of the above facts and circumstances, prayer of injunction is rejected.

Misc.(J) case is disposed off on contest.

**Munsiff No.1,
Jorhat.**