

Misc. (J) case No. 5/14

31.03.14-

By this order, I am going to dispose off a petition under order 39 rule 1 and 2 CPC filed by the plaintiff/petitioner .

Petitioner's case in brief is that he has filed the Title Suit No. 2/14 against the defendants for declaration of his right, title, interest, confirmation of possession and permanent injunction in respect of the suit land measuring 3 kathas 5 lochas, covered by Dag No. 175 of P.P. No. 163, situated at Kalakhuwa Gaon, under Charigaon Mouza, Jorhat. It is stated that the defendant No.1, on 24/11/13, tried to grab the suit land by demolishing a kheri house of the plaintiff standing over the suit land. The defendant No. 1 along with his men with weapon threatened the plaintiff to disposes him from the suit land if he further tries to prevent defendant No.1 to enter into the suit land. Hence, the T.S 2/14 was filed by the plaintiff. It has been further stated that being legal heir of one of the original pattadar, namely Sri Tilosan, plaintiff has right, title and physical possession over the suit land and he also has residential house thereon. If defendant No. 1 enters into the suit land, demolish the residential house of the plaintiff and thereby dispossess him, the plaintiff will have to suffer irreparable loss which could not be compensated in terms of money. It has also been submitted that, defendant No. 1 has no right, title, interest over the suit land as such no inconvenience will be caused if injunction is granted.

O.P., Sri Kunja Nath Dutta filed written objection denying and challenging inter-alia the claims of the petitioner and further stated that the O.P. is a bonafide purchaser of a plot of land measuring 1 (one) bigha 6 (six) lochas covered by Dag No. 175 of PP No. 163 of Kalakhowa gaon, under Charigaon Mouza, Jorhat along with absolute possession and use of a pathway on northern side of the suit land measuring 16 feet in breadth and 100 feet in length upto PWD road vide Regd. sale deed which has been annexed as **Annexure - ii**. The said road is the only way for ingress and egress of the O.P. to the suit land and prior to the purchase of the above plot of land, the road was under the absolute possession of its sellers and thereafter it was transferred to the O.P. Since then, the O.P. has been utilizing the said pathway without any obstruction and now if injunction is granted then the O.P. will have to suffer from irreparable loss and inconvenience.

Perused the record, heard the learned counsels.

Upon perusal and hearing of both the parties, let me discuss the instant petition in the light of the rules followed for granting injunction under order 39 rule 1 and 2 .

From materials available on record, it prima-facie reveals that plaintiff/petitioner is having share over the land covered by dag No. 175 of Patta No. 163. Record further reveals that out of total 1 Bigha 3 kathas and 12 lochas of land of the said dag, a plot of land measuring 1 bigha 6 lochas was sold to defendant No.1, by defendant No.2 to 4 vide registered sale deed No. 1065 dtd7.04.86. Perusal of jamabandi reveals that defendant No. 3 to 4 are legal heirs of Late Guwal, one of the original pattadar. From the schedule of the sale deed, it appears that along the land, defendant No. 2 to 4 had

also handed over a plot of land measuring 100 feet in length and 16 feet width for use as approach road to the land sold.

In the instant petition, petitioner/ plaintiff has claimed that O.P. No. 1, has encroached over his part of land and there is apprehension that O.P. may again try to dispossess him. Petitioner in the instant case, has failed to prima-facie satisfy that O.P. No 1 tried to dispossess him on 24.11.13 as because although he has stated that a non F.I.R. case was lodged in this court but plaintiff has failed to produce copy of such document in support of his claim. Moreover, petition reveals that he has sought injunction only on mere apprehension that O.P. No.1 would dispossess him. Therefore, in presence of prima-facie prove of title of the O.P. No.1, over the land covered by dag No. 175 of patta No. 163, and right of use of a part of land measuring 100 feet in length and 16 feet in breath as approach road since 7.04.86, I am of the considered opinion that plaintiff has failed to show prima-facie case in his favour.

So far as balance of convenience is concerned, it prima facie appears that although plaintiff/ petitioner has stated that O.P. has tried to grab a part of the suit land by demolishing a kheri house, but he has failed to prima-faice satisfy the court about such attempt of O.P. No. 1. From the sale deed and from the submission of the O.P., it appears that O.P. has been using a portion of land of the disputed dag as approach road to their portion of land, which was provided to him by his seller through the registered sale deed. Moreover, materials on record is not sufficient to prima-facie come to a opinion about the location of the road as claimed by the O.P. , Situated thus, I am of the opinion that there is probability that restraining the O.P. from entering into the suit land may amount to restraining the O.P. from using the approach road provided to the O.P. by his seller, which would obviously place the O.P. in more inconvenient stage than that of the petitioner.

In view of the above discussion, if the injunction is granted then the right of the O.P. to use the approach road obtained by him through registered deed of sale shall be violated which cannot be compensated in terms of money.

Therefore, considering the matter in entirety the prayer for injunction is rejected.

Misc (j) case is accordingly disposed off.

MUNSIFF NO.1, JORHAT.