

MISC. 29/2014

3/5/2014

Parties are represented. Order arises out of petition No.818/2014, filed U/O 18 Rule 18, Order 26 Rule 2 & 9 R/W Sec 151 of CPC with a prayer to direct local inspection by Hon'ble court or through Advocate Commissioner.

Petitioner's case in brief is that there was issue framed in the form of "whether the plaintiff has been in possession of the suit land". As per the pleading of plaintiff, he has been in possession of the suit land till date and the same has been lying as Jungle and are his parents were also cremated there.

It is stated that defendants Sri Sanjib Rajkhowa and Dimbeswar Hazarika has pleaded that they purchased the suit land wherein there were two katcha houses That concerned Lat Mandal during his cross-examination has stated that the suit land has been remaining as jungle and there no building/structures over the suit land. Situated thus, for proper adjudication of the matter and for determining the status of the suit land, a commission for local inspection has been prayed.

O.P./defendants filed written objection wherein it is stated that petition has been filed without reasonable ground to harass the defendants. It is further stated that on the basis of report of Commissioner, the exclusive possession cannot be determined. Situated thus, prayer has been made to dismiss the petition.

Perused the pleadings and available materials on record. Perusal of the pleadings reveals that it is an admitted position that plaintiff, defendant No.1 and proforma defendant No.5 are brothers and they have inherited property from their father Sri Sorulora Koch measuring 1 Bigha 3 Kathas covered by different dags in Patta No.23. Plaintiff has pleaded that the suit land measuring 1 Katha 10 Lochas covered by Dag No.71 came to his share and he has been in exclusive possession without any interruption till date. He has further pleaded that defendant No.1 without informing the plaintiff sold the share of the plaintiff i.e. the suit land to defendant No.2 and 3 vide registered sale deed. Thereafter, defendant No.2 and 3 sold the suit land to defendant No.4.

Whereas the defendant No.1 has pleaded that he has sold his own share i.e. the suit land and the purchasers of the respective land were/are in possession. Contesting defendant denied the possession of the plaintiff over the suit land. It is also stated that plaintiff had no share over the suit land instead of that plaintiff's share is adjacent to the suit land.

Perusal of the record further reveals that one of the core dispute between the parties to the suit is regarding the possession of the suit land. In the instant case, an issue has already been framed in respect of possession of the suit land. Record reveals that P.W. 4, Lat Mandal who is an independent witness during his examination in chief stated that he has seen the suit land but he cannot say who is in possession of the same.

From the petition and submission of the Ld counsel of the plaintiff it appears that through the commission he wants to collect information in the form of evidence regarding who is in possession of the suit land and also about the position/status of the suit land.

The object of local investigation is not so much to collect evidence which can be taken in Court but to obtain evidence which from its peculiar nature can only be had on the spot. In the instant case among others the possession is in dispute which can very well be elucidated by oral or documentary evidence by the party who asserts. Therefore, this court is of the opinion that under present fact situation neither a commission for local investigation nor an inspection by court is required for the purpose of elucidating the matter in dispute.

Petition is accordingly rejected.

MUNSIFF NO.1, JORHAT.