

MISC. (J) CASE NO-17/13

22.07.2013

Order arises out of a petition being No.772/13 filed by the plaintiff U/O 39 Rule 1 & 2 CPC with a prayer to grant ad-interim injunction restraining the O.Ps./Defendants or any other person/persons interested under them from alienating the suit land and from cutting and selling valuable trees standing thereon and also from raising construction of permanent nature on the suit land.

Petitioner's case in brief is that she is having right, title, interest over a plot of land measuring 2 Bighas 1 Locha covered by Dag No.60, P.P. No.148 situated at Charaibahi Gaon, Khangia Mouza, Dist.- Jorhat. That there is also an Assam Type house with C.I. sheet roofing containing 3 rooms with kitchen which was constructed by father of the petitioner Late Saruram Chutia @ Saruram Bora. That there are some valuable trees e.g. Nahor, Sanchi, Betel Nut, Bamboo etc. standing on the said plot of land planted by her father during his life time. It is further stated that since the death of her father she has been living in her parental house till the month of August, 2012 and thereafter, she went to live in the residence of her husband keeping her parental house, at No.2 Charaibahi Gaon, P.O.- Dholajan, Jorhat under lock and key.

It is stated that taking the advantage of absence of petitioner/plaintiff in the suit land, the O.Ps./defendants on 26/12/12 trespassed into the said landed property and occupied the houses and landed property measuring 4 Kathas out of 2 Bighas 1 Locha. After occupying both the houses and landed property, the O.Ps./defendants have started residing over there and have been cutting the valuable trees of Nahor and Sanchi with help of laborers and are selling the trees.

It is stated that on 27/12/12, petitioner/plaintiff on being informed by the neighbours regarding such illegal acts of the O.Ps./Defendants, approached them and resisted them from doing so but, O.Ps./Defendants did not paid any heed rather threatened them of physical assault. It is further stated finding no other alternative, Petitioner/Plaintiff have served Advocate's notice upon the O.P./Defendant No.1, requesting her from stopping the illegal occupation on both the houses and landed property and also to stop the illegal activities of cutting and selling of valuable trees. That O.P. No.1 replied the notice wherein they have raised some false, fabricated and baseless allegations and as such the instant petition.

O.P. filed Written Objection denying and challenging inter alia the claims of the petitioner and stated that the land covered by P.P. No.148, under Khangia Mouza was a joint property of heirs of Late Fedua Chutia. Originally said land covered by P.P. No.148 was of Late Fedua Chutia and after his death, said land was inherited by his legal-heirs viz. Late Bapuram Chutia, Late Hira Chutia, Late Mina Chutia and Late Saruram Chutia. The said landed property is still un-divided as per records of right and all the legal-heirs of Late Fedua Chutia are jointly enjoying the same. It is stated that O.P. No.1 is the daughter-in-law and O.P. No.2 is the grand-daughter of said Bapuram Chutia whereas Petitioner is the daughter of Late Saruram Chutia and as Saruram Chutia has no son, he used to reside with his niece Gunaram Chutia i.e. husband of O.P. No.1 and father of O.P. No.2 and that he adopted the said Gunaram Chutia as his son.

O.P. No.1 has been residing at the said house continuously since the days of her marriage for more than 40 years and prior to that her husband was residing therein. That the Petitioner, Monju Bora was married out from the present suit house more than 25 years back and since then she has been residing at her matrimonial house. It is stated that in view of the

aforesaid facts and circumstances, question of alienating the suit premises or cutting and selling of valuable trees of the suit property does not arise and as such prayer has been made to dismiss the petition. O.Ps. have relied upon the following decisions in support of their case:

- i) Madanlal –Vs- Masonic Lodge (AIR 1991 N.O.C. 50 M.P.)
- ii) Rohit Dhawan –Vs- G.K. Malhotra & anr. (A.I.R. 2002, Delhi 151)

Perused the available materials on record, which prima-facie reveals that Late Fedua Chutia was the original owner of the suit land. Perusal of Jamabandi further reveals that at present plaintiff is the recorded pattadar in respect of the suit land along with other co-owners. Jamabandi further reveals that name of predecessor in interest of the O.Ps. viz. Sri Bapuram Chutia's name although originally appeared in the Jamabandi but later on his name was struck off, which prima-facie shows that at present legal-heirs of said Bapuram Chutia are not having any prima-facie right over the suit property.

During hearing it has been submitted by the learned counsel of the O.Ps. that the name of Bapuram Chutia was illegally struck off from the Jamabandi, but at present, materials on record is not sufficient to determine the legality / validity of the Jamabandi and as such at present, this court has no other option than to accept the Jamabandi, giving preference to its face value.

Documents further prima facie reveals that Monju Bora, i.e. the petitioner has been paying the land revenue and she has filed F.I.R. before the Police alleging that O.Ps. have cut and sell some valuable trees from the suit land and have also abused them.

From the above discussions, I am of the considered opinion that there is a prima-facie case to go for trial.

I have also gone through the decisions submitted by learned counsel for the O.Ps. but after going through the same, I humbly opine that under present facts and circumstances, O.Ps. are not entitled to get the benefits of the said decisions.

So far as balance of convenience is concerned, being the prima-facie owners of the suit land and houses standing thereon, petitioner has every right to protect her property of being wasted, damaged or alienated by any party to the suit and it is also bounden duty of the court to protect the property during the pendency of the suit and as such rejection of the prayer would in my considered opinion put the petitioner in more inconvenient stage than that of the O.Ps.

It prima-facie appears that O.Ps. are presently occupying the suit land and the houses standing thereon and as such there is every probability that they may cut the trees standing thereon or may raise construction over there. Probability of alienating the land by the O.Ps. during the continuance of the suit, also cannot be denied and as such, I am of the view that , rejection of petition at this stage may cause irreparable loss and injury to the petitioner which can't be compensated in terms of money.

Therefore, considering the matter in its entirety, I deem it fit and proper to issue injunction. Accordingly, ad-interim injunction is issued restraining the O.Ps./Defendants or any other person/persons interested under them from alienating the suit land and from cutting and selling valuable trees standing over the suit land and also from raising construction of permanent nature thereon, till disposal of the suit.

Misc. (J) case is accordingly disposed off.

(Achma Rahman)
Munsiff No 1, Jorhat.