

DISTRICT – JORHAT

COURT OF : MUNSIFF NO.1, JORHAT

PRESENT: MRS. ACHMA RAHMAN, MUNSIFF NO.1, JORHAT

CASE NO.: MISC.(J) 40/2013

Sri Partha Pratim Dhar &amp; ors. –Vs- Sri Shyamal Chandra Das

Sl. No.	Date of order or proceeding	Order or other proceeding	Signature of court	Office action taken on order with date and ex-dated signature of pleaders or parties when necessary
1	2	3	4	5
	30.07.13	<p>Order arises out of a petition being No. 1710/13 filed U/O 39 Rule 1 &amp; 2 of C.P.C.</p> <p>Petitioner's case in brief is that they are legal-heirs of Late Haripada Dhar. Haripada Dhar, during his life time purchased 16 Lochas of land covered by Dag No.41/42, of P.P. No.3, along with Assam type residential house from the defendant vide Registered Sale Deed No.947/682, dtd. 26/4/2000. That beside the aforesaid plot of land, a common private road of 12 ft. Breadth from north to south and 75 ft. in length from west to east situated on the southern side of the petitioner's /plaintiff's land was provided to the plaintiff for his ingress and egress to their house and land by the defendant. In the eastern side of the petitioner/plaintiff's residence there is a huge three storied building of the defendant and more than 32 Nos. of families are residing there as his tenant. The O.P./Defendant is also having a land measuring 18 ft. X 20 ft. to the south west corner of the petitioner/plaintiff's land and taking the advantage of temporary absence of the petitioner from his residence, the defendant started construction of a R.C.C. room measuring 15.2 ft. X 18.8 ft. without complying the standard norms of construction. It is also stated that defendant has not left minimum area as set back and thus has deprived the petitioner from his right to light and air. That apart a 11 K.V. power line of State Electricity is passing over the said RCC construction of the defendant and the extended iron bars are about to touch the high voltage power line. It is also stated that he had also tried to block the common path by extending his construction over the said path. It is further stated that O.P. has started to dump his entire household garbage as well as the garbages of 32 rented families over the common private road in front of the residence of plaintiff/petitioners. That on being objected and requested by the petitioner, defendant/O.P. did not paid any heed to stop such illegal whimsical acts and as such the instant petition.</p>		

O.P. filed written objection denying and challenging inter alia the claims of the plaintiff/petitioner and stated that O.P. is the absolute owner and title holder of alleged suit property i.e. Schedule B & C which is in fact an unit and not in accordance with the schedules as shown by the plaintiff. It is further stated that O.P. has not sold any land to the deceased father of the petitioner as described in the schedule of the petition and have not provided common private road of 12 ft breadth and 75 ft length. That the suit property as described in Schedule B and C are owned by opposite party absolutely as a title holder and he has been enjoying the same as his personal property and therefore petitioner is not entitled to challenge the O.P.'s utilisation of the same as the petitioner has no right, title and interest over the land of Schedule B and C. It is further stated that the RCC room over schedule C was constructed long back by him and as such, petitioner cannot interfere the construction of the 1<sup>st</sup> floor over the already constructed ground floor.

That O.P. has never undertaken any illegal and disputed construction as alleged and as such prayer has been made to dismiss the petition.

During hearing, learned counsel for the O.P. has submitted that they have given the privilege of road as per their sale deed. The use of road as right by the petitioner was denied by him. As per him the whole area belongs to him and none of the part of the area of land situated in the southern side of the petitioner's house can be considered as road and he has right to raise construction of whatever nature over his own land. The right of petitioner to use the land adjacent to his house is denied by the O.P. It is also submitted that petitioners are having access to the main road from the western side of their land but, they have blocked the said access by construction of a garage and as they have direct access from their own land to the main road, they cannot claim road over the land of the O.P.

Perused the Complaint, petition and available materials on record which prima-facie reveals that predecessor in interest of the plaintiff, had purchased Schedule 'A' land from the defendant vide registered Sale Deed and as per the Sale Deed, apart from schedule A land, a common private road of 12 ft. breadth and 75 ft. length was provided by the defendant to the Purchaser for ingress and egress to their respective premises. It also appears from the copy of Sale Deed that it was mutually agreed between the parties that they would remain vigilant so that no any obstruction of the drainage system and private road is made by anybody.

But documents available on record and from the submission of Ld counsel of the defendant/O.P., it reveals that in spite of such specific, clear and unambiguous terms and conditions inserted by the O.P himself, he is denying the rights and privileges allowed to the predecessor in interest of the plaintiff. Moreover it is not the case that O.P. has denied the execution of the sale deed.

It is also an admitted position that schedule B and C land belongs to the defendant/O.P , but it does not necessarily mean that o.ps are at liberty to raise construction as per their own whims and franchise. He is to abide by the rules and regulation of construction prevailing at that locality and of course would have abide by the terms of the sale deed executed by himself.

The submission of the O.P that he is not bound to give the road as provided in the sale deed and it is sufficient to the petitioner if they are able to ingress or egress to their land by any strip of land provided by them is also not tenable in law as they have promised to provide road as per terms of the sale deed.

As per **MCMILLAN DICTIONARY** and **OXFORD DICTIONARY**

**Road means** a wide way leading from one place to another, especially one with a specially prepared surface that vehicles can use.

In view of the above definition it is crystal clear what the word '**road**' means and what is to be provided by the O.Ps. to the petitioner in terms of their sale deed.

From the submission as well as from the materials on record it is found that the O.P. has been constructing the First floor of his house in schedule 'C' land as per his whims and franchise by violating the required norms of construction and also by making construction over/covering the schedule 'B' land (the common private path as per the sale deed) and thereby depriving the petitioner/plaintiff from enjoying the common private path as a road in its true perspective and also depriving him from enjoying free light and air etc. to his land under schedule- A. After going through the terms of the sale deed and interpreting the meaning of road as discussed above, I am of the considered prima-facie opinion that the O.P. can't deny to provide the road to the petitioner which is one of the basic need for convenient enjoyment of the land and property of the plaintiff/petitioner. That until and unless the sale deed in question is cancelled by a competent court of law the O.P. can't legally deny the benefits provided under the

said sale deed and in the instant case, as appeared from the materials on record, the O.P without any basis has made overt act to deny the benefit provided in the sale deed.

In view of the aforesaid fact situation, I am of the considered opinion that plaintiff is having a prima facie case to go for trial.

So far as balance of convenience is concerned, Plaintiff, being the owner of the Schedule 'A' land, which is adjacent to Schedule 'B' and 'C' land, has every right to enjoy his property lawfully, safely and with dignity and there is probability that in the event of rejection of this petition O.P./Defendants may complete the ongoing un-authorised constructions, which would place the plaintiff/petitioner in more inconvenient stage than that of the O.P.

From the prayer portion of the plaint it reveals that suit is for declaration that the construction made by the defendant over the suit land is illegal and also for demolition of the said construction and as such unless the construction is stopped it would not only effect both the parties to the suit but may also make the very purpose of filing the suit by the plaintiff a futile exercise, which may cause irreparable loss and injury to the petitioner which can't be compensated in terms of money.

In view of the above, ad-interim temporary injunction is issued by restraining the O.P. from undertaking any further construction over schedule 'B', the private road and also over schedule 'C' till disposal of the suit.

All the observation, opinion, decision made above are prima facie observation, opinion, decision based on the basis of available materials on record till today.

**Mrs Achma Rahman,  
Munsiff No 1, Jorhat.**

