

Misc.28/2014

13/5/2014

Parties are represented. Order arises out of petition No.809/2014 filed U/O 39 Rule 1 & 2 R/W Sec. 151 of CPC.

Petitioner's case in brief is that he is the absolute owner of a plot of land measuring 3 Bighas 6 lochas covered by Patta No.76, Dag No.111, situated at Ratanpur Gaon, under Mouza- Thengal, within the Sub-Division- Titabor, District- Jorhat as described in the schedule of the plaint. That in the year 2011, the O.P. had illegally encroached the suit land without any knowledge of the petitioner. After coming to know about such encroachment he somewhat in the month of February, 2012 approached the O.P. and raised his voice against such illegal encroachment but, he was misled by O.P. That the entire fact of encroachment of the suit land had come into the knowledge of the petitioner on 10/3/2014 when the sons of the plaintiff/petitioner had measured the total land of the plaintiff situated over the suit patta. Thereafter, petitioner approached the O.P. and asked him to vacate the suit land but, O.P. though initially agreed to vacate the land but thereafter, instead of vacating the suit land he started construction of a katcha house over the suit land and threatened the petitioner with dire consequence to his life and as such the instant petition is filed to restrain the O.P. from entering into the suit land and to raise construction both permanent as well as of temporary nature.

O.P. contested the petition and filed written objection denying and challenging inter alia the claims of the petitioner and further stated that petitioner at present is possessing a plot of land measuring 3 Bighas 1 Katha covered by Dag No.111 of Ratanpur Gaon, under Thengal mouza, Titabor, Dist.- Jorhat and major portion of the land occupied by the petitioner falls under P.P. No.76. That the land under possession of the plaintiff/petitioner is towards the eastern portion of Dag No.111 but the said land does not resemble the boundary mentioned in the instant petition. It is also stated that the copy of Jamabandi provided by the petitioner fails to show any ownership of petitioner in respect of land of Dag No.111 of Ratanpur Gaon. That the O.P. is the recorded owner in respect of landed proper under various dags under P.P. No.108 and P.P. No.103 under Ratanpur Gaon, Mouza-

Thengal. That the land of the O.P. covered by Dag No.96, 109 and 112 are adjacent to the land covered by Dag No.111 of P.P. No.76. It is also stated that the extreme north-western side of Dag No.111 was converted into govt. land being ceiling surplus land. That the said land was under the possession of Smti. Sonmai Gogoi since long and subsequently, said land was recorded in the name of Sri Pradip Gogoi, S/O- Smti. Sonmai Gogoi. It is stated that petitioner was trying to illegally grab the portion of land under possession of said Smti. Sonmai Gogoi Nos. of time and answering O.P. apprehends that present petition is erroneously filed by the petitioner by giving a boundary resembling the western portion of Dag No.111 for some illegal gain. Situated thus, prayer has been made for dismissal of the petition.

I have already heard learned counsels of both the parties. Perused the plaint, petition, written objection and available materials on record which reveals that petitioner has claimed himself to be the owner of land measuring 3 Bighas 6 Lochas covered by Dag No.111, P.P. No.76 situated at Ratanpur Gaon, under Thengal Mouza. To that effect he has filed a copy of jamabandi in respect of the said patta. Perusal of the copy of jamabandi reveals that his name though appears in the jamabandi but, it cannot be ascertained about his ownership in respect of land covered by any of the Dags of Patta No.76. Jamabandi further reveals that land covered by Dag No.111 was made ceiling surplus vide order dtd.14/6/76 in Ceiling case No.143/75-76. Materials on record further reveals that in Dag No.70 and 111, one Smti. Sonmai Gogoi has been possessing 4 Bighas 1 Katha 8 Lochas of land and subsequently, said land was recorded in the name of her son Sri Pradip Gogoi as Tauji land.

Although the ownership of plaintiff over the land of dag No. 111 and patta No. 76 could not be prima-facie ascertained from the jamabandi filed by the petitioner but from the written objection of the O.P., it prima-facie appears that petitioner is in possession over the land measuring 3 Bighas 1 Katha covered under Dag No.111 of Patta No.76. O.P though has disputed the location of land of the petitioner under possession but at present materials on record is not sufficient to ascertain the genuineness of the schedule of suit land given by the plaintiff. Materials on record further reveals that O.P. has land covered by various dags of Patta No.108 and 103 adjacent to the Dag No.111.

Thus it is prima-facie found that petitioner is in possession of land covered by dag No. 111 of patta No. 76 and the certificates issued by the Gaon Bura of Thengal Mouza, Ratanpur Khanda and President, 66 No. Thengal G.P., prima-facie shows that that O.P. had raised construction over the land covered by dag No. 111 and patta no 76 ,under possession of the petitioner.

Therefore, I am of the considered opinion that petitioner has a prima facie case to go for trial.

So far balance of convenience is concerned, I am of the considered opinion that being the possessor of the land, petitioner has every right to enjoy the same until evicted in due course of law. Moreover, from the materials on record it reveals that O.P. is having land on different Dags adjacent to the suit land and as such rejection of the petition would certainly cause more inconvenience to the petitioner, whereas no inconvenience is virtually seen in favour of the O.P in the event of its allowance.

If the possession of the plaintiff/petitioner over the suit land is not protected then the nature and character of the suit land may be changed and it may also give rise to multiplicity of proceeding which would cause irreparable loss and injury to the petitioner, which can't be compensated in terms of money.

Situated thus prayer for injunction is allowed.

O.P is restrained from entering into the suit land and to raise construction both permanent as well as temporary nature over there.

Misc. (j) case is accordingly disposed off.

MUNSIFF NO.1, JORHAT