

21.5.13. This Misc case has arisen out of the petition filed U/O.39, R.1 & 2 of C.P.C, R/W.Sec.151 of the said Code, filed by the petitioner/plaintiff in T.S.4/13 , with a prayer for granting ad-interim temporary injunction restraining the O.Ps and their agent, workmen from entering into the suit fishery and forcefully collecting money from the fishermen and from the employees of the petitioner/plaintiff. The petition is supported by an affidavit.

The petitioner/plaintiff's case in brief is that he is a businessman having good experience of fishing and other allied business. The defendant/O.P.No.1 is a registered Co-operative Society under the name and style of Darika Part III Meen Samabai Samity Ltd.,Sivasagar with its Head office at Dikhowmukh, Suraguri under Gaurisagar P.S in the District of Sivasagar. The defendant No.2 is the Secretary of the O.P.No.1/defendant No.1. The O.P's society obtained settlement of the Brahmaputra Part II Fishery, Sivasagar for 7 years terms w.e.f 31.8.2007. The area of the fishery Mahal is extended from Disangmukh Sivasagar to Kaibartagarh Chapori of Jorhat. The O.P/defendant, for financial assistance, approached the plaintiff/petitioner in the year 2007 and the petitioner/plaintiff assured the Secretary of the said Samabai Samity to provide financial assistance as and when necessary with a condition to allow him to operate the portion of the fishery in Jorhat district. The Secretary of the samabai samity agreed to the said proposal offered by the petitioner/plaintiff. The O.P.No.2 executed an agreement with the petitioner on 11.9.07. By this agreement, the petitioner was allowed to operate the portion of Brahmaputra Part II Fishery falls in the Jorhat District. The petitioner

has been paying Rs.2.25 lakhs per year for running the said portion of the fishery and this process continued till November,2012. But, on 2.12.12, the O.P.No.2, the Secretary of the said Samabai Samity demanded an advance amount of Rs.4.50 lakhs only from the petitioner for financial year 2012-13 and 2013-2014, i.e., up to the end of the settlement of the Fishery. The petitioner, considering the long business relationship with the O.Ps, paid the amount to the Secretary of the Samabai Samity. The Secretary issued a receipt thereof under his seal and signature in favour of the petitioner. The petitioner, as such, has right for fishing the said portion of the fishery till August, 2004, but on 15.1.2003. The Secretary of the Samabai samity illegally and wrongfully , for his wrongful gain, without any intimation to the petitioner, entered into the Malaghat fishing point and demanded money earn from the fishing point. The employee of the petitioner while refused, the Secretary of the Samabai samity threatened him with dire consequence and also warn not to fishing in the said point. The employee of the petitioner immediately informed the matter to the petitioner for which, the petitioner made contact with the Secretary of the Samabai samity and also protested the said illegal act, but the Secretary replied the petitioner that he will never allow him to operate the said fishing point as the Samabai samity decided to operate the said fishing point at their own initiative. The Secretary also warned the petitioner to hand over the possession within a month, unless the Samabai will take the possession by force. Finding no other alternative, the petitioner filed the suit seeking for relief and the petitioner has filed this petition for restraining the O.P from entering into the

suit fishery for the purpose of fishing and forcefully collect money from the employee and fishermen engaged by the petitioner. The petitioner has submitted that he will suffer irreparable loss, if the O.Ps are not restrained. He has a prima facie case and the balance of convenience is also in favour of the petitioner.

In pursuance of the notice, the O.P/Defendant filed written statement through the O.P.No.2 wherein they have stated that there is no prima facie case for the purpose of issuance of ad-interim temporary injunction in view of the prayer for relief submitted in the main suit. The document dtd.11.9.07 stands inoperative and cancelled in view of the document dtd.2.8.12. The settlement of the Meen Mahal in dispute was granted to the O.Ps for seven years from the year 2007 onward and as such the O.Ps are the true settlement holders of the Meen Mahal. Injunction cannot be issued against the true settlement holder who is the actual possessor of the suit fishery. The settled law is that possession of an agent is the possession of the principal. From the averment of the petition, it appears that the O.P.No.2 also executed a power of attorney in favour of the petitioner for smooth functioning and fishing of the Brahmaputra Part II Fishery, under Jorhat District and to do certain acts and deeds for and on behalf of the Society. The petitioner, on the strength of the power of attorney and also the written document executed by the O.P.No.2 operated the fishery by deploying certain fisherman and some other employees. The petitioner has also been paying the necessary charges to the O.Ps year by year against the running of the portion of the fishery amounting to

Rs.2,25,000/- and obtained receipt of the payments. But, surprisingly enough, the O.P No.2 on 2.12.12 demanded advance amount of Rs.4,50,000/- only from the petitioner for running of the fishery under the portion of Jorhat District for the year 2012-13 and 2013-14, i.e., up to the end of settlement of the fishery and the relief prayed for in Clause 3 of the plaint are in consistent with the prayer No.1 . These inconsistent statements cannot give rise to a prima facie case for the purpose of temporary injunction. The allegation raised on 15.1.13 ,the O.P No.2 forcibly entered into the fishing point and collected money from the fisherman and employees of the petitioner is totally false and is fabricated to make out a false case against the O.Ps. The balance of convenience is not in favour of the petitioner. If injunction is granted, the O.Ps may be answerable to the settler for the deeds or misdeeds ,if any, of the petitioner. In that case, the settlement may be forfeited. On the other hand, the petitioner will lose nothing if injunction is not granted. He has ample scope to recover the amount allegedly given to the O.Ps in the court of law. The petitioner will not suffer irreparable loss if injunction is not granted, in as much as, the petitioner is neither the owner nor the agent. Therefore, he has submitted that injunction petition is liable to be dismissed.

I have heard the Ld.counsel for the petitioner as well as the O.P. The petitioner has not denied the settlement of fishery with the O.P.No.1. From the documents submitted by the plaintiff, it appears that the O.P by making an agreement, allowed for fishing in the fishery which falls in the district of Jorhat on taking of an amount of Rs.2,25,000/- and on 2.8.12, the agreement was for 2 years, i.e., for

the year 2012-13 and 2013-14. By the agreement dtd.2.8.12, the O.P.No.1 took Rs.3,20,000/- out of Rs.2,25,000/- is for the financial year 2012-13 and rest is for the year 2013-14. On 31.8.07 by an agreement dtd.11.9.07, the fishery which falls in the district of Jorhat was allowed to the petitioner for fishing for 7 years. Initially, the agreement was for 7 years, but at the time of receipt of payment, the O.P. issued receipt against the payment. The Ld.counsel for the O.P relying a decision of the Hon'ble Apex Court reported in 1989 SC 1269, has submitted that ***as per Contract Act, petitioner is an agent of the O.Ps and possession of agent is the possession of the principal. So, he cannot file the suit against the O.P.***

I have gone through the decision relied upon by the Ld.counsel for the O.P.

Upon perusal of the Judgment, I find that the facts of the matter in that Judgment is not related with the present case. That suit was regarding partition of the family properties and collection of rent by the tenant. So, this Judgment is not applicable in the instant case.

From the written objection, it is reflected that the O.Ps have not denied the payment of money and execution of the deed of agreement. So, if the petitioner is debarred from fishing, he will suffer irreparable loss. Prima facie, there is a case for granting injunction and balance of convenience is also in favour of the petitioner.

Accordingly, ***the ad-interim injunction granted by vide order dtd 02.02.2013 is hereby made absolute.***

This Misc.(J)case is disposed of on contest.

Civil

Judge, Jorhat.