

Form of Order Sheet

DISTRICT :- SONITPUR

COURT OF:- MUNSIFF, GOHPUR

PRESENT:- SRI R. S. DUARA

CASE NO.:- MISC(J) CASE NO. 01/2020

Smt. Tileswari Chutia @ Borah & Others -Vs- Sri Jageswar Borah & Others

Serial No.	Date of Order or Proceeding	Order or other Proceeding	Signature of Court	Office action taken or order with date and dated signature of pleaders or parties when necessary.
1	2	3	4	5
	19.02.21	<p>Petitioner is represented.</p> <p>I have gone through the case record and heard the engaged counsel for the Petitioner.</p> <p>The instant petition has been filed by the petitioner/plaintiff under Order XXXIX Rule 1 & 2, C.P.C. r/w section 151 C.P.C. praying for an ad-interim injunction against the defendants/O.P.s for preventing and prohibiting the Opposite parties, their men, agents and workmen from carrying out the construction of the building over the disputed land till the disposal of the suit. This Court, however, observed and noted the absence of any urgency and held that the purpose of granting injunction would not be defeated if notice is issued to the opposite parties. Accordingly, notice was issued to the opposite parties and report of it was received which suggested that the same was duly served. But the opposite parties failed to respond to the said notice despite such service. Hence, the case proceeded ex parte in their absence.</p>		

Now inviting attention to the case at hand, the facts of the case can be surmised as: the petitioners/plaintiffs claim to be title holder of the suit land duly highlighted in the Schedule and have averred that they have been holding it for over 50 years. It is contended that around 8 years back, they had mortgaged the same in favor of Defendant no.1, against the payment of a sum of Rs.15,000/- with a condition that the same will be repaid as and when possible, at the consensus of both the parties. Subsequently, however, it is alleged that despite multiple attempts by the Petitioners to repay the said sum, the Opposite Parties for reasons unknown have refused to accept the sum forwarded.

It is further alleged that the Opposite Parties on 15.10. 2017 had demolished a thatched house of the petitioners built over the suit land. The petitioners have also brought to the fore that they tried to repay the said amount on 25.12.2017, 10.06.2018, 15.12.2018 and lastly on 12.11.2019. But the opposite parties refused to receive the mortgage sum and withheld the suit land. It is lastly contended that in the month of March, 2019, the Opposite parties have started construction of an Assam Type Building over the disputed land and despite persistent protests by the petitioners against such unlawful construction, their requests were not heard and the construction went on unhindered. In view of the above scenario, the Prayer for interim injunction has been advanced by

the Petitioners.

The counsel for the Petitioners has submitted that, this is a fit case for granting injunction and if the same is not granted, the petitioners will be highly prejudiced and will suffer irreparable losses.

At this juncture, it would be only prudent to reiterate that the primary objective for granting an injunction is to ensure and facilitate the preservation of property in dispute and it becomes imperative to secure its nature and character and prevent it from being wasted away.

Drawing focus on the present petition and perusing the same along with the documents filed, it thus transpires that there is a prima facie dispute between the parties which is the sine qua non for grant of an injunction, since the petitioners as averred have affirmed their title over the suit land which the Opposite Parties have purportedly denied by refusing to accept the mortgage sum. It is also pertinent to acknowledge that the balance of convenience, which is another pre-requisite, tilts in favor of the petitioners as the comparative damage suffered by them would be greater than that of the opposite parties, if at all any. Lastly, this Court opines that if the construction is allowed to continue, the Petitioner shall suffer irreparable loss which cannot be compensated in monetary terms.

Situated thus, in light of the above observation further given impetus to by the

	<p>conjunctive satisfaction of the aforesaid three conditions, this Court holds that this is a fit case for grant of temporary injunction.</p> <p>Accordingly, the prayer of the petitioner is allowed to the extent as follows: The Opposite parties, their men, agents and workmen are hereby restrained from carrying out the construction of the building over the disputed land till the disposal of the suit.</p> <p>The Misc(j) case is accordingly disposed of.</p> <p>.</p>		
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SONITPUR DISTRICT JUDICIARY