

Assam Schedule VII. Form No. 143

**HIGH COURT FORM NO. (J) 13
Form of Order Sheet**

DISTRICT- SONITPUR

IN THE COURT OF MUNSIFF NO. 1, SONITPUR, TEZPUR

PRESENT : Triza P M Baruah

Case No. Misc (J) 196 of 2019

Smt Vitamoni Borah versus Sri Deben Bhuyan

Sl No. of Orders	Date	Order	Signature
	30-07-20	<p>Both parties are absent due to the current situation of pandemic of Covid-19.</p> <p>However, arguments of both parties were heard on 07/03/2020 and the instant case has been fixed for order.</p> <p>With the following order, I intend to dispose of this Misc. (J) Case which has arose out of petition no. 2553/19 filed in Title Suit No. 67/2019.</p> <p>Petitioner's case in succinct is that the petitioner as plaintiff has instituted Title Suit No. 67/2019 against the opposite party/defendant for a decree of permanent injunction against the opposite party for restraining and prohibiting the opposite party from evicting the petitioner from the schedule premises.</p> <p>In the petition praying for temporary injunction, petitioner has stated that the opposite party is the owner of the schedule premises; described in the petition, wherein the petitioner has been carrying on business of grocery as tenant. That both parties had entered into an agreement for tenancy dated 25/09/2018 for the said premises. Petitioner has further stated that the electricity connection for the said premises was taken in the name of her husband Sri Munindra Borah and accordingly electricity charges were regularly paid to the concerned department. That as per the said agreement, petitioner has paid the monthly rent of Rs. 1000/- till the month of July, 2019 and that there is a security deposit of Rs. 8000/- with the opposite party. Petitioner has submitted photocopy of the rent khata claimed to be signed by the son of the opposite party for the rent paid for the said premises from the month of March, 2019 till July, 2019.</p>	

30-07-20 contd...	<p>That on 26/07/2019 petitioner received a notice for eviction from the opposite party demanding that the schedule premises be vacated on or before 31/08/2019. That the opposite party along with his family members i.e his son and wife met the petitioner in person on 31/08/2019 and threatened to forcibly oust the petitioner from the said premises. Further, petitioner has stated that on 05/09/2019, the opposite party repeated his behavior of threatening the petitioner and demolished the tin shed of the verandah of the said premises and removed a few tins from the shop of the petitioner. Subsequently, FIR was filed by the petitioner against the opposite party. Hence, the petitioner has prayed for direction of the Court to restrain and prohibit the opposite party and his men, agents etc. from evicting the petitioner illegally from the schedule premises.</p> <p>Opposite party has filed written objection contending inter-alia that the petitioner has no locus standi to institute the suit against the opposite party seeking injunction against him as the petitioner has no legal right, title and interest in the schedule premises. Thereafter, the opposite party has stated that the petitioner as tenant has been in occupation of the schedule premises since 01/08/2015 and has not paid the monthly rent from her own will and accord to the extent that the amount of Rs. 8000/- paid as security deposit had to be adjusted for ten months w.e.f. 01/08/2015 till 31/05/2016. Opposite party has claimed that thereafter the petitioner has not paid any monthly rent from the date of execution of the tenancy agreement dated 25/09/2018.</p> <p>Opposite party has further claimed that electricity connection from the schedule premises were unlawfully obtained by the petitioner on basis of forged documents.</p> <p>That the opposite party has denied the receipt of any rent and the rent khata signed by the son of the opposite party has been claimed by the opposite party to have been obtained by the petitioner by threatening the minor son of the opposite party.</p> <p>The opposite party has denied all averments by the petitioner that the opposite party along with his family members threatened the petitioner and attempted to forcibly evict the petitioner. Further, opposite party has submitted that the duration of the tenancy agreement executed between the party was for a period of 11 months w.e.f. 25/09/2018 till 24/08/2019 and the said agreement was not renewed. In the absence of any agreement extending the duration of tenancy, the opposite party approached the petitioner on 31/08/2019 and asked her to hand over vacant possession of the schedule premises within a week. Prior to 31/08/19, the opposite party had also served notice for</p>	
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30-07-20 contd...	<p>eviction dated 26/7/19 on the petitioner to hand over vacant possession by 31/08/19. On 05/09/2019, contrary to the claims of the petitioner, the opposite party claimed that the petitioner along with her husband physically assaulted and threatened the opposite party with dire consequences if the petitioner is approached for hand over of vacant possession of schedule premises. Thereafter, the opposite party filed an FIR against the petitioner and subsequent events led to the registration of Misc(J) bearing no. 86/2019 under section 107/145 of Cr.P.C. under the Executive Magistrate, Tezpur for disposal which is pending as mentioned in the written objection. The opposite party has stated that the schedule premises being situated at Goroimari center is under Panchayat area and not governed by Assam Urban Areas Rent Control Act, 1972. Hence, the opposite party has prayed for dismissal of the case with cost and has stated that the counter claim has been filed against the petitioner for eviction from the schedule premises.</p> <p>I have perused the case record. I have also heard the Ld. Advocates representing either party i.e the petitioner Smt Vitamoni Borah and the opposite party i.e Sri Deben Bhuyan.</p> <p>The petitioner/plaintiff has instituted a Title Suit praying for a decree of permanent injunction in mandatory form to restrain and prohibit the defendant/ opposite party from evicting the petitioner from the schedule premises till evicted with due process of law.</p> <p>Considering the matter in its entirety, I find that there are allegations and counter allegations which necessarily establish a case for consideration to determine the relief of temporary injunction.</p> <p>The grant of temporary injunction is an equitable relief which is based on the three golden principles of law as stated in</p> <p><i>Gujarat Bottling Co. Ltd. Vs Coca Cola Co. (1995) 5SCC 545</i> wherein the Honourable Supreme Court of India held that the grant of interlocutory injunction is the discretion of the Court on basis of the three principles:</p> <ul style="list-style-type: none"> i) Whether the plaintiff has a prima facie case; ii) Whether the balance of convenience is in his favour; iii) Whether he would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. <p>In view of the aforesaid position of law, in the instant case, from the material on record and submissions of the Ld. Counsels of both sides; the following factors have to be</p>	
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30-07-20 contd...	<p>considered to decide the petition for grant of temporary injunction in favour of the plaintiff.</p> <p><i>i) Whether the petitioner has a prima facie case for grant of temporary injunction in her favour;</i></p> <p><i>ii) Whether the balance of convenience is in her favour;</i></p> <p><i>iii) Whether the petitioner would suffer an irreparable injury if her prayer for interlocutory injunction is disallowed.</i></p> <p>Perusal of the photocopy of the agreement dated 1/08/15 and 25/09/2018 executed between the parties reveal the existence of a tenant landlord relationship between the petitioner and the opposite party. As per clause 2 of the said agreement dated 25/09/18, the term of the agreement is for a period of 11 months commencing from 25/09/2018 till 24/08/2019. Neither party has denied the existence of the agreement and the term specified in the said agreement. It is to be noted that there is mention of security deposit worth of Rs. 8000/-; which the petitioner has claimed to be in custody of the opposite party, in the previous agreement for tenancy dated 01/08/2015 executed between the parties. It is pertinent to mention that in the written objection, opposite party has specifically stated that the petitioner has been a tenant of the opposite party since 01/08/2015 and the security deposit worth of Rs. 8000/- was adjusted as rent for 10 months w.e.f. 01/08/2015 till 31/05/2016. Thereafter, for the subsequent period; contrary to the claims of the petitioner, opposite party has denied receiving any rent for the schedule premises.</p> <p>However, in the written objection the opposite party has not denied that the signature in the rent receipt for the month of February, 2019 till July, 2019; for the schedule premises is that of the son of the opposite party. But the opposite party has maintained that the said signatures were obtained under threat by the petitioner as the son of the opposite party is a minor.</p> <p>As per clause 2 of the agreement for tenancy dated 25/09/2018, the said agreement was for a period of 11 months commencing from 25/09/2018 unless extended under new terms and conditions on mutual agreement of both the parties. Thus, the said agreement in absence of an extension based on mutual consent is deemed to expire on 24/08/2019.</p> <p>There is no material on record to show that rent was received by the opposite party beyond July,2019. Further, the notice for eviction dated 26/07/2019 served by the opposite party on the petitioner to hand over vacant</p>	
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<p>30-07-20 contd...</p>	<p>possession of the schedule premises by 30/08/2019 shows that the opposite party as landlord had not given his consent for extension of the tenancy agreement beyond 24/08/2019.</p> <p>It is relevant to mention section 106 of the Transfer of Property Act, 1882 which states that in the absence of a contract, or local law or usage to the contrary, a lease of immovable property for any purpose other than for agricultural or manufacturing purposes shall be deemed to be lease from month to month terminable by either lessor or lessee with 15 days notice.</p> <p>Further, section 107 of the Transfer of Property Act, 1882 specifies that a lease of immovable property from year to year or for any term exceeding one year can be made only by and under a registered instrument.</p> <p>Thus, from the above discussion of law, it can be concluded that if a lease is documented by a contract, as in the instant case, the term of the lease would be as per the contract and the lease period shall expire as per contract by efflux of time. It is to be noted that expiry of lease results in the determination of the relationship between the lessor i.e. the landlord and lessee i.e. the tenant. And in such cases where the lease has expired under the contract by efflux of time, no notice of determination of the lease is required.</p> <p>Further, section 108(q) of the Transfer of Property Act, 1882 lays down the obligation on part of the lessee i.e the tenant to leave the leased premises in the same condition as he received from the lessor and put the lessor back in possession of the said premises.</p> <p>In the instant case, there is no material on record to show that rent was tendered post expiry of the tenancy agreement i.e beyond 24/08/2019. Hence, it cannot be held that the petitioner as tenant has the effect of holding over by virtue of section 116 the Transfer of Property Act, 1882 on strength of having paid rent and the opposite party receiving the same thus implying the assent of the opposite party to let the petitioner continue in possession of the said premises as tenant.</p> <p>Thus, in the absence of an express or implied bilateral contract between the parties, the mere continuance of possession after the expiry of the tenancy agreement is not sufficient to entitle the tenant to establish tenancy by holding over.</p> <p>As per position of law, in absence of a case where the tenant fails to establish tenancy by holding over; his status would be of a tenant at sufferance.</p>	
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<p>30-07-20 contd...</p>	<p><i>In R.V. Bhupal Prashad Vs State of A.P, AIR 1996 SC 140;</i> the Honourable Supreme Court of India observed as follows:</p> <p><i>"Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser."</i></p> <p>In view of the aforesaid discussion of law and the surrounding facts and circumstances based on the material available on record; it can be concluded that the term for tenancy of the schedule premises expired on 24/08/2019. There is no evidence on record to show that rent has been deposited by the petitioner and the same has been received by the opposite party for the said premises beyond July, 2019. Thus, the petitioner cannot be held to be a tenant by holding over who has continued in possession of the said premises with the implied consent of the landlord i.e the opposite party. The act of service of notice for eviction dated 26/07/2019 by the opposite party on the petitioner explicitly show that the opposite party had no intention of extending the tenancy agreement beyond the term specified in it i.e. 24/08/2019 and subsequently, the petitioner was given time for a period of 30 days to vacate the premises by 31/08/2019.</p> <p>Thus, considering all, petitioner being a tenant at sufferance can not be deemed to have a prima facie case in her favour to seek temporary injunction against the opposite party from evicting her from the said premises. Further, the underlying circumstances assessed from the term specified in the tenancy agreement and the material available on record, the balance of convenience cannot be said to be in favour of the petitioner.</p> <p>The third principle to consider i.e whether the petitioner would suffer an irreparable injury if her prayer for interlocutory injunction is disallowed; the position of law observed in the following case is pertinent to be considered.</p> <p>In Colgate Palmolive (India) Ltd. Vs Hindustan Liver Ltd. (1999) 7SCC1, wherein the Honourable Supreme Court of India indicated further considerations which ought to be weighed in by the Court considering an application for grant of injunction:</p> <p>"Protect the plaintiff's interest for violation of his rights</p>	
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	30-07-20 contd...	<p>though, however, having regard to the injury that may be suffered by the defendants by reason thereof.”</p> <p>Thus, in the instant case, consideration of the above discussion of law and the material on record shows that the opposite party as landlord shall suffer loss and inconvenience in the form of injury to his right of possession of the schedule premises in the absence of a mutual agreement for tenancy and rent for the said premises.</p> <p>Thus, in view of the foregoing rationale, I find that there is no prima facie case and the balance of inconvenience is not in favour of the petitioner to allow the prayer of the petitioner for temporary injunction to restrain and prohibit the opposite party and his men, agents etc. from evicting the petitioner from the schedule premises in due process of law.</p> <p>Therefore, the prayer for the temporary injunction sought by the petitioner in petition no. 2553/19 is hereby rejected.</p> <p>Misc(J) Case no. 196/19 is hereby disposed of.</p>	
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