

ASSAM SCHEDULE VII, FORM NO. 143

HIGH COURT FORM NO. (J) 13

FORM OF ORDER SHEET District: Sonitpur

Court of Munsiff no. 2, Tezpur, Sonitpur

Present: Uttam Chetri

Misc (J) Case No. 202/2014 in TS No. 114/2014

Rafiqul Islam vs Nur Mahammad

Sl No of orders	Date	Order or other proceedings
	15.05.2015	<p>Both sides are represented.</p> <p>Heard learned counsel representing both the parties.</p> <p>The instant Misc (J) Case arises out of petition bearing no. 3254/14 dated 12.12.14 filed by the petitioner/plaintiff, praying for temporary injunction against the opposite party/defendant under Order XXXIX Rule 1 and 2 read with Section 151 of the Civil Procedure Code.</p> <p>The petitioner/plaintiff pleads that a plot of land measuring 2 bighas, 2 kathas and 17 lessas covered by Dag No. 428 (B.Forng), P.P No. 107 situated in Village: Bhomaraguri, Mouza Mahabhairab, P.S: Tezpur, District: Sonitpur, Assam more particularly described in the Schedule of the petition (from here-onwards the aforesaid land will be mentioned as suit land) is mutated in the name of the defendant, which he succeeded from his father, being his sole successor; that on being approached by the opposite party/defendant for selling the aforesaid suit land, the petitioner/plaintiff agreed to purchase the same for a consideration of Rs 2, 40,000 (Rupees two lakh forty thousand) only; that accordingly, an agreement for sale was executed on 14.12.2012 in a non-judicial stamp paper, on part-payment of Rs 1,00,000/- (Rupees one lakh) only by the petitioner/plaintiff to the opposite party/defendant in presence of three witnesses on 14.12.2012 itself,</p>

and the same was notarised in Notary Public, Tezpur vide 6418/14 dated 14.12.2012 with a condition that, on payment of remaining balance of Rs 1,40,000/- by the petitioner/plaintiff to the opposite party/defendant and, after, obtaining relevant permission from the concerned authority a sale deed in respect of the suit land would be executed between the petitioner and the opposite party; that the opposite party/defendant had assured the petitioner/plaintiff, that he would collect the sale permission from the concerned authority within a period of one month; that in spite of repeated requests, when the opposite party/defendant did not obtain the requisite sale permission for a period of six months, the petitioner/plaintiff inquired the status of the sale permission from the Office of the DC, Sonitpur, and came to know that the opposite party/defendant had not applied for the same; that, subsequently, the petitioner/plaintiff filed an FIR against the opposite party/defendant before the Tezpur Police Station through the Chief Judicial Magistrate Court, which was registered as Tezpur P.S. No. 241/2014 u/s 420/406 of the Indian Penal Code and the same is still pending against the opposite party/defendant; that the petitioner has come to know that the opposite party is intending to sell the aforesaid suit land, and prays before this Court to grant temporary injunction, prohibiting the opposite party from selling the aforesaid suit land described in the Schedule of the petition and/or from executing any deed of transfer till disposal of the suit.

The opposite party appeared and filed his written objection, wherein he admits the fact of execution of agreement for sale between the petitioner and the opposite party in respect of the suit land, but denies the fact of having received an advance amount of Rs 100,000/- (Rupees one lakh) only from the petitioner as advance amount. The opposite party further submits that he has not executed the sale deed in respect of the suit land conveying the same to the petitioner because in spite of assurance the petitioner has not paid him any advance money. As such, the opposite party prays for dismissing the Misc (J) Case with costs as it has been falsely instituted with criminal and malafide intention against the opposite party only to harass him.

As per the provisions of Order XXXIX Rule 1 and 2 of the Code of Civil Procedure Code the essential ingredients necessary to be proved for grant of temporary/ad interim temporary injunction are:

Prima Facie Case

Balance of convenience

Irreparable loss

1. **Prima facie case:** The petitioner is aggrieved by the non-collection of sale permission by the opposite party from the Office of the District Commissioner, Tezpur with regard to the suit land, in spite of repeated requests by the petitioner, violating the assurance given by the latter to the former in agreement for sale dated 14.12.2012, wherein the opposite party had assured the petitioner that he would make the requisite sale permission from the Office of the District Commissioner, Tezpur in respect of the suit land within a period of 1 month . Being so aggrieved, the petitioner has filed Title Suit No. 114/2014 praying before this Court to pass a decree for specific performance directing the defendant to obtain requisite permission for sale from the concerned authorities and to execute sale deed in respect of the suit land described in Schedule of the petition after accepting the balance amount of Rs 1,40,000/- from the petitioner/plaintiff, and on the failure of the opposite party/defendant to do so, to pass order as per Order XXI, Rule 34 of the Code of Civil Procedure.

The petitioner/plaintiff submits that on being approached by the defendant, he agreed to purchase the suit land for a consideration of Rs 2, 40,000/- and accordingly, and he had already made a part payment of Rs 100,000/- to the opposite party. The petitioner further submits that, accordingly, an agreement for sale was executed on 14.12.2012 between the petitioner and the opposite party in presence of three witnesses on 14.12.2012 itself, and the same was notarised in Notary Public, Tezpur vide 6418/14 dated 14.12.2012, with a condition that on payment of remaining balance of Rs

1,40,000/- by the petitioner/plaintiff to the defendant, and after obtaining relevant permission from the concerned authority by the opposite party, the sale deed in relation to the suit land would be executed between them. **The petitioner has submitted the photocopy of the agreement for sale dated 14.12.2012 along with the main suit.**

I have heard the learned counsel for the petitioner and perused the agreement for sale dated 14.12.2012 which has been filed along with the main suit.

Thus, whether the agreement for sale dated 14.12.2012 was indeed executed between the petitioner and the opposite party, and whether the petitioner is entitled to the relief claimed for would be decided in the original suit after weighting the evidence, but at this stage after going through the agreement for sale submitted by the petitioner, wherein it is seen that an agreement for sale of the suit land for a consideration of Rs 2,40,000/- (Rupees two lakh forty thousand) was indeed executed between the petitioner and the opposite party on 14.12.2012, and a sum of Rs 100,000/- (Rupees one lakh) only was paid by the petitioner to the opposite party as part payment in presence of three witness, establishes a prima facie case in favour of the plaintiff/petitioner to go for trail, and to get the relief he is praying for in this petition. Hence in light of the above discussion, this point is decided in favour of the plaintiff/petitioner.

2. **Balance of convenience:** On the basis of prima facie evidence, if the plaintiff/petitioner is denied the relief of Temporary Injunction directing the opposite party not to sell the suit land, and/or not to execute any deed of transfer with respect to the suit land till the disposal of the suit, or till further orders of this Court, it would cause more inconvenience to the petitioner than to the opposite party, because such a course of action might adversely affect the prima facie right of the petitioner over the suit land. Hence, I am of the opinion that balance of convenience tilts towards the

petitioner.

3. **Irreparable loss:** On the basis of the discussion aforesaid, prima facie it seems that the petitioner is already affected by the non-fulfilment of the assurance made by the opposite party in agreement for sale dated 14.12.2012, wherein the latter had assured that, he would take the requisite sale permission from the concerned authority within a period of one month. In such a situation, if the opposite party transfers the aforesaid suit land to other party/parties, the purpose for filing the main suit and this injunction petition may be frustrated, and which may cause irreparable damage to the petitioner, and may adversely affect his right.

Hence considering the facts and circumstances of the case and the reasons discussed above, I am of the considered opinion that, this is a fit case to grant temporary injunction to the petitioner.


The opposite party is, hereby, directed neither to sell the aforesaid suit land described in the Schedule of the petition nor to execute any deed of transfer in respect of the suit land to any other person and to maintain status quo in respect of the suit land till the disposal of the suit, or till further orders of this Court.

This order is purely temporary in nature and would not have any effect on the final disposal of the suit.

The petition is disposed of accordingly.

Accordingly the Misc Case is disposed of on contest.

Parties are directed to bear their own cost.

  
MUNSIFF No. - 2  
TEZPUR

