

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. 303/2012 in TS No.98/2012

Jalalluddin Ahmed vs Bolubhadra Das and Ors

Sl No of orders	Date	Order or other proceedings
	30.05.2015	<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. 4377/12 dated 10.12.12 filed by the petitioner/plaintiff, praying for temporary injunction against the opposite parties/defendants under Order XXXIX Rule 1 and 2 read with Section 151 of the Civil Procedure Code.</p> <p>The petitioner pleads that he is the owner of a plot of land measuring 3 (three) kathas out of the total land measuring 5 (five) bighas, 1 (one) lessa under Dag No. 127 (old), 159 (new) of periodic patta no. 43 (old) 94 (new) situated at Molan Pukhuri under Mouza Balipara which he purchased from the pro forma defendant vide registered sale deed no. 931/86 dated 31.03.1986; that a PWD Road known as Balipara Rangapara Road is situated in the northern boundary of the suit land, and the petitioner and his family members enter the suit land from a 30 feet space between the PWD Road and the suit land; that the opposite parties without having any right, title and possession in the suit land illegally tried to enter into the suit land on 12.03.12 by digging a portion of the aforesaid PWD land but timely intervention from the petitioner avoided the aforesaid illegal act; that although the opposite parties have no right to block the open space which is</p>

used as thoroughfare by the petitioner to enter into his land from the northern side, the opposite parties have threatened the petitioner that they will construct house not only in the portion of aforesaid thoroughfare but also in other portion of the suit land; that if the opposite parties succeed in blocking the thoroughfare portion of the petitioner's land, the petitioner will be compelled to forego his valuable suit land from the northern side; that the opposite parties by their aforesaid illegal acts have disturbed the right, title and interest and peaceful possession of the petitioner in the suit land; that there is strong prima facie case in favour of the petitioner; that the balance of convenience is in favour of the petitioner; that if the temporary injunction as prayed for is not granted, it will cause irreparable loss and injury to the petitioner and prays for restraining and prohibiting the opposite parties from taking forcible possession of the suit land described in the Schedule of the petition or any part thereof or from disturbing the peaceful possession of the plaintiff thereof.

The opposite parties appeared and filed their written objection, wherein they state that there is neither any PWD Road in the northern boundary of the suit land nor any space of 30 feet on the northern side of the petitioner's land as alleged; that the opposite parties have their plot of land on the northern side of the suit land; that it is the petitioner who has been trying to illegally encroach the plot of land belonging to the opposite parties which falls in the northern side of the suit land by illegally trying to make a road through the said plot, and prays for dismissing the petition which the petitioner has filed just to harass the opposite parties by concocting a false story.

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 alleged attempt on the part of the opposite parties to dig the portion of PWD land which supposedly runs on the northern side of the suit land belonging to the petitioner, and to block the open space of about 30 feet which is supposedly used as thoroughfare by the petitioner to enter into his land from the northern side. The petitioner also alleges that the opposite parties have threatened him that they will construct house not only in the portion of aforesaid thoroughfare, but also in other portion of the suit land. The petitioner, therefore, submits that if the opposite parties succeed in blocking the thoroughfare portion of the petitioner's land, the petitioner will be compelled to forego his valuable suit land from the northern side and prays for restraining and prohibiting the opposite parties from taking forcible possession of the suit land described in the Schedule of the petition, or any part thereof, or from disturbing the peaceful possession of the petitioner thereof. Per contra, the opposite parties submit that, there is no PWD road in the northern portion of the suit land as alleged by the petitioner nor there is any attempt on their part to enter into the suit land.

In the present case, although the petitioner claims that the opposite parties are trying to dig the thoroughfare PWD road used by him and to encroach into the suit land, the former has not, however, produced any cogent evidence to show or substantiate his claim that there is a PWD road in the northern portion of the suit land or that the opposite parties are supposedly digging the PWD road or are trying to encroach the suit land from the northern side. Further even if we presume that there a PWD road and the opposite parties are digging it or are trying to dig it, then the petitioner has no locus standi to question such act because PWD road being a public property, it is the Government official who should have raised the grievance before this Court. As such, I am of the considered view that the petitioner has not been able to show with any cogent evidence prima facie case in his favour to get the temporary injunction as prayed for in his petition.

2. Balance of convenience: As the petitioner has not been able to show with any cogent evidence that the opposite parties are trying to encroach the suit land from the northern side or are trying to dig any portion of the PWD road which is allegedly on the northern side of the suit land, if the temporary injunction is granted in favour of the petitioner, it would cause more harm to the opposite parties than to the petitioner, because such a course of action might adversely affect rights of the opposite parties over their land. Hence, I am of the opinion that balance of convenience tilts towards the opposite parties.

3. Irreparable loss: On the basis of the discussion aforesaid, if the temporary injunction as prayed for by the petitioner is granted it may cause irreparable loss to the opposite parties and may also adversely affect their right.

Hence considering the aforesaid facts and circumstances of the case and the reasons discussed above, I am of the considered opinion that, this is a fit case not to grant temporary injunction to the petitioner.

The petition is, therefore, rejected.

The petition is disposed of accordingly.

Accordingly the Misc Case is disposed of on contest.

Parties are directed to bear their own cost.

