

Assam Schedule VII: Form No. 132

**HIGH COURT FORM NO. (J) 2.  
HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE  
IN THE COURT OF THE CIVIL JUDGE, TEZPUR, SONITPUR**

Present: **N.J. Haque, LLM, AJS**  
Civil Judge  
Tezpur, Sonitpur

**23<sup>rd</sup> day of May 2019**

**MISC. (J) NO. 37/2019**  
**(Arising out of TS No.18/2019)**

**Ms. Madhusmita Bora**

D/o (L) Mahendra Nath Bora  
W/o Sri Kongkon Saikia  
Vill – Ushanagar, PS - Tezpur  
Dist – Sonitpur, Assam

-- Petitioner

-Vs.-

**(1) Sri Suraj Kumar Bora**

S/o (L) Mahendra Nath Bora  
Vill – Rupaknagar  
Mouza- Bhairabpad  
PS - Tezpur  
Dist – Sonitpur, Assam

**(2) Smt. Mamoni Das**

S/o (L) Umesh Ch. Das  
Vill – Da-Parbatia Bali Chapori  
Mouza- Bhairabpad, PS - Tezpur  
Dist – Sonitpur, Assam

**(3) Sri Monoj Kumar Bora**

S/o (L) Mahendra Nath Bora  
Vill – Darakial Gaon  
PS - Tezpur  
Dist – Sonitpur, Assam

---- Opp. Parties

Ld. Advocate appeared for the petitioner : - Mr. S. K. Singh

Ld. Advocate appeared on behalf of OP : - Sri S. Mishra & Sri P. C. Sarmah

**This is a petition filed for temporary injunction under Order 39 Rules 1 & 2 of Code of Civil Procedure and the misc. case came up for final hearing on-23<sup>rd</sup> day of May 2019.**

1. Petitioner Ms. Madhusmita Bora brought the instant petition under Order 39 Rule 1 and 2 CPC praying to pass an order to restrain the OP No.1 and 3 from alienating any chunk of the property mentioned in schedule "A" and further to prevent through an order of injunction against the OP No.2 from making any sort of construction over the schedule "B" schedule land or doing any renovation or changing anyway the existing house standing thereon.

**Petitioner's case in, brief:**

2. The petitioner Madhusmita Bora in her injunction prayer emphatically beseeched that on 25-01-2007 petitioner along with OP No.1 and OP No.3 reciprocally entered into a family partition assenting to divide and relinquish shares of their ancestral property and accordingly a Deed of Family Partition No.150 of 2007 was executed and registered and through that deed the ancestral property was divided between the two brothers and the petitioner gave up her right, title and interest from the share of the property of her father and mother in favour of her two brothers. She offered to relinquish her shares in favour of the brothers only on the promise that property would remain with them and never be sold out to any third party. That the petitioner suggested for incorporating in para 6 of the Partition Deed to prevent the OP No.3 from selling any part of the ancestral property and everyone including the petitioner had the belief that OP No.1 would not commit any mischief. That petitioner had offered to relinquish her share only on the promise of retaining the property amongst the siblings and the sole consideration of the petitioner was that her right in the land and the dwelling house would remain intact and if at any stage the co-sharers wishes to sell their shares. It is further pleaded by the petitioner that OP No.1 sold out the said property to OP No.2 and subsequently managed to obtain a collusive decree and consequent to that her brother OP No.1 managed to get execution of a sale deed from the court in favour of OP No.2 in TS No.35/18 and presently the OP No.2 is trying to start construction over the suit land. The petitioner further pleaded that OP No.1 had made application before the Circle Officer to grant sale permission,

but earlier the suit land was annual patta land and subsequently it has converted in to Periodic Patta in the year 2016 and as such land cannot be sold within ten years of its conversion into periodic patta land. Accordingly, O.P No.1 and 2 managed to obtained fraudulent decree by TS No.35/18 by suppressing all the facts. It is further pleaded that OP No.2 lodged an FIR on 22-01-2019 during the pendency of the execution proceeding wherein she stated that she had entered into an agreement of purchase of an area of land measuring 1611 Sqft (around 8 lessas) covered under Dag No.910 of PP No.380 at a consideration of Rs.15, 90,000/- and not at a consideration amount of Rs.2, 10,000/- as projected and pleaded in the suit (TS No.35/18). That there is no disclosure of the fact that present OPs except the OP No.3 approached the Office of the Circle Officer, Tezpur Revenue Circle, with an application for grant of sale/purchase permission but then the application was rejected on 23-04-2018 on the ground that a land converted into Periodic Patta from Annual Patta cannot be sold/purchased within ten years from such conversion. It is further pleaded that alleged agreement dated 11-10-2017 between Smt. Mamoni Das and Sri Suraj Kumar Bora which was enforced by the compromise decree was a fraudulent contract and which was against the public policy, and at best can be termed as an illegal contract under the provisions of the Contract Act. Such a contract which is against the public policy and an illegal one cannot be enforced by any court in any way. That despite execution of a sale deed for an area of 6 Lessas of the land, the OP No.2 is in occupation of around 8 Lessas of land. The pleading and prayer for recovery of possession was intentionally made only to deviate the attention. That the FIR lodged by Smt. Mamoni Das on 22-01-2019 also show that she had been in possession of the suit land. All sorts of misrepresentations done by the parties only to gain a decree. Upon the above the petitioner prays to pass an order of injunction against the OPs preventing them from alienating or creating any encumbrances or right of any sort in any way of any third party on any part of the suit schedule A land and an order of injunction directing the OP No.2 from making any sort of construction or from creating any

right of any third party by way of mortgage, gift or lease etc. and to make the order absolute after hearing the parties and to pass any other order which this Hon'ble Court deems fit and proper.

3. In this case, on receiving notice from the court O.P Nos.1 and 2 contested the case by filing written objection and the case proceeded ex-parte on O.P No.3.

**OPs case in, brief:**

4. O.P. Nos. 1 and 2 submitted written objection both in law and facts by denying the entire contention of the petitioner in respect of obtaining collusive or fraudulent decree from the court. It is further pleaded by the O.Ps that petitioner had already relinquished her right, title and interest from her ancestral property by executing a Family Partition Deed and OP No.1 having his right, title and interest over the suit property sold the same in favour of OP No.2. It is further pleaded that OP No.2 became the absolute owner and title holder of the suit land after purchase through a registered sale deed from the O.P No.1 who is the absolute owner and title holder of the entire land described in schedule A of the injunction petition. In respect of remaining contentions of the petitioner, both the OPs have categorically denied and set forth certain pleadings. Upon the above, both the O.P Nos. 1 and 2 have prayed to dismiss the prayer of the petitioner with cost.

**Discussion, Decisions and Reasons thereof:**

5. During the time of argument, learned advocate appearing on behalf of the petitioner Mr. S. Sing and Learned Advocate appearing for the O.P's Mr. S. Mishra and Mr. P. C. Sarmah conjointly submitted before this court to pass an order of status-quo over the suit land till the final disposal of the original vide TS No.18/19. As such, it is seen that both the sides have conceded in respect of passing an order of status-quo over the suit land till final disposal of the dispute in hand.
6. Indeed neither the petitioner nor the O.Ps have adduced any sort of evidence in this case. Petitioner's side as well as OPs have submitted Xerox copies of many documents along with their pleadings.

- 7.** I have heard both the sides and perused the entire pleadings on record and it finds that petitioner's claim rests upon the contents of Family Partition Deed of the year 2007 executed between the petitioner, O.P No.1 and O.P No.3 over their ancestral properties. Petitioner further pleaded that O.P Nos.1 and 2 obtained a collusive decree in respect of the ancestral property left by her parents and prayed to declare the decree passed in TS No.35/18 to be collusive. The petitioner further prayed to declare the Deed of Family Partition null and void along with other consequential reliefs by setting some pleadings against the decree, family partition, and mutation entry in respect of the suit property.
- 8.** Per contra, O.Ps have denied the pleadings of the petitioner and further claimed that O.P No.1 having his ownership over the suit property rightly sold out the same in favour of O.P No.2 and as per the Family Partition petitioner has no right over the suit property as she relinquished her right, title and interest from the suit property.
- 9.** Considering the pleadings on record, this court finds that pleadings of both the sides disclosed many mixed questions of facts and those needs proper adjudication in the original TS No.18/19 on appreciation of the evidences.
- 10.** Prior to that the subject matter of the suit property needs to be preserved by way of passing an order of status-quo as in the event the property is not protected by passing an order of status-quo till final conclusion of the dispute, the very purpose of filing the TS No.18/19 will be infructuous in case the OPs disposed of the property through mortgage, alienating, transferring, gift etc. or making further construction or renovation.
- 11.** Therefore, considering all the aspects coupled with the submissions put forwarded by the counsel appearing on behalf of the petitioner and both the OPs, this court finds that it is demand of justice to pass an order of status-quo over the suit property for its preservation till disposal of the original dispute between the parties in TS No.18/19.
- 12.** Hence, at this stage, considering the nature of dispute pending between the parties without entering into the merit of the dispute in hand and without further discussing three golden principles of

granting injunction, considering the submission of counsel of both the parties, an order of status-quo is passed till final conclusion of the dispute in TS No.18/19. Accordingly, both the parties are directed to maintain status-quo over the suit property till final disposal of the TS No.18/19.

**ORDER**

- 13.**Accordingly, an order of status-quo over the suit land is passed and both the sides are directed to maintain status-quo over the suit land till final disposal of TS No.18/19.
- 14.**Instant order has been passed u/s 151 of CPC. Both the sides shall bear their respective costs.
- 15.**Misc. (J) case is disposed of accordingly.

Civil Judge  
Sonitpur, Tezpur