

Present: N. Bhatta, Civil Judge.

MISC J CASE NO.07/2021

i/c with TS no.06/2021

05-01-2022

Both parties are represented through their Id. counsels. Today is fixed for order upon the injunction petition filed by the plaintiff petitioner. The plaintiff petitioner filed the instant petition vide petition No.268/2021 under Order 39 Rule 1 and 2 CPC read with Section 151 of C.P.C. filed by the plaintiff petitioner for granting injunction from alienating or creating any encumbrance or right of any sort in any way of any third party on any part of the suit land including schedule A land and restraining the opposite parties from making any sort of construction over any part of the suit land.

Perused the instant petition. On perusal of the instant petition filed by the plaintiff petitioner it appears that the Opposite Party No.1 is an owner of a plot of land measuring 10 Bigha 4 Katha 1 Lessa which she had purchased through a registered Deed of Sale [no.2165 of 2010] jointly from 5 vendors. This land she wanted to sell for which she was looking for a suitable buyer. This land is the suit

land and has been described in schedule A herein below. That the proforma opposite Party, the husband of the opposite party no.1 approached the husband of this plaintiff petitioner with an offer to sell this plot of a land of his wife measuring 10 Bigha 4 Katha 1 Lessa which is covered under Dag No.14 & 15 of PP No.71 which is described as schedule A land. The parties had settled the consideration for the entire land at Rs.57,50,000/- (Rupees Fifty Seven Lakhs Fifty Thousand) only. This petitioner tendered Rs.5,00,000/- (Rupees Five Lakhs) only in cash and Rs.5,00,000/- (Rupees Five Lakhs) only vide Cheque No.10010165 drawn from Federal Bank of India, Tezpur Branch i.e. Rs.10,00,000/- (Rupees Ten Lakhs) only as advance was paid. The parties entered into an agreement in writing on 03-09-2011. That after the obtainment of the permission, the Opposite Party No.1 and her husband proforma doopposite party started avoiding contracts with this petitioner or her husband. That despite extension of the permission, the Opposite Party No.1 or her husband were not coming forward to execute the sale deed. That on 28-01-2021 the husband of the petitioner noticed some people accumulating construction materials on a part of the

disputed land. He approached them and could gather from them that the opposite Party No.2 had purchased an area of 2 Katha of land from the opposite Party No.1. He immediately approached the office of the Senior Sub-Registrar, Tezpur Sub-Registry, and through search made therein could gather the details of the sale deed executed by the Opposite Party No.1 in favour of the Opposite Party No.2. He collected certified copy of the Deed of Sale [No.1282 of 2020] on 29-01-2021. She came to learn that the Opposite Party No.1 had sold an area of 2 Katha of land described in schedule B to the Opposite Party No.2. The Opposite Party No.2 has got his name mutated too. This land measuring 2 Katha is part and parcel of the schedule A suit land. Later on, the plaintiff petitioner came to know that the present opposite party no.2 filed a suit (T.S. No.19/19) against the opposite party no.1 in the court of civil Judge, Tezpur for specific performance of contract. That the opposite party no.1 appeared in that suit and admitted the claim of the opposite party no.2. Accordingly, the court passed a judgment on admission by passing the decree in favour of the opposite party No.2. On the basis of Judgment the sale deed was executed and

registered on 24-06-2019. That, the decree was collusive one. Hence, the plaintiff/petitioner has filed the instant suit against the defendants opposite parties for a decree of specific performance of contract relating to the suit land along with a decree for declaration that the decree dated 04-05-2019 passed in TS No.19/2019 as collusive and fraudulent and therefore null and void with consequential relief of cancellation of the sale deed [no.1282 of 2019] as well as mutation of the name of the defendant No.2 from the Jamabandi.

Along with the suit, the plaintiff/petitioner has filed the instant petition under Order 39 Rule 1 and 2 C.P.C. read with Section 151 of for granting injunction from alienating or crating any encumbrance or right of any sort in any way of any third party on any part of the suit land including schedule A land and restraining the opposite parties from making any sort of construction over any part of the suit land.

Against the instant petition, the Opposite party No. 1 and the proforma opposite party had filed the joint written objection stating that "Proforma opposite Party approached the husband of the plaintiff petitioner with an offer to sell the land of

his wife (opposite party no.1) and that the petitioner paid Rs. 5,00,000/- (Rupees Five lacs) only in cash and Rs. 5,00,000/-(Rupees Five lacs) only vide Cheque No. 10010165 from Federal Bank of India, Tezpur Branch i.e. in total Rs. 10,00,000/- (Rupees Ten lacs) only as advance payment. The Opposite Party No.1 after receiving the said cheque deposited same in the State Bank of India, Tezpur Branch for collection. But the said Cheque was returned by the Banker of the State Bank of India, Tezpur Branch because of some discrepancy in the cheque. The Opposite Party No.1 and Proforma Opposite Party returned the said Cheque to the petitioner. The Opposite Party No.1 at various time requested the petitioner to issue a fresh Cheque in accordance with the agreement for sale which was executed on 03-09-2011 and the Opposite Party No.1 and Proforma Opposite Party also requested the petitioner and her husband to execute the registered Sale Deed and pay balance sale consideration. And due to delay issue of a fresh cheque by the plaintiff petitioner the Opposite Party No.1 and Proforma Opposite Party decided to return Rs. 5,00,000/-(Rupees Five lacs) only which was received in cash from petitioner on 03-09-2011. The

said cash amount was returned to the husband of the petitioner Motilal Sipani in Bablu Photo Studio, N.C.Road, Tezpur in presence of owner of the Bablu Photo Studio, Firozul Rahman, Ismail Ali, Sirajul Haque. Thus opposite party no.1 received no advance amount under the terms of the agreement for sale dated 03-09-2011 so, she is not bound to execute the registered sale deed in favour of the plaintiff petitioner. The opposite party no.2 has also filed written objection stating that he is the bonafide purchaser of the schedule B land came into possession of the land under the lawfully passed decree in TS. 19/19. So, the opposite parties have prayed to dismiss the injunction petition filed by the plaintiff petitioner.

I have gone through the entire case record along with all the documents annexed with the plaint submitted by the plaintiff petitioner. In the instant case the plaintiffs petitioner has pleaded that the opposite party no.1 was the owner of the suit land and on 03-09-2011 opposite party no.1 entered into an agreement with the plaintiff petitioner for sale of the suit land at a valuable consideration amount of Rs.57,50,000/- by taking advance amount. On other hand the opposite party no.1 has

pleaded in the written objection that the plaintiff petitioner had failed to perform her part of contract and the advance amount was return back to her by the opposite party no.1 thus opposite party no.1 had received no advance amount under the terms of the agreement for sale dated 03-09-2011 so, opposite party no.1 is not bound to execute the registered sale deed in favour of the plaintiff petitioner. Again the opposite party no.2 has pleaded by written objection that he is the bonafide purchaser of the schedule B land came into possession of the land under the lawfully passed decree in TS. 19/19.

Thus, again from the documents submitted by the plaintiff petitioner it appears that she had paid a considerable part of the sale consideration to the opposite party no.1 for purchasing of the schedule A land. Furthermore, at this stage, the opposite party sells/alienates the schedule land to any third person, then the petitioner will definitely prejudice and entire purpose of filing the suit and injunction become infructuous.

As such without entering into the merits of the dispute and further without discussing the three golden principles of granting temporary injunction,

this Court considering the pleading of the sides, finds sufficient reason to preserve the suit property till disposal of the TS No. 06/2021 from any aggressive acts of the either sides by way of passing an order of status-quo. Therefore, in the light of the above mentioned discussions, considering the nature of dispute pending between the parties, this Court is considered opinioned that the both parties are to be maintained status quo in respect of the suit land till disposal the main case. 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 in respect of possession and status of the suit land till final disposal of TS No.06/2021. Misc (j) case is disposed of on contest. Both parties shall bear own costs.

Given under my hand and seal of this court on the 05th day of January, 2022.

(N. Bhatta)
Civil Judge
Sonitpur, Tezpur