

**In The Court of Smt. Priyanka Saikia, Munsiff No. 2,
Sonitpur, Tezpur**

Case No: Misc(J) Case No. 115/2022

Smti Darshana Baruah Sarma

-vs-

Sri Deshraj Bapanas and others

10.11.2022

Both sides are represented.

I have already heard learned counsel appearing for both sides.

This instant Misc (J) case has arisen on petition no. 2047/2022 dated 12.05.2022 filed by the petitioner under Order XXXIX Rule 1 and 2 r/w Section 151 of the CPC with a prayer to grant temporary injunction against the opposite parties.

Today, I am going to dispose of this instant Misc(J) case.

Plaintiff states that the mother Late Arati Baruah and the father Late Lalit Kumar Baruah of the petitioner and opposite party No.1 died on 25-10-1993 and 06-12-2007 respectively leaving behind the petitioner and opposite party No.1 as their legal heirs and successors.

That the father of the petitioner and the opposite party No.1, Late Lalit Kumar Baruah during his life time had purchased a plot of land no. **6-H of Higher Income Group** under residential land development scheme at Mazgaon, Tezpur under I. D. S. M. T. having total area **416.30 square meter** (18.10 M X 23M) as is bounded as

follows: Dag no.. 460/907/944/399; North: 19.00M **(H-7)**, South: 17.20M **(9M Road)**, East: 22.80M **(12M Road)**; West: 23.20M **(M-13)** from Deputy Director, Town & Country Planning, Govt. of Assam, Tezpur through the registered sale deed no. 1930 for the year 1992 dated 17-12-1992 at a valuable consideration.

That the Deputy Director, Town & Country Planning, Tezpur vides its letter no. TUO/IDSMT/MISC56/90/88/147 DATED 30-03-1993 had held that the land purchased by Sri Lalit Kumar Boruah since deceased having clear title and the land is free from all encumbrances. That after purchased of the said land since deceased Lalit Kumar Boruah had constructed RCC building over the scheduled land by obtaining building construction permission vides no.TDA/BP/Mazgaon/492/2003 dated 31-10-2003 from the Tezpur Development Authority, Tezpur. That to construct his RCC residential building since deceased Lalit Kumar Boruah had taken housing loan from the State Bank of India, Tezpur Branch by creating equitable mortgage of the scheduled land and had been paying the monthly installment i.e. EMI in his loan account no. 10501914965. That in the mean time prior to closure of housing loan account the father of the petitioner and the opposite party No.1 was expired in the year 2007, as such the petitioner has to pay the monthly installment i.e. EMI in the loan account of her father with SBI.

That after the death of Lalit Kumar Boruah his heirs Smti Darshana Baruah Sarma and the opposite party No.1

Sri Deshraj Bapanas became the joint owners of the scheduled mentioned undivided land and houses standing thereon by right of inheritance. That below mentioned schedule properties, which amounts to joint properties of the petitioner and the opposite party No.1 hereto as under law, and the houses or RCC buildings which are standing over the schedule land deemed to be the house of both the petitioner and the opposite party No.1 under law as Late father Lalit Kumar Boruah had constructed the RCC building standing over the said joint un partitioned land. That after demise of Lalit Kumar Boruah, the opposite party No.1 has been collecting the rents from the tenant premises letting out for opening a boy's hostel in the 2nd floor of the RCC building.

That it shocked the petitioner, while she saw a notice of sale of plot no. 6-H of Higher Income group at Mazgaon, Tezpur, District Sonitpur, Assam measuring 416.30 mt. that has been published in Dainik Agradoot dated 21-04-2022, stated to be in the name of opposite party No.1 Sri Deshraj Bapanas, son of Late Lalit Kumar Bapanas Ahmed. It is pertinent to mention here that the father of the petitioner is not AHMED as mentioned in the news paper, which hurts the religious sentiments of the entire family.

That the father of petitioner and opposite party No.1 had never created mortgage with any other bank or financial institution at any point of time except State Bank of India. That Late Lalit Kumar Boruah had only created mortgage with SBI, Tezpur Branch during his life time and

after his demise the petitioner had paid the EMIs till December 2016, thereafter the opposite party No.1 has been paying the EMIs to the said bank without default.

That for the first time the petitioner came to know from the notice published in Dainik Agradoot dated 21-04-2022 that the opposite party No.1 has created equitable mortgage of the below mentioned scheduled property alone with the opposite party no.3 for taking loan.

That the schedule property as referred in Dainik Agradoot news paper on 21-04-2022 for sale on default of payment of loan amount, is a joint undivided property of the petitioner and the opposite party No.1, being the said property has been devolved upon the petitioner and the opposite party No.1 upon death of their predecessor in interest Lalit Kumar Boruah. Besides, the petitioner has not created mortgage or entered any agreement with any financial institution or with opposite party banks for the schedule mentioned property at any point of time.

That the petitioner after her marriage in the year 2010 has been living with her husband in the matrimonial home and on some occasions has visited her parental home. That on being search by the petitioner, it reveals that the opposite party No.1 behind the back of the petitioner taking advantage of her absence has taken loan from the opposite party no.3, which subsequently merged with opposite party no.2 bank, by creating the equitable mortgage over the joint undivided below mentioned

schedule land and building of which the petitioner having equal half share over each inch.

That the aforesaid acts, deeds and things of the opposite party No.1 are utterly unjust and wrongful, which threatens and invades into the lawful right, title and ownership of the petitioner in peacefully enjoying the fruits of the suit land and RCC building as joint owners and possessors thereof. That the petitioner is not involved in any manner in the said loan or any transaction of loan or whatsoever in any manner, hence, the petitioner cannot be evicted from the suit premises forcibly and illegally under law.

That thereafter the Petitioner informed the opposite party No.1 about the sale notice of the auction sale of their undivided schedule mentioned property and also asked about the loan that had been taken from the opposite party banks, however, the opposite party no. 1 did not pay any heed and reluctant to reply. Besides, the scheduled mentioned property is not partitioned as yet in between the petitioner and the opposite party , as such creating mortgage behind the back of the petitioner with the opposite party banks by mortgaging the same is total illegal and not permissible under law being violation of all canons of law.

That thereafter on 28-04-2022 the petitioner served a letter on the opposite party no.2 bank intimating that she is the co-owner of the land in question, also raised the question that on what basis the opposite party banks has

published the notice to sell the scheduled land and also has requested to provide the land related documents to her. The said notice has been acknowledged by the opposite party no.2 on 11-05-2022, but the opposite party banks turned a deaf ear to the letter dated 28-04-2022.

That said opposite party No.1 was not entitled to get mutation of the said lands in his name by denying the inheritance of the other coparceners under law as the petitioner having undivided share over the said schedules land. So, the mutation entries, if any, in the name of opposite party No.1 is totally illegal and liable to be set aside and stuck off the name of the opposite party No.1 from the record. That all the mutation entries in the name of opposite party No.1 if any, in the record of rights of the revenue department is also needed to be declared as illegal and liable to be set aside and quashed.

That even though the opposite party No.1 offered to grant the schedule mentioned land and building to the opposite party banks for obtaining the financial assistance, the authority of the opposite party banks ought to have carried out its enquiry of the title deeds and other land related documents, and how the opposite party No.1 had got his name recorded in the deed of conveyance relating to schedule land and other land revenue records or record of rights. Opposite party No.1 solely by depriving the petitioner in collusion with the than revenue and bank officials had availed loan in his name without the knowledge of the other co-sharer i.e. petitioner. Besides,

the bank authorities also did not verify how the said scheduled land has been devolved upon the opposite party No.1. The bank authorities before creating mortgage could have ascertained the illegality perpetrated by the opposite party No.1 over the undivided joint land, but due to having some collusion with the Bank authorities with the opposite party No.1, the bank authorities had over looked the illegalities and sanctioned the loan over joint undivided property. So it became necessary to declare that officers of the opposite party banks had also acted in collusion with an intent to defraud the petitioner for making wrongful gain for which there could not have been an act of mortgage. Hence, the alleged mortgage created by opposite party No.1 with opposite party banks is illegal and liable to be set aside.

That since the petitioner is heir and successor of Lalit Kumar Boruah along with opposite party No.1 and the said land which is mortgaged by the opposite party No.1 is not purchased at any point of time by him and opposite party banks ought to have enquired into the title of opposite party No.1 before accepting equitable mortgage. So, whole process of mortgaging the land in favour of opposite party bank is illegal.

That due to aforesaid circumstances it has become necessary to partition of the schedule land amongst the heirs of Lalit Kumar Boruah and thereafter released the part of the petitioner from the alleged mortgage.

That the revenue record in the name of the opposite party no. 1 is highly illegal, act of deposit of the title deed for creation of Equitable Mortgage for financial assistance from opposite party banks is also illegal, irregular and opposite party banks are also at false in accepting the title-deed of the schedule land for creation of equitable mortgage. Hence it becomes necessary for intervention of the Court to enquire regarding misdeed of the opposite party No.1 in collusion with opposite party banks.

That the petitioner now apprehends that the officials of opposite party banks may take over the schedule properties, which are un partitioned amongst petitioner and opposite party No. 1 and in that event petitioner shall suffer irreparable loss, harm and injury.

The petitioner also apprehends that the opposite party 2 by way of online auction sale may sell their inherited undivided below mention scheduled property which has been devolved upon her and her brother after demise of their father Lalit Kumar Boruah. That the petitioner also apprehends that the opposite parties would take forcible possession of the scheduled mentioned property by evicting or ousting the petitioner by depriving from her legitimate share, which she acquires after demise of her father being she is one of the successors and heirs.

That under above certain circumstances petitioner has been compelled to institute the suit for declaration of right, title and interest, cancellation of mutation entries in the revenue record. Declaration that mortgage created by

opposite party No.1 under schedule land are illegal, inoperative and cancellation of said illegal Mortgage by opposite party No.1 in favour of opposite party banks along with consequential relief of partition by metes and bounds and for permanent injunction.

That the petitioner states that she has got strong prima facie case against the opposite parties to go in for trial, which necessitates the grant of a temporary injunction against the Opposite Parties to restrain them from disturbing and interfering with the lawful possession and enjoyment of the petitioner over the below mentioned scheduled suit property and from carrying out their malicious activities against the Petitioner. Thus with the intervention of the Hon'ble Court, the aspirations of the petitioner shall be protected.

The opposite parties filed written objection and vehemently objected the same. The opposite parties have stated that the present application is not maintainable in its present form and there is no prima facie case made out for grant of ad-interim injunction. It is submitted by the Opposite Party No.1 that he has never created any equitable mortgage with the defendant bank. In fact defendant No.2 & 3 along with the directors of M/S Cleanopolies Energy Systems (P) Ltd had forged his signature and title deeds of scheduled property an for which a police case was registered being Panbazar P.S. Case No.316/2021 under Sec.406, 420, 468,34 and seized the documents letter of Mortgagor and supplemental

letters and those are forwarded to Forensic Science & Laboratory for examination of the specimen signature and handwriting of him. The Opposite Party No.2 & 3 stated that plaintiff failed to annex any Next of Kin Certificate or Succession Certificate and failed to produce original sale deed and updated land revenue receipt of 2022. It is also stated that petitioner had already availed all remedy before the Debt Recovery Tribunal, Guwahati vide I.A. No. 214/2022, I.A.No.197/2022, IN E-DRT-S.A.NO-269/2022 under Sec.17 of SARFAESI Act, 2002. It is further stated that plaintiff has admitted that the sale deed of deceased father is in the custody of SBI, therefore it is impossible to create equitable mortgage with INDIAN BANK with same original deed. Hence, prayed to dismiss the petition.

Heard argument from the learned counsel of both parties. Also perused the case record along with the injunction petition, and the other documents filed by the petitioner.

In the light of the pleadings of the parties to decide the injunction prayer filed under Order XXXIX Rule 1 and 2 of CPC, the followings are appears to be the points for determination :

- (i) Whether there is a prima-facie case in favour of the plaintiff/ petitioner ?
- (ii) Whether balance of convenience is in favour of the plaintiff /petitioner ?
- (iii) Whether the plaintiff petitioner is going to suffer irreparable injury/loss in the event of

court not granted temporary injunction against the defendant/opposite party ?

Order XXXIX, Rule 1 (c) of C.P.C. provides that “ temporary injunction may be granted where, in any suit, it is proved that the Opposite Party threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossessing the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders”.

It is settled law that relief for granting of temporary injunction is subject to the court’s satisfying that :

(1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of being entitled to the relief asked for by the plaintiff/defendant;

(2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

I have gone through the entire case record along with all the documents annexed with the plaint submitted by the petitioner. In the instant case the petitioner have pleaded that the opposite party No.1 behind the back of the petitioner taking advantage of her absence has taken loan from the opposite party no.3, which subsequently merged with opposite party no.2 bank, by creating the equitable mortgage over the joint undivided schedule land and building of which the petitioner having equal half share over each inch. That thereafter the Petitioner informed the opposite party No.1 about the sale notice of the auction sale and also asked about the loan that had been taken from the opposite party banks, however, the opposite party no. 1 did not pay any heed and reluctant to reply. Thereafter on 28-04-2022 the petitioner served a letter on the opposite party no.2 bank intimating that she is the co-owner of the land in question, also raised the question that on what basis the opposite party banks has published the notice to sell the scheduled land and also has requested to provide the land related documents to her. The said notice has been acknowledged by the opposite party no.2 on 11-05-2022, but the opposite party banks turned a deaf ear to the letter dated 28-04-2022.

After considering the submissions of the parties, pleadings as well as document on record it appears that petitioner is the daughter of original owner of the schedule land. As such, at the first sight of the entire case-record it appears that there is a prima facie case in favour of the

petitioner. Therefore, if the nature and character of the suit land is transformed then it will be the petitioner, who would suffer greater inconvenience and irreparable loss.

From the above observation and reasons, I am constrained to hold that three golden principles for granting temporary injunction are found in favour of petitioner. But simultaneously, it is also to be born in mind that the opposite parties are contending that opposite party No.2 & 3 already stop the online sale or auction sale of the schedule land. The opposite party No.2 & 3 further stated that the sale deed of deceased father of the petitioner and opposite Party No.1 is in custody of SBI and there was no any equitable mortgage with INDIAN Bank.

So, considering the rival pleadings of both the parties, I am of the considered view that if an order to maintain status quo of the schedule land is passed, it will be just and proper.

Accordingly, till disposal of the main suit, both the parties are directed to maintain status quo of the schedule land as on today and no party will change the nature, character or feature of the disputed land nor any party during pendency of suit shall dispose the disputed land.

With the above observation and order, the instant Misc. (J) Case stands disposed of accordingly.