

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

**Case No: Misc(J)case No. 272/2022**

**(I/c T.S. 235/2022)**

**Abdul Hamid**

**-vs-**

**Mustt. Halima Khatoon and others**

**14.11.2022**

This instant Misc (J) case has registered on petition no.2433/2022 dated 14.11.2022 filed by the petitioner under Order I Rule 10 read with Order VI Rule 17 and Section 151 of the CPC to implead (i) Noor Hussain, (ii) Zakir Hussain, (iii) Ali Hussain, all sons of Late Nurul Islam, (iv) Foto Miya, son of Noor Baksh to the suit as opposite parties and for amendment of the petition.

The main contention of the petitioners is that the Petitioner as Plaintiff has instituted Title Suit being No. 235/2022 suit for declaration of his right, title and interest over the suit land/s as mentioned in the Schedules of the Plaint and confirmation of Plaintiff's possession over the suit lands and consequential relief of permanent prohibitory injunction restraining and prohibiting the Opposite parties , their men, servants, agents, associates, etc., from trespassing, interfering or causing any disturbances to the Plaintiff in respect of his right to occupy and possess the suit lands. The Petitioner has also filed a separate petition being Misc (J) Case No. 267/2022

under order XXXIX Rule 1 and 2 for interim injunction against the Opp. Parties.

That the said Misc(J) case has been fixed on 29-11-2022 for written objection and the Opp. Parties/ Opposite parties are yet to appear in the case.

That the Opposite parties Nos. 2, 3 and 4 after receiving summons and notice/s of injunction from this Hon'ble Court surreptitiously with malafide and evil intention on 11-11-2022 with the help of four other persons namely (i) Noor Hussain, (ii) Zakir Hussain, (iii) Ali Hussain, all sons of Late Nurul Islam, (iv) Foto Miya, son of Noor Baksh visited the suit land/s and tried to fence some portion of the suit lands by bamboo fencing. When the plaintiff got the news from other villagers he immediately rushed to the suit lands alongwith some well wishers and was successful in stopping the Opp. parties and the aforesaid persons from fencing of a portion of suit land/s. At that time the Opp. Parties along with the aforesaid persons laughed at the Petitioner and told him that how many days the petitioner will be able to resist them and one day they will take possession of the entire suit land/s.

That the Opposite parties Nos. 2, 3 and 4 with the help of four other persons namely (i) Noor Hussain, (ii) Zakir Hussain, (iii) Ali Hussain, all sons of Late Nurul Islam, (iv) Foto Miya, son of Noor Baksh are now trying to encroach and trespass the suit lands by evicting the plaintiff forcefully and unlawfully which is for what the petitioner was compelled to lodge an ejhar before the

Borghat Police out post on 12-11-2022 against the Opposite parties Nos. 2, 3 and 4 and the above stated four persons namely Noor Hussain, Zakir Hussain, Ali Hussain, and Foto Miya. A photocopy of ejhar and been enclosed herewith.

That for what is stated in the above paragraph it has become very necessary to implead new parties namely (i) Noor Hussain, (ii) Zakir Hussain, (iii) Ali Hussain, all sons of Late Nurul Islam, (iv) Foto Miya, son of Noor Baksh as Opposite parties Nos. 6, 7, 8 and 9 respectively and also the petitioner is required to be amended as under:

(i) In page No. 2 before line No.1 i.e. "All are" the numerics and alphabets – "6. Noor Hussain, 7. Zakir Hussain, 8. Ali Hussain, all sons of Late Nurul Islam, 9. Foto Miya, son of Noor Baksh are required to be inserted

(ii) In page No. 10 after paragraph No. 12 and before paragraph No. 13 of the petition a new paragraph is required to be inserted "12 (a) That the Opp. parties Nos. 2, 3 and 4 after receiving notice/s of injunction from this Hon'ble Court surreptitiously with malafide and evil intention on 11-11-2022 with the help of Opp parties No. 6, 7, 8 and 9 visited the suit land/s and tried to enfence some portion of the suit lands by bamboo fencing. When the petitioner got the news from other villagers he immediately rushed to the suit lands alongwith some well wishers and was successful in stopping the Opposite parties from enfencing of a portion of suit land/s. At that time the Opp. parties laughed at the Petitioner and told him that how many days the petitioner will be able to resist

them and one day they will take possession of the entire suit land/s. The petitioner thereafter on the next date i.e. 12-11-2022 lodged an ejhar before the Borghat Police Outpost in respect of the said incident.”

That the addition of new Opp. parties and consequent amendments are only due to the illegal acts of the Opp. Parties as stated above and there has been no lapse on the part of the Petitioner. The said newly added Opp. parties are necessary and proper parties in the case and in their absence no effective order can be passed by the Hon'ble Court.

That the said impleadment of the new Opp. parties and proposed amendments shall not change the nature and character of the case but if the after the impleadment the amendments are not allowed then it may lead to confusions and cause prejudice to the petitioner.

That if the impleadments and amendments as stated above are allowed there will be no question of any kind of loss or injury cause to the Opp. Parties as the Opp. Parties are yet to appear in the case and file their written objections but if the prayer for impleadment of additional opposite parties and amendments are not allowed then the Petitioner shall suffer irreparable loss and injury.

That the petition of this Petitioner is made bona-fide and he has come with his clean hands and pray before this Hon'ble Court to allow him to implead new Opposite parties and amend the petition otherwise the Petitioner shall suffer irreparable loss and injury for the fault he has not committed.

Heard and perused the case record and the documents submitted by the petitioner.

Upon perusal, It is seen that vide order dated 10.11.2022, this court has passed interim order prohibiting and restraining the main opposite parties from trespassing, interfering or causing any disturbances to the petitioner in respect of his right to occupy and possess the suit lands.

But, during the pendency of the case, Opp. parties nos. 2, 3 and 4 after receiving summons and notice/s of injunction on 11-11-2022 with the help of four other persons namely (i) Noor Hussain, (ii) Zakir Hussain, (iii) Ali Hussain, all sons of Late Nurul Islam, (iv) Foto Miya, son of Noor Baksh visited the suit land/s and tried to fence some portion of the suit lands by bamboo fencing. When, petitioner tried to stop the Opp. parties and the aforesaid persons from fencing of a portion of suit land/s. At that time the Opposite parties alongwith the aforesaid persons submit that one day they will take possession of the entire suit land/s.

Considering the above facts, I feel that presence of new opposite parties are necessary in the case and no effective order can be passed in absence of said opposite parties. Hence, considering all aspects of matter, the prayer is allowed. Accordingly, (i) Noor Hussain, (ii) Zakir Hussain, (iii) Ali Hussain, all sons of Late Nurul Islam, (iv) Foto Miya, son of Noor Baksh are impleaded as opposite parties in the case.

It is also considered that the proposed amendment is necessary for just decision in the case and for proper

adjudication of the matter, I find that the balance of convenience lies in favour of allowing the prayer for amendment as sought for and the same will not cause irreparable loss or injury to the other side nor the same will change the nature of the case. Hence, the proposed amendment is allowed.

With the above observation and order, the Misc. (J) Case is disposed of on contest.