

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

Sonitpur, Tezpur

Case No: Misc(J) Case No. 221/2019

Sri Biren Saikia

-vs-

Sri Mahendra Saikia and other

28.11.2022

Both sides are represented.

I have already heard learned counsel appearing for both sides.

This instant Misc (J) case has arisen on petition no. 3027/2019 dated 06.11.2019 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 he has instituted the Title Suit No. 76/2015 against the defendants for declaration of right, title and interest of the plaintiffs in the plaint schedule land C with consequential relief of recovery of possession by evicting the defendant no. 1 & 2 with their men and materials there from and for further declaration that the mutation entries dated 17/05/2010 are null and void and for cancellation thereof etc.

That the defendants had made their appearance in the above title suit and accordingly contested the suit by

filing their written statement on the basis of certain false allegations and story.

The defendant no. 1 and 2 during the pendency of the above title suit have started new house construction in the below schedule land on 14-10-2019, then the plaintiff protested and requested them to refrain from such construction works but they then threatened the plaintiff to face dire consequences if he make any obstruction to them.

Schedule "C" in the plaint being the land of the plaintiff, and therefore the defendants have no right and authority whatsoever to start new house construction in any portion of land under law.

That the defendant no. 1 and 2 without having any authority have started the new construction in the said land as the said land was and is part of the plaintiff's portion of land.

That the said illegal construction is started during the pendency of the aforesaid title suit, therefore it has become necessary to pass injunction against the defendants No. 1 and 2 not to continue with any new construction in the suit land or any part thereof.

That the plaintiff has a prima facie case for granting temporary injunction and he is entitled to get the relief of permanent injunction in this case.

That the balance of convenience for grant of temporary injunction is also in favour of the plaintiff. That the defendant No. 1 and 2 who are not the owners of the

suit land will not face any inconvenience, loss, harm and injury if the injunction is granted against them but on the other hand if the court refused to grant injunction then the plaintiff who is the owner of the suit land will not only face greater inconvenience but will suffer irreparable loss, harm and injury.

The plaintiff is also apprehend that the defendant No. 1 and 2 may also start new construction in other portions of plaint schedule "C" land though defendants are bound to maintain the status-quo of the schedule 'C' land till disposal of the Title Suit No. 76/2015 and not to disturb the status-quo of the suit land; hence he has prayed before the Hon'ble court to grant temporary injunction on the below schedule land i.e. the plaint schedule "C" land.

The opposite party filed written objection and vehemently objected the same. The opposite party has stated that the Plaintiff/ Petitioner cannot file this petition now after closing of the evidence of the Plaintiff side witnesses. The defendant has not started any new construction over the land, whatever constructions are there are all old constructions and the Defendant No. 1 completed those constructions many years ago and before filing of the suit. The Defendants have not constructed any type of new construction over any land.

The Opp. Party No. 1 and/or Opp. Party No. 2 never started any construction/s on 14-10-2019 and as such there was no question of protest or request by the Petitioner to stop the construction works but the Opp.

Parties have every right and possession over the land as mentioned in the Schedule.

The Petitioner have no right, title and/or interest and possession over the suit land. The Opp. Parties/ Defendants have right, title interest and possession over the land since long though they have every right to construct and construction over the land but they have not started any construction either on 14-10-2019 or any date/s during the pendency of the suit.

It can be mentioned here that Plaintiff side witnesses i.e. PW 2 i.e. Indreswar Saikia and PW 3 i.e. Sri Ranjit Das in their written evidence on affidavit clearly mentioned that prior to November 2016 the land was vacant it means that if any construction/s was made that has been made in the month of December 2016 or thereafter. If the version of the PWS is to be believed and it is assumed that the Opp. Parties did construction/s in the year 2016 than why the petitioner waited for 3 long years to file the present injunction petition. Even the PW2 Indreswar Saikia in his cross examination clearly stated about the construction of pucca boundary wall and garage over the said land. So, the petitioner now cannot file this petition falsely alleging starting of construction on 14-10-2019.

Hence, prayed to reject the petition of the petitioner.

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 petitioners.

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 and photographs annexed with the plaint submitted by the petitioners. In the instant case the petitioners have pleaded that opposite parties during the pendency of this instant suit have started construction of new house over the schedule C land. It is also stated that opposite parties have no right and authority over the suit land. It is stated if the opposite parties would success in construction, then the nature of the suit would changed and petitioner will face inconvenience and will suffer irreparable loss.

After considering the submissions of the parties, pleadings as well as document on record it appears that petitioner possessed the Schedule C 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 they have not started any new construction over the land, whatever constructions are there are all old construction over the land. The opposite parties further stated they never started constructions on 14.10.2019 and as such there is no questions of protest or request by the petitioner to stop the construction works over the petitioner's land. It is also stated that PW-2 & PW-3 have stated in their evidence of affidavit that prior to November 2016, the said schedule C land was vacant. Hence, opposite parties prayed to reject the same.

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 suit 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 suit 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.