

**IN THE COURT OF SMTI PRIYANKA SAIKIA ,**  
**MUNSIFF NO. 2, SONITPUR, TEZPUR, ASSAM.**

**Case No: Misc(J)case No. 51/2022**

**(I/c Title Suit No. 36/2022)**

**Troilokya Chakraborty –vs- Sanjib Borah & other**

**08.12.2022**

Both sides are represented.

Today the day is fixed for order.

I have already heard the learned counsel for the petitioner.

This instant Misc (J) case has registered on petition no.1055/2022 dated 19.02.2022 filed by the petitioner under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC.

The main contention of the petitioner is that That the plaintiff Sri Trailokya Chakraborty had purchased a plot of land measuring 1 katha 10 lessas from it's previous owners Sri Pramod Kumar Borah, son of Late Satananda Borah of Village- Deka Chuburi Kundarbari, Mouza- Haleswar, P.O.- Tezpur, District- Sonitpur, Assam vide registered Sale Deed No. 733 of 2017 dated 11-05-2017 with valuable consideration and accordingly had taken physical possession of the said purchased land. Subsequently the name of the plaintiff had been mutated for land measuring 1 katha 10 lessas, under Dag No. 220, covered by Periodic Patta No. 349 of village - Deka Chuburi Kundarbari, Mouza - Haleswar, Revenue Circle - Tezpur,

District - Sonitpur, Assam in the revenue records and thereafter he was paying the land revenue of the said land to the Government as its true owner as on date.

The plaintiff since the date of purchase of the aforesaid 1 katha 10 lessas of land has been in continuous and uninterrupted possession of the same as on date. Plaintiff had also constructed the northern, southern and western side boundary walls. That in the second week of March '2021 while the plaintiff has started construction of the road approaching eastern side boundary wall, the defendants not only objected the same but also threatened the plaintiff to face dire consequences if he continues with the construction of eastern side boundary wall. However after the said incident the plaintiff who is a peace loving person has immediately stopped further construction of the eastern side boundary wall.

Subsequently the defendants have filed an F.I.R. before the Salonibari Police Outpost on 12-03-2021 by alleging certain false and baseless allegations and likewise prayed to take proper action by prohibiting the petitioner from constructing the boundary wall. That though the defendants have filed the aforesaid FIR without having any valid reason but upon receipt of the said F.I.R. police of Salonibari Outpost has forwarded the same with report vide Non FIR Case No. 07/2021 dated 01-04-2021 before the office of the Deputy Commissioner, Sonitpur at Tezpur and thereafter the Learned Executive Magistrate has drawn up a proceeding under section 107/145 Cr. P.C. vide Misc.

Case No. 15/107/145/2021 against the plaintiff in a mechanical manner.

Having come to know about the said proceeding the plaintiff has immediately filed a Criminal Revision Case No. 01/2022 before the court of the Session Judge, Sonitpur at Tezpur with the prayer to setting aside the proceeding of Misc. Case No. 15/107/145/2021. Pertinent to mention here that the Hon'ble Addl. Session Judge, Sonitpur at Tezpur has already admitted the aforesaid Criminal Revision for hearing and called for the original Case record of Misc. Case No. 15/107/145/2021 vide his order dated 01-02-2022 passed in Criminal Revision Case No. 01/2022.

The plaintiff being the rightful possessor of the below schedule land since the days of his purchase, the defendants have no right or authority whatsoever to obstruct the plaintiff from ongoing construction of road approaching eastern side boundary wall over his portion of the purchased land. The defendants who have no right or authority whatsoever in the purchased land of the plaintiff are trying to obstruct the plaintiff from completing his eastern side boundary wall by threatening and also by applying one after another trick. That the plaintiff who is a senior citizen and is a law abiding peace loving person and if obstructed from constructing the road side eastern boundary wall as threatened by the defendants than it would definitely cause irreparable loss and harm to him. So without the help of the court it is not possible on the part of the plaintiff to save his valuable rights in the suit land

from the above mentioned threatened acts of the defendants.

Under the above facts and circumstances the plaintiff has been compelled to institute the title suit against the defendants for decree of right, title and interest of the plaintiff over his purchased portion of land and for permanent injunction restraining the defendants their agents and men from stopping/interfering in the right of the plaintiff to construct boundary wall on his purchased portion of land fully shown in the schedule hereto below.

The matter involved is very serious and imminent, so the court's interference by way of granting temporary injunction is urgently required without issuing notice of this application to the defendant opposite party. That if the notice of the application is given then the defendant opposite party and his men will immediately create unwanted interference by use of force and then granting of injunction would be defeated by delay and the very purpose of filing the suit will be in fructuous.

It is, therefore, prayed that the Hon'ble court be pleased to grant temporary injunction without issuing notice of this application to the defendants opposite party restraining and prohibiting the defendants opposite party and their men, agents etc. from stopping / interfering in the right of the plaintiff to construct boundary wall on his purchased portion of land fully shown in the schedule hereto below under Order 39 rule 1 and 2 and section. 151 of Civil Procedure Code for ends of justice and equity.

The opposite parties appeared and contested the case by filing written objection and stated that the Petitioner in his injunction petition are not supported by the documents filed by him. (The schedule of the injunction petition shows Now Pradip Kalita in the north, M.Gogoi in south, road then B. Borah on the east and K. Borah on the west. However, the sale deed being No. 733 for the year 2017 of Tezpur Sub Registry, as furnished by the Petitioner himself show the boundaries of the schedule land as follows:

North: Road  
South: M. Gogoi  
East: B. Borah  
West: K. Borah

Even the land sale permission being No. SRS-33/2015-16/391 Dated 20-04-2017 issued by the Land Revenue Department of the office of the Deputy Commissioner, Sonitpur, Tezpur shows the boundaries as Road on the North, M.Gogoi on the South, B. Borah on the East and K. Borah on the West. Even the permissions issued by the Office of the Chairman, Tezpur Development Authority being No. TDA/NOC/LAND/DEKACHUBURI KUNDARBARI/ 1469/2016 dated 19-07-2016 shows the boundaries as:

North: Road  
South: M. Gogoi  
East: B. Borah  
West: K. Borah

Even the sketch map attached with the land sale permission issued by Tezpur Development will prove the same.

The Petitioner after coming to the plot has been continuously troubling the neighbours. It is not true that the Petitioner after purchasing the plot of land constructed boundary walls on the northern, southern and western side of the schedule land. The fact is that in the northern side the wall was constructed by one Pradip Kalita and on the southern side there is a half wall that was already constructed by M. Gogoi. On eastern and western side there was no wall and that was constructed by the Petitioner. The Opp. Parties submit that at the time of construction of the boundary wall on the eastern side the Petitioner installed the gate on the eastern side of his wall and made the land of the Opp. Parties vulnerable for encroachment by the Petitioner, but still the Opp. Parties did not say anything to the Petitioner. The real dispute is on the western side where the Petitioner constructed boundary wall by encroaching about 10' X 30' of land belonging to the Opp. Parties. That was when the Opp. Parties had protested but the Petitioner refused to budge out from the land of the Opp. Parties and forcibly constructed the boundary wall by taking advantage of order of ad-interim injunction granted by the Hon'ble Court. The Opp. Parties deny that they objected the same but also threatened the Petitioner to face dire consequences, if he continues with the construction of eastern side boundary wall. The Opp. Parties further denies

that the being a peace loving person immediately stopped further construction of the eastern side boundary wall. As the Petitioner was himself threatening to complete the illegal boundary wall, so, the Opp. Parties had lodged an FIR before the Salonibari Police Outpost on 12-03-2021 and upon receipt of the FIR GDE No. 226/2021 dated 12-03-2021 was made and police enquired the matter and after enquiry the police found sufficient matter as such they forwarded the case to the Additional District Magistrate, Tezpur and a Misc. Case being No. 15/107/145/2021 has been registered and the said Additional District Magistrate made over the case to the Court of the learned Executive Magistrate for disposal. Now the said case is pending trial.

The Opp. Parties have filed an FIR before the Salonibari Police Outpost on 12-03-2021 and upon receipt of the said FIR the police of Salonibari Outpost has forwarded the same with report vide Non FIR Case No. 07/2021 dated 01-04-2021 before the office of the Deputy Commissioner, Sonitpur, Tezpur and thereafter the learned Executive Magistrate has drawn up a proceeding under section 107/145 of Cr PC vide Misc. Case No. 15/107/145/2021 against the Petitioner, Remaining averments made in the paragraph are stoutly denied by the Opp. Parties.

The answering Opp. Parties submit that they are all false, baseless, imaginary and fanciful as such they stoutly deny and dispute the same. It is true that the Petitioner is the rightful owner of the schedule land as mentioned in the

sale deed being No. 733/2017 of Tezpur Sub Registry. In the garb of the ad-interim injunction the Petitioner has illegally constructed the boundary wall by encroaching about 10' X 30' of land belonging to the Opp. Parties as such these Opp. Parties have ample right to lawfully protest and object and for which they have lodged an FIR which is now pending trial in the Court of Executive Magistrate, Tezpur. The Opp. Parties will file proper petition for survey commission and then the truth shall come out. The present of the schedule land of the plaint on the ground and the sketch map attached with the land sale permission issued by the Tezpur Development Authority in favour of the Petitioner shall prove what the Petitioner has done and how he has misled the Hon'ble Court. The Petitioner has so shrewdly making averments regarding the boundary wall of the eastern side of the suit land however, he is absolutely silent about the encroachment made by him on the western side. Though the Opp. Parties have no right, title and interest over any inch of the land belonging to the Petitioner as has been mentioned in the schedule of the sale deed being No. 733/2017 but they have every right to lawfully recover the encroached land from the Petitioner. The Petitioner is not required to submit at a regular interval that he is a senior citizen and for being a senior citizen he does not get right to encroach upon the land of the Opp. Parties. These Opp. Parties have no interest over the Petitioner's land but they will surely keep fighting legally to recover their land from the clutches of the Petitioner. It is the Petitioner who has



been threatening the Opp. Parties by saying that he would lodge false FIRS against them. For the illegal act of the Petitioner the Opp. Parties have been suffering injuries now. Hence, prayed to dismiss the petition.

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

Upon perusal, it is seen that petitioner is the lawful owner of the suit land by executing a registered deed of Sale 733/2017 dated 11.05.2017 and taken physical possession over the suit land. It is also seen that petitioner also mutated his name on the land records over the suit land. from the date of purchase, he has continuous and uninterrupted possession over the suit land. On perusal of all these it clearly apparent that in the second week of March, 2021, while the plaintiff has started construction of the road approaching eastern side boundary wall, the opp parties objected the same and also threatened the plaintiff to face dire consequence if he continue with the construction. Hence, in my considered view the petitioner contains prima facie case as well as balance of inconvenience in his favour as if the court refuse to grant injunction, he will suffer irreparable loss, harm and inconvenience.

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 and photographs annexed with the petition submitted by the petitioner.

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 the boundary as described in the petition and the boundary of the sale deed are different. The sketch map attached with the land sale permission issued by Tezpur Development will prove the same. The opposite parties further stated that the Petitioner after coming to the plot has been continuously troubling the neighbours. In the garb of the ad-interim injunction the Petitioner has illegally constructed the boundary wall by encroaching about 10' X 30' of land belonging to the Opp. Parties as such these Opp. Parties have ample right to lawfully protest and object and for which they have lodged an FIR which is now pending trial in the Court of Executive Magistrate, Tezpur.

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.