

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

Case No: Misc(J) Case No. 243/2019

Hazra Begum –vs- Rashid Ansari @ Chatua and others

11.11.2022

Both sides are represented.

I have already heard learned counsel appearing for both sides.

This instant Misc (J) case has arisen on petition no. 3403/2019 dated 17.12.2019 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 Musstt. Hazra Begum i.e. petitioner is a senior citizen aged about 75 years, permanent resident of Vill- Ward No. 2, Dhekiajuli Town, P.O & P.S Dhekiajuli, and Dist- Sonitpur, Assam and is a citizen of India by birth, and as such, she is entitled to all the legal rights and remedy as guaranteed by the law of the land.

That the father of the petitioner, Late Rozan Ansari during his lifetime married 3 ladies namely, Azizan Begum, Magriban Begum and Rasulan Begum. Magriban Begum had no issues and she died during the lifetime of her husband.

That from the first (1st) wife i.e. Azizan Begum, Rozan Ansari had two issues a daughter and a son namely, Sabija Khatun and Kurban Ansari. From the (3rd) wife i.e. Rasulan Begum, Rozan Ansari had a daughter namely Hazra Khatun (Petitioner) and a son namely Asauddin. Asauddin died unmarried during the life time of his father. That during the life time of Rozan Ansari, his daughter Sabija Khatun was married to one Abdul Gani, Abdul Gani married another lady namely, Mazida Khatun. From Sabija Khatun, Abdul Gani was blessed with a daughter namely, Sahara Khatun and a son namely Ainul Ansari @ Mainuddin Ansari. Ainul Ansari also died unmarried. From the 2nd wife Mazida Khatun, Abdul Gani was blessed with three (3) sons namely, Salam Ansari @ Randhwa, Sahabuddin Ansari @ Kancha, and Mainul Ansari @ Batul. (i.e. opp party no. 5, 6 & 7).

That Late Kurban Ansari was blessed with 3 (three) sons namely Khurshid Ansari, Rashid Ansari (opp party No. 1) and Sahid Ansari (proforma opp party no. 1). That late Khurshid Ansari was married to one lady namely, Rahida Khatun and out of their wedlock 1(one) son namely Ahsan Ansari and three daughter namely Nargis Khatun, Sakina Khatun and Firdosh Khatun. (these four children's are still minors and are under the care and custody of their mother Rashida Khatoon Opp party no. 2).

That the petitioner Hazra Begum owned and possessed land measuring 2 Bighas covered under Dag No. 513 of PP No. 107/113/204 (old)/ 42(New) situated at

Medhi Chuburi, 10 No. Laat, under Mouza: Barsola, District: Sonitpur, Assam which is morefully described in the Schedule A herein below, In the same dag and patta Late Ainul Ansari @ Mainuddin Ansari own and possessed 2 bighas of Land and Late Kurban Ansari own @ possessed 1 Bigha and 2 Kathas land. The said lands are adjacent to each other.

That the petitioner, opposite party and the proforma opposite party are relatives and they possessed their respective share of lands as per right. The petitioner, opposite party and proforma opp party lived together in a joint family and they had been enjoying the said land facing the road, (Eastern side).

That the petitioner was married to Abdul Baki Ansari and soon after marriage she was shifted to her husband's place i.e., at ward No. 2, Dhekiajuli Town, P.O & P.S Dhekiajuli Dist- Sonitpur, Assam. The petitioner and her husband used to grow paddy upon the Schedule A suit land and the entire family of the petitioner enjoyed the crop all round the year.

That the opposite party also cultivated their sher of land, which is adjacent to the land of the petitioner. The opp party No. 1-7 constructed shop room and their residential house upon their share of land in the year 2015-16. That the Schedule A suit land belongs to the petitioner alone. That due to ailment of the petitioner along with he son went to Uttar Pradesh for her treatment and taking advantage of that the opp party No. 1 started construction

a Tin shed room upon the **Schedule B** suit land. The petitioner came to know about the illegal act and raised her objection also she informed the Addl. District Magistrate, Sonitpur, Tezpur, Assam on dated 29.02.2016. Wherein the Addl. District Magistrate asked the Officer in charge of Dhekiajuli for enquiry and to submit the report on same. The opp party No. 1 stopped the construction as such the petitioner did not take any further steps. The opp party no. 1 promised not to commit such illegal act in future.

That all went well again the petitioner fell ill and taking advantage of it's the opp party NO. 1 again tried to encroach the land of the petitioner on 23.09.2016. This time the petitioner filed an application before the Circle Office Dhekiajuli, Sonitpur, Assam. The Circle Office made enquiry and visited the suit land along with other opp party was directed by the Circle Officer Dhekiajuli Revenue Circle not to indulge in the illegal act. The opp party again promised not to encroach the Schedule A suit land of the petitioner.

That all went well for couple of years. The petitioner came to know from reliable source that the opp party no. 1 to 7 were planning to encroach the suit land of the petitioner and trying to construct boundary wall, this petitioner filed an application before the Circle Officer Dhekiajuli for demarcating the boundary of the suit land. The Circle Office issued letter No. DRC-9/2017-18/30 dated 28.02.2019 and directed the petitioner and opp party to

remain present on 06.03.2019. The petitioner went to the suit land but the opp party did not turned up as such in their absence the boundary demarcation could not be done by the officials.

That the petitioner being an old lady suffering from geriatric problem became frustrated and again on 30.03.2019 the petitioner filed an application before the Circle Officer Dhekiajuli Revenue Circle requesting to direct the opp party not to construct any wall. The said Circle Office received the said application which was numbered as 262 of 01/04/2019. The Circle Officer directed the Lat Mandal and D/A to take necessary action. The Lat Mandal went to the suit land and asked the opp party to stop the illegal wall construction and asked them to remain present in the office of the Circle Officer, Dhekiajuli. Till then they were directed to stop the construction. The opp party though promised to remain present in the office but they did not turned up. The opp party again stopped the construction.

That on 10.10.2019 the opp party No. 1 encroached 1 katha of land which is morefully described in Schedule B land and started construction this time the petitioner lodged an FIR before Dhekiajuli police station on dated 14.10.2019. The police received the said FIR and went to the suit land and directed the opp party to partition the land and then start the construction upon their own land. The opp party No. 1 along with other opp party agreed to the proposal. The petitioner further approached the village

headmen to enquire upon the matter and thereafter the village headmen called upon the opp party no. 1 vide letter Memo No. SGP-141 Dated 15.10.2019. It was clearly mention in the said letter that without taking any NOC or permission the opp party No. 1, has started construction of a house. The opp party no. 1 was directed to stop the construction on immediate effect. The Opp party no. 1 after receipt of the said notice stopped the construction.

That the petitioner and her son were out of station at Delhi and taking advantage of the absence of the petitioner the opp party no. 1 along with other opp parties again started constructing house on the Schedule B land facing road side. The petitioner returned back on 15.10.2019 and raised objection to the illegal construction she even intimated the village headmen and illegality. The village headmen asked the opp party not to indulge in the illegality and stop the construction, again the opp party no. 1 stopped the construction.

That on 15.11.2019 the opp party no. 1 on war footing trying to complete the construction this petitioner raised objection but the opp party refused to listen to the sound advice and continued with the construction. The petitioner fears that the opp party specially, the opp party no. 1, 2 and 3 might take drastic step with the help of their men power/goons. It is not possible on the part of the petitioner to resist the opp party from their illegal acts. The petitioner is compelled to institute the present suit against the opp party for permanent injunction, restraining the

prohibiting them and their men from illegally making any sort of construction/ building over the schedule B land (suit land) till the suit is disposed.

That the petitioners fears that the opp parties might have drastic steps with the help of their manpower. It is not possible on the party of the Petitioner to resist the opp parties from their illegal act. If the opp party by using her manpower manage to complete the construction then the Petitioner will not only be greatly prejudiced but also will lose her valuable right over the property. This will definitely cause harm and injury to the petitioner.

That the petitioner is compelled to institute the present case against the opp parties for permanent injunction, restraining and prohibiting the opp parties and their man from illegally constructing anything over the schedule suit land till disposal of the suit.

That there is a prima facie case in favour of this petitioner. The balance of convenience is in her favour and irreparable loss will ensure to the petitioner and hence the opposite parties need to be restrained and prohibited them from constituting the illegal building till disposal of the suit. There is no alternative relief in this regard. That the petitioner being the sole owner is legally entitled to have an order of injunction in her favour since non issuance of such an order with all promptness will make things complicated enabling the opposite parties to complete the illegal construction upon schedule B land.

The opposite party filed written objection and vehemently objected the same. The opposite party has stated the entire suit patta land is in possession of all heirs of Rozan Ansari. The all legal heirs and representatives of Azizan Begum and Sabija Khatun, therefore the main suit must be dismissed. The opposite party has admitted that Azizan Begum was the mother of Sabija Khatun and Kurban Ansari. It is also admitted that the other wife of Rozan Ansari gave birth to her daughter i.e. the petitioner.

Further opposite party stated that opposite party No.3 is the wife of Ainul Ansari @ Mainuddin, who was the son of Abdul Gani. The opposite parties and proforma opposite party find no reason to dispute the claim of the petitioner that the schedule A land is marked as her land in the record of rights. The entry in the Record of Rights showing 2 Bigha of land in the name of the petitioner is a collusive one which I always to be rectified on being disputed by other co-pattadars. The petitioner have started to cultivate her land since long forty years back, on certain earlier seasons the opposite parties cultivated her land as adhiar, but since last few years the petitioner is cultivating her land on her own and the opposite parties and proforma opposite parties never objected against cultivating the land by the petitioner. The construction by the opposite parties are all made on their own land and not in any part of the land in possession of the petitioner. The opposite party has no reason to stop the construction, therefore they has no reason to restart the construction. The opposite parties

never received any letter from Circle Office. The opposite parties further stated they never encroached in the petitioner's land rather the petitioner obstructing and harassing the opposite parties in the peaceful possession and enjoyment of their land which is in their possession since the life time of their parents. 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 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 annexed with the plaint submitted by the petitioners. In the instant case the petitioners have pleaded that opposite parties illegally tried to encroach the schedule B land of the petitioner in several occasions. It is also stated that opposite party no.1 had no right over the suit land. Opposite parties tries to construct any sort of construction over the petitioner’s schedule land. It is stated

if the opposite party 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 B 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 the construction by the opposite parties are all made on their own land and not in any part of the land in possession of the petitioner. The opposite party has no reason to stop the construction, therefore they has no reason to restart the construction. The opposite parties further stated they never encroached in the petitioner's land rather the petitioner obstructing and harassing the opposite parties in the peaceful possession and enjoyment of their land which is in their possession since the life time of their parents.

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.