

THE COURT OF MUNSIFF, HATSINGIMARI, DHUBRI.

MISC (J). CASE NO. 48/2019

I/C with T.S. 52/2019

Present: Sri Abhijit Saikia, A.J.S.

Tuesday, the 20th day of October, 2020.

MOBARAK HUSSAIN

..... Petitioner

Versus

1. MEHERUL ISLAM
2. MEHBUB HUSSAIN (PINKI)
3. MEHEDI HASSAN

..... Opposite Parties

1. MOZAFFAR ALI
2. MOMINA NESSA
3. MORZINA KHATUN
4. LEGAL HEIRS OF LATE AZGOR ALI
5. NURUL AMIN
6. A.S.O. MANKACHAR CIRCLE, MANKACHAR

..... Pro Forma Opposite Parties

This case coming on for final hearing on 15/10/2020 in the presence of –

Mr. S. I. Khandakar , Learned Advocate for the petitioner; and

Mr. L. Rahman , Learned Advocate for the opposite parties,

And having stood for consideration to this day, the court delivered the following
Order -

ORDER

1. The instant misc. judicial case arises out of a petition under Order XXXIX, Rules 1 and 2 read with Section 151 of The Code of Civil Procedure, 1908. The aforesaid petitioner had sought a temporary injunction against the opposite parties.
2. The brief facts leading to the institution of this case as revealed from the petition are that:
3. The father of the petitioner and the pro forma opposite parties No. 1, 2 and 3 was the owner and possessor of a plot of land measuring 1 (One) Bigha and 19 (Nineteen) Lechas, covered by Miyadi Patta No. 249/665 and Dag No. 1324/949, situated at village Pathuria under the Mankachar Revenue Circle. He had expired about 30 (Thirty) years ago. After his death, the land measuring 3 (Three) Kathas and 18 (Eighteen) Lechas have been recorded in the name of the petitioner. The said plot has been described in the schedule A of the petition. The remaining land had been recorded in the names of the pro forma opposite party Nos. 1 and 5. The pro forma opposite party No. 1 had sold his portion of the land to the said pro forma defendant No. 5 Nurul Amin. As regards the other legal heirs left behind by the deceased father of the petitioner, they received equal shares covering other plots in the ancestral properties, in accordance with an amicable family partition. The petitioner cultivated seasonal vegetables, 130 (One Hundred and Thirty) numbers of Betel Nuts, various wood producing trees, Mango trees and Coconut trees over the suit scheduled lands. About 4 (Four) years back, the opposite parties and their musclemen forcefully took Betel Nuts from the suit lands, at a time the nuts had become ripe for harvesting. Since then, the O.P.s have been forcefully taking away Betel Nuts from the suit lands every season. Also, they have been demanding other crops from the petitioner without any valid right. They have been claiming the suit land to be their own and have been trying to dispossess the petitioner without success. On 30.09.2019, all the O.P.s and their hired goons tried to dispossess the petitioner from the suit land while being armed with dangerous weapons. Although they could not succeed, they left the place with a threat that they would dispossess the petitioner any time

and cause damage to his cultivations. There is every likelihood of the dispossession of the petitioner. The petitioner is the lawful owner and possessor of the suit land having right, title and interests therein. The O.P.s are trying to dispossess the petitioner illegally, which is required to be restrained by an order of ad interim temporary injunction from this court until disposal of the main suit between the parties. Hence, the petitioner has prayed for a temporary injunction against the opposite parties.

4. The opposite parties No. 1, 2 and 3 appeared in the case after proper service of notices upon them. They duly submitted their written objections thereby contesting the claims of the petitioner. The pro forma opposite parties had failed to contest the case of the petitioner even after proper service of notices upon them. Accordingly, the case was heard ex-parte against the aforesaid pro forma opposite parties.
5. In their written objection, the opposite parties asserted that the instant petition is not maintainable and it is bad for non-joinder and misjoinder of parties as because only the name of the O.P. No. 1 is recorded in the record of rights. Likewise, certain necessary parties like Angur Miah, Noheza Bewa, Shorishafuli Khatun, Amir Ali etc. have not been made parties in this case. They further claimed that the petitioner does not have a cause of action and the petition is barred by the law of limitation. They expressly denied the veracity of the averments in the petition. The O.P.s averred that the O.P. No. 1 Meherul Islam had purchased the suit scheduled land from the petitioner and his brother Azgor Ali by executing an unregistered Sale Deed about 30-35 years ago. Accordingly, his name was inserted in the record of rights of the suit land. Since then, the O.P. No. 1 had been enjoying possession over the plot without any interference from any corner. Later, the petitioner hatched a conspiracy to remove the name of the O.P. from the record of rights. After his purchase, the O.P. No. 1 had planted Betel Nut trees, Firewood trees, Mango trees and Coconut trees over the suit land. It is the petitioner who had tried to dispossess the O.P. No. 1 from the suit land as he is trying to grab the plot after the death of his brother Azgor Ali with the help of a manufactured case. The O.P. No. 1 is the lawful owner and possessor of the suit land and he has every right, title and interests over the same. The petitioner does not have

any of the three golden principles in his favour so as seek an order of injunction. If such an order is passed, the O.P. shall suffer irreparable losses as the fruit cultivation over the suit land is a source of income for him. The petitioner had tried to set fire to the house of the O.P. No. 1 with the help of hired goons. The O.P.'s house was damaged but he was able to save his dwelling house. In this connection, the O.P. had lodged a First Information Report vide Mankachar P.S. Case No. 14/2020 under sections 120-B/143/436/447 of The Indian Penal Code. The petitioner had already initiated a proceeding before the Executive Magistrate under sections 107/144/145 of The Code of Criminal Procedure vide Misc. Case No. 173/2019, as per which the occurrence took place on 13.06.2019. Here, the petitioner has put some imaginary dates to establish a cause of action. Even as per the report of the Lat Mandal in the stated proceeding, the possession of the suit land is with the O.P. since long. Accordingly, the O.P.s prayed for the rejection/dismissal of the petition with costs.

6. I have heard the arguments put forward by the learned counsel for the petitioner. No verbal arguments were preferred from the side of the opposite parties. I have gone through the Case Record thoroughly.
7. The petitioner has established a claim of ownership over the suit lands on the strength of his inheritance. As per his petition, his predecessor in interest Munglu Sk. was the actual owner and possessor of the plot of land measuring 3 (Three) Kathas and 18 (Eighteen) Lechas, covered by Miyadi Patta No. 249/665 and Dag No. 1324/949, situated at village Pathuria under the Mankachar Revenue Circle, as has been described in the schedule A of the petition. The petitioner has submitted a copy of the draft Chitha of the suit lands, which includes his name and the name of his predecessor Munglu Sk., as recorded Pattadars of the suit Patta lands. It even contains the entry that the petitioner's name had been inserted in the records after he had inherited the suit scheduled lands from his deceased father Munglu Sk. He has further submitted a copy of Land Holding Certificate issued by the Assistant Settlement Officer, Mankachar Circle, which certifies that the petitioner is in possession of the suit scheduled lands, as per the report of the concerned Lat Mandal. Upon the analysis of the averments in the petition and the scrutiny of

the supporting documents, it is clear that the petitioner has managed to stake a genuine claim of ownership over the suit lands on the strength of his inheritance. On the other hand, the opposite parties have not been able to rebut this claim by establishing any genuine claim of their own over the suit lands. Mere averments in the written statement/objection, which is not supported by any relevant documents, does not establish any valid claim of title or possession. Overall, it can be held that the petitioner has, through his petition, supporting affidavit and documents, managed to establish a prima facie case in his favor.

8. The petitioner/plaintiff has filed the main suit to seek a declaration of his right, title and interests over the suit lands and for other incidental reliefs. The Section 52 of the Transfer of Property Act, 1882 mandates that during pendency of any suit or proceeding, in which right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party so as to affect the rights of any other party except under the authority of the court. Therefore, it is apparent that any unlawful dispossession of the petitioner from the suit land will lead to a greater harm to the petitioner than the opposite parties. Hence, it can be held that the balance of convenience is in favor of the petitioner.
9. As the matter pertains to title and possession over an immovable property, it can be assumed that any unlawful dispossession of the petitioner at the hands of the opposite parties which violates the genuine claim of ownership of the petitioner will lead the petitioner to suffer irreparable losses that cannot be compensated in terms of money. Moreover, it has the effect of nullifying the final verdict of the court in the main suit.
10. In view of the above discussion, the prayer in this petition is allowed. A temporary injunction is hereby issued against the opposite parties. The opposite parties, their agents, servants and representatives are hereby restrained from dispossessing the petitioner from the suit lands described in the schedule A of the petition, in any manner, till disposal of the main suit.
11. This petition is disposed off with this order and direction. The Misc. case is disposed off accordingly.

Given under my hand and the seal of this court on this the 20th day of October, 2020 at Hatsingimari, Dhubri.

ABHIJIT SAIKIA,
MUNSIFF, HATSINGIMARI, DHUBRI

MISC. (J) 48/2019

20.10.2020

The Petitioner is represented.

The contesting opposite parties are absent without any steps.

The Final Order is prepared in separate sheets to be tagged together with the Case Record. The same is pronounced in open court in presence of the learned counsel for the petitioner. In view of the discussions and decisions therein, the prayer in the instant petition is allowed. A temporary injunction is hereby issued against the opposite parties. The opposite parties, their agents, servants and representatives are hereby restrained from dispossessing the petitioner from the suit lands described in the schedule A of the petition, in any manner, till disposal of the main suit.

Misc. Case is disposed off accordingly.