

**IN THE COURT OF THE CIVIL JUDGE,
DIBRUGARH**

Misc.(j) Case No. 04 of 2022
(In Title Suit No. 06 of 2022)

Md. Kamal
-VS-
Manjuma Begum

Present : Smti. Jharna Saikia,
Civil Judge, Dibrugarh



ORDER

21.07.2022

This Misc. case arose out of a petition bearing No.446/2021 filed by the Petitioner/ Plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of C.P.C.

The brief of the Petitioner's case is that the Opposite Party is the sister of the Petitioner/Plaintiff. Their father Abdul Hakim (Since deceased) was an owner of a plot of land measuring 0B- 2 K- 0-Lessa of periodic Patta No.447, covered by Dag No.174 of extended Khalihamari Ward, Dibrugarh Town, District Dibrugarh, Assam by way of purchase in the following manner: (i) vide Sale Deed No.1706, dated 10.09.1993, from Musst. Amina Khatoon land

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measuring 1 K 10 Lessas and (ii) vide Sale Deed No.2169 dated 30.09.1994, from Musst. Jarina Khaton a plot of land measuring 10 Lessas.

After death of said Abdul Hakim on 19.06.2012 his 6 (six) legal heirs became the owner of the plot of land as mentioned below :-

(I) Asma Khaton(Wife) land measuring 0B-0K-9 Lessas.

(ii) Md.Ashraf,(Son) land measuring 0B-0K-9 Lessas.

(iii) Rujena Begum,(Daughter) land measuring 0B-0K-4 Lessas.

(iv)(Md.Kamal (Son) land measuring 0B-0K-9 Lessas.

(v) Manjuma Begum,(Daughter) land measuring 0B-0K-4 Lessas.

(vi) Halima Begum,(Daughter) land measuring 0B-0K-4 Lessas.

Accordingly, they mutated their name for their respective share of land in the revenue record and took possession of their own portion of land.

The Plaintiff/Petitioner took possession of the land which is the suit land and he has been paying revenue in respect of his portion of land. Later on, Manjuma Begum, Opp.Party/Defendant purchased 4



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lessas of land owned by Halima Begum and she became the owner of total land measuring 0B -0K- 8 Lessas. However she mutated a portion of land measuring 9 Lessas in her name.

That on 13.11.2021, the Opp.Party/defendant started construction over the land of the Plaintiff digging land to install pucca pillar for construction. On being asked to stop construction over the land belonging to the Plaintiff/Petitioner, the Opposite Party/defendant told him that the land belongs to her which she partitioned from the total plot of land measuring 0B 2K 0Lessa. Later on, after going through the concerned record he came to know that the Opp.Party/Defendant partitioned a plot of land measuring 9 Lessas in her name without knowledge and consent of the Plaintiff/Petitioner on 07.02.2020 vide partition case No. DIB/DOBE/2019-20/77/OPART, creating New Dag No.965 and New Periodic Patta No.687 of extended Khalihamari Ward, Dibrugarh Town Mouza, District Dibrugarh, Assam.



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Under the above facts and circumstances, the Petitioner/Plaintiff the instant Misc. case to pass an temporary injunction order restraining the Opposite

Party from making further construction over the suit land.

It is worth mentioning that the case was earlier transferred to the court of the learned Munsiff No.2 Dibrugarh and the learned Munsiff no.2 Dibrugarh has vide order dated 23.11.2021 while issuing notice to the opposite party was pleased to direct the parties to maintain status quo in respect of the suit property until further orders. Subsequently the case was transferred to this court on account of change of pecuniary jurisdiction.

Opposite Party has contested the Case by filing Written Objection wherein she had denied all the allegations laid by the Petitioner and prayed for dismissal of the instant Misc. Case. The opposite party as defendant no.1 has also filed her counter claim in the main title suit. I have also gone through the plaint and written statement and counter claim filed by the parties to come to a definite conclusion on the injunction petition. It appears that the opposite party has in her written statement pleaded inter alia that in the year 2013 verbal family partition was done but the plaintiff/petitioner is targeting and claiming the land of the defendant/O.P.



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as his allotted plot of land by way of threat and coercion. It is further pleaded in the W.S of the defendant that plaintiff has come to know about the partition of the entire land in the year 2013 when the land of Lt. Abdul Hakim was mutated in the name of all legal heirs of Lt. Abdul Hakim on 20.08.2013 and they are all possessing their respective shares since then. The defendant/ opposite party has accordingly prayed for dismissal of the injunction petition.



Heard learned Counsel for both the sides and also perused the materials available on record. There is no dispute that refusing or granting injunction is governed by three well settled principles :-

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- (i)** Whether the Petitioner has a strong prima-facie case to go to trial?
- (ii)** Whether irreparable loss and injury is likely to be caused to the Petitioner which cannot be compensated in terms of money?
- (iii)** Whether the balance of convenience lies in favour of the Petitioner ?

So far as the first principle of granting injunction is concerned the prima-facie case does

not mean that the Court should examine the merits of the case closely and come to a conclusion that the Petitioner has a strong prima-facie case in which he or she is likely to succeed. To establish a prima-facie case the Petitioner is to show that he has a serious question to be tried as to existence of his right as to matter in dispute which he alleges and can satisfy the Court that the matter in dispute requires to be protected in its actual physical condition till final disposal of the main suit.



In the instant case in hand, the counsel for the defendant had submitted that the partition of the suit land was done verbally and no one objected to it. He further stated that when the defendant Manjuma Begum started filling in soil in her suit property and started construction of pillars for construction of her house, no objection was given by the plaintiff then, but later on the plaintiff objected. It was prayed that the status quo order be vacated as the construction was in her share of land.

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On the other hand the learned counsel for the plaintiff submitted that at the time of the partition,

no notice was served upon him, hence the partition is illegal.

Thus it appears that the matter herein involves circumstances and issues which can be decided only when the suit further progresses, as there are claims by the parties which are inconsistent with the other side.

Hence, in the instant case from the pleadings of both the sides and rival contentions, it is seen that undoubtedly the Petitioner has a strong prima-facie case to go to the trial.

It is well settled that the judicial process of Injunction is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting interim injunction is to preserve the subject matter of the suit. The grant of injunction is subject to the court satisfying that it is not only necessary to satisfy that there is a serious disputed question to be tried in the suit, but the court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs



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protection from the consequences of apprehended injury.

The third condition is that the "balance of convenience" must be in favour of granting injunction and the court while arriving to this decision must find out the amount of substantial injury which is likely to be caused to the parties if injunction is refused and compare it with the injury which would be inflicted on the other party if the injunction is granted.

So far as the question of protecting the subject matter of the suit in its actual physical condition is concerned, this Court is of the view that till disposal of the real question in controversy between the parties and till the final outcome of the suit; if the Opposite Parties are allowed to continue with the construction it will have effect of changing the nature, character and feature of the suit land/property. Further, on thorough perusal of documents as well as the Case Record it is seen that if the injunction as prayed for is granted it will no way cause prejudice to the Opposite Parties as because if after trial at length the Petitioner fails to



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substantiate his case the Opposite Parties can always be compensated in terms of money and on the contrary if the injunction as prayed for is not granted to the Petitioner it will definitely cause prejudice to him.

In view of the discussions made above, this Court is of the view that other two ingredients viz. Balance of convenience and irreparable loss and injury also lies in favour of the Petitioner.

Hence, considering all, the order of status quo dated 23.11.2021 passed by the court of the learned Munsiff No.2, Dibrugarh is hereby made absolute. Accordingly the parties are directed to maintain the status quo over the suit land till disposal of the title suit being T.S. No. 06/2022.

Hence, the instant Misc. Case is hereby disposed off on contest.



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