

IN THE COURT OF CIVIL JUDGE NO. 2, KAMRUP, GUWAHATI.

Present : ***Sri S.N. Sarma , LLM. AJS,***
Civil Judge No. 2,
Kamrup, Guwahati.

Reference : ***Misc. Appeal No. 4/11***

Appellant : ***Sri Rohini Kumar Mazumdar***

vs

Respondents : ***Sri Debendra Kumar Choudhury & 2 ors.***

For the appellant : ***Sri H. Sharma , Advocate***

For the respondents : ***Mr. S. Ali , Advocate***

Date of hearing : ***9/8/12***

Date of Judgment : ***23/8/12***

JUDGEMENT

This Appeal is preferred under Order 43 Rule 1 (r) of the CPC challenging the order dated 28/2/11 passed in Misc. (J) Case No. 520/10 arising out of T.S. No. 347/10 by the learned Munsiff No. 1, Guwahati refusing to grant temporary injunction.

Being highly aggrieved with the aforesaid order the appellant preferred this appeal on the following amongst other grounds :

GROUND

- 1. For that the learned Munsiff has committed manifest error of law and facts in passing the impugned order; as such the same is liable to be set-aside.*
- 2. For that the court below has passed the impugned order or surmise and conjecture.*
- 3. For that the learned court has failed to appreciate the materials on records at the time of passing the impugned order as such, the same is not tenable in law.*
- 4. For that the trial court has misread the averments made and has not considered the right accrued to the appellant and has not at all considered revenue records except bold statement of illegality in the entry in the Sadar Jamabandi.*
- 5. For that court below has not considered the purchase deed of suit area which was purchased from Girish Chandra Choudhury as reflected in the sale deed 6153 /71 thereby arrived at erroneous finding which passing the impugned order.*
- 6. For that the learned court failed to consider the vital point about the question to be tried about loss of rights of the O.Ps over the suit area consequence of sale by the father/father in law /grand father to his brother who in turn transferred to the vendor of the appellant.*
- 7. For that it is apparent from the documents namely, the*

document No. 1 vide note Ga that Harendra Kumar Choudhury purchased the suit area and accordingly his name was mutated in the year 1970 and at any point of time the opposite parties have not challenged the same about illegality or wrongly granting mutation and also failed to consider document No. 8.

- 8. For that the learned court has also failed to consider about hardship caused to the appellant due to lack of passage meant the said land and related loss and injury.*
- 9. For that the court has passed the impugned order mechanically and behind back of the appellant as the date was fixed for order on 14/2/11 and thereafter nothing any entry in daily cause list but just laying down his office, on 28/2/11 returned the case records to Bench Assistant passing the impugned order.*
- 10. For that the court has not discussed all the ingredients for granting injunction while passing the impugned order except just non-existence of prima-facie case which is not properly in discussing injunction matter.*
- 11. For that impugned order is palpably illegal and wrong and liable to be quashed.*
- 12. For that in any matter of view, the impugned order ought to be reversed.*

Plaintiff's/appellant's case is that the plaintiff No. 1 is the owner and possessor of plot of land measuring 2 kathas 3 laechas and the plaintiff No. 2 is the constituted attorney of the plaintiff No. 1. The plaintiffs state that Girish Chandra Choudhury and Harendra Kumar

Choudhury, sons of Kali Ram Choudhury owned and possessed 1 bigha 1 katha 8 lechas of land and they partitioned the said land among themselves, whereby 2 kathas 8 lechas

fell in the share of Harendra Choudhury and 4 kathas fell in the share of Girish Choudhury, but since there was no passage for ingress and egress of land falling in the share of Harendra Choudhury he purchased a land measuring 5 lechas from Girish Choudhury towards the southern side in Dag No. 410 of Patta No. 410/273, the area so purchased was mutated in the name of Harendra Choudhury, consequently, Harendra Choudhury became the owner and pattadar of land measuring 2 kathas 13 lechas. The 5 lechas of land is the suit land. Harendra Choudhury sold the land to Upendra Bora and Priti Bora by two sale deeds. After the death of Upendra Bora, his wife Priti Bora sold the entire land to Madan Sarma, Joy Prakash Chouhan and Rudreswar Thakuria on 14/1/2000. The plaintiff and three others had purchased lands measuring 4.92 are from Pabitra Choudhury which lies contiguous to the land of Priti Bora and Upendra Bora. The purchasers of land of Pabitra Choudhury defendants No. 1, 8 & 9 who are the legal heirs and successors of Girish Choudhury, started digging the suit land in the eastern side apart from constructing latrine of temporary nature and the plaintiff requested the defendant No. 1 not to encroach the suit land which would severally affect the right of the plaintiff in using the suit land as path to this plot of land and as such prays to restrain the opposite party No. 1, 8 & 9 from taking any construction whatsoever and to remove the obstructions put over the suit area.

Against the injunction petition defendant/respondent has filed written objection inter alia stating that injunction petition is

misconceived , baseless , and not maintainable . The defendants specifically denied that the petitioner has got any right to use the suit land for ingress and egress to his land. It is stated that there is an alternative path lead to the land of plaintiff and the path is known as Dipak Path leading from R.K. Choudhury Road. Defendant also denied the fact that Girish Chandra Choudhury sold the schedule land to Harendra Kumar

Choudhury in the year 1969. The very fact of purchasing of land by H.K. Choudhury from G.C. Choudhury in the year 1969 is not believable at all. H.K. Choudhury during his life time never resided and stayed upon his share of land by constructing in structure and as such there was no question of ingress and egress. The father in law/grand father of the respondents sold away land measuring 5 lechas for passage to the land of H.K. Choudhury who in turn sold to the vendor of the appellant vide document No. 3 and the said sale deed No. 5121/69 dated 22/5/69 are significant bearing on the matter in hand are out and out false, baseless and motivated states and opposite parties deny the same. At no point of time said Harendra Kumar Choudhury purchased 5 lechas of land from Girish Chandra Choudhury, as alleged. /the land as mentioned in the alleged sale deed No. 5121/1969 is distinct and different than the land covered by the present suit path/road and as such the same has got no bearing at all upon the matter in hand, Further, the alleged trace map and sale deed, which the petitioner wants to file and rely upon in the instant appeal proceeding have no connection or nexus with the suit path/road in any manner. The story as propounded by the appellant/petitioner regarding searching and tracing of the aforesaid documents is not at all believable and sustainable one and as such at this stage of the proceeding of the case the aforesaid documents are not permissible and acceptable in the case for any purpose under the law. As

alleged, G.C. Choudhury never sold land measuring 5 lechas covered by the suit path/passage to H.K. Choudhury in the year 1969. It may be mentioned here that said H.K. Choudhury during his lifetime never resides and stayed upon his share of land by constructing any structure, as such there is no question of buying and / or using the suit land for the purpose of ingress and egress , as alleged, by the petitioner. The opposite parties further state that there was no sale transaction took place between G.C. Choudhury and H.K. Choudhury during their lifetime and as such the very existence of sale deed No. 5121/69 dated 22/5/69 is doubtful and suspicious and as such the same

cannot be considered for any purpose in the case. The aforesaid sale deed No. 5121/69 is a manufactured and manipulated document and as such the same cannot be relied upon the Hon'ble Court for any purpose in the instant case. The aforesaid documents are not at all trustworthy and reliable documents and the same are not relevant and germane for deciding the present appeal. Further the documents, as stated, cannot be filed and relied upon at this stage of the proceeding under the law. The plea taken by the petitioner is mere show off without having any legal basis and foundation and as such prays to dismiss the injunction petition.

Initially , ad interim injunction was granted. However, hearing learned counsel for both sides injunction petition was rejected and ad interim injunction was vacated. Hence, this appeal against rejection of temporary injunction.

I have gone through the entire case record including lower court record and the impugned order . I have also heard learned counsel for the parties.

Learned counsel for the appellant has argued that learned court below has not consider the purchased deed of suit area which was purchased from Girish Chandra Choudhury. He further argued that there is a prima-facie case in favour of the appellant and if injunction is not granted appellant shall suffer irreparable loss and injury and as such prays to allow the appeal. Controverting the submission of learned counsel for the appellant his counter part learned counsel for the respondent/defendant has argued that the suit patta land is in the name of defendants and defendants are possessing the suit land and as such argued that learned lower court has rightly rejected the injunction petition. He also pointed out that in case of appeal against rejection of injunction court should not interfere unless the order passed by the learned lower court is capricious and arbitrary.

I have gone through the relevant documents submitted by the parties . From the record, it appears that the suit patta is the patta land of respondent and they are in the possession. Petitioner has failed to show that they purchased the suit path. As the defendants are in the possession of suit land and the patta is also in the name of defendants I am of the view that the plaintiff has no prima-facie case so as to grant injunction and in a case where there is no prima-facie case there is no question of irreparable loss and balance of convenience in favour of the appellant. In such a circumstances, I am of the view that the learned Munsiff has rightly rejected the the injunction petition.

ORDER

*In the result, the appeal is **dismissed on contest** without cost. Send down the copy of the judgment to the lower court along with the LCR.*

*Given under my hand and seal of this court on this the **23rd day of August, 2012** at Guwahati.*

Civil Judge No. 2,

Kamrup, Guwahati.

Dictated & corrected by me

*Civil Judge No. 2,
Kamrup, Guwahati.*