

Assam Schedule VII. Form No.143

HIGH COURT FORM NO. (J) 13

Form of Order Sheet

DISTRICT : **TINSUKIA**

IN THE COURT OF THE CIVIL JUDGE, TINSUKIA

Present:- Sri Ranjan Brahma, Civil Judge, Tinsukia

Misc.(J) Case No.119 of 2020

(Arising out of Title Suit No.51 of 2020)

Sri Mahesh Rajak.....Petitioner/Plaintiff

-Vs-

Smt. Parul Rani Ghosh.....Opposite Party/Defendant

03.04.2021

Both the parties are duly represented by their respective learned counsel.

The ex parte ad-interim injunction was granted by this Court vide Order dated 07.11.2020 and the O.P./defendant is restrained from creating any third party interest in any manner over the suit land which is extended till today.

Upon receipt of Notice, the O.P./defendant appeared and filed his written objection. I have heard the learned counsel for the petitioner as well as the O.P. in length.

The case of the petitioner/plaintiff in a nutshell is as follows-

That the petitioner/plaintiff has filed the main suit i.e. Title Suit No.51/2020 for Specific Performance of Contract and other reliefs. That the O.P./defendant is the owner of the suit land (described in the Schedule of the plaint/instant application) and she being in need of money proposed to sell the suit land at a valuable consideration of Rs.7,75,000/- and with that intention negotiated with the petitioner/plaintiff, who also agreed to purchase the suit land at such consideration amount.

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That accordingly one agreement for sale was also reduced into writing on 16.07.2016 between the parties and it was also got registered; that as per the said agreement for sale and the agreement between the parties, the petitioner/plaintiff paid a sum of Rs.50,000/- as advance money to the O.P./defendant agreeing to pay the remaining balance amount of Rs.7,25,000/- to the O.P./defendant on the date of execution and registration of the sale deed.

That as per the said agreement, the O.P./defendant had to obtain the necessary sale permission from the concerned authorities at her own cost within a period of one year and to hand over the same to the petitioner/plaintiff for preparation and registration of a formal sale deed but the O.P./defendant deliberately and intentionally neglected to obtain the necessary sale permission and N.O.C. instead of several request made by the petitioner/plaintiff.

That subsequently, in the month of June/July, 2019, the O.P./defendant came up with a new proposal and requested the petitioner/plaintiff to enter into a fresh agreement for sale and demanded Rs.13,85,000/- as full consideration amount in respect of the suit land in place of previously negotiated amount; that the O.P./defendant also disclosed that she had no money to bear expense for obtaining sale permission and N.O.C. from the concerned authorities.

That the petitioner/plaintiff having no alternative agreed to such demand of the O.P./defendant and accordingly on 14.11.2019 paid the full consideration amount of Rs.13,85,000/- for the suit land and the O.P./defendant accepted the said full consideration amount and accordingly executed a Promissory Note cum Agreement on 14.11.2019 for sale in respect of the suit land promising to execute the sale deed within a short period of six months after obtaining the necessary sale permission from the concerned authorities.

That however, after executing the fresh/new agreement for sale, the O.P./defendant started to avoid the petitioner/plaintiff and since August, 2020, some people of the locality informed the petitioner/plaintiff that the O.P./defendant is in search of some other customer/purchaser for sale of the suit land at a higher rate.

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That thereafter the petitioner/plaintiff visited the house of the O.P./defendant to enquire about the said fact and then the O.P./defendant boldly stated to the petitioner/plaintiff that she is going to sell the suit land to some other persons at more higher rate and will also not return the consideration amount paid to her by the petitioner/plaintiff.

That on 26.10.2020 from reliable sources the petitioner/plaintiff came to know that the O.P./defendant had already negotiated with some persons to sell the suit land and is going to enter into a written agreement for sale within two or three days in respect of the suit land.

The learned counsel for the petitioner submitted that it is a fit case to grant him temporary injunction as there would be multiplicity of suits, if injunction is not granted as prayed for.

On the other hand, the learned counsel for the O.P. denied the statements of the petitioner by raising objection and stating inter-alia that the O.P. entered into negotiation with the petitioner for sale of property in urgent need of money, as such after the execution of the agreement for sale, the O.P. through her son repeatedly approached and requested the petitioner for payment of the part consideration amount as agreed to be paid by the petitioner to the O.P. within a period of one month from the date of execution of agreement for sale but the petitioner failed to comply with the utmost terms of the negotiation as entered into between the petitioner and the O.P. to pay the balance consideration amount of Rs.5,00,000/- as agreed. That in the year 2017, the O.P. got her aforesaid land demarcated by metes and bound and after demarcation, it was found that the quantum of land possessed by the O.P. is much lesser than the area proposed to be sold to the petitioner.

That after receiving the Notice of this Court issued in connection with the instant Misc.(J) Case, the O.P. and her son for the first time came to know about the illegality committed with them by the petitioner. The contents reflect that the said agreement for sale was executed in favour of the petitioner with terms and condition that the balance consideration amount of Rs.7,25,000/- shall be paid by the petitioner to

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the O.P. on the day of execution and registration of formal Deed of Sale in favour of the petitioner and the O.P. shall obtain necessary sale permission from the authority concern within a period of one year from the day of execution of agreement for sale and shall hand over the same to the petitioner for preparation and registration of the formal deed of sale, whereas the O.P. party negotiated to sale the suit land at a consideration price of Rs.7,75,000/- only in urgent need of money on terms and condition that besides paying a sum of Rs.50,000/- only as advance consideration amount on the day of entering into agreement for sale, the petitioner shall pay to the O.P. a sum of Rs.5,00,000/- within a period of one month. That the execution and registration of agreement for sale being Deed No.1289/2016 dated 18.07.2016 of the Sr. Sub Registry Office, Tinsukia was obtained by the petitioner by adopting unfair practices. The said agreement for sale does not confer any right, authority and claim of the petitioner in respect of the land, as referred in Schedule of the said agreement for sale and is liable to be declared cancelled.

I have considered the above rival contentions as well as the three well established principles for grant or refusal of temporary injunction viz. (1) Whether the petitioner has made out a prima-facie case (2) Whether the balance of convenience in favour of the petitioner i.e., whether it would cause greater inconvenience to the petitioner if the injunction is not granted than the inconvenience which the O.P. would be put to if the temporary injunction is granted, and (3) Whether the petitioner would suffer irreparable injury.

It appears to me that the O.P. admitted the agreement for sale dated 16.07.2016 with respect to the suit land which was registered being Deed No.1289 of 2016 for sale the suit land at a consideration of Rs.7,75,000/- and received an advance amount of Rs.50,000/- with condition that the O.P./defendant would obtain sale permission/N.O.C. within one year and registered the suit land in the name of the petitioner/plaintiff by receiving the balance amount from the petitioner/plaintiff. The allegation of the petitioner is that the

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O.P./defendant failed to obtain the N.O.C./sale permission the petitioner/plaintiff again offered him enhance amount of Rs.13,85,000/- for the same plot of land and executed an agreement/promissory note on 14.11.2019, thereby paying all the said amount to the O.P./defendant. But, the O.P./defendant again failed to obtain the requisite sale permission/N.O.C. and did not co-operate with the petitioner/plaintiff to register his name in respect of the suit land.

The learned counsel for the O.P./defendant has not denied the execution of the registered agreement dated 16.07.2016 and receipt of Rs.50,000/- from the petitioner/plaintiff but O.P./defendant has denied the other contents of the agreement. According to the O.P./defendant, the petitioner/plaintiff shall have to pay a sum of Rs.5,00,000/- only within one month from the date of execution of agreement for sale and the rest i.e. a sum of Rs.2,25,000/- shall be paid at the time of registration of Deed of Sale in favour of the petitioner/plaintiff and also negotiated the necessary land sale permission/N.O.C. shall be obtained by the petitioner at his cost and initiative and the O.P./defendant shall put her signature in the application form, affidavit and any other document required for the purpose of obtaining land sale permission. Thus, there is sufficient prima-facie case for go on trial for the proper adjudication of the matter and from bare perusal of the above facts and circumstances, it appears to me that petitioner has sufficient reasons for the apprehension that he may face greater inconvenience and irreparable loss or injury, if the O.P.s are not restrained from trying to dispossess the suit premises by creating third party interest, etc. Thus, the petitioner has successfully shown that he has strong prima-facie case and the balance of convenience in his favour. If the temporary injunction as prayed for by the petitioner is granted, I am of the view that it would not cause greater inconvenience to the O.P. as the O.P./defendant has not denied the execution of the agreement for sale dated 16.07.2016 with respect to the suit land and thereby receipt of Rs.50,000/- though the O.P. has raised questions about the other terms and conditions of the said sale agreement and also disputed the subsequent agreement

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dated 14.11.2019. It appears that there was a transaction between the petitioner/plaintiff and the O.P./defendant with respect to the sale of the disputed plot of land as the said agreement dated 16.07.2016 was duly registered. Hence, the subject matter i.e. the disputed plot of land is very much necessary to be preserved as there is a prima-facie case of the petitioner/plaintiff for go on full trial for the proper adjudication of the matter. There could not be any proper adjudication of the matter if the O.P. transferred the disputed plot or create interest to any third parties. In view of the above discussions, I am of the opinion that the O.P./defendant should be restrained from alienating the suit land to any third parties at this stage.

Thus, considering the above discussions and observations, the temporary injunction is hereby granted and the O.P./defendant is hereby restrained from creating any third party interest in any manner over the suit land (described in the Schedule of the plaint/instant application) till disposal of the Title suit.

However, no cost is imposed.

Thus, consequently, the instant application is disposed on contest without cost.

(Dictated)