

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:- Ms. Leena Doley, AJS, Civil Judge, Tinsukia

Misc. (J) case No.45 of 2022
(Arising out of Title Suit No.24/2022

Smt. Gaytri Devi and Another.....Petitioners

--VS--

Numan SiddiqueOpposite Party

13.05.2022

The parties are duly represented.

The instant Petition vide No.1900/2022 has been filed by the petitioners/plaintiffs under Order XXXIX Rule 1 & 2 r.w. Section 151 of C.P.C. against the O.P.

The plaintiffs in the suit has prayed for decree of declaration having right, title, interest and possession over the suit land mentioned in Schedule-I and Schedule-II, declaration that the documents dated 30.06.2018, 24.10.2018 and 25.01.2020 are void ab-initio and having no force of law and liable to be cancelled and for permanent injunction of restraint against the O.P.

The contentions of the petitioners in this instant petition is that they are the rightful owner having

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possession over the suit land as described in Schedule-I and Schedule-II inherited after the death of Jugal Prasad Gupta being husband of Petitioner No.1 and father of Petitioner No.2. The petitioners stated that they have been enjoying the fruit of the suit land i.e. plucking green tea leaves and have been managing the affairs of tea cultivation business since the death of Jugal Prasad Gupta.

The petitioners stated that on 09.03.2022, the O.P. entered the suit land and claimed to be the owner of the suit land and tried to restrain the O.P. No.2/Plaintiff No.2 and his men from plucking tea leaves and tried to dispossess him. The petitioners stated that on 10.03.2022, some unknown representatives of the O.P. visited his home along with two Notarized Agreements vide Serial No.2498 dated 30.06.2018 and Serial No.1486 dated 24.10.2018, both were allegedly signed between Jugal Prasad Gupta and the O.P., on strength of which the O.P. claimed that he is the lessee of the suit land and he will pluck the tea leaves and take possession of the suit land.

The petitioners stated that after going through those two Agreements found that in Agreement vide

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Serial No.2498 dated 30.06.2018 it is averred that deceased Jugal Prasad Gupta borrowed an amount of Rs.5,30,000/- from the O.P. after executing the said Agreement with the condition that he will return the money till 30.10.2018 and in the event of default, the said amount shall be treated as advance payment for commencement of a lease for ten years commencing from 31.10.2019. The said Agreement also avers that the borrower has given a Cheque of like amount to the O.P. with the understanding that the cheque will be encashed after 30.10.2018.

The petitioner stated that after going through the second Agreement No.1486 dated 24.10.2018, he found that a Lease Deed was executed between Jugal Prasad Gupta and the O.P. for the same suit land for a period of 15 years commencing from 01.04.2019 and stated that both these documents were not registered as provided by statues. The petitioners stated that there is another third Agreement vide Serial No.600 dated 25.01.2020 titled as Agreement for Sale between Late Jugal Prasad Gupta and the O.P. regarding only the Miadi Patta part of the suit land excluding the Eksonia patta land but the description of the land given was

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incorrect and the total consideration as averred have been fixed at Rs.1,45,0000/- out of which an amount of Rs.9,00,000/- is said to have been already paid by the O.P. to Late Jugal Prasad Gupta.

The contentions of the petitioners is that the documents as referred above are false and fabricated and have been forged as no prudent man would execute a number of agreements for the same plot of land with the same person and also claims that none of those documents says that the possession of the land is actually transferred to the opposite party at the any point of time. The petitioners also contented that during the lifetime of Jugal Prasad Gupta the O.P. remained silent and only after the death of Jugal Prasad Gupta, the O.P. has come up with those documents in hand to raise his claims over the suit land to grab the land.

The petitioners stated that on 23-03-2022 one Abdul Rajak Khan with some of his associates under instruction of the O.P. came to the suit land and misbehaved with the Plaintiff No.2 and declared that he has come to take over the Tea Garden as he has paid certain amount to the O.P. for running the tea garden. The petitioners alleged that the said Abdul

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Rajak Khan criminally intimidated the plaintiff No.2 and his staffs and also verbally abuse them, for which the Plaintiff No 2 also filed an Ejahar (FIR) in the Doomdooma police station and a case as Doomdooma P.S. Case No 93 of 2022, u/s 294, 506 I.P.C. was registered and the same is pending in investigation.

The petitioners contented that they have right, title, interest and possession over the suit lands and if the illegal and unlawful acts of the O.P is allowed to be continued, they shall suffer heavy loss of irreparable nature and their valuable right over the suit lands shall be jeopardized which cannot be compensated in terms of money and therefore prays for granting temporary injunction restraining the O.P and his men from disturbing their peaceful possession and enjoyment over the suit land and restraining the O.P. from creating nuisance and from dispossessing the petitioner illegally and unlawfully from the suit lands.

The O.P. party on the other hand has contended that Late Jugal Prasad Gupta was a small tea grower and was the recorded pattadar of a plot of land measuring 7 bighas 3 kathas 18 lessas under various

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Dag of P.P. No.88 more particularly described in Schedule A of their written statement and also had possessory right over 12 bighas 2 kathas 2 lessas of land described in Schedule B of their written statement and the said land is recorded in the name of Hindustan Lever Limited surrounding the Schedule -A land.

The O.P party has contended that as per lease agreement dated 01-04-2019 deceased Jugal Prasad Gupta has handed over the Schedule A and B land to the O.P and since then the O.P. is enjoying the possession thereof. The O.P. has termed the whole suit land in Schedule A and B as Schedule-C property. The O.P. has raised contention that the petitioners alone are not the legal heirs of the deceased Jugal Prasad Gupta and that there are three more daughters who have been excluded in the record of rights. The O.P. contended that while taking over possession of the Schedule-C property, the production of the tea leaves in the garden was nominal due to poor maintenance and tea bushes were unhealthy due to lack of proper manure and non spraying of insecticides, etc. and the O.P. invested huge amounts in the garden to increase

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productivity and fenced the garden to stop the entry of animals, etc. and also constructed one hut on a part of the said land. The O.P. also contended that Ahmad Raja Khan was looking after and managing the garden and was supplying the plucked green tea leaves in the name of M/s. B. N. Tea Estate since 01.04.2019 till date and the payments from the factory were being received in the account of his son.

The O.P. submitted that the Notarized agreement dated 30.06.2018 and 24.10.2018 are valid documents executed by Jugal Prasad Gupta and also the contents of his agreements are true and binding upon the petitioners being legal heirs of Late Jugal Prasad Gupta.

The O.P. further stated that on receipt of substantial amount of Rs 9,00,000/-after execution of the agreement for sale dated 25-01-2020 Jugal Prasad Gupta handed over his title document and revenue records of the aforesaid Patta land to the O.P. and while going through the land records, it was found that in the former Agreements dated 30.06.2018 and 24.10.2018 due to typographical mistake the details of the land was mentioned as 6 Bighas 3 Kathas 18 Lessas instead of 7 Bighas 3

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Kathas 18 Lessas. The petitioner further stated that the O.P. and Jugal Prasad Gupta obtained all relevant documents required for N.O.C. and jointly applied for land sale permission before the Deputy Commissioner, Tinsukia vide Memo No.NOC/18/5544 /2020 dated 11.03.2020. The O.P. contended that he was ready to pay the balance consideration amount of Rs.5,50,000/- to Jugal Prasad Gupta on the date of execution and registration of the proposed Sale Deed in respect of Schedule-A property but during the pendency of said process of N.O.C., unfortunately, Jugal Prasad Gupta died on 05.05.2020 and the N.O.C. could not be obtained.

The O.P. denied the claim of the petitioner that the N.O.C. could not be obtained as the documents submitted by him were forged. The O.P. further contended that after death of Jugal Prasad Gupta, he visited the house of the petitioners on many occasions requesting them to mutate their names in the record of rights and co-operate in obtaining land sale permission and thereafter, execute the Sale Deed in his favour, to which though the petitioners agreed but purchased time on this or that pretext. The O.P. further contended that on 05.02.2022, he

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came to know from a Lot Mandal of Borhapjan Gaon the name of Jugal Prasad Gupta was deleted from land records on 05.02.2022, as such on 06.02.2022, the O.P. visited the house of petitioner and asked for the Jamabandi copy for paying updated land revenue but the petitioners did not furnish the copy and only showed the mutation order. The O.P. stated that on checking the mutation, order he found only name of petitioners as recorded pattadars and they have suppressed the names of other three daughters Late Jugal Prasad Gupta.

The O.P. stated that he was ready and willing to pay the balance consideration amount of Rs.3,50,000/- to the petitioners on the date of execution and registration of proposed Sale Deed of Schedule-A property but surprisingly came to know on 26.03.2022 that a police case was registered in Doomdooma Police Station lodged by petitioner No.2 Aman Kumar Gupta and on enquiry, the O.P. found that the Ejahar was lodged alleging a false incident alleging the uncle of the O.P. to have criminally intimidated the petitioner No.2. The O.P. further stated that on 29.03.202, the petitioner No.2 came to the Schedule-C property along with some stranger

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and on enquiry by the uncle of the O.P. he expressed his intention to forcefully take over the possession of Schedule-C property by hook or crook.

The O.P stated that he has already paid a large amount of money i.e. Rs.9,00,000/- in furtherance to the Agreement for Sale and also paid Rs.7,15,500/- as lease amount and is ready to pay the balance consideration amount but the acts and conducts of the O.P.s have cast a cloud over the legal right and subsisting interest of the petitioner over Schedule-C property and thus, his rights and interest have become necessary to be protected by due process of law.

The O.P.s denied the contention of the petitioner that the N.O.C. was not issued because of the fraud played by the O.P using forged documents. The O.P has contended that injunction of restraint as prayed by the petitioners is liable to be rejected as he is in possession of the suit land as handed over by the deceased Jugal Prasad Gupta and he cannot be evicted or restrained from doing any act over the suit land.

I have heard the learned counsel of both the sides and have gone through the instant petition and

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the written objections along with plaint and documents available in the case record of the main suit in details.

From the above contentions and counter contentions and documents, it is evident that there is a counter suit filed by the defendant/O.P. against the petitioners/plaintiffs. In this suit and instant petition, both the parties have claimed of having possession over Schedule-I and Schedule-II land as described in the plaint.

It is evident from all the discussions that this suit property has tea cultivation over it and in no manner it will not be possible to compensate either of the parties in terms of money and therefore, I am of the opinion that this is not a fit case for consideration under purview of granting temporary injunction taking note of the golden principle of irreparable loss.

Though there is a prima-facie case for trial but there is no urgency in granting temporary injunction restraining the other side from doing any act as the disputed property is a land having tea cultivation and in no manner the loss if suffered by either of the parties may not be compensated in terms of money.

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Taking note of the dispute of claiming right, title, interest and possession over the disputed property by both the parties, I am of the opinion that if status-quo with respect to the suit property is maintained by both the parties, the parties will not be put to any inconvenience and thus they will not suffer any irreparable loss or injury.

I am of the opinion that the dispute needs to be settled in the main suit without putting the parties under any order of restraint until disposal of the main suit.

Thus, considering the above, in order to preserve the subject matter of the dispute and for proper adjudication of the matter, **both the parties are hereby directed to maintain status-quo as on today in respect of the suit property till disposal of the suit and no order for temporary injunction is granted as prayed by the petitioner** and this Misc.(J) case is disposed off on contest

(Dictated)


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