

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.69 of 2021
(Arising out of Title Suit No.41/2021)

Smt. Namita Paul and Another.....Petitioners

--VS--

Sri Sudip PaulOpposite Party

19.05.2022

The parties are duly represented.

The instant Petition vide No.4112/2021 has been filed by the petitioners 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, partition and permanent injunction against the defendants and other reliefs.

The contentions of the petitioners in this instant petition is that the petitioner No.1 is the wife of Late Lakhan Paul and the petitioner No.2 is the son of Late Lakhan Paul and the O.P. is the younger brother of Late Lakhan Paul.

The petitioners stated that Late Lakhan Paul and the O.P. jointly started a jewellery shop having

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joint possessory right and interest over the shop which is the suit property situated at Mission Road, Digboi town which was made of CI Sheets roof, bamboo and partial brick walls having timber door in front with electrical fittings, etc in the name and style of Paul Jewellery.

The petitioners stated that the said shop/suit premises was started in the year 1993 and later on, in the year 2012 the suit premises was reconstructed into a pucca shop popularly known as Paul Jewellery. The petitioner contended that both Lakhan Paul and the O.P. started jewellery business in the name of Paul jewellery and Late Lakhan Paul being the elder brother devoted maximum time in establishing and running the jewellery business which led success of their business. The petitioner stated that they both were peacefully running the jewellery business and paying regularly licence fees jointly in their name and also sharing the income of the said business equally between them without any dispute and differences.

The petitioners further contended that the petitioner No.2 with passage of time also engaged

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himself as an associate of his father and uncle under their guidance and supervision learned the work of jewellery and have been working together and made their business as one of the prominent shop of Digboi town. The petitioner contended that on 18.08.2021, Lakhan Paul expired due to his ill-health at A.M.C.H., Dibrugarh leaving behind the petitioners as his legal heirs and successors and after his death. The petitioners contended that when the petitioner No.2 again started going to the suit premises for extending his part of duty, the O.P. did not allow him to deal with the customers and also asked him not to visit the suit premises.

The petitioners further contended that when the petitioner No.2 wanted to see the stocks, ledger account, account books, cash book, money receipts, etc. and wanted to know the share of the profits gained by his deceased father, the O.P. did not allow him to see any of those records and withheld all these stocks, ledger account, account books, cash book, money receipts, etc. under his custody and kept the same under lock and key.

The petitioners further contended that when the petitioners claimed to have equal share over the

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suit premises "Paul Jewellery" and that they have equal share over the income of the business, the O.P. illegally and unauthorizedly took over the control over the suit premises and refused to part with any share and profits of the suit premises. The petitioners stated that being the wife and son of Late Lakhan Paul, they have equal share over the assets, capital income of Paul Jewellery and therefore, have filed this suit for decree of declaration, partition and have filed this instant petition for temporary injunction against the O.P., restraining the O.P. or any other person or persons claiming under or through him from transferring and/or part of the possession of the suit premises as well as restraining from acting and/or doing any acts partially to the interest of the petitioners.

The O.P. on the other hand has admitted to the contentions of the petitioners that the suit premises is a joint property acquired by both him and his deceased brother Late Lakhan Paul having joint possessory right and interest over the suit premises. The O.P. has denied the contention of the petitioners

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that Late Lakhan Paul being the elder brother devoted his maximum time in establishing and running the jewellery business which led to success of their business and stated that he being bachelor at the starting of Paul Jewellery used to devote maximum time in developing the business and for his efforts, they achieved success in their business.

The O.P. has admitted the contention that he and Late Lakhan Paul jointly obtained trade licence and they have been jointly depositing the licence fees but denied the contention that they used to equally share the income of the said business and contended that Late Lakhan Paul used to withdraw the maximum amount for his personal and family use.

The O.P. contended that the petitioner No.2 was a boy of about 9 years at that time and he used to visit the suit premises along with his mother and thereafter also the petitioner No.2 occasionally visited the suit premises and sit idle without showing any interest in art of jewellery making. The O.P. contended that seeing this careless and uninterested attitude of petitioner No.2, having no interest in

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learning the art of jewellery making, both the O.P. and Late Lakhan Paul jointly purchased a new shop in the name of O.P. No.2 in the year 2011 adjacent to the Paul Jewellery and started the shop under the common signboard for both the shops i.e. Paul Jewellery. The O.P. further contended that before filing of this suit in the month of October, 2021, a new signboard was fixed in the name of Ashirbad Jewellery by O.P. No.2 in front of the new shop.

The O.P. also contended that both the shops old Paul Jewellery and a new shop Ashirbad Jewellery were reconstructed in the year 2012 with the income and profit of old Paul Jewellery. The O.P. denied the contention raised by the petitioner that he has taken full control over the suit premises after the death of Lakhan Paul but he was allowed to keep control and management of the Paul Jewellery due to the illness of his brother and the O.P. No.2 was allowed to run, control and manage the new shop Ashirbad Jewellery adjacent to the suit premises.

The O.P. contended that no partition was done during the life time or after death of Lakhan Paul and thus the petitioners claiming and demanding only

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half share in the suit premises without disclosing that in both the shop, the petitioners and the O.P.s have equal share and if partition is allowed, partition has to take place taking both the shops i.e. Paul Jewellery and now Ashirbad Jewellery into account.

The O.P. contended that the petitioners have baselessly concocted the whole facts and have filed this suit only with apprehension and imaginary view that the O.P. shall alienate the suit premises and deprive the petitioners from their lawful share over the suit premises. The O.P. has contended that the prayer for injunction filed by the petitioners is also based on apprehension and imagination and by alienating the suit premises the O.P. himself will suffer loss as it is the only source of income for him and his family and therefore, no injunction in this regard restraining the O.P. from alienating the suit premises is necessary and the petition filed may be dismissed.

The O.P. in support of their objection has relied upon the Judgment of Hon'ble Gauhati High Court in I.A. (Civil) No.209 of 2017 in CRP No.26 of 2017 and decision of Hon'ble Supreme Court in M/s Best Sellers

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Retail (India) Pvt. Ltd. -Vs- M/s. Aditya Birla Nuvo Ltd. & Ors. reported in Civil Appeal No.4313-4314 of 2012 decided on 8th May, 2012.

I have heard the learned counsel of both the sides and have seen the instant petition and the pleadings of the petitioners in the main suit and documents relied upon and after a fair consideration, the matter of granting injunction will be decided on three golden principles of temporary injunction:-

Prima-facie case:-

As the both the parties have admitted the fact of existence of the suit premise in the name and style of Paul Jewellery and as both the parties have admitted that they have equal share over the said property but only the O.P. is in possession of the suit premises and further, as claimed by the O.P. that not only the suit premises but also another adjacent shop in the name and style of Ashirbad Jewellery is also a part of the suit premise and partition has to take place taking both the shops into account for which a decision of this Court is required, a prima-facie case has been meted out.

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Balance of convenience:-

In this instant case, the O.P. is in possession of the suit premise and he has been having the possession during the life time of Late Lakhan Paul and has been looking after the business of Paul Jewellery. As the O.P. has not denied the claim of the petitioners that they also have equal share in Paul Jewellery, no question as to alienating or transferring the suit premise to any other person by the O.P. arises. Restraining the O.P. and any other person/persons claiming under or through him from transferring and/or part with the possession of the suit premises and by restraining the O.P. by doing any act would though not cause any inconvenience to the O.P. but as he has already admitted the existence of equal share of the petitioner over the suit premises and as he is in possession of the suit premises and has been earning his livelihood by running the business of jewellery in the suit premises which is his sole source of income, this Court is of the opinion that if the suit premises is maintained in the manner as it stands today by both the parties till disposal of the main suit, it will be convenient for

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both the parties and will also help this Court in adjudicating the matter also keeping in mind the counter-claim filed by the O.P./defendants.

Irreparable loss:-

As discussed above as the possession of the suit premises is with the O.P. who has been running and looking after the business of the suit premises, and who has admitted that the petitioners have equal share over the suit premises, any profit acquired by the O.P. or to be acquired by the O.P. from the business, to be shared with the petitioners can be compensated to the petitioners in terms of money and no irreparable loss will be caused to the petitioners.

Therefore, from the above discussions, this Court is of the opinion that no temporary injunction restraining the O.P. as prayed by the petitioner can be allowed.

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.

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Thus, considering the above, in order to preserve the subject matter of the dispute in the manner as it stands today and for proper adjudication of the matter, **both the parties are hereby directed to maintain status-quo in respect of the suit property as on today till disposal of the suit and no order for temporary injunction is granted as prayed by the petitioner** and the petition vide No. 4112/2021 dated 26.10.2021 stands rejected.

This Misc.(J) case is disposed off on contest.

(Dictated)


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