

Misc. (J) 22/2017.

ORDER

10.7.2017.

Parties are represented.

Today is fixed for orders in the instant Misc(J) case and same is passed accordingly.

Petitioner Amrit Priyam Barman filed petition bearing no. 685/2017 under Order 39 Rule 1 and 2 CPC read with section 151 CPC praying for restraining the opposite party / her men and agents from carrying out any construction works over the suit land or from raising any construction over the suit land which would change the nature and feature of the suit land. Petitioner has also prayed for a further direction to the opposite parties restraining alienation of the scheduled properties. The said petition has been registered as the present Misc(J) Case.

It is the petitioner's case that his predecessor-in-interest Subhash Ch. Barman expired on 29.8.2003 leaving behind his sons being the petitioner and proforma-opposite party No. 2, opposite party No. 1 being his mother, and proforma-opposite party No. 2 being his wife and that during the minority of the petitioner No. 1 and proforma-opposite party No. 2, opposite party No. 1, Lalita Barman filed Title Suit bearing No. 30/2005 in the instant Court seeking a declaration of her right, title, interest and for partition of the intestate properties of her son wherein the petitioner's mother being the present proforma-opposite party No. 1 on behalf of the petitioner and the proforma-opposite party No. 2 entered into a compromise and accordingly a compromise decree was drawn up on 5.7.2007. The petitioner avers that on his attaining majority in the 2011, and after completion of his studies, he could learn about

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the compromise in Title Suit No. 30/05, challenge and accordingly challenged the same consequent to which the said decree was set aside vide order dated 17.5.2008, but a revision application was filed before the Hon'ble Gauhati Court vide CRP 412/2008, which was disposed of reversing the order of setting aside the compromise decree. The petitioner further avers that proforma-opposite party No. 1, was not entitled to represent the petitioner in any compromise without obtaining guardianship certificate for which the compromise decree is not binding upon him.

It is also alleged that opposite party No. 1 had already sold substantial portion of the intestate properties without partitioning the same by metes and bounds. The petitioner further avers that the compromise decree is void as the same had been obtained without consent of the petitioner and therefore the scheduled properties are liable to be partitioned and the petitioner be given share to the tune of 1/4th. It is alleged that the opposite party have been erecting RCC posts in the schedule B lands illegally with an intention to change the nature and character of the suit land for which it is required that the construction work be stopped and the suit property be protected. The petitioner prays for an order of injunction accordingly.

Upon motion this Court deemed it fit to hear the other side before disposal of the prayer for injunction and accordingly issued show-cause notices to the opposite party and proforma-opposite party to show-cause as to why the prayer for injunction so made, shall not be granted.

The opposite party entered appearance pursuant to notice and filed her written objection. The proforma-opposite parties, however, did not contest proceeding.

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The opposite party resisted the petitioner's prayer primarily on the ground of mis-representation and suppression of material facts. The opposite party averred that proforma-opposite party No. 1 being the mother stood as the guardian of her minor sons on the death of her husband, and she being their natural guardian entered into the alleged compromise which was allowed by the Court, and the said decree had attained finality and the question of challenging the same does not arise. The opposite party further averred that she had been raising construction over the scheduled property as she is in possession of the same on the strength of the compromise decree which is still subsisting and question of restraining her to enjoy the properties which she had received pursuant to a compromise decree does not arise. The opposite party accordingly prays for dismissal of the petition.

Heard both sides.

Learned counsel for the petitioner submits that the suit property is required to be maintained status-quo till disposal of the main suit as the petitioner would suffer irreparable loss, if the nature and feature of the suit land is changed without adjudication of his claim. Learned counsel submits that the wrong which has been done should not be allowed to continue and the property is therefore required to be protected.

Learned counsel for the opposite party, on the other hand, submits that the opposite party is possessing the schedule B land which she had received pursuant a compromise in T.S No. 30/05 and that she being an ailing person and there being dearth of rooms in the accommodation available, further rooms are required to be constructed to induct persons to look after her for which the construction has been undertaken. Learned counsel submits that

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opposite party is entitled to enjoy the property which she had received during compromise and no injunction can be granted against a co-owner.

Learned counsel submits that the petitioner's prayer is liable to be rejected.

Heard both sides.

Perused the case record.

It is well settled that though the relief of injunction is a discretionary relief and the exercise whereof is to be judicious. The grant or refusal of injunction is governed by three cardinal principles namely (a) prima-facie case, (b) balance of inconvenience, (c) irreparable loss or injury. In fact Court in exercise of the power of granting an injunction is to satisfy itself that --

(a) There is a serious disputed question to be tried in the suit and that an act on the facts before the Court there is probability of his being entitled to the relief asked for by the plaintiff/defendant.

(b) That the Court's interference is necessary to protect the party from the species of injury In other words, irreparable injury or damage would ensue before legal right would be established at trial ; and

(c) That the comparative hardship or mischief which is likely to occur from withholding the injunction will be greater than that would be likely to arise by granting it.

Now it is to see whether the aforesaid cardinal principles exists in the petitioner's case or not, to enable him to secure the relief of injunction.

Perusal of the pleaded case of the parties discloses that petitioner seeks to challenge the compromise decree passed in T.S. No. 30/05,

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by dint of which the opposite party had come into possession of the schedule B properties. The main ground of challenge is non-obtaining of guardianship certificate by the petitioner's mother to enter into compromise on petitioner's behalf. On the other hand, the opposite party claims to be in possession of the scheduled property on the strength of compromise which had attained finality after the order of the Hon'ble Gauhati High Court in CRP No. 0412/08.

The perusal of the rival claims and contentions discloses that there is a prima-facie case for trial. But it must be remembered that prima-facie case is not to be confused with prima-facie case for trial or prima-facie title. Petitioner has to satisfy the Court that non-interference by Court would cause irreparable injury to him. Now, it is an admitted fact that the opposite party is in possession of the schedule B property pursuant to the compromise decree dated 15.6.2007 passed in T.S. No. 30/05. Though the petitioner seeks to challenge the same yet due to the subsistence of the compromise decree, the opposite party's possession over the scheduled property is fortified. Therefore, during the subsistence of the compromise decree she would be able to enjoy her share of land. Further even if it is assumed that the compromise decree is 'nonest', the scheduled property would be deemed to be possessed by the opposite party on behalf of the co-owners as well. It is well settled that no injunction could be granted against the co-owner unless complete ouster is proved. But as stated above, admittedly the possession of the opposite party is on the strength of compromise decree which is still in force. Hence in the above circumstances, no case of urgency or prima-facie case for injunction is made out.

Further the opposite party being in possession of the B

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schedule property she would be able to enjoy the same and if she is injuncted, she would be put to greater comparative hardship than the petitioner who is admittedly not in possession of the same and thereby. Irreparable loss would ensue to the opposite party than the petitioner. If the petitioner's cause succeed then the property would be divisible but in the face of the existing compromise decree, if the opposite party injuncted it would cause prejudice to the opposite party than the petitioner. Hence, in view of the above discussions, I am constrained to hold that the petitioner's case is devoid of the essential conditions for grant of injunction. Accordingly, injunction is refused.

Misc.(J) case is dismissed on contests without costs.

As dictated.



Civil Judge,
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