

PRESENT: SMT. ARUNIMA SONOWAL, CIVIL JUDGE
(SENIOR DIVISION), MORIGAON

ORDER

MJ Case No. 7/2023

17-07-2026

Both sides are represented by their Id. Counsel.

Today was fixed for order on petition no.41/23 filed by petitioners/plaintiffs under Order 39 Rule 1 & 2 read with section 151 of the Civil Procedure Code, for granting temporary injunction against the opposite parties/defendants.

Accordingly I proceed with this order to dispose of the petition.

The petitioners/plaintiffs have filed the main suit for declaration of right, title and interest over 3/6th shares of Schedule A land and also for partition, separate possession, permanent injunction.

That the suit schedule A land of the suit, measuring about 6 bigha covered by Dag no. 124 of P.P no. 489 at Hatimuria Kissam under Moirabari mouza in the district of Morigaon, was originally owned by Asor Ali, Hussen Ali, Abdul Gafur, Ohedali @ Ohed Ali, Sabed Ali @ Sabed Ali and Abedali @ Abed Ali. The said pattadars were holding the schedule A land in ejmali without any formal partition of the same. That defendants Abdul Mazid and Abdul Zabbar without the knowledge of the plaintiffs mutated their names in the revenue records in place of Ohedali @ Ohed Ali, Sabedali @ Sabed Ali, Ahedali @ Ahed Ali. That the original pattadars never transferred any land of the schedule A land to the

said defendants. On 25.11.2022, the petitioners asked the principal defendants to make partition of the suit land but they denied.

The opposite no. 4, 5 and 6 submitted written objection and stated that they are the legal owners and pattadars of the suit land. They purchased the suit land from Abdul Mozid and Jamila Khatun by executing registered sale deed and accordingly their names are mutated. They are possessing the same by constructing residential house over the same. That the petitioners have no right, title and possession over the suit land.

It is well settled that for granting temporary injunction, following pre-conditions must be fulfilled or the three golden principles should be followed which are as follows:

Prima Facie case- Perused the pleadings and documents submitted by both sides. It is seen that both the sides claim to have right, title and interest over the suit schedule A land. The petitioners claim for right, title is denied by the opposite parties who claim to own the same by virtue of purchase. Hence it shows existence of prima facie case in the instant suit which needs to be adjudicated in respect of the suit Scheduled B land plaintiff. This point is in favour of the petitioners.

Balance of convenience- It is apparent from the pleadings of the parties that petitioner the suit land is mutated in the names of the opposite parties. Entries in revenue record give a prima facie evidence of possession which is rebuttable. A person in possession cannot be ousted without following due process of law. It appears that no substantial mischief or injury is likely to be

caused to the petitioners if their prayer for injunction is refused in comparison to what is likely to be caused to the opposite parties if the injunction is granted. Hence **balance of convenience does not appear to lie in favor of the petitioners.**

Irreparable loss- Since petitioners are not seen to be in possession of the suit schedule A land, **petitioners are not likely to suffer any irreparable loss if temporary injunction is not granted in this case.** Hence this point is decided against the petitioners.

Hence considering all these, prayer for granting temporary injunction against the opposite parties is **rejected.**

Accordingly the instant Misc (J) case no. 07/2023 is disposed of.

(Smti. Arunima Sonowal)
Civil Judge (Sr. Division), Morigaon