

IN THE COURT OF CIVIL JUDGE::KOKRAJHAR :: ASSAM

Misc (J). Case No. 39 of 2022

Petitioner :- 1. Debashis Kartik Das @ Debashis Das

-Vs-

Opposite Parties :- (1) Suraj Das (2) Prakash Das

(3) Sekhar Das (4) Pran Krishna Das

PRESENT:- Sri Rupak Rajak, AJS

FOR THE PETITIONER :- Sri A. Mahmud, Advocate.

FOR THE OPPOSITE PARTY :- Sri R. N. Brahma, Advocate

HEARING ON :- 29.05.2023

ORDER DELIVERED ON :- 17.06.2023

O R D E R

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1. Both sides are represented.
 2. The petitioner/plaintiff is the son of Kartik Ch. Das. Kartik Ch. Das owned a plot of land in Santinagar (previously known as Bhatarmari) in Kokrajhar district. The land was jointly purchased by Kartik Ch. Das and his brother Sadhan Ch. Das in 1957. They divided the land equally, with Sadhan Ch. Das taking the eastern portion (Schedule B) and Kartik Ch. Das taking the western portion (Schedule C), where he built houses and raised his children. Kartik Ch. Das died in 2021.

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(R. Rajak)

3. The petitioner/plaintiff's siblings gradually moved away and established their own lives, but two of his siblings (Opp. party/defendant No.3 & 4) continued to live on Schedule C land with their father, Kartik Ch. Das. Another sibling, Ram Krishna Das, initially moved away but later returned to live on Schedule C land with his family before passing away.
4. The petitioner/plaintiff also went to Mumbai for better opportunities and set up a business there. He would visit Kokrajhar once a year but started spending more time there from 2017. In 2017, he noticed construction on the Schedule C land but couldn't gather much information about it. When Kartik Ch. Das passed away, the Opp. party/defendant No.1 and his mother started living in the partially constructed building on the land.
5. After Kartik Ch. Das's death, the petitioner/plaintiff asked for a fair partition of the Schedule C land but was refused by the Opp. party/defendant No.1,2 & 4, who claimed that Kartik Ch. Das had gifted the land to them through an unregistered gift deed and affidavits. The petitioner/plaintiff disputes the authenticity of these documents and asserts that Kartik Ch. Das never mentioned gifting any part of the land. The Opp. party/defendant No.1 & 2 also never attempted to change the land records during Kartik Ch. Das's lifetime.
6. The petitioner/plaintiff seeks a perfect partition of the Schedule C land, asserting their right as a legal heir of Kartik Ch. Das. They claim that the unregistered gift deed and affidavits hold no

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legal value and that the Opp. party/defendant No.1,2 & 4 are attempting to unlawfully seize the land. The petitioner/plaintiff requests the court's protection and for their name to be included in the land records. They also state that their siblings are in agreement with the partition.

7. The petitioner therefore, prayed to pass temporary injunction restraining the Opposite Parties from raising any kind of construction in the suit land.
8. The Opposite Parties appeared in the case and have filed their written objection. In response, the first defendant states that they have been in possession of a portion of land gifted by Late Kartik Chandra Das for over 15 years. They claim possessory rights over this land, which is part of the disputed schedule. Late Kartik Chandra Das executed a Notarial Gift Deed in 2020, mentioning the defendant's possessory right and shares of other legal heirs, including the petitioner. The defendants assert that the Notarial Gift Deed is genuine and reflects Late Kartik Chandra Das wishes and desire for partition.
9. The defendants argue that the petitioner's case lacks legal basis and is an attempt to harass them and the other defendants. They believe the case should be dismissed.
10. I have heard the argument both the sides. I have considered the contention and rival contention of the parties. I have also perused the documents submitted by the respective parties along with their pleadings.

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(R. Rajak)

11. As we know that to consider the prayer of temporary injunction, we have to follow three golden principle of injunction. These three golden principles of injunction, which are often considered by courts when evaluating a request for a temporary injunction, are as follows:

1. Prima Facie Case: This principle requires the party seeking the injunction to demonstrate that they have a reasonable likelihood of success on the merits of the case. In other words, they must present a strong enough case that, if accepted, would support their legal rights. The court assesses the available evidence and arguments to determine if the petitioner has a prima facie case.

2. Balance of Convenience: This principle examines the potential harm or inconvenience that would be caused to both parties if the injunction is granted or denied. The court weighs the interests of the petitioner against those of the respondent and considers which party would suffer greater harm if the status quo is maintained or altered. The aim is to ensure fairness and prevent undue hardship on either side.

3. Irreparable Loss: This principle considers whether the harm or injury that would be suffered by the petitioner if the injunction is not granted could be adequately compensated through monetary means or any other form of remedy. If the court determines that the harm is irreparable or cannot be adequately compensated, it may be more inclined to grant the injunction to prevent such loss.

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(R. Rajak)

12. I have carefully examined the facts and circumstances presented in the above-mentioned case, as well as the arguments put forth by both the petitioner/plaintiff and the opposite parties/defendants.

13. The petitioner/plaintiff is the son of the late Kartik Ch. Das, who jointly owned a plot of land in Santinagar (previously known as Bhatarmari) in Kokrajhar district with his brother, Sadhan Ch. Das. The land was divided equally between the two brothers, with Sadhan Ch. Das taking the eastern portion (Schedule B) and Kartik Ch. Das taking the western portion (Schedule C) where he built houses and raised his children. Following Kartik Ch. Das's death, some of the petitioner/plaintiff's siblings moved away, while others continued to reside on Schedule C land. The Opposite Party/Defendant No. 1 and his mother started living in a partially constructed building on the land after Kartik Ch. Das's demise. The petitioner/plaintiff claims that after Kartik Ch. Das's death, they requested a fair partition of the Schedule C land but were refused by the Opposite Party/Defendant No. 1, 2 & 4, who asserted their rights based on an unregistered gift deed and affidavits allegedly executed by Kartik Ch. Das. The petitioner/plaintiff disputes the authenticity and legal validity of these documents and insists that Kartik Ch. Das never mentioned gifting any part of the land. They assert their rights as a legal heir and seek a perfect partition of the Schedule C land, requesting protection from the court and inclusion of their name in the land records. The petitioner/plaintiff prayed for a

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temporary injunction to restrain the opposite parties/defendants from carrying out any construction on the disputed land.

14. In response, the first defendant has claimed possession of a portion of land, which they state was orally gifted to them by Late Kartik Chandra Das over 15 years ago. They have also presented a Notarial Gift Deed executed by Late Kartik Chandra Das in 2020, mentioning their possessory rights and the shares of other legal heirs, including the petitioner/plaintiff. The defendants argue that the petitioner's/plaintiff's case lacks legal basis and is an attempt to harass them and the other defendants, and thus, they seek the dismissal of the case.

15. Based on the information presented, it is clear that the petitioner/ plaintiff and the opposite parties/defendants hold conflicting claims regarding the ownership and partition of the Schedule C land. The petitioner/plaintiff alleges that the unregistered gift deed and affidavits are invalid, while the opposite parties/defendants contend that these documents reflect the wishes of Late Kartik Chandra Das.

16. To grant an injunction, it is essential to establish a prima facie case by demonstrating a reasonable likelihood of success on the merits. However, upon careful evaluation of the facts and arguments provided, I find that the petitioner/plaintiff has not sufficiently demonstrated a prima facie case to support the granting of an injunction. The petitioner/plaintiff's claims are primarily based on disputing the authenticity of the unregistered

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(R. Rajak)

gift deed and affidavits presented by the opposite parties/defendants.

17. While it is important to thoroughly investigate the validity of the documents and assess their legal implications, the materials provided by the petitioner/plaintiff at this stage do not conclusively establish their case. The opposing parties have presented a Notarial Gift Deed executed by Late Kartik Chandra Das, which reflects the wishes and desire for partition.
18. In the context of joint ancestral property, it is a well-established legal principle that all co-sharers have equal rights over the property. Each co-sharer has an undivided share in every inch of the property until a partition takes place. This means that the possession of one co-sharer is considered to be the possession of all the co-sharers until a proper and complete partition of the property occurs.
19. The concept of joint possession in relation to ancestral property recognizes the collective ownership and rights of all the co-sharers. It implies that the possession of one co-sharer is not exclusive but is shared by all the other co-sharers. Therefore, the possession of one co-sharer cannot be treated as separate or exclusive from the possession of the other co-sharers.
20. This principle is rooted in the notion that ancestral property is held jointly by the family members, and each co-sharer has an equal entitlement to the property. Until a partition is carried out, all co-sharers have a right to enjoy and possess the entire property collectively.

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21. It is important to note that joint possession does not mean physical occupancy or actual presence on the property by each co-sharer. Rather, it signifies the legal right and entitlement of each co-sharer to the property. This principle helps safeguard the interests of all co-sharers and prevents any unilateral action or exclusion by one co-sharer to the detriment of others.
22. Considering the conflicting claims and the complexity of the issues involved, it is apparent that further inquiry and examination of evidence are required to determine the veracity of the opposing parties' claims and the petitioner/plaintiff's allegations. A detailed examination of documents, witnesses, and any additional evidence will be necessary to ascertain the actual ownership and rights over the Schedule C land.
23. In the absence of a clear prima facie case, granting an injunction at this stage would be premature and may cause undue hardship to the opposite parties/defendants.
24. Therefore, it is my opinion I find that the petitioner/plaintiff has not established a prima facie case to support the granting of an injunction. The request for a temporary injunction is hereby rejected.

The Misc(j) case is disposed of accordingly.

(R. Rajak)
Civil Judge,
Kokrajhar

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