

GAHC010025582021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/326/2021

DIMBESWAR KEOT
S/O. LATE KALIMON KEOT, R/O. BARUAH CHUBURI, MOUZA- HALESWAR,
P.O. DEKARGAON, DIST. SONITPUR, ASSAM

VERSUS

RUPAK KEOT AND 10 ORS.
S/O. LATE GONGAI KEOT, R/O. PATIA CHUBURI, DEKARGAON, P.O.
DEKARGAON, MOUZA- HALESWAR, DIST. SONITPUR, ASSAM

2:JITEN KEOT
S/O LATE GONGAI KEOT
R/O PATIA CHUBURI
DEKARGAON
P.O. DEKARGAON
MOUZA HALESWAR
DIST. SONITPUR
ASSAM
PIN 784001

3:LOHIT KEOT
S/O LATE KHILESWAR @ KHIRESWAR KEOT
R/O PATIA CHUBURI
DEKARGAON
P.O. DEKARGAON
MOUZA HALESWAR
DIST. SONITPUR
ASSAM
PIN 784001

4:SMT. MONI KEOT
W/O LATE MANTU KEOT @ ARUN KEOT

R/O PATIA CHUBURI
DEKARGAON
P.O. DEKARGAON
MOUZA HALESWAR
DIST. SONITPUR
ASSAM
PIN 784001

5: BABU KEOT (MINOR)
S/O LATE MANTU KEOT @ ARUN KEOT
R/O PATIA CHUBURI
DEKARGAON
P.O. DEKARGAON
MOUZA HALESWAR
DIST. SONITPUR
ASSAM
PIN 784001

6: SMT. ANIMA KEOT
W/O LATE DIPAK KEOT
R/O PATIA CHUBURI
DEKARGAON
P.O. DEKARGAON
MOUZA HALESWAR
DIST. SONITPUR
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7: DHIRAJ KEOT (MINOR)
S/O LATE DIPAK KEOT
R/O PATIA CHUBURI
DEKARGAON
P.O. DEKARGAON
MOUZA HALESWAR
DIST. SONITPUR
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PIN 784001

8: SMTI RINA KEOT
W/O LATE DEBEN KEOT
TEMPORARY R/O CHANDMARI
GUWAHATI
DIST. KAMRUP
ASSAM AND PERMANENT ADDRESS C/O SRI RUPAK KEOT (DEFENDANT
NO. 1)
PIN 781005

9: KHANINDRA KEOT

S/O LATE DEBEN KEOT
TEMPORARY R/O CHANDMARI
GUWAHATI
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ASSAM AND PERMANENT ADDRESS C/O SRI RUPAK KEOT (DEFENDANT
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10:UTPAL KEOT
S/O LATE DEBEN KEOT
TEMPORARY R/O CHANDMARI
GUWAHATI
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ASSAM AND PERMANENT ADDRESS C/O SRI RUPAK KEOT (DEFENDANT
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D/O LATE DEBEN KEOT
TEMPORARY R/O CHANDMARI
GUWAHATI
DIST. KAMRUP
ASSAM AND PERMANENT ADDRESS C/O SRI RUPAK KEOT (DEFENDANT
NO. 1)
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Advocate for the Petitioner : MR. D MOZUMDER

Advocate for the Respondent : MR. R ALI

Linked Case : RSA/17/2019

SRI DIMBESWAR KEOT
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R/O BARUAH CHUBURI
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W/O LATE DEBEN KEOT

TEMPORARY R/O CHANDMARI
GUWAHATI
DIST. KAMRUP

ASSAM AND PERMANENT ADDRESS C/O SRI RUPAK KEOT (DEFENDANT
NO. 1)

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9:KHANINDRA KEOT

S/O LATE DEBEN KEOT

TEMPORARY R/O CHANDMARI
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DIST. KAMRUP

ASSAM AND PERMANENT ADDRESS C/O SRI RUPAK KEOT (DEFENDANT
NO. 1)

PIN 781005

Advocate for : MR. D MOZUMDER
Advocate for : MR. R ALI (R-1-10) appearing for SRI RUPAK KEOT AND 10 ORS

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
:ORDER:

17.02.2021

Heard Mr. D. Mozumdar, learned Senior Counsel assisted by Mr. S. Biswas, learned counsel for the applicant as well as Mr. R. Ali, learned counsel appearing for all the opposite parties.

2. By this application filed under Order XXXIX Rule 1 and 2 CPC, the applicant, who is the appellant in RSA 17/2019 has prayed for grant of an ad- interim injunction, restraining the opposite parties for handing over possession of part of the suit land described in Schedule D of the application.

3. The learned Senior Counsel for the applicant submits that the applicant has filed T.S. No. 103/2016, seeking partition and khas possession of his share in respect of the suit land, and the said suit was dismissed by the learned trial Court and the aggrieved applicant had filed T.A. No. 11/2017, which was also dismissed, as such, the applicant has filed the connected Second Appeal which was admitted for hearing by order dated 18.01.2019 passed by this Court. It is submitted that on 11.01.2019, a part of the suit land which is prescribed in Schedule D of the application (in four parts) was sold by the opposite party nos. 8 to 11 to a third party vide registered sale deed No. 113/2019 dated 11.01.2019. It is projected by the learned Senior Counsel that the khas possession of that part of the suit land could not be delivered to the third party-vendee. By referring the two statements made in paragraph-7 of this application, it is submitted that although the vendee of the sale deed had applied for mutation, but the Circle Officer has not yet allowed the same. Accordingly, it is submitted that as per instructions received, mutation could not be done for lack of possession by the vendee despite registration of the sale deed by the opposite party nos. 8 to 11.

4. It is submitted that the opposite parties had filed their affidavit-in-opposition and had taken a stand that the opposite party nos. 8 to 11 had handed over the khas possession of the land sold to the vendee.

5. Vehemently opposing this application, the learned counsel for the opposite parties submits that in view of the concurrent finding of both the learned Courts below, the applicant does not have any prima facie case, as such, neither there is no balance of any favour of the applicant, nor any

irreparable loss or injury would be suffered by the applicant because even if the appeal stands allowed, the applicant would become entitled to relief as sought for in the plaint. It is also pointed out that the sale deed in question is also in respect of the first plot of the Schedule of this application, which is not the suit land in the plaint as there is no reference to the land covered by Dag No. 494 in the plaint. It is further submitted that in the sale deed, which is annexed to this application as Annexure-A, it would be evident that the copy of the sale deed was obtained on 14.10.2019 and therefore, the applicant has approached the Court with an un-explained delay of almost two years and that the said sale deed contains narration to the effect that possession of the sole land was already delivered to the vendee. It is also submitted that the objection referred to in Annexure-B and complaint referred to in Annexure-C does not contain any date on which such objection was filed. Hence, it is submitted that this is not a fit and proper case for grant of any injunction. From the copy of plaint available with the connected memo of appeal, it is seen that the applicant is seeking declaration of right, title and interest over 2 bigha-3 katha-11-61 lechas land out of total land described in Schedule-A of the plaint and he claims confirmation of possession over Schedule B and C land. It is claimed in this application that land described in Schedule D to this application has been sold. Schedule-D describes land in 4(four parts).

6. In respect of the objections in Annexure-D and C is concerned, the lack of date in the document filed would not invalidate the objection. It is not the case of the opposite parties that such objection was a manufactured the document. The defect of non-availability of date would not be fatal. In so far as the land described Schedule-D is concerned, it is seen that in the plaint there is no reference to any land covered by Dag No. 494 in the plaint, which is in respect of land measuring 1 katha 15 lechas. Therefore, in this regard, the Court is of the considered opinion that there can be no order of injunction in respect of the first plot of land describing in Schedule D of this application.

7. In respect of three other plots of land covered by Schedule D of this application, it is seen that the land covered by Dag No. 495, 499 and 500 of patta no. 90 is covered by the land described in the Schedule of the plaint.

8. As the connected appeal was filed by the applicant on 12.10.2018 and admitted for hearing on 18.01.2019, the learned counsel for the applicant has been able to show that the part of the suit land which was alienated by the opposite party nos. 8 to 11 vide sale deed no. 113/2019 dated 11.01.2019 and the land covered by second, third and fourth part of Schedule D land would become covered by the principle of lis pendens under Section 52 of the Transfer of Property Act. In this connection, while it is asserted by the applicant that he derives title through Bogiram Keot, but although the learned counsel for the opposite party disputes that the applicant derives the title from Bogiram Keot, there is

no such specific stand in the affidavit-in-opposition. Accordingly, the effect of transfer by one of the co-owners is a situation, which is seen to be covered by Section 44 of the Transfer of Property Act, which provides as follows:-

44. Transfer by one co-owner.— *Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.*

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

9. On a perusal of the aforesaid provision of law, the vendee would derive a mere right to the joint possession of share of interest of the vendor. Therefore, taking note of the well settled principle that the possession of any one of the co-owners would become constructive possession on behalf of all the co-owners, by virtue of Section 44 of the Transfer of Property Act, the transferee or vendee cannot have right to exclusive possession.

10. In view of the discussion above, the applicant has been able to show a prima-facie case in his favour. The balance of convenience is found in favour of grant of interlocutory injunction. In light of the Provisions of Section 44 of the Transfer of Property Act, if exclusive possession is delivered by the opposite-parties, the applicant shall suffer irreparable loss and injury.

11. More over, the learned counsel for the opposite parties no. 8 to 11 has asserted that as per the sale deed they have delivered possession to the third party-vendee. Therefore, having regard to the provisions of Section 44 of Transfer of Property Act, this Court is inclined to direct both the parties to maintain status-quo as regards the property described in part 2, 3 and 4 of the Schedule-D of this application, being the land described in Schedule-D of the sale deed no. 113 dated 11.01.2019.

12. Accordingly, this application stands disposed of in terms of observations indicated above.

JUDGE

Comparing Assistant