

High Court Form No J(3)
Heading of judgment in first appeal

DISTRICT : KARIMGANJ

IN THE COURT OF CIVIL JUDGE, KARIMGANJ

Present:- **A. Kader, AJS.**
Civil Judge, Karimganj.

Misc Appeal No. 01/2019

Sri Krishna Nath.....Appellant/petitioner/plaintiff.

-Versus -

Md. Abdul Jalil & another.....Respondents/OP's/defendants.

Advocate for the appellant: Mr. Ashok Chakraborty

Advocate for the respondents: Mr. S. Chakraborty

Date of Hearing:- 01/03/2019 and 12/03/2019

Date of Judgment:- 12/03/2019

And having stood for consideration to this day, the Court delivered the following:—

JUDGMENT

1. This appeal has been preferred against the order dated 26/11/2018 in **Misc. Case No. 190/2018** arising out of **Title Suit No. 125/2018**, passed by the Ld. Munsiff No. 1, Karimganj, whereby the plaintiff's Misc Case filed U/O. XXXIX Rule 1 and 2 for temporary injunction was dismissed.

2. **Brief facts:-** The appellant/plaintiff purchased a plot of land measuring about 2 bigha from one, Monir Uddin by a registered sale-deed No. 681 dated 04/05/2009. The seller Monir Uddin had purchased the suit land alongwith other land measuring 3 bigha 5 katha from one, Sams Uddin Choudhury and three others vide registered sale-deed No. 1501 dated 23/07/1992. By this purchase, the plaintiff became the owner of the schedule-1 land. The schedule-2 land measuring ½ bigha, situated within the schedule-1 land.

One of the attesting witness namely, Abdul Jalil in deed No. 681 is now defendant No. 1 and his wife is defendant No. 2. The defendant No. 1 approached the plaintiff to provide him shelter in the land for one year from 10/04/2016 from 10/04/2017. After completion of one year, the defendants refused to vacate the land. He also cut down some bamboos and trees and also demolish the houses. The plaintiff prayed for temporary injunction restraining the defendants from changing the nature and feature of the suit land and from cutting and demolishing bamboos and trees as well as kutcha house belongs to the plaintiff.

3. The appellant/plaintiff in the said suit filed a petition under order XXXIX Rule 1 and 2 r/w 151 CPC supported by an affidavit praying for grant of temporary injunction. Accordingly, Misc. Case No. 190/2018 was registered. The respondent/OP appeared and submitted written objection. In the written objection, the respondent/OP stated that they are residing in the adjacent land of the appellant/plaintiff/petitioner. Their land is situated in the adjacent north of the plaintiff's land. Their lands is covered by dag No. 219. Further, the respondent/OP stated that they are the relatives of the vendor of the appellant/plaintiff.

4. Ld. Munsiff No. 1 in the impugned order, observed that the defendants have no right, title and interest over the land covered by dag No. 232, 233, 236 and 237 of patta No. 9 and 10. However, the defendants have

claimed over the land covered by dag No. 216 (it should be 219). Since the defendants are in possession in the disputed land and both the parties are claiming the land covered by their respective dag numbers, which cannot be decided without a survey. Therefore, the Ld. Court below refused to grant injunction at that stage.

5. Upon admission of the appeal, this court issued notice to the respondents/defendants and call for the record of the Ld. Lower court. The respondent/defendant side appeared to contest the appeal and the record of Ld. Lower court also received.

6. Learned Counsel for the appellant/plaintiff stated that the respondents/defendants have not produced any documents in support of the claim on the land covered by dag No. 219. The plaintiff has right, title, interest over the disputed land and defendants remaining on the land as a trespasser and having rightful ownership or any other right to stay on the land. Ld. Counsel also submitted that there is a separate dag vide No. 219 that is not covered in the schedule-1 land.

7. Learned Counsel for the respondents/defendant side stated that admittedly the respondents/defendants are in possession of the suit land and there is a kutcha house on the suit land, where the defendants are residing. The plaintiff purchased land measuring 2 bigha covered by dag No. 232, 233, 234, 236 and 237 from one Monir Uddin Choudhury on 04/05/2009 vide deed No. 681. In the plaint, the plaintiff described in schedule-1 land measuring an area of 2 bigha, which was purchased vide deed No. 681. Those 2 bighas land covered by 5 dags but dag No. 234 is missing from the plaint. The plaintiff did not any detail description of the land comprise in each of the dag No's. The defendant is holding the land covered by dag No. 219 as obtained khatian, which was issued in the name of the father of the defendant namely, Nizam Uddin Choudhury. The land covered by dag No. 219 and 234 is adjacent with each other. As per survey

map, the land covered by dag No. 219 is found to be adjacent with dag No. 234 but not dag No. 232 and 233 etc.

POINTS FOR DETERMINATION:

(i) Whether the appellant/plaintiff/petitioner have a prima facie case?

(ii) Whether the impugned order is required to be interfered with?

DECISIONS AND REASONS THEREOF:

Point No. (i): Whether the appellant/Petitioner have a prima facie case?

8. Admittedly, there is a dispute between the parties regarding a plot of land. The disputed land is in the possession of the respondent/defendant. The plaintiff purchased the land mentioned in schedule-1 by a registered sale-deed measuring 2 bighas. On the other hand, it is found that a land covered by dag NO. 219 was recorded in the name of the father of the defendant namely, Nizam Uddin Choudhury. Therefore, the matter requires physical survey of the land and cannot be decided at this stage. There is no prima facie case made out by the plaintiff so that the interim injunction can be granted restraining the defendant from changing any nature and feature of the suit land.

Point No. (ii): Whether the impugned order is required to be interfered with?

9. The impugned order passed by the Ld. Court below is found to be justified by fact and circumstances and required no interference. Accordingly, the present appeal is dismissed. Send back the LCR alongwith a copy of this judgment.

Pronounced and delivered in the open Court under my seal and signature on this 12th day of March, 2019.

Transcribed at my dictation,
corrected by me and every page
bears my signature.

(A. Kader)
Civil Judge, Karimganj

(A. Kader)
Civil Judge, Karimganj

Dictation taken & transcribed by

(Mashhood Safi)
Stenographer.
