

**HIGH COURT OF TRIPURA
AGARTALA**

FAO No.01 of 2024

Sri Anil Das

.....Appellant(s);

Versus

Sri Bijan Kumar Paul

.....Respondent(s)

For Appellant(s) : Mr. A. Acharjee, Advocate,
Ms. S. Sarkar, Advocate.

For Respondent(s) : Mr. K.L. Pal, Advocate,
Mr. R.R. Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

17/05/2024

Heard learned counsel for the parties.

2. The prayer for temporary injunction over the Scheduled land 'A' by the plaintiff for restraining the O.P. not to construct any building over the suit land or any roof over the entrance pathway of the suit land has been declined vide impugned order dated 20.01.2024 by the learned Court of Civil Judge (Sr. Division), Court No.1, Dhalai Judicial District, Ambassa in Civil Mis. (Inj.) 17 of 2023 arising out of T.S. 22 of 2023 with the following reasons:

“From the available documents, I find that one Sri Sajal Kanti Dey the original owner of 13 Satak of land, corresponding to Khatian No.2160 and within it, Hal Dag No. 4154 (3 Satak of land), 4155 (1 Satak of land) and 4158 (9 Satak of land). Out of this 13 Satak of land, the petitioner has purchased 9 Satak of land, corresponding to Khatian No.2169 of Mouja- Halahali, Hal Dag No.4154 (1 Satak of land), 4155 (1 Satak of land) and 4158 (9 Satak of land).

On the other hand, the O.P. has purchased 2 Satak of land (out of said 13 Satak of land), corresponding to Khatian No.2169 of Mouja – Halahali, Hal Dag No.4154 (2 Satak of land). This 2 Satak of land of the O.P. is measuring 60 ft. in length and 13 ft in breadth.

So, it appears that both the petitioner and the O.P. are sharing 1 Satak of land and 2 Satak of land respectively corresponding to common Dag No.4154 under Khatian No.2169 of Mouja- Halahali.

It also appears from the sale deed submitted by the O.P. that his 2 Satak of purchased land, which is measuring about 60 ft. in length and 13 ft. in breadth is a pathway. Observation of this Court is supporting by the plea of the petitioner made in para no.4(D) to the effect that the petitioner has always been using the said 1 Satak of land for entrance pathway which belongs to the boundary line of the O.P.

It is also seen from the available documents that the 2 Satak of land (out of 3 Satak of land) under Dag No.4154, corresponding to Khatian No.2169 was purchased by the OP in 2017. Rest 1 Satak of land within the same dag number and khatian number was purchased by the petitioner in 2022.

Hence, in case of any dispute, that might have been arose with regard to selection of entrance pathway in between the petitioner and the O.P., the O.P. would have right to choose the entrance pathway had the O.P. not been residing on his land.

So, from the above discussion, it cannot be said, at this stage, that the O.P. is illegally occupying the suit land measuring about 32 sq. ft. (entrance pathway).

So, I find that *prima facie*, the petitioner has no case for seeking temporary injunction, rather, if the temporary injunction is granted against the O.P., the O.P. would suffer irreparable loss and injury.

The balance of convenience and inconvenience, at present, is favouring the O.P.

With the above observation, the instant application for temporary injunction is hereby rejected.

Thus, the case is disposed of on contest.”

3. Upon notice, respondent has appeared. Learned counsel for the respondent makes a clear statement that there is no fresh construction underway on the suit land. He submits that the learned Trial Court had rightly held that it cannot be said that the O.P. is illegally occupying the suit land measuring about 32 sq. ft. as from the documents on record 2 Satak of land (out of 3 Satak of land) under Dag No.4154, corresponding to Khatian No.2169 was purchased by the O.P. in 2017 and rest 1 Satak of land within the same dag number and khatian number was purchased by the petitioner in 2022. Moreover, any such construction has been made by the opposite party/respondent herein by the year 2021 itself. As such, there is no case of any temporary injunction against the opposite party from making any construction.

4. Learned counsel for the petitioner submits that in that case, the suit property may be held intact by an order of *status quo* till the suit is decided.

5. Upon hearing learned counsel for the parties and after going through the materials placed from record and on perusal of the impugned order,

it appears that the finding of the learned Trial Court on the prayer for temporary injunction does not suffer from any error warranting interference under Article 227 of the Constitution of India by this Court.

The main dispute is as regards the same piece of land measuring about 32 sq. ft. under Khatian No.2169, Hal Dag No.4155 of Mouja- Halahali,. Both the parties had purchased the land from the original owner namely Sri Sajal Kanti Dey. The learned Trial Court has also observed that although the application does not bear any separate schedule of 'A'-Scheduled land but a reference may be made from para-3 of the present injunction application. Since the respondents contend that there is no fresh construction going on over the suit land in question, it would be proper that parties maintain *status quo* as on date over the suit land till disposal of the suit. Without interfering in the impugned order, the instant petition is disposed of with the aforesaid observations.

(APARESH KUMAR SINGH), CJ

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