

RahimuddIn Khan Vs. Siraj UddIn Khan

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SooperKanoon Citation : sooperkanoon.com/1138010

Court : Orissa

Decided On : Apr-22-2014

Appellant : RahimuddIn Khan

Respondent : Siraj UddIn Khan

Judgement :

R.S.A.No.347 of 2010 Misc.

Case Nos.192 & 193 of 2014 08.

22.04.2014 Appellants being the petitioners in both the misc.

cases has prayed for an interim injunction restraining the opposite party/respondent from changing the nature and character of the suit property till disposal of the appeal (in Misc.

Case No.192 of 2014) and for a direction to the opposite party/respondent to remove the fence over the Plot Nos.114 and 121 and to maintain status quo over the suit property (in Misc.

Case No.193 of 2014) Earlier, on the prayer of the petitioners/appellants, order was passed on 10.02.2014 in Misc.

Case No.623 of 2013 directing the parties No.to alienate the suit property till disposal of the appeal with specific direction with regard to suit plot No.115 that

the parties shall maintain status quo and shall No.make any construction or raise any fence over that plot and in case there is any fence over that plot the same be removed.

No.in the present misc.

cases petitioners/appellants allege that after passing of the order dated 10.02.2014, the opposite party/respondent, in order to frustrate the earlier order, has put barbed-wire fence along the boundary line of Plot Nos.114 and 121 thereby preventing the petitioners/appellants from entering into Plot No.115 which is the only passage for ingress and outgress of the petitioners/appellants dwelling house.

It is also alleged that the opposite party/respondent is trying to cut and remove some of the valuable trees standing over the Plot No.121 without paying the cost therefor even though as per the Amin Commissioner Report in the final decree he is liable to pay the cost.

2 In his counter in both the misc.

cases, the opposite party/respondent has asserted that there is no blockage of Plot No.115, that Plot No.115 is No.the only passage for the ingress and outgress in respect of petitioners/appellants dwelling house, that though the petitioners/appellants are No.required to get approach to the road through Plot No.115, but even if they want to come over to Plot No.115 for any purpose they can come through Plot No.113.

As regards the cutting of trees the opposite party/respondent has denied the application.

It transpires that basing on the Amin Commissioners Report, final decree has been passed and fiRs.appeal against final decree has been dismissed.

Against the confirming final decree, the petitioners/appellants have approached this Court in second appeal which had been admitted on the following substantial question of law: Whether the learned courts below have acted contrary to law in

holding that the Commissioners report and map required no change without examining the report and map in detail and the question as to whether there is an approach road for the defendants from their allotted land to the public road?.

It is clear that the petitioners/appellants challenged to the final decree solely on the ground that from their allotted land they would have no approach road to the public road.

Therefore, the real dispute is with regard to Plot No.115 which has been allotted to the share of the plaintiff/opposite party.

No.the petitioners/appellants allege that by way of raising a barbed wire fence, the opposite party/respondent is blocking their access to Plot No.115.

It is No.claimed by the opposite party/respondent that the fence has been in existence even prior to the passing of the final decree.

It appears the fence has been raised recently and it is No.clarified as to how the fence blocking the petitioners/appellants direct approach to Plot No.115 from his dwelling house is essential for him.

Since previously the parties were managing without any fence it is No.considered just and proper on the part of the opposite party/respondent to raise a fence to block the petitioners/appellants direct approach to Plot No.115 from their dwelling house.

Therefore, the petitions are allowed.

Parties are directed to maintain status quo of the entire of the suit property and No.to change the nature and character thereof till disposal of the appeal and opposite party/respondent is directed to remove the portion of his fence that blocks the petitioners/appellants direct approach to the road from their dwelling house through Plot No.115 till disposal of the second appeal.

..R.Dash, J.

Debasis

