

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP (C.R.P. ART.227) No. 41 of 2015

1. Smt. Moirangthem Ningol Haobam Ongbi Radhamani Devi, aged about 69 years, W/O late Bisheswor Singh, resident of Kwakeithel Akham Leikai, P.S. Singjamei, Imphal West District, Manipur.
2. Shri Moirangthem Tomba alias Ibomcha Singh, aged about 76 years, S/O late Thambou Singh of Heirangoithong Naoria Pakhanglakpa, P.S. Singjamei, Imphal West District, Manipur.

..... Petitioners

- Versus -

Smt. Huidrom Ningol Laishram Ongbi Taruni alias Tarunibala Devi, aged about 69 years, W/O late L. Khamba Singh, resident of Heirangoithong Naoriya Pakhanglakpa, P.S. Singjamei, Imphal West District, Manipur, now died and represented by his legal heirs as follows:

1. Smt. Konthoujam Ongbi Jamuna Devi, aged about 50 years, W/O Kh. Oken Singh of Konthoujam Lairembi Mamang Leikai, P.O. & P.S. Patsoi, Imphal West District, Manipur.
2. Smt. Khoirom Ongbi Ganga @ Daina Devi, aged about 48 years, W/O Khoirom Dinesh Singh of Sagolband Salam Leikai, Mayai Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur.
3. Smt. Nameirakpam Ongbi Sharmila Devi, aged about 38 years, W/O N. Meiraba Singh of Kha Sanjenbam, P.O. Lamlong P.S. Lamlai, Imphal East District, Manipur.
4. Smt. Meinam Ongbi Sangita @ Naobicha Devi, aged about 36 years, W/O M. Roshan Singh of Nagamapal Kangjabi Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.
5. Smt. Pechimayum Ongbi Sanju Devi, aged about 33 years, W/O P. Herojit @ Damudor Singh of Kongpal

Khaidem Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.

6. Laishram Geeta, aged about 46 years, D/O (L) L. Khamba Singh of Heirangoithong Naoriya Pakhanglakpa, P.O. & P.S. Singjamei, Imphal West District, Manipur.
7. Smt. Maibam Ongbi Bedamani @ Abe Devi, aged about 40 years, W/O M. Naoba Singh of Heirangoithong Naoriya Pakhanglakpa, P.O. & P.S. Singjamei, Imphal West District, Manipur.
8. Shri Laishram Birjit @ Somorendro Singh, aged about 44 years, S/O (L) L. Khamba Singh of Heirangoithong Naoriya Pakhanglakpa, P.O. & P.S. Singjamei, Imphal West District, Manipur.
9. Shri Laishram Bimol Singh, aged about 42 years, S/O (L) L. Khamba Singh of Heirangoithong Naoriya Pakhanglakpa, P.O. & P.S. Singjamei, Imphal West District, Manipur.
10. Shri Laishram Roshan Singh, aged about 30 years, S/O (L) L. Khamba Singh of Heirangoithong Naoriya Pakhanglakpa, P.O. & P.S. Singjamei, Imphal West District, Manipur.

.... Respondents

BEFORE

HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

For the petitioners	:	Mr. T. Rajendra, Advocate
For the respondents	:	Mr. Th. Mahira, Advocate

Date of Order : 30.08.2019

ORDER

[1] Heard Mr. T. Rajendra, learned counsel appearing for the petitioners and Mr. Th. Mahira, learned counsel appearing for the respondents.

[2] The civil revision petition has been filed under Article 227 of the Constitution of India seeking to set aside the order of the District Judge, Manipur East, dated 13.05.2015 (Anexure-A/8). The revision petitioners are defendant No. 1 & 2 and respondent (now represented by Legal heirs) is the plaintiff in Original Suit No. 6 of 2011 which has been filed for the following reliefs :-

- “(i) to pass a decree declaring that the plaintiff is the owner in actual possession of the suit-land by virtue of the fact that the transaction between the plaintiff and the defendant No. 1 under the registered sale deed dated 19.8.1994 in mortgage on the suit-land between them that there was no transaction between them as regards the subsequent entry of an area of 5 ft. x 25 ft. in the same Jamabandi of the suit-land as to be of defendant No. 1 and that the plaintiff has been in actual physical possession of the suit-land as her own for more than 12 years adversely against the whole world including the defendants*
- (ii) a decree for cancellation of the registered sale deed dated 19.8.1994 between the plaintiff and the defendant No. 1 declaring the same transaction is being incompetent and void;*
- (iii) a decree of permanent injunction against the defendants restraining them from entering into and/or from making any attempt to enter into, or from disturbing plaintiff's possession of, the suit-land;*

[3] Along with the suit, an application being Judl. Misc. Case No. 32(A) of 2011 was filed for interim injunction under Order XXXIX of CPC which was considered by the Civil Judge, Junior Division, Imphal West on 19.04.2013 (Annexure-A/7) by passing the status quo order as follows :-

19. Ld. counsel of petitioner submitted that no injury would be caused to O.P.s. if status quo of the suit land was maintained. He also submits that the O.P. No. 1 is presently residing at Akham Leikai. He further submitted that the declaration deed filed by the O.P. No. 1 showed the O.Ps. admitted that some items of petitioner were kept inside the suit land. Further he pointed out that the O.Ps. had not mentioned in what manner the O.P. No. 1 possessed the suit land. He contended that a prima facie case of adverse possession is disclosed.

20. *Ld. counsel of O.P.s on the other hand contended that the ingredients of granting temporary injunctions were not made out. He would contend the claim that the sale deeds were in fact mortgage deeds has to fail in view of S.91 and S.92 of the Indian Evidence Act He also contended that the principles of estoppels as provided by S. 115 I.E.A. forbids the petitioner from denying the sales. He also submitted that the petitioner never challenged the mutation orders. He also contends no injunction can be granted against the true owner.*

21. *It is the claim of the petitioner that the registered sale deed dt. 19.08.1994 by which a piece of her homestead land measuring 20ft. x 25 ft. was ostensibly sold to defendant no. 1 was in fact a mortgage deed. Similarly she also claims that the registered sale deed dt. 30.11.94 whereby she ostensibly sold another homestead land to Chongtham Budhichandra Singh measuring 5 ft x 25 ft is also a mortgage in reality.*

22. *The O.Ps had denied this claim of the petitioner. There is at present nothing except the claim of the petitioner that the said sale deeds are in reality mortgage deeds. There is also no apparent reason why mortgage deeds should be reduced in the form of sale deeds. It is also unnatural that mutations of the lands would be made in the name of the O.P. No. 1 if the said sale deeds were meant to be mortgaged deeds in reality. Also S.92 of the I.E.A. will preclude the petitioner from adducing oral evidence contradicting the contents of sale deeds. Hence, as far as her claim that sale deeds were in fact mortgage deeds is concerned, no prima facie case is made out.*

23. *It is also the plea of the petitioner that she has acquired her right in the suit land by adverse possession for more than 12 years against the defendants. The petitioner has also averred that toilet and kitchen are standing on the suit land.*

24. *It is the case of the petitioner as averred at para 11 of the plaint that about three or four weeks ago, the plaintiff was called by the Singjamei Police. That the plaintiff found the defendant no. 1 and 2 and some other unknown persons in the police station. That the police obtained her signature on some blank papers saying the defendant No. 1 had filed a complaint against her. In the written statements, while they deny that the signature of the plaintiff was obtained, they maintain that the assurance was given voluntarily. The defendant no. 1 had filed the copy of the assurance(declaration) dt. 22.12.10.*

Its translation in English reads as follow-

I smt. Laisharm (O) Taruni Devi (60) w/o late L. Khamba Singh of Heirangoithong Naoriya Pakhang Lakpa Leikai in presence of the witnesses put my signature that I will remove the toilet and the other

materials which lies in the homestead measuring 25 x 25 situate at Heirangoithong of Smt. Haobam (O) Radhamani Devi (60) w/o H. Bishewor of Kwakeithel Akham Leikai on or before 20.02.2011. If I failed to remove the same I have no objection to take legal action against me and I will be responsible for the same.

25. The fact that such a document exists would go to support the claim of the petitioner that she is in possession of the suit land irrespective of the fact if it was signed voluntarily or not. The petitioner has raised a triable issue if she has been in possession of the suit land adversely to the O.P. for at least 12 years and her title over it perfected. A prima facie case of perfection of title through adverse possession is disclosed.

26. If an appropriate order is not passed, the petitioner may be dispossessed from the suit land, structure upon the suit land may be destroyed, and there may be multiplicity of proceedings. The balance of convenience is clearly in favour of the petitioner. Irreparable injury may also be occasioned if no such order is passed.

27. In the premise, ex-parte order dt. 18.02.11 is hereby made absolute and the status quo of the suit land be maintained by all parties until further order or till disposal of the suit.

[4] Against this order, an appeal, being Misc. Civil Appeal No. 12 of 2013 was filed before the District Judge, Manipur East. On 13.05.2015, the Appellate Court after hearing both the parties, giving detailed and reasoned order, partly allowed the appeal and modified the status quo order dated 19.04.2013. Relevant portion of the order dated 13.05.2015 read as follows :-

“4. (a) on careful perusal of all the available documents filed on record of this case, it is ascertained that all the documents in respect of the process of sale transaction of the lands of the present respondent -1 to the appellant -1 and to the said Budhichandra Singh have been occurred in the year 1994. This particular fact is not disputed between the parties. The respondent No. 1 has pleaded that even though the said registered sale deed were executed in favour of the appellants – 1 and the said Budhichandra, the present respondent 1 and his family members have been in possession physically till the first week of August 2010 without any interruption from any quarter. In this regard, it is pertinent to mention here that as called by the police personnel of Singjamei P.S. the respondent – 1 went and found there the present appellants along with some other unknown persons and thereafter, the police obtained her signatures on some blank papers and stated that the appellant – 1 has file a complaint for taking over her possession of

the suit land and the respondent -1 should vacate the suit land and deliver thereof to the appellant No. 1 on or before 20/2/2011 failing which she would be ousted from the suit land with removal of all her belongings. Such incidence has taken place on 22/12/2010 as reflected from the said declaration allegedly made by the present respondent-1. But the validity of the said declaration should be decided at the time of the trial of the suit before the Id. trial court. In the above discussion, it is clearly seen that the respondent -1 and his family members have been possessing the suit land physically for more than 12 years from the date of execution of the said sale deeds. It is also seen from the said declaration dated 22/12/2010 said to have been declared by the respondent 1 in the Police Station of Singjamei and also from the version of the respondent -1 that upon the suit land the latrine and kitchen shed of the respondent No. 1 belonging to her, have been standing till now. All the said sale deeds of the said lands of the respondent No. 1 to the appellant -1 and the said budhichandra might be the mortgaged deed or sale deed, whatever the case may be, this subject matter should be considered at the time of the trial of the present suit. If this fact is taken into consideration and I have arrived at a decision as to the validity of the said deeds at this stage it might be prejudged of the suit and prejudice may be caused to the parties. Hence, the present respondent No. 1 cannot be dispossessed at this stage of the case from the suit land.

(b) The respondent – 1 has sold or mortgaged a piece of her land measuring 25 ft x 25 ft. situated at the westernmost portion of her said homestead. First, she sold or mortgaged a portion of land measuring 20 ft. x 25 ft. But another 5 ft. x 25 ft. to the westernmost portion of her said homestead has also been sold to one Budhichandra on registered mortgage on 30/11/94. But surprisingly, the same has again been sold by the said Budhichandra to the present appellant on the same day on a registered sale deed. This land measuring 25 ft x 25 ft. is the suit land. If the said land has been sold out by the respondent 1 to the appellant the delivery of possession of the said land did not hand over to the appellant. And as such the respondent -1 and her family members have been in possession of the same more than 12 years without any interference from any quarter. In the said suit land the respondent 1 and her family members constructed latrine and kitchen shed and kept there the domestic materials. It is already seen that the respondent 1 has made an agreement in the police station that she will remove the toilet and other materials which lies in the homestead of Haobam Ongbi Radhamani Devi. The said homestead stated by the respondent 1 is no other than the present suit land. Hence, it is crystal clear that some valuable properties are still remained in the said suit land. It is also the plea of the respondent No. 1 that she was forced to

vacate the suit land and deliver thereof to the appellant No. 1 on or before 20/2/2011 failing which she would be ousted from the suit land with removal of all her belongings. Hence, she has an apprehension that the appellants and his agents shall enter into and occupy the suit land and also shall remove the said latrine, kitchen shed and other house hold materials now standing/lying inside the suit land. In this matter, after determination into this fact, I arrive at the conclusion that the properties-in-suit should not be or cannot be made irreversible so that at the end of the suit, it can be said that one of the parties has expended a lot against the properties to be dismantled or constructed.

5. In view of the above discussion, the appeal is partly allowed. Hence, it is ordered that the impugned order dated 19/04/2013 passed by the Id. Civil Judge Junior Division, Imphal West in J.M. Case No. 32(A) of 2011 for maintaining status quo of the suit land is modified to the extent that the direction for maintaining status quo is confined to the kitchen and toilet located in the suit land B. It is clarified that status quo is not extended to the remaining part of the scheduled land B (Suit land B)

Appeal is partly allowed.

[5] Against this order, the present civil revision petition has been filed. Both the Trial Court as well as the Appellate Court have gone into details of the nature of relief claimed by the respondent/plaintiff and the objection of the defendants. In the interlocutory order on prima facie consideration of documents and evidence which is already on record, the Trial Court was of the view that the status quo order should be granted in favour of the plaintiff. The Appellate Court after considering the same and also the objection of the defendants' plea that it is a case of absolute sale with possession, observed it is a matter for trial to establish rival claims, was of the view that in the interest of both the parties, the status quo order passed by the Civil Judge, Junior Division, Imphal West should be modified to the extent that the status quo in so far as the suit land should be confined to the kitchen and toilet area located in the suit land B alone, and that

status quo will not be extended to the other parts of the scheduled land B (suit land B).

[6] Having heard the learned counsel of either side and on going through the order of the Civil Judge Junior Division and the Appellate Court, it is evident that there are certain factual issues which have been analysed by the Trial Court to come to the conclusion that status quo order should be granted to safeguard the interest of both the parties and then, the appellate Court modified it partially.

[7] Be that as it may, the issues which arise for consideration in the present case are based mostly on documents. The need to let in evidences by either side becomes imperative to decide the issues that are to be framed in the suit. The Trial Court after hearing either side was of the view that status quo should be maintained. The Appellate Court modified it based on analysis of prima facie case and materials relied upon. At this stage, to go into merits of rival documents based on pleading will certainly affect the outcome of the trial. Any observation will have a bearing on the rights of parties. There is no error apparent on the face of record to interdict the interim order of the Appellate Court. It has only safeguarded either party to the suit. The suit is of the year 2011. Issues have not been framed and therefore, there is undue delay in disposal of the trial because of the interlocutory proceeding. It will, therefore, be appropriate to direct the Trial Court to proceed with the trial after framing issues and allowing the parties to let in their evidence.

[8] In so far as the order which is under challenge in the present case is concerned, having gone through the same, there are certain observations made by the Civil Judge Junior Division, Imphal West and the Appellate Court which are primarily indicated for the purpose of grant of interlocutory relief. Such observation of the court should not have any bearing at the time of trial and disposal of the suit.

[9] What has been stated in the interlocutory stage is only to safeguard interest of the litigating parties as an interim measure of protection and the findings in the interlocutory stage should not and will not have a bearing on the final outcome of the suit after a proper trial.

[10] Observed as above and at the request of the counsel for the both sides, to have early disposal of the trial, civil revision petition is disposed of with direction to the Trial Court to take up the suit immediately for trial

[11] Civil revision petition stands disposed of as above.

CHIEF JUSTICE

Sandeep

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