

Assam Schedule VII: Form No. 132

**HIGH COURT FORM NO. (J) 2.**

**HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE  
IN THE COURT OF THE CIVIL JUDGE, TEZPUR, SONITPUR**

Present: **N.J. Haque, LLM, AJS**  
Civil Judge  
Tezpur, Sonitpur

**9<sup>th</sup> May, 2019**

**MONEYSUIT NO. 15/2018**

**Sri Pradip Kumar Baruah**

Son of (L) Harendra Nath Baruah  
Resident of Bamun Chuburi,  
PO- Tezpur, Mouza- Bhairabpad  
District – Sonitpur, Assam

----- Plaintiff

-Vs.-

**Sri Budhin Gohain**

Son of (L) Suren Gohain  
Resident of Thelamara  
PO – Thelamara, Mouza- Thelamara  
District – Sonitpur, Assam

----- Defendant

**This is a suit for recovery of  
Rs.13,10,200/- along with interest.**

Ld. Advocate appeared for the plaintiff : - Mr.P. Saikia

Ld. Advocate appeared on behalf of defendant: - None

**JUDGMENT**

**PLAINTIFF'S CASE**

1. Plaintiff's case appears to be in a narrow campus is that defendant sold his land and house to the plaintiff on 28-11-2011 vide registered Sale Deed No.1613 of 2011 at a consideration of Rs.4,00,000/-and subsequently it came to the notice of plaintiff that the defendant took loan from the Bank and Life Insurance Corporation of India by keeping mortgage of said land and house. The defendant took loan of Rs.7,50,000/- only from the UCO Bank,Tezpur Branch by mortgaging the land and house which was sold to the plaintiff. That the said loan amount of Rs.7,50,000/- only and same stood as Rs.12,00,000/- only due to non-payment of said loan amount to the said Bank by the

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defendant and when the said Bank asked the defendant to repay the aforesaid loan amount the defendant approached and requested the plaintiff to save him by giving him a loan of Rs.12,00,000/- and the plaintiff under compulsion with a view to save his purchased land and house had agreed to help the defendant by giving him loan of Rs.12,00,000/-. The plaintiff and defendant had mutually finalized the terms and conditions of loan which were embodied in written agreement of settlement dated 29-05-2015 and was executed by both the plaintiff and the defendant. Prior execution of said agreement on request of defendant the plaintiff had deposited Rs.2,00,000/- only out of total amount of Rs.12,00,000/- on 28-05-2015 in defendant's A/C No.02440610000496 in the UCO Bank, Tezpur Branch in cash by deposit voucher and it was decided that the balance amount of Rs.10,00,000/- will be paid by the plaintiff by depositing the said amount in the defendant's bank account within 3 months from the date of aforesaid agreement. Accordingly, the plaintiff had deposited Rs.5,00,000/- on 30-06-2015 and Rs.4,00,000/- on 05-08-2015 in the defendant's account at UCO Bank, Tezpur Branch and after payment of each payment the defendant had issued money receipt to the plaintiff. Thus, the plaintiff had paid total amount of Rs.11,00,000/-. That the defendant had promised to repay the loan amount of Rs.12,00,000/- to the plaintiff vide terms and conditions of aforesaid written agreement /settlement dated 29-05-2015. Though the plaintiff had agreed to give loan of Rs.12,00,000/- but the defendant had actually taken loan of Rs.11,00,000/- only from the plaintiff. The plaintiff several times requested the defendant to repay the aforesaid loan amount of Rs.11,00,000/-, but all the times the defendant took further time to repay the said loan amount to the plaintiff by showing some causes. The plaintiff contended that the defendant is legally bound to repay the said loan amount of Rs.11,00,000/- with interest to the plaintiff, but the defendant has failed and neglected to repay the loan amount or any part of it to the plaintiff. That the LIC published a notice for general information that the property which was purchased by the plaintiff was mortgaged to the LIC Housing Finance Ltd. against loan of defendant. The defendant has earned wrongful gain by not paying the aforesaid huge loan amount to the plaintiff, hence the defendant is liable to pay interest at the

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rate of 6% p.a. on the loan amount of Rs.11,00,000/- to the plaintiff. The plaintiff ultimately served demand notice dated 11-08-2017 through his advocate to the defendant demanding payment of Rs.11,00,000/- with interest @6% p.a. thereon from the date of disbursement of loan within one month to the plaintiff. That the plaintiff under compulsion had to pay Rs.20,000/- to LIC due to non-payment of loan by the defendant to the LIC. The plaintiff had paid the said amount in the name of defendant in the defendant's loan account on 31-07-2017 and therefore, defendant is also legally bound to repay the said amount of Rs.20,000/- to the plaintiff.

2. Upon the above said circumstances, the plaintiff has filed this suit against the defendant for recovery of Rs.11,20,000/- only as principal and Rs.1,90,200/- as interest, total Rs.13,10,200/- ; future interest @6% p.a. on the principal amount from the date of filing of the suit till recovery of decretal amount, for cost of the suit and other relief etc.
3. Summons was issued from the Court to the defendant but the defendant fails to appear before the Court and as such, vide order dated 13.09.2018, my learned predecessor was pleased to pass an order directing that the suit shall proceed ex-parte against the defendant.
4. The plaintiff has examined three numbers of witnesses as PW-1, PW-2 and PW-3 and further relied upon a number of documents. I have gone through the evidence on record including the documents relied on and also heard the arguments of learned counsel appearing for the plaintiff.
5. The following point is formulated for determination:

**Whether plaintiff is entitled to get any decree as prayed for?**

**EVIDENCES ADDUCED BY THE PLAINTIFF**

6. Plaintiff side during the ex-parte hearing examined as many as three numbers of witnesses and out of which PW-1 is the plaintiff and he submitted his examination in chief through affidavit reproducing the contentions of the plaint. PW-1 further exhibited the following documents:-

Ext.1 is the original sale deed No.1613 of 27-04-2011,  
Ext.1(1) to 1(8) are the signatures of executant Sri  
Budhin Gohain,  
Ext.1(9) to 1(10) are the signatures of witness Sri  
Pradip Patangia,

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Ext.1(11) is the signature of Rabindra Tamuli,  
Ext.1(12) is the signature of drafter Hiranya Kalita,  
Ext.2 is the original loan agreement dated 29-05-2015,  
Ext.2(1) to 2(4) are the signatures of plaintiff,  
Ext.2(5) to 2(8) are the signatures of Budhin Gohain,  
Ext.2(9) is the signature of witness Sunil Chandra Das,  
Ext.2(10) is the signature of witness Narayan Barman,  
Ext.2(11) to 2(14) are the signatures of Notary Smt. D. Chowdhury,  
Ext.3 is the Bank deposit voucher of UCO bank dated 28-05-2015,  
Ext.4 is the money receipt dated 28-05-2015,  
Ext.4(1) is the signature of defendant Budhin Gohain,  
Ext.5 is the Bank deposit voucher of UCO bank dated 05-08-2015,  
Ext.6 is the money receipt dated 05-08-2015,  
Ext.6(1) is the signature of defendant Budhin Gohain,  
Ext.7 is the Bank deposit voucher of UCO bank dated 30-06-2015,  
Ext.8 is the money receipt dated 30-06-2015,  
Ext.8(1) is the signature of defendant Budhin Gohain,  
Ext.9 is the pleader's notice dated 11-08-2017,  
Ext.9(1) to 9(3) are the signatures of advocate,  
Ext.10(1) to 10(2) are the postal receipts dated 11-08-2017,  
Ext.11(1) to 11(2) are the acknowledgment card dated 25-08-2017,  
Ext.12 is the possession notice issued by Gramin Bikash Bank dated 12-09-2017,  
Ext.13 is the notice issued by UCO Bank dated 18-01-2013,  
Ext.14 is the notice issued by LIC Housing Finance Ltd. Dated 23-01-2016,  
Ext.15 is the money receipt issued by LIC Housing Finance Ltd. Guwahati dated 31-07-2018 and  
Ext.16 is the non-encumbrance certificate issued by Senior Sub-Registrar, Tezpur.

7. PW-2 and PW-3 also submitted their examination-in-chief through affidavit supporting the entire contentions of the plaint.

**APPRECIATION OF PLAINTIFF'S EVIDENCE**

8. In this case, plaintiff Pradip Kumar Baruah prayed for recovery of Rs.13,10,200/- along with 6% interest p.a. from the date of filing of the suit till recovery from the defendant contending that after he purchased 1 Katha 5 Lessas of land from the defendant, plaintiff came to know that defendant obtained Rs.7,50,000/- loan by mortgaging the said land and said loan stood

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at Rs.12,00,000/- due to non-payment of loan amount. It was further pleaded by the plaintiff that defendant suppressed that he sold out the land to plaintiff that defendant already mortgaged to UCO Bank and subsequently the defendant approached the plaintiff to save him and accordingly the plaintiff to save his purchased property, on request of defendant before execution of the agreement dated 29-05-2015 the plaintiff had deposited an amount of Rs.2,00,000/- to the loan account No. 02440610000496 of the defendant on 28-05-2015. The plaintiff further deposited Rs.9,00,000/- i.e. on 30-06-2015 and 05-08-2015 respectively. It is further pleaded that he came to know that defendant obtained loan from LIC Housing Finance Ltd. and he was compelled to deposit Rs. 20,000/- on 31-07-2017. Defendant failed to repay the loan amount of Rs.11,20,000/- to the plaintiff and accordingly the plaintiff issued an advocate notice on 11-08-2017 to the defendant and defendant failed to return the amount.

9. To prove the above said facts, the plaintiff examined three nos. of witnesses and all the three witnesses supported and corroborated the contentions of the plaintiff.
10. The oral evidences presented before this Court by PW-1, PW-2 and PW-3 remains unshaken as they were not cross-examined by the defendant side in the event the suit has proceeded ex-parte against the defendant.
11. I have carefully travelled through the oral as well as documentary forms of evidences adduced by the plaintiff and it finds that the plaintiff by adducing trustworthy evidences established and proved the entire story of the plaintiff. The oral evidences makes it unqualified that vide Ext.1 sale deed plaintiff had purchased land from the defendant and vide Ext.2 there was a loan agreement executed between the plaintiff and defendant on 29-05-2015. It further established and proved that plaintiff has deposited an amount of Rs.11,00,000/- in the bank loan account of UCO bank belongs to the defendant. Exts.3,4,5,6,7 and 8 appears to be proof of such facts. Plaintiff vide Ext.9 issued pleader's notice on 11-08-2017 upon the defendant and Ext.10 and 11 appears to be the postal receipts and acknowledgement cards dated 25-08-2017. Ext.12 is the notice issued by Assam Gramin Vikash Bank for possession. Ext.13 notice issued by UCO Bank. Ext.14 notice issued by LIC

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Housing Finance Ltd. Ext.15 is the proof of receipt of Rs.20,000/- that was deposited by the plaintiff on 31-07-2018 and Ext.16 is the non-encumbrance certificate issued by Sr. Sub-Registrar, Tezpur in the name of Budhin Gohain.

12. On careful perusal of the documentary forms of evidences it becomes crystal clear before this court that vide Ext.2 it was settled between the plaintiff and defendant that plaintiff shall pay Rs.12,00,000/- to the defendant's loan account of UCO bank, Tezpur vide No. 02440610000496 and the defendant shall return the loan within a period of one year. Although the agreement executed between the plaintiff for Rs.12,00,000/- but plaintiff in his plaint himself pleaded that he has deposited Rs.11,00,000/- and subsequently deposited in the Account of LIC Housing Finance Ltd. of Rs.20,000/-. The plaintiff claimed that total amount of Rs.11,20,000/- was paid by him to the defendant's loan account before UCO Bank, Tezpur and LIC Housing Finance Ltd. Guwahati.
13. Therefore, in the light of oral as well as documentary forms of evidences, this court is of considered opinion that plaintiff proved and established his case by adducing cogent and trustworthy evidences and this court not finds anything to disbelieve the evidences of the plaintiff's side.
14. In the result, it can safely concluded by way of observing that plaintiff has paid total amount of Rs.11,20,000/- to the defendant's loan account before UCO Bank, Tezpur and LIC Housing Finance Ltd. As such, the plaintiff is entitled to get the amount of Rs.11,20,000/- with interest.
15. Plaintiff filed the suit for recovery of Rs.13,10,200/- by calculating interest and in the same time the plaintiff failed to give any proper accounts of calculation as how Rs.11,20,000 came up to Rs.13,10,200/-. As such, upon the above said circumstances, this court has no hesitation to hold that plaintiff is entitled to get only Rs.11,20,000/- from the defendant with interest @ 6% p.a. from the date when the amount becomes due.

**ORDER**

16. In the result the plaintiff suit is decreed ex-parte by way of granting the following reliefs:-
- ❖ plaintiff is entitled to get only Rs.11,20,000/- from the defendant with interest @ 6% p.a. from the date when the amount became due;

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- ❖ That plaintiff is entitled to get cost of the entire proceeding from the defendant and cost of the proceeding shall be calculated and ordered at the time of preparing the decree;
17. Prepare the decree accordingly. Judgment is pronounced and delivered in open court under the hand and seal of this court on 09<sup>th</sup> day of May' 2019.

**CIVIL JUDGE, SONITPUR**

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**APPENDIX**

- 1. Plaintiff's witnesses:-**
- PW-1 Sri Pradip Kumar Baruah  
PW-2 Sri Sunil Ch. Das  
PW-3 Sri Mukut Mohanta
- 2. Plaintiff's exhibits :-**
- 1) Ext.1 is the original sale deed No.1613 of 27-04-2011
  - 2) Ext.1(1) to 1(8) are the signatures of executant Sri Budhin Gohain
  - 3) Ext.1(9) to 1(10) are the signatures of witness Sri Pradip Patangia
  - 4) Ext.1(11) is the signature of Rabindra Tamuli
  - 5) Ext.1(12) is the signature of drafter Hiranya Kalita
  - 6) Ext.2 is the original loan agreement dated 29-05-2015
  - 7) Ext.2(1) to 2(4) are the signatures of plaintiff
  - 8) Ext.2(5) to 2(8) are the signatures of Budhin Gohain
  - 9) Ext.2(9) is the signature of witness Sunil Chandra Das
  - 10) Ext.2(10) is the signature of witness Narayan Barman
  - 11) Ext.2(11) to 2(14) are the signatures of Notary Smt. D. Chowdhury
  - 12) Ext.3 is the Bank deposit voucher of UCO bank dated 28-05-2015
  - 13) Ext.4 is the money receipt dated 28-05-2015
  - 14) Ext.4(1) is the signature of defendant Budhin Gohain
  - 15) Ext.5 is the Bank deposit voucher of UCO bank dated 05-08-2015
  - 16) Ext.6 is the money receipt dated 05-08-2015
  - 17) Ext.6(1) is the signature of defendant Budhin Gohain
  - 18) Ext.7 is the Bank deposit voucher of UCO bank dated 30-06-2015
  - 19) Ext.8 is the money receipt dated 30-06-2015
  - 20) Ext.8(1) is the signature of defendant Budhin Gohain
  - 21) Ext.9 is the pleader's notice dated 11-08-2017
  - 22) Ext.9(1) to 9(3) are the signature of advocate
  - 23) Ext.10(1) to 10(2) are the postal receipts dated 11-08-2017
  - 24) Ext.11(1) to 11(2) are the acknowledgment card dated 25-08-2017
  - 25) Ext.12 is the possession notice issued by Gramin Bikash Bank dated 12-09-2017
  - 26) Ext.13 is the notice issued by UCO Bank dated 18-01-2013
  - 27) Ext.14 is the notice issued by LIC Housing Finance Ltd. Dated 23-01-2016
  - 28) Ext.15 is the money receipt issued by LIC Housing Finance Ltd. Guwahati dated 31-07-2018
  - 29) Ext.16 is the non-encumbrance certificate issued by Senior Sub-Registrar, Tezpur

**CIVIL JUDGE, SONITPUR**