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HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT ON ORIGINAL APPEAL.

District : Sonitpur.
IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

Present : **Sri P.C. Kalita, AJS,**
Saturday the 31st day of May, 2014.

TITLE APPEAL NO. 10 of 2011.

1. Sri Pradip Hazarika,
S/O Late Puneswar Hazarika
Vill. – Niz Baghmari, PO – Burigang,
Mouza - Baghmara,
Dist. Sonitpur(Assam).
... Appellant.

-versus -

1. Sri Muhiram Saikia,
Son of Late Laduram Saikia,
Vill. – Niz Baghmari, PO – Burigang,
Mouza - Baghmara,
Dist. Sonitpur(Assam).
..... Respondant.

Sri Omprakash Sarmah,
S/O Sri Ramesh Sarmah,
Vill. – Niz Baghmari, PO – Burigang,
Mouza - Baghmara,
Dist. Sonitpur(Assam). Proforma respondent.

This appeal coming on for final hearing or having been heard on 19th day of May, 2014.

Mr. P.K. Dutta,
Sr. Advocate and
Sri S. Borthakur Advocate. For the appellant.
Mr. P.Sarma and
Mr. S. Borah, Advocates For the respondent.

And having stood for consideration this day, the 31st May, 2014 the Court delivered the following Judgment : -

J U D G M E N T

1. This appeal has been preferred against the Judgment and Decree dated 01-08-2011 passed by the learned Munsiff, Biswanath Chariali, in Title Suit No. 03 of 2009 whereby the suit was decreed partly, on contest without cost.

2. For better understanding the issues arisen in the present appeal, the facts of the case may be summarized as follows :

This is a declaratory suit along with a prayer of demarcation and recovery of possession of the suit land by evicting the defendants.

The appellant/plaintiff's case, in brief, is that the land measuring an area of 1 katha under Dag No. 38 of Periodic Patta No. 10 of Mouza Baghmara described in schedule B of the plaint which included the land described in the schedule A of the plaint is the subject matter of the suit. That suit land described in both the schedule is the purchased land of the plaintiff through registered deed No. 581 and plaintiff also got mutated his name over the suit land by paying proper revenue to the Government. That at the time of registration of aforesaid deed southern boundary was mentioned wrongly and it was corrected through rectification deed No. 323/08. That defendant has 2 katha of land which situated just adjacent north of suit land. That defendant taking advantage of absence of the plaintiff encroached B schedule suit land of the plaintiff on 01-12-2007 and started construction of a residential building thereon. Thereafter, plaintiff immediately knowing such fact filed a proceeding u/s 145 of Cr.P.C., but the Executive Magistrate on misconception of law dismissed such proceeding. That the defendant knowing such order, started construction in full swing from the month of May, 2008. That previously the measurement of the plaintiff land was 23 (B) X 180(L) inches but at present 14 inch in width in its western direction though the width remains 32 inch

eastern part. The defendant having no sort of title over the suit B schedule land possessed the same. Hence, the plaintiff filed the instant suit.

3. The Respondent-defendants contested the suit by filing written statement.

The defendants in their written statement contended, inter-alia, in brief, that there is no cause of action for the suit, suit is not maintainable, bad for defect of parties, barred by limitation etc. and defendants denied all the statement of the plaintiff save and except what are specifically admitted. The defendant also pleaded that on the date of sale, the seller of the plaintiff Karuna Baruah has lost his title as per the revenue records. Hence, registered sale deed and rectification deed were void. That defendant purchased his land from Gokul Bhagawati and Gokul Bhagawati purchased such land from Gopal Hazarika the same original owner of the land described in schedule A of the plaint. That the defendant denied that plaintiff has been possessing land described in schedule A from the year 1992. According to the statement of the plaintiff the possession of the said land was given to the plaintiff in the year 1992 and the registration of the sale deed was executed in the year 1993 which is complete absurd and unbelievable. That proforma defendant purchased the land after one year from the date of purchasing the land of defendant and got possession from his seller Uma Shankar Gupta. That defendant after purchase of land started construction his house in the year 1997 and completed in the year 1999. That defendant could not be evicted from the suit land. Hence, defendants prayed to dismiss the suit with cost of Rs. 3000/-.

4. On the other hand, proforma defendant contested the suit by filing separate written statement both in law and fact and inter-alia, pleaded that save and except which are specifically admitted in the written statement the rest of the averments of plaint are denied. That the plaintiff has been enjoying the plot of land situated to the southern portion of defendants lands with the boundary presently existing between them. The statement of the plaintiff regarding sale in the year 1993 and recording the name in the year 1992 is contradictory. That he purchased 2 kathas of land from Uma Kanta Gupta in the year 2001 and possessed the same. That defendant never encroached 1 katha land on -01-12-2007 from possession of the plaintiff. The plaintiff and defendant did not inform him regarding any excess land possessed by them. So, prayed for dismissing the suit with cost.

5. Upon the premises of the pleadings, the learned lower court settled the following issues:-

- 1.** Whether there is any cause of action for the suit?
- 2.** Whether the suit is bad for non-joinder of necessary parties?
- 3.** Whether the plaintiff has right, title, and interest over the suit land as described in the schedule A of the plaint?
- 4.** Whether the plaintiff's land is encroached by the defendant?
- 5.** Whether the plaintiff is entitled to the decree as prayed for?
- 6.** To what other relief or reliefs parties are entitled?

6. The plaintiff has adduced both oral as well as documentary evidences. The witnesses of the plaintiff are not cross-examined by the defendant side as on the date of cross-examination the defendant remains absent without any step. Thereafter, upon hearing the learned Advocate of plaintiff side and perusing the evidence on record both oral and documentary, learned trial Court partly decreed the suit of the plaintiff.

7. Being highly aggrieved by and dis-satisfied with the Judgment and decree dated 01-08-2011 passed by the trial court, the plaintiff preferred this appeal.

8. Learned advocate for the appellant submits that the learned trial court has failed to appreciate the evidence on record, failed to discuss the Commission report properly.

Per contra, learned advocate for the respondent submits that the learned lower court has rightly decreed the suit. Learned advocate also submits that the Commissioner's report is a part of the record which was not disputed by any of the parties. In support of his contention, learned advocate placed reliance upon the following decisions :

- 1. {2008 (62) AIC 224 (SC)} and**
- 2. 1992 (2) GLT 600.**

DISCUSSIONS, DECISION AND REASONS THEREOF.

9. I have carefully perused the entire case records, evidence, both oral and documentary, available on record. Heard the argument advanced by learned advocates of both

sides. Also perused the cross-objection filed by the proforma-respondent. Now, let us examine the evidence on record to decide the case at hand.

Issue No.1.

Whether there is any cause of action for the suit?

10. Plaintiff has filed this suit for his right, title and interest and recovery of possession of the schedule B land, demarcation of land on the ground that schedule A land is the purchased land of the plaintiff and schedule B land which includes the schedule A land, encroached by the defendants illegally. On the other hand, the defendants denied the claim of the plaintiff. A cause of action is a bundle of essential facts affirmed by one party and denied by the other party. Upon perusal of the pleadings, I find a bonafide dispute between the parties which requires judicial determination. Therefore, I hold that there is a cause of action for the suit. Hence, this issue is decided in the affirmative and in favour of the plaintiff.

Issue No.2.

Whether the suit is bad for non-joinder of necessary parties?

11. The defendants in their written statement have contended that the suit is bad for non-joinder of necessary parties. Defendants in this respect alleged that Sri Karuna Bora from whom the plaintiff purchased the land, is a necessary party in the suit. On the other hand, proforma-defendant in their written statement alleged that total 13 numbers of persons as co-pattadars in the records and no formal partition taken place amongst them till date. As such, all are necessary parties in the suit. Upon perusal of

the record, I find that Karuna Bora is the seller of the suit land to the plaintiff and plaintiff has no allegation against Karuna Bora. So, this person is not necessary party. In absence of Karuna Bora, vendor of plaintiff, the suit may be properly decided. On the other hand, how all recorded pattadars are the necessary parties in this suit, it is not clear. So, I hold that the suit is not bad for non-joinder of necessary parties. Therefore, this issue is decided in the affirmative and in favour of the plaintiff.

Issue No.3.

12. Whether the plaintiff has right, title, and interest over the suit land as described in the schedule A of the plaint? - this is the vital issue to be adjudicated upon in this suit. The plaintiff pleaded that he became owner of the suit land described in the schedule A of the plaint by purchase through registered Sale Deed No. 581 /93. That at the time of registration of the said sale deed, southern boundary of the land was mentioned wrongly but it was corrected lateron vide rectification Deed No. 323 / 08. The defendant has got of his 2 kathas of land which situated just adjacent north of the suit land. The defendant taking the advantage of absence of the plaintiff, encroached B schedule suit land of the plaintiff on 01-12-2007 and constructed residential house thereon. The plaintiff also pleaded that immediately knowing about the illegal encroachment by the defendant over the schedule B land, filed a proceeding u/s 145 of Cr.P.C which was dismissed by the Executive Magistrate. Thereafter the defendant started construction in full swing from the month of May, 2008. That previously measurement of the plaintiff's land was 23 (B) X 180(B) inches but at present

14 inch in width in its western direction though the width remains 2 inch eastern side. On the other hand, the defendant's contention is that the plaintiff has no title over the suit land by virtue of registered sale deed as well as the rectification deed. The defendant also stated that he never encroached any part of the suit land. Plaintiff Pradip Hazarika submitted his deposition as PW 1. In his evidence-in-affidavit, supported his case as mentioned in the plaint. PW 2 Karuna Bora, the vendor of the plaintiff, also supported the contention of the plaintiff though his evidence-in-affidavit and he also affirmed the sale of the suit land to the plaintiff through registered deed. Both the witnesses of plaintiff side were not cross-examined as because the defendant side remains absent and defendant side did not turn up before the Court to cross the witnesses.

The plaintiff has exhibited the original Sale Deed as Ext. 1, original rectification deed as Ext. 2, copy of Zamabandi as Ext. 3, order passed by the Executive Magistrate as Ext. 4 and land revenue paying receipts as Ext. 5 and 6.

I have carefully perused all the Exhibits which show that the plaintiff purchased the land measuring 2 kathas from Sri Karuna Bora in the year 1993 through Ext, 1 and before that in the year, 1992 plaintiff got possession over the suit land and the names of the plaintiff was mutated in the records of right. Therefore, I find that the plaintiff has right, title and interest over the suit land. Hence, this issue is decided in the affirmative and in favour of the plaintiff.

Issue No. 4.

Whether the plaintiff's land is encroached by the defendant?

13. Upon perusal of the case record, it appears that vide order dated 13-07-2010 the learned Munsiff, Biswanath Charali, issued a Commission to Survey the suit land. Accordingly, the suit land was surveyed. Neither of the parties made any objection against the report submitted by the Survey Commissioner which becomes the part of the case record.

I have gone through the said report which reveals that the land measuring an area of 1 katha 10 lessas is under the possession of the plaintiff, and 2 kathas of land possessed by the defendant Muhiram Saikia which is situated to the adjacent north of the land of the plaintiff, and proforma defendant possessed another 2 kathas 10 lessas of land situated to further north of defendant. Perusal of the sketch map goes to show that the land of the plaintiff then defendant then proforma defendant situated in a lineal way from south to north direction, where plaintiff's land shown measuring as 181 ft of length and 32 and 15 feet in breadth east west direction whereas the land of defendant is exactly 2 kathas. As per the sketch map, I find that the land of the plaintiff not encroached by the defendant because, the plaintiff in his plaint pleaded that the defendant encroached northern 1 katha of land, whereas from the report it is seen that the defendant only possessed 2 kathas of land. Plaintiff in his plaint stated that the defendant has got 2 kathas of land just adjacent to the schedule A land and proforma-defendant got another 2 kathas of land which situated further north adjacent to the

land of defendant. The report of the Commission also discloses the something before the Court. So, the question of encroaching 1 katha of land does not arise as the defendant had possessed only 2 kathas of land. Thus, the plaintiff has failed to substantiate his contention that defendant encroached his land.

Therefore, this issue is decided in the negative and against the plaintiff.

Issue Nos. 5 & 6.

Whether the plaintiff is entitled to the decree as prayed for and to what other relief or reliefs parties are entitled?

14. Both the issues are analogous, for which, they are taken together for discussion.

In view of the discussions and decisions of all the foregoing issues, I find that the plaintiff has proved his possession over 1 katha 10 lessas of land instead of 2 kathas of land though plaintiff proved title over 2 kathas of land. Therefore, the plaintiff is entitled to get right, title and interest over the land as mentioned above. As the plaintiff has failed to prove the encroachment over B schedule suit land by the defendant, for which the plaintiff is not entitled to get the relief of recovery of possession of schedule B land. Plaintiff in this suit also not entitled to get the order of demarcation as already the land was surveyed on measurement by competent authority and such, survey was done in presence of all the parties concerned.

Hence, both the issues are answered partly in favour of the plaintiff.

15. In the result, the plaintiff's suit is decreed partly by declaring plaintiff's right, title and interest over the suit land without cost.

In the light of above discussions and decisions, I do not find any reason to interfere with the impugned Judgment and decree dated 01-08-2011 passed by the learned Munsiff , Biswanath Charali, in Title Suit No. 03 of 2009. Hence, the appeal is dismissed and the Judgment and decree dated 01-08-2011 is upheld.

However, the parties shall bear their own costs.

Prepare a decree accordingly.

The appeal is disposed of on contest.

16. Send down the record of the case/suit to the learned Court below along with a copy of this judgment.

Given under my hand and seal of this Court on this 31st day of May, 2014.

(P.C. Kalita)
Civil Judge,
Sonitpur::Tezpur.

Dictated and corrected by me.

(P.C. Kalita)
Civil Judge
Sonitpur, Tezpur.

Transcribed by me.

(R. Hazarika),
Steno.