

**High Court Form No. (J) 2.
Heading of Judgment in Original Suit**

District : Sonitpur.

In the Court of Munsiff No.1, Sonitpur.

**Present : Triza P Mazinder Baruah, AJS,
Munsiff No.1, Sonitpur.**

Monday, the 09th day of November, 2020

TITLE SUIT NO. 70 OF 2019

Sri Gopal Chandra Lahiri

**Plaintiff/s
Petitioner/s**

versus

v/s

Sri Rajdip Choudhury

**Defendant/s
Opposite party/s**

**This suit/ case coming on for final hearing on 06.11.2020 in the
presence of –**

Sri S. Mishra,

Advocate for the plaintiff; and

None for the defendant,

**and having stood for consideration to this day, the court delivered the
following judgment-**

JUDGMENT

1. The instant suit is for recovery of arrear of rent and vacant possession of the schedule premises bearing description of holding no. 2238 of Jyotish Road, Ward No. 8 of Tezpur Town, P.O & P.S – Tezpur, Mouza- Mahabhairab, District- Sonitpur, Assam after eviction of the defendant from the said premises along with recovery of rent.
2. In the pleadings submitted by the plaintiff it is stated that the plaintiff is the absolute owner of the schedule premises. That on 24.03.2019, the plaintiff had agreed to let out the said premises on monthly rent of Rs. 3,500/- to the defendant from 1st April, 2019. The basis of the arrangement was a verbal agreement with the understanding that a written tenancy agreement would be executed in the month of April, 2019.
3. That the defendant on 31.03.2019 was delivered possession of the schedule premises and defendant on the same date placed one LPG cylinder, one lighter, one stove and one knife in the said premises. Thereafter, on and from 31.03.2019, the defendant has kept the said premises under lock and key. On request of the plaintiff to enter into written tenancy agreement, the defendant stated that he shall do so after 10.04.2019.
4. That as per the pleading submitted by the plaintiff; on basis of the verbal agreement of tenancy between the plaintiff and the defendant, the term of the tenancy begins with effect from 01.04.2019. The plaintiff has further submitted that since 31.03.2019, the said premises were kept under lock and key of the defendant and the defendant has failed to make any payment towards monthly rent despite demand made on phone. Hence, the plaintiff has prayed for recovery of arrears rent and for eviction of the defendant from the said premises.
5. Summons on defendant was served on 19.09.2019 however, in-spite of receiving summons, the defendant failed to appear in Court and as such proceedings were drawn exparte against him by order dated 22.10.2019 and the case was fixed for evidence of plaintiff's witness.
6. In support of the instant case the plaintiff exhibited the following documents :

Ext. 1- certified copy of Jamabandi of P.P. No. 1026 Dag No. 1505 of Tezpur Town, 3rd Part, Mouza - Mahabhairab.

Ext. 2- Land revenue paying receipt for the year 1425 B.S.

Ext. 3- Holding Tax payment receipt issued by TMB.

7. In support of his claim plaintiff Gopal Chandra Lahiri has examined himself as P.W-1 and the son of the plaintiff Gairish Lahiri has been examined as P.W-2. The defendant, on the other hand has neither examined any witness in support of his case nor cross examined the witness for the plaintiff. P.W-1 in his evidence as well as in his plaint stated that the defendant and him had entered into a verbal agreement for tenancy of the said premises from the month of April, 2019 at the monthly rent of Rs. 3,500/-. Thereafter, it is alleged by the plaintiff that the defendant failed to make any payment towards monthly rent and to execute written tenancy agreement. The plaintiff has further stated in his evidence that the defendant has kept the said premises under lock and key since 31.03.2019 after keeping one LPG cylinder, one lighter, one stove and one knife in the said premises.
8. In the instant case the plaintiff has been able to prove his title on the schedule premises. P.W-1 who is the plaintiff in the instant suit and P.W-2 reiterates what has been already pleaded in the plaint. Both P.W-1 and P.W-2 have not been examined or cross examined by the defendant and as such there evidence has remained unchallenged/unrebutted. Civil cases are based on preponderance of probabilities and in absence of any rebutal by defendant the same is deemed to be prove. The evidence of P.W-1 and P.W-2 is stated in favour of the plaintiff and as such it remains unrebutted. The defendant did not appear before this Court to put forth his defence inspite of receipt of summons. Hence, in the absence of any pleading of the defendant, it is now to be determined whether the plaintiff has independently been able to prove his case. The plaintiff claims that inspite of an oral agreement for tenancy commencing from 01.04.2019, no payment towards monthly rent has been made by the defendant whereas the defendant has been in possession of the schedule premises since 31.03.2019. As a witness the plaintiff as P.W-1 and the evidence of P.W-2 corroborates what is stated in the plaint.

9. I have perused the documents submitted by the plaintiff. The material on record show the ownership, right and interest of the plaintiff regarding schedule premises and the plaintiff is entitled to recover vacant possession of the same by evicting the defendant along with arrears of rent. The defendant has failed to negate the claims of the plaintiff. The evidence of the plaintiff remains un rebutted. Consequently, it can be held that the plaintiff is entitled to the decree as prayed for.
10. Accordingly, it is held that, the plaintiff has been able to prove his case and hence, entitled to the decree for recovery of vacant possession of the said premises.

Order

11. **In the conclusions, the suit is decreed exparte without cost with the below mention relief/s.**
- i) The defendant is to be evicted along with men and material/s from the schedule premises and the plaintiff is to be delivered the vacant possession of the schedule premises by removing men, materials, structures, belongings etc. standing thereon.**
 - ii) Plaintiff is entitled to realize arrears of rent @ Rs. 3,500/- only from 01.04.2019 to 31.08.2019.**
 - iii) Plaintiff is entitled for recovery of future rent @ Rs. 3,500/- only per month from the date of institution of the suit until decree.**
 - iv) Plaintiff is entitled for recovery of mesne profits @ Rs. 200/- only daily from the date of decree until recovery of vacant possession.**
 - v) The defendant and his men, servants, agents and associates are restrained and prohibited from entering the schedule premises after eviction.**
12. **Prepare decree accordingly.**

**Given under my hand and the seal of this court on this the 09th day of
November, 2020 at Tezpur, Sonitpur.**

**Smt. Triza P Mazinder Baruah
Munsiff No.1,
Tezpur, Sonitpur.**

Dictated and corrected by me

**Smt. Triza P Mazinder Baruah
Munsiff No.1,
Tezpur, Sonitpur.**

APPENDIX

A. Plaintiff's Witnesses:

1. P.W-1: Sri Gopal Chandra Lahiri.
2. P.W-2: Sri Gairish Lahiri.

B. Defendant's Witnesses:

Nil

C. Plaintiff's Exhibits:

1. Ext. 1- certified copy of Jamabandi of P.P. No. 1026 Dag No. 1505 of Tezpur Town, 3rd Part, Mouza – Mahabhairab.
2. Ext. 2- Land revenue paying receipt for the year 1425 B.S.
3. Ext. 3- Holding Tax payment receipt issued by TMB.

D. Defendant's Exhibit :

Nil.

Smt. Triza P Mazinder Baruah
Munsiff No.1,
Tezpur, Sonitpur