

**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

7th May, 2019
TITLE SUIT NO. 9/2015

Sri Madhab Saha

S/o(L): Hemanta Saha
Ward No.13, Nepalipatty, Tezpur Town
P.O.-Tezpur, Mouza - Mahabhairab
District – Sonitpur, Assam

-- Plaintiff

-Vs.-

(1) Smt. Sandhya Rani Paul

W/o: Sunil Kanti Paul
Vill. Lower Jail Road, Near Ruprekha School, Shillong
PO- Shillong, PO- Shillong
793001, Meghalaya

(2) Smt. Bharati Dey Sarkar

W/o: Sri Jayanta Sarkar
Vill. Takurpatty, Kharupetia,
District – Darrang, Assam

----- Defendant

Ld. Advocate appeared for the plaintiff : - Mr. P. Saikia
Ld. Advocate appeared on behalf of defendant: - Mr. S. Mishra

"This is a suit filed for specific performance of contract for sale and purchase of suit properties and came up for final hearing on-23/04/2019.

JUDGMENT

PLAINTIFF'S CASE

1. Plaintiff's case appears to be in a nutshell is that plaintiff is a tenant of house standing over the land measuring 10 lessacovered by Dag No.1274 of Periodic Patta No.1270 that comprising of two rooms of Ekchali Assam Type

house and hereinafter referred as "suit properties". That originally rent was fixed at Rs.500/- and subsequently it was enhanced to Rs.1000/- only. It was further pleaded by the plaintiff that defendant No.1 is the owner of the suit land along with one Ekchali old Assam type house having two rooms and on 07-01-2013 defendant No.1 Sandhya Rani Paul tried to evict him from the suit properties and the plaintiff filed TS No.2/2013 for decree of permanent injunction so that he may not be evicted from the suit premises forcibly. Thereafter, an ex-parte judgment was passed in favour of plaintiff and wherein defendant No.1 was restrained permanently from forcefully evicting the plaintiff. Subsequently, defendant No.1 who resides at Shillong came to Tezpur and proposed the plaintiff to sell the suit properties at Rs.4,00,000/- on 10-07-2013 and executed oral contract of sale in favour of the plaintiff. Thereafter, plaintiff came to know that defendant No.1 sold the suit properties in favour of defendant No.2 at Rs.8,00,000/- by executing a registered sale deed No.1399/2014 and defendant willfully disobeyed conditions of oral contract of sale, as such plaintiff filed this suit praying for specific performance of contract with other reliefs.

Case of the defendants:

2. Both the defendants on receiving summons from the court appears before this court and contested the case by filing written statements separately both in law and facts. The defendant no-1 denied entire contentions of the plaintiff and further submitted that suit is not maintainable and there is no cause of action for the suit. Defendant No.1 admitted that plaintiff is the tenant of the suit property and she never attempted to evict the plaintiff from the suit property on 07-01-2013. She further denied any proposal and acceptance to sale the suit properties to the plaintiff on 10-07-2013 at consideration of Rs.4 Lakhs. Defendant No.1 further pleaded that she has received an amount of Rs.5 Lakhs on two different dates from the defendant No.2 for sale and purchase of suit property and on 25-08-2009 she had entered into a concluded contract with defendant No.2 to sell her suit property and said agreement of sale notarized at Guwahati on 25-08-2009. Thereafter, defendant No.2 tendered the sale consideration amount on several occasions but she due to her ill-health unable to obtain permission of sale and execute registered sale deed by accepting the sale consideration.

Thereafter, defendant No.1 has received letters to execute registered sale deed, but she could not obtain requisite permission for her old days ailments. Thereafter, on 23-02-2010 defendant instituted TS No.5/10 for specific performance of contract along with a Misc. case and said suit decreed against defendant No.1 on ex-parte and subsequently they compromised the dispute without going for execution of said ex-parte decree and defendant no-1 obtained permission for sale on 10-09-2013 and executed registered sale deed in favour of defendant No.2 at sale consideration of Rs.8 Lakhs and sale deed No.1339 of 2014 was executed over house structures including the land covered by Patta No.1270 Dag Nos.2714 and 2715. That on the date of execution of registered sale deed on 17-10-2014, the defendant No.1 directed her tenants i.e. plaintiff and Pranesh Das and Ajit Biswas to pay monthly rent to defendant No.2 but plaintiff has not paid any rent to the defendant. Upon the above, defendant No.1 prayed dismissal of the suit.

3. Defendant No.2 contended same facts in her written statement so as to defendant no-1 has contended in her written statement. The defendant no-2 further pleaded that suit is not maintainable and there is no cause of action for the suit. Defendant No.2 further pleaded that defendant no-1 never entered into any oral contract of sale of suit property to the plaintiff on 10-07-2013 at consideration of Rs.4 Lakhs. Defendant No.2 further pleaded that defendant no-1 has received an amount of Rs.5 Lakhs on two different dates from her for sale and purchase of suit property and on 25-08-2009 she had entered into a concluded contract with defendant No.1 for sale suit property and said agreement of sale notarized at Guwahati on 25-08-2009. Thereafter, she tendered the sale consideration amount on several occasions but defendant no-1 due to her ill-health unable to obtain permission of sale and execute registered sale deed by accepting the sale consideration. Thereafter, she obtained an ex-parte decree TS No.5/10 for specific performance of contract against the defendant no-1 and before execution of said decree they mutually executed registered sale deed No.1339 of 2014 at sale consideration of Rs.8 Lakhs. That on the date of execution of registered sale deed on 17-10-2014, the defendant No.1 directed her tenants i.e. plaintiff and Pranesh Das and Ajit Biswas to pay monthly rent to defendant

No.2 but plaintiff has not paid any rent to the defendant. Upon the above, defendant No.2 prayed dismissal of the suit.

4. Upon the above said pleading my predecessor in office framed the following issues:-

ISSUES

- I. Whether there is any cause of action?**
 - II. Whether the plaintiff and defendant No.1 entered into an oral agreement to sell the suit land to the plaintiff for a consideration of Rs.4, 00,000/- ?**
 - III. Whether the defendant No.1 breached the contract and sold the suit land to defendant No.2?**
 - IV. Whether plaintiff is eligible for the decree as prayed for?**
 - V. To what relief(s) the parties are entitled to?**
5. At the time of hearing the argument learned advocate appearing on behalf of the defendants argued before this court strenuously that plaintiff failed to prove the alleged oral contract executed between the plaintiff and defendant no-1 by adducing any cogent evidences before this court.
6. Per contra, learned advocate appearing for the plaintiff vehemently submitted before this court that plaintiff's suit is liable to decreed with cost as the plaintiff established and proved the contentions of plaint by adducing trustworthy evidences before this court.
7. Plaintiff as well as defendant side adduced both ocular as well as documentary forms of evidences. For the sake of brevity of the judgment let us reproduce some relevant portions of the evidence presented by both the sides briefly as follows :-

EVIDENCES ADDUCED BY THE PLAINTIFF

8. Plaintiff Madhab Saha examined as many as two nos. of witnesses and relied upon several nos. of documents. PW-1 submitted his examination-in-chief through affidavit supporting and reproducing the entire contents of the plaint and he exhibited the following documents:Ext-1 is the case record of TS No.2/2013, Ext, 1(1) is the final order of the suit, and Ext.2 is the certified copy of registered sale deed No.1339/2014.
9. PW-1 in his cross-examination testified that he filed this case for 10 Lessas of land and after obtaining certified copy of Patta No.1270 he came to know about the measurement of land. Witness No.2 is his own brother. Including himself there were other tenants named Ajit Biswas and Pranesh Das. There

is a wholesale shop of fruits over the suit property and same is situated in the back side of shop of Ajit Biswas. There was no agreement between him and owner of rented rooms. Defendant No.1 used to reside at Shillong. He doesn't know in which place of Shillong, Sandhya Rani Paul resides and he never visited her house. He filed one Misc. Case No.90/16 for repairing of his rented room against the owner and the suit is pending before Munsiff No.1. His brother Gosai Das Saha was present at the time of oral agreement with defendant No.1 on 10-07-2013. Said agreement was done at Nepalipattay at 4 p.m. and it was agreed to purchase land at Rs.4,00,000/-. He never requested the owner to execute written agreement of sale. In T.S No.2/2013 judgment and decree was passed on 08-07-2013. He has no dispute or quarrel with the owner at the time of filing TS No.2/13. He filed T.S No.2/13 so that he may not be evicted from there. Sandhya Rani Paul sold out land of patta No.1270 and room standing thereon in favour of defendant No.2 by executing registered sale deed. If defendant No.2 Bharati Dey Sarkar filed TS No.5/10 against Sandhya Rani Paul before Civil Judge court for specific performance of sale of land and recovery of possession, he doesn't know. If defendant No.1 has entered into agreement of sale of land and house of Dag No.1270 in favour of defendant No.2 and received advance amount, he doesn't know. If TS No.5/10 decreed on 25-05-2011 he doesn't know. After he obtained judgment and decree passed in TS No.5/10 he filed this case against defendants. He forgot in which date he received the certified copy of judgment. Ext.2 registered sale deed executed and registered before Sub-Registrar, Tezpur on 17-10-2014. In Ext.2 total 1 Katha of land described respectively as from Dag No.2714 as 12 Lessas and Dag No.2715 as 8 Lessas and said 1 Katha land bounded by in the North –Shyam Charan Paul, South- S. K. Alam, East – Manuwar Hussain and West- Kabarkhana path and within that boundary the suit property and rooms falls.He has not issued any notice against the defendant No.1 for selling suit properties on 10-07-2013. The oral contract of 13-07-2013 known by his brother Gosai Das Saha and he has not informed others.

10. PW-2 submitted his evidence in chief through affidavit by reproducing the contents of plaint and he deposed in his cross-examination that he doesn't know that on 07-01-2013 his brother was attempted to be evicted from the

suit property. His brother filed several suits against Sandhya Rani Paul over some disagreements with Sandhya Rani Paul. At 3-30 p.m. between his brother and Sandhya Rani Paul oral agreement was executed for sale and purchase for suit property and that time none were present except his brother himself and Sandhya Rani Paul.

EVIDENCES ADDUCED BY THE DEFENDANTS

11. DW-1 Bharati Dey Sarkar submitted her examination-in-chief through affidavit reproducing the contentions of the written statement and she further exhibited the following documents :-

Ext.A is the registered Sale deed No.1339 for the year 2014 of Sub-Registry Office, Tezpur, dated 17-10-2014,
Ext.A (1) to A(7) are signatures of Sandhya Rani Paul,
Ext.A(8) is the signature of identifier Prabhu Dayal Shukla,
Ext.A(9) is the signature of DW-1,
Ext.A(10) is the signature of Pranesh Das,
Ext.A(11) is the signature of witness Prabhu Dayal Shukla,
Ext.A(12) is the signature of Sujoy Kumar Das,
Ext.B is the certified copy of Jamabandi of PP No.1270 Dag Nos.2714, 2715,
Ext.C is the certificate issued by the Executive Officer, Tezpur Municipal Board dated 07-04-2016,
Ext.D is the no objection certificate issued by the Executive Officer, Municipal Board dated 07-04-2016,
Ext.E is the copy of amended plaint in Title Suit No.5/2010,
Ext.E(1) is the certified copy of order dated 25-05-2011 passed by Civil Judge, Sonitpur, Tezpur,
Ext. E(2) is the certified copy of decree in Title Suit No.5/2010,
Ext. F is the case record of Title Suit No.5/2010,
Ext. F(1) is the amended plaint,
Ext.F(2) is the list of documents,
Ext.F(3) is order dated 25-05-2011 and
Ext. F(4) is the decree passed in TS No.5/2010.

12. DW-1 in her cross-examination deposed before this Court that she had entered into an agreement with Sandhya Rani Paul in the year 2009 for sale and purchase of the land and said land measuring 1 Katha 4 Lessas and Dag numbers were 912/1664/913/1868/2829/1867 and Patta 13 (old), 67 (new) and as per the agreement, land value was Rs.20 Lakhs. She filed TS case No.5/10 before Civil Judge court and land was described as 1 Katha 4 Lessas. Even she had not described Dag No.2914, 2915 in the agreement, but in TS No.5/10 she had mentioned those dag numbers. She had not mentioned about the houses in her agreement as well as in TS No.5/10. As per Ext.1 the value of land is Rs.8 Lakhs and there she has not mentioned

about any room. There was no similarity of the boundary of the land described in Ext.A and in the plaint of TS No.5/10. She doesn't know from when plaintiff Madhab Saha was the tenant of Sandhya Rani Paul, but at the time she purchased the land plaintiff was a tenant of Sandhya Rani Paul. She doesn't know if plaintiff filed TS No.2/13 against Sandhya Rani Paul for permanent injunction. She had authorized tenant Pranesh Das to withdraw the rents from the tenants. She had not made said Pranesh Das as a witness. She doesn't know if Madhab Saha paid the rents to the court in the name of plaintiff and herself.

13. DW-2 Pranesh Das has submitted his evidence in chief through affidavit and further exhibited following documents :-Ext-A is the registered Sale deed No.1339 for the year 2014 of Sub-Registry Office, Tezpur, dated 17-10-2014, Ext-A (1) to A(7) are signatures of Sandhya Rani Paul, Ext-A(8) is the signature of identifier Prabhu Dayal Shukla, Ext.A-(9) is the signature of DW-2, Ext-A (10) is the signature of Pranesh Das, Ext.A(11) is the signature of witness Prabhu Dayal Shukla & Ext.A(12) is the signature of Sujoy Kumar Das.
14. He in his cross-examination, deposed that on 14-08-2009 between Bharati Dey Sarkar and Sandhya Rani Paul agreement of sale executed. He being an agent of Bharati Dey Sarkar collected rents and paid to Bharati Dey Sarkar but he has not furnished any receipt in respect of collecting the rents. He doesn't know in which Dag and Patta Bharati Dey Sarkar has her land.
15. DW-4 (wrongly typed as PW-3) in his evidence-in-chief deposed that he was working as Lat Mandal in the Circle Office, Tezpur Revenue Circle, Tezpur. He has come to the Court on receipt of summons and brought documents and registers as directed. Ext.G is the Jamabandi Register of Mouza- Mahabhairab, Tezpur Town, 3rd Part. Ext.G(1) is the relevant entry of PP No.856 (old), 1270 (new) and Dag No.2714 containing land measuring 12 Lessas and Dag No.2715 containing land measuring 8 Lessas. These PP Nos contained total land measuring 1 Katha of Mouza- Mahabhairab, Tezpur Town, 3rd Part. The name of the pattadar is Smt. Bharati Dey Sarkar, wife of Sri Jayanta Sarkar. Previously, the above stated land was of PP No.856 (old) and 1270 (new) was mutated in the name of Smt. Sandhya Rani Paul. Thereafter, mutated in the name of Smt. Bharati Dey Sarkar. Ext. H is the

Chitha Book of, Tezpur Town, 3rd Part, Mouza- Mahabhairab. Ext.H(1) is the relevant entry of Dag No.1867 (old), 2714 (new) containing land measuring 12 Lessas and Dag No.1868 (old), 2715 (new) containing land measuring 8 Lessas. These two Dags contain total land measuring 1 Katha and mutated in the name of Smt. Bharati Dey Sarkar, wife of Sri Jayanta Sarkar.

16. DW-4 in his evidence-in-chief deposed that since June 2015 he was discharging his official duty as Sheristadar of the office of the Civil Judge, Sonitpur, Tezpur. TS No.5/2010 was pending before the Court of Civil Judge, Sonitpur and same was disposed of on 25-05-2011. Ext.F is the original case record of TS No.5/2010. Ext.F(1) is the plaint of TS No.5/2010. Ext.F(2) is the list of documents filed by the plaintiff, Ext.F(3) is the order dated 25-05-2011. Ext. F(4) is the decree.
17. I have heard the arguments of both the sides and perused the entire case record along with the oral and documentary forms of evidences before this court.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

18. Issue No.1: CAUSE OF ACTION

- Issue no-1 of this relates to the cause of action. The defendants in their written statement categorically pleaded that this suit has no cause of action. In the legal system, a "cause of action" is a set of facts or legal theory that gives an individual or entity the right to seek a legal remedy against another. This applies to the filing of a civil lawsuit for such wrongs as property damages, personal injury, or monetary loss, as well as to criminal wrongs such as battery, theft, or kidnapping. A cause of action may come from an act or failure to act, breach of duty, or a violation of rights, and the facts or circumstances of each specific case often have a significant effect on the case.
- In other words Cause of Action of a law suit defined as bundle of facts affirmed by one party and denied by the other side. Assertion of certain facts and denial from the other side, gives rise of a bonafide dispute between the parties and said dispute considered to be cause of action for a law suit.
- The plaintiff Madhab Saha brought instant lawsuit against the defendant alleging, inter-alia, that defendant No.1 Sandhya Rani Paul

after entering into an oral agreement of sale for sale and purchase of the suit property to the plaintiff on 10-07-2013, subsequently sold out the suit land along with other land to defendant No.2 by executing registered sale deed No.1339/14. Per contra, the defendants submitted their written statements separately and contended that the defendant no-1 never entered into an oral agreement of sale and purchase of the suit property in favour of the plaintiff. The defendants further pleaded that plaintiff merely is a tenant of suit property and holding along with other tenants and falsely obtained a decree of ex-parte decree of permanent injunction against the defendant No.1.

- The facts asserted by the plaintiff in his plaint subsequently denied by the defendants and such assertions and denials gives rise of cause of action of the instant law suit. There are many points of controversy raised upon the pleadings of assertion and denial put forwarded by both the sides and those controversy requires proper adjudication in the instant law suit. Therefore, in the light of the above said discussion, this court is of the considered opinion that instant suit has cause of action to decide and accordingly, Issue No.1 is answered in affirmative and in favour of the plaintiff.

19. **Issue No.2:** This issue relates to the fact-----"**whether the plaintiff and defendant No.1 entered into an oral agreement to sell the suit land to the plaintiff for a consideration of Rs.4,00,000/".**

- ❖ This issue relates to the crux of the dispute. If we meticulously peruse the pleadings of both the parties, then it becomes crystal clear before this court that the plaintiff admitted herself to be a tenant of one portion of the suit holding and on 07-01-2013 defendant No.1 tried to evict the plaintiff from the rented from forcibly against which plaintiff filed TS No.2/13 against the defendant No.1 for permanent injunction and accordingly said suit proceeded ex-parte and vide ex-parte judgment and decree dated 08-07-2013 the defendant No.1 has been permanently restrained by the court from forcefully evicting the plaintiff from the suit premises. Plaintiff further pleaded that defendant No.1 used to reside at Shillong and on 10-07-2013 defendant No.1 came to Tezpur and proposed to sell 10 Lessas of land

including the Assam type house to the plaintiff with a consideration of Rs.4 Lakhs and accordingly an oral contract of sale was entered between the parties on 10-07-2013 and it is further agreed that permission of sale of the suit property will be obtained by the defendant No.1 and afterwards defendant No.1 will execute the registered sale deed in favour of the plaintiff. Thereafter, in the last part of December,2014 plaintiff came to know that defendant No.1 sold out the suit property to the defendant No.2 by executing registered sale deed No.1339/14 dated 06-02-2014 with a consideration of Rs.8 lakhs. As such, the plaintiff prayed for specific performance of oral contract along with some other reliefs.

- ❖ Per contra, the defendants denied the entire contentions of the plaintiff and they further pleaded that there was no agreement of sale of suit property executed on 10-07-2013 between the plaintiff and the defendant No.1 and defendant No.1 on 16-08-2009 offered to sell her land measuring 1 Katha 4 Lessas to defendant No.2 and defendant No.2 agreed to purchase the same on consideration of Rs.20 Lakhs and on 22-08-2009 defendant No.2 paid Rs.1 Lakh and Rs.4 Lakhs on 22-08-2009 and there was an agreement of sale notarized before the Notary Public, Guwahati on 25-08-2009. Thereafter, defendant No.1 due to her illness failed to perform her own part and subsequently defendant no-2 filed T.S No.5/2010 for specific performance of contract and said suit was decreed ex-parte against the plaintiff and consequent to that defendant No.1 and 2 mutually measured the land covered by PP No.1270 under Dag No.2714 and 2715 and found the land measuring 1 Katha and there was Assam type old dilapidate house more than 60 years old and thereafter sale deed No.1339/14 was executed in respect of 1 Katha of land along with Assam type house on 17-10-2014 after obtaining requisite permission in favour of defendant No.2 and defendant No.2 mutated her name over the suit property and on 17-10-2014, defendant No.1 directed her tenant i.e. plaintiff, Pranesh Das and Ajit Biswas to pay monthly rent to the defendant. Other tenants were regularly paying the rent to defendant No.2 but plaintiff has not paid rent to defendant No.2 in spite of demand.
- ❖ As such from the above said pleadings on record, this court finds that in this case the burden lies upon the plaintiff to prove the execution of oral

concluded contract between him and the defendant No.1 in respect of suit property measuring 1 Katha on 10-07-2013 with sale consideration amount of Rs.4 Lacs.

- ❖ Let us discuss few points of oral agreement. What makes an Agreement valid is the first thing to discuss. The process of making a valid agreement starts from statutory provisions given in Indian Contract Act.
- ❖ Under Section 10 of the Act, it is stated that – All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. So from this section, we can conclude the following necessary things for making an Agreement a valid contract:
 - ◆ Competent parties
 - ◆ Free consent
 - ◆ Lawful consideration
 - ◆ Lawful objectBy fulfilling these 4 necessary requirements, an agreement becomes a contract under Section 10 of the Act. Hence it can be understood that an agreement plus the essentials tabled in Section 10 will deem the contract valid. Section 2(e) of the Act says that an Agreement is defined as “every promise and every set of promises forming the consideration for each other”.
- ❖ When a person makes an offer to another and that offer is accepted by the other person that offer becomes a promise and we have already discussed the definition of an agreement above.
- ❖ This means the offer is a starting point for making an agreement. The important part which we have to emphasize upon is how such offer is communicated. Section 3 of the Act discusses this point and in brief, it is said that a communication of an offer can be made in any way which has the effect of showing the willingness of the person who is offering. Such communication could be made through the mouth, or writing, or even by the conduct. This type of offer which is communicated through mouth or writing is called ‘express offer’.
- ❖ This is also mentioned under Section 9 of the act that where the proposal or acceptance of any promise is made in words, the promise is said to be express. And when such offer to whom is communicated comes to his or her

knowledge and also signifies his assent to that place, the offer is said to be accepted. After its acceptance, it becomes a promise.

- ❖ When an oral agreement is found to fulfil certain essentials, their admissibility the court cannot be questioned. On the validity of oral agreements while dealing with several cases the courts recognised the acceptability of oral agreements once they were found to be fulfilling the essentials provided in section 10. As we see in the case of **Alka Bose vs. Parmatma Devi & Ors [CIVIL APPEAL NO(s). 6197 OF 2000]**, the Hon'ble Supreme Court by coming to the conclusion of the case observed that how oral agreements are valid. A sale agreement can be oral also and valid. It is not necessary that agreement should be written, what is more important is that it should be within the ambit of Section 10 of the Indian Contract Act. All oral and written agreements will be valid if they fulfil the conditions specified in Section 10.

Admissibility of oral agreement under Evidence act

- ❖ Under Section 92 of the Evidence Act, an Oral agreement will not be held as an evidence if the terms of the contract are reduced to the form of a document. But its proviso (2) makes an exception to that if there is any separate oral agreement as to any matter where the document is silent and the terms are inconsistent, then the oral agreement may be proved valid. And provision (3) further makes an exception that if there is any separate oral agreement which constitutes a condition precedent to the attaching of any obligation under any such contract, then also oral agreement may be proved.
- ❖ In the light of above said settled propositions of law it is seen that the entire relief of specific performance of contract based upon the proof of oral agreement between the parties. In respect of any agreement that allegedly executed orally, they are still enforceable but something recommended widely when the contract deals with major transaction and governs relation between the parties. If such oral agreement have already been made the plaintiff can prove the presence of essential elements of a contract by providing the admissible proof, the plaintiff can still avail justice as justice not to deny on some ground on non-availability of written agreement when other pieces of evidence support the claim of the plaintiff. In the

forthcoming discussions we shall try to ascertain whether plaintiff is able to prove all the essential requirements of a valid contract.

- ❖ In the foregoing discussion, we have already described the relevant portion of the evidences adduced by both sides. I have carefully travelled through the evidences presented before this Court by the plaintiff and it finds that the plaintiff to substantiate his pleadings of oral contract examined two nos. of witnesses, out of which PW-1 is the plaintiff and PW-2 is the brother of plaintiff.
- ❖ On meticulous appreciation of the evidences adduced by both PW-1 and PW-2 it is seen that plaintiff in his examination-in-chief claimed that between him and defendant No.1 oral agreement was executed on 10-07-2013 and he in his cross-examination affirmed that except his brother defendant No.1 and himself, none were present. TS No.2/2013 was filed by the plaintiff for permanent injunction and same was decreed on 08-07-2013. The plaintiff as PW-1 in his cross-examination emphatically deposed that before filing TS No.2/13 there was no dis-agreement between him and the owner of the property. He instituted TS No.2/13 so that he may not be evicted. Hence, from the cross-examination part of PW-1, it is seen that PW-1 himself appears to be contradictory with his own pleadings as he described in para no.3 of the plaint regarding incident dated 07-01-2013 where he claimed that defendant No.1 forcibly tried to evict the plaintiff from his rented room forcefully. Although the plaintiff has claimed such incident dated 07-01-2013 in his plaint, but surprisingly in his cross-examination he categorically affirmed that there was no quarrel between him and plaintiff before he instituted the TS No.2/13. Accordingly, it is seen that plaintiff appears to be contradictory with his pleadings and a strong presumption can be drawn upon against the versions of plaintiff.
- ❖ PW-1 in his cross-examination further deposed that if the defendant No.1 on 25-08-2009 entered into an agreement for sale of land belongs to Patta No.1270 with defendant No.2 he does not know. He further does not know if on 25-05-2011 decree was passed vide TS No.5/10. He affirmed that after obtaining judgment and decree of TS No.5/10, he brought the instant suit. PW-1 in his cross-examination further deposed that he never issued any notice upon the defendant No.1 asking her to sell land and room. If really

there was any oral agreement of sale executed between the plaintiff and defendant No.1, plaintiff at least issued a notice against the defendant No.1 before institution the instant suit in hand.

- ❖ PW-2 contradicted the version of PW-1 by way of testifying before this court that he does not know that on 07-01-2013 there was an attempt to evict his brother from the suit property. He further testified that due to dis-agreement with Sandhya Rani Paul, his brother filed one suit earlier against Sandhya Rani Paul. The plaintiff as PW-1 in his cross-examination himself admitted that there was no quarrel with owner of the suit property before she instituted earlier law-suit for permanent injunction.
- ❖ Hence, it is seen that both the PW-1 and PW-2 appears to contradictory with each other. PW-1 and PW-2 both have supported the fact that there was an oral agreement for sale and purchase of the suit property executed between the plaintiff and defendant No.1 in the year 2013, but in the same time they have contradictory to each other regarding the disagreement between the plaintiff and defendant no-1 and in presence of those contradictions, the evidences of both the witnesses cannot be relied upon.
- ❖ More also, PW-1 and PW-2 in their evidences failed to depose anything to prove that the plaintiff has done some overt acts in pursuant to the alleged oral agreement to obtain a registered sale deed from the defendant No.1 before institution of the law suit. The oral agreement as alleged between the parties was on consideration of Rs.4 Lakhs, but there was no attempt made by the plaintiff for compelling the defendant No.1 to execute a registered sale deed in favour of the plaintiff before institution of the suit. The plaintiff even did not issue notice upon the defendant No.1. The plaintiff even failed to tender the entire balance consideration amount to the defendant no-1 by approaching her at Shilong or any other place. The plaintiff failed to tender any evidence showing that he has approached the defendant no-1 with a proposal that he is willing and ready to perform his part or asked the defendant no-1 to execute register sale deed in his favour.
- ❖ The defendants side in support of their case, examined four nos of witnesses and on careful and meticulous perusal of the evidence on record, it is seen that defendants have substantiated the pleadings of the written statements by way of establishing the fact that initially there was an agreement of sale

of the suit property between defendant No.1 and defendant No.2 and advance amount of Rs.5 lakhs was paid and agreement dated 25-08-2009 was executed and subsequently the defendant No.1 failed to obtain permission upon which the defendant No.2 instituted the TS No.5/10 and same was decreed on ex-parte. The witnesses further affirmed that due to good relationship they measured the land and found the land to be 1 Katha and subsequently on obtaining permission of sale, the 1 Katha of land was sold out at consideration amount of Rs.8 Lakhs and registered sale deed No.1339/14 was executed. Ext.A appears to be the proof of that sale deed and consequent to that name of defendant No.2 recorded over Jamabandi by deleting the name of defendant No.1 over the suit property. Ext.B appears to be proof of mutation entries and holding of the suit property also recorded in the name of defendant No.2.

- ❖ DW-2 one Pranesh Das who was one of the tenants of defendant No.1 categorically deposed in his cross-examination that on 14-08-2009 there was an agreement of sale executed between Bharati Dey Sarkar and Sandhya Rani Paul. He further affirmed that he being an agent of Bharati Dey Sarkar collects the rents of rented rooms and handed over the same to Bharati Dey Sarkar but he never provided any rent receipts. DW-2 further deposed that defendant No.1 never informed him about sale and purchase with Madhab Saha. He further deposed that in the year 2009 Sandhya Rani Paul and her son-in-law informed him, Madhab Saha and remaining tenants about sale and purchase of property with Madhab Saha. That part of his evidence stands no clarity and cannot be used against the defendants or in favour of the plaintiff as plaintiff himself never claimed in his pleadings that there was any agreement of sale that was executed in the year 2009 between him and defendant No.1. DW-2 further deposed that it is not a fact that Sandhya Rani Paul and her son-in-law informed Bharati Dey Sarkar regarding the sale and agreement between Madhab Saha, himself and other tenants. Hence, it is seen that the fact of informing Bharati Dey Sarkar regarding agreement of sale between Madhav Saha and Sandhya Rani Pal as deposed before this Court by the defendant No.2 has denied by the plaintiff.
- ❖ The evidence presented by DW-2 established and proved that the tenants of the suit property were very much aware about the fact of sale and purchase

of the suit land by the defendant no-2 from defendant no-1 and accordingly, DW-2 Pranesh Das who also a tenant of the suit property collected the rents of suit premises from the other tenants on behalf of defendant no-2.

- ❖ To sum up the evidences on record, it is seen that if we compare the evidences adduced by both sides, this court finds the evidences of defendants' side to be more trustworthy than the evidences of plaintiff.
- ❖ As such it can safely be concluded here that balance of probability favours the defendants' pleadings. From the entire discussion as well as evidence on record, this court finds that both sides affirmed the plaintiff to be a tenant of one part of the suit property and if there was any oral agreement between the plaintiff and defendant No.1, the plaintiff must have informed about such facts to other tenants namely Pranesh Das and Ajit Biswas. The plaintiff except his brother i.e. PW-2 not informed anyone.
- ❖ Learned Advocate appearing on behalf of the plaintiff side during the time of argument hearing vehemently submitted that defendant no-1 failed to appear before this court and depose anything before this court on oath upon which strong presumption may be drawn upon over the fact that an oral agreement was executed between her and plaintiff. In support of the argument learned counsel of the plaintiff referred two numbers of case laws those are styled as **Iswar Bhai Chandra Patel vs. Harihar Behera & others, AIR 1999 SC 1341 & Himanshu Jain & another vs. Lalit Kumar & another AIR P&H 2015(1) 861.**
- ❖ **In Iswar Bhai Chandra Patel vs. Harihar Behera & others, AIR 1999 SC 1341, it was decided by the Hon'ble Apex Court that** appellant abstained from witness box and had not made any statement on oath in support of his pleadings and accordingly dismissed the appeal.
- ❖ **In Himanshu Jain & another vs. Lalit Kumar & another AIR P&H 2015(1) 861,** Hon'ble Punjab & Haryana High Court decide the points of subsequent purchaser and burden of proof of sale and agreement.
- ❖ I have carefully gone through the case laws referred before this court and it finds that factual aspect of this case and the factual aspect of both the referred cases are totally different and identical. Hence, the ratio of both the cases not applicable to this case.

- ❖ More also in this case in hand there was two numbers of defendants and the pleadings of both the defendants are same and identical although they have submitted separate written statement. Out of those defendants, the defendant no-2 appeared before this court and depose as DW-1 and further examined other witnesses. As such question of drawing presumption against defendant no-1 does not arise.
- ❖ Oral and documentary forms of evidences adduced by the defendant's side proved and established that in the year 2009 there was an agreement of sale executed between the defendants and subsequently defendant No.2 obtained ex-parte decree of specific performance of contract. Defendant No.1 mutually sold out the suit property by executing a registered sale deed in the year 2014 to the defendant no-2. The plaintiff has claimed that oral agreement executed in the year 2013 and failed to corroborate and proved the execution of oral agreement by adducing any cogent and trustworthy evidences.
- ❖ Therefore, in the light of the above said discussions, this court is constrained to opine that plaintiff failed to prove and establish the alleged oral agreement of sale between him and defendant no-1 over suit property. The plaintiff even failed to establish the proposal and acceptance by tendering truthful evidences. The balance consideration amount of the suit property as claimed by the plaintiff also appears to be less than the balance consideration of agreement of sale executed between the defendants. The agreement of sale between the defendants was of the year 2009 and plaintiff claimed defendant no-1 agreed to sale suit land with holding at consideration of Rs.4 Lacs in the year 2013. The defendants proved and established the fact that finally the defendant no-2 purchased the suit land at Rs.8 Lacs in pursuance to oral agreement of sale of the year 2009. The consideration amount of the suit property further create lots of reasonable doubt over the oral agreement of sale as alleged by the plaintiff.
- ❖ Therefore in the light of above said discussions, this court finds balance of probability in favour of the defendants and that is sufficient to turn the scale in favour of the defendants.
- ❖ In the result this court is court constrained to opine that there was no oral agreement of sale executed between the plaintiff and defendant No.1 in

respect of sale and purchase of the suit land and its premises. Hence issue No.2 is answered in negative and against the plaintiff.

20. **Issue No.3: Whether the defendant No.1 breached the contract and sold the suit land to defendant No.2?** In the light of the discussion and decisions of issue No.2, this Court finds that there was no oral contract executed between the plaintiff and defendant No.1 over the suit property. As such question of breaching said contract does not arise. Accordingly, Issue No.3 is answered in negative and against the plaintiff.
21. **Issue No.4 and 5:** Both the issues are taken together for discussion and decision as both the issues relates to the reliefs. In the light of the discussion and decisions of issue No.2 and 3, the plaintiff is not entitled to get any relief. Hence, both the issues answered in negative and against the plaintiff.

ORDER

22. In the result the plaintiff suit is dismissed with cost.
23. Prepare the decree accordingly. Judgment is pronounced and delivered in open court under the hand and seal of this court on 7th day of May, 2019.

CIVIL JUDGE, SONITPUR

APPENDIX

1. **Plaintiff's witnesses:-** PW-1 Sri Madhab Saha
PW-2 Sri Gosai Das Saha
2. **Plaintiff's exhibits :-**
Ext-1 is the case record of TS No.2/2013,
Ext.1(1) is the final order of the suit
Ext.2 is the certified copy of registered sale deed No.1339/2014.
3. **Defendant's witnesses:-** DW-1 Smt. Bharati Dey Sarkar
DW-2 Sri Pranesh Das
DW-3 Md. Abdul Hasib
DW-4 Subimal Pathak
4. **Defendant's Exhibits :-**
Ext.A is the registered Sale deed No.1339 for the year 2014 of Sub-Registry Office, Tezpur, dated 17-10-2014,
Ext.A (1) to A (7) are signatures of Sandhya Rani Paul,
Ext.A(8) is the signature of identifier Prabhu Dayal Shukla,
Ext.A(9) is the signature of DW-1,
Ext.A (10) is the signature of Pranesh Das, Ext.A(11) is the signature of witness Prabhu Dayal Shukla,
Ext.A(12) is the signature of Sujoy Kumar Das, Ext.B is the certified copy of Jamabandi of PP No.1270 Dag Nos.2714, 2715,
Ext.C is the certificate issued by the Executive Officer, Tezpur Municipal Board dated 07-04-2016, Ext.D is the no objection certificate issued by the Executive Officer, Municipal Board dated 07-04-2016,
Ext.E is the copy of amended plaint in Title Suit No.5/2010, Ext.E(1) is the certified copy of order dated 25-05-2011 passed by Civil Judge, Sonitpur, Tezpur, Ext. E(2) is the certified copy of decree in Title Suit No.5/2010,
Ext. F is the case record of Title Suit No.5/2010, Ext. F(1) is the amended plaint,
Ext.F(2) is the list of documents,
Ext.F(3) is order dated 25-05-2011 and
Ext. F (4) is the decree passed in TS No.5/2010.
Ext. G is the Jamabandi Register.
Ext. H is the Chitha Book of, Tezpur Town, 3rd Part, Mouza- Mahabhairab.
Ext.H (1) is the relevant entry of Dag No.1867 (old), 2714 (new)

CIVIL JUDGE, SONITPUR