

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

HEADING OF JUDGMENT IN ORIGINAL SUIT

District : Sonitpur

**IN THE COURT OF MUNSIF NO 1, TEZPUR , SONITPUR**

PRESENT---- Aklima Begum, AJS

Munsiff No1,

Sonitpur, Tezpur

Friday, the 22<sup>th</sup> day of May 2015

**Title Suit No 46/2011**

Sri Dibya Mukut Deka.....Plaintiff

- 1) Smt Purabi Deka
- 2) Sri Diganta Deka
- 3) Smt. Karabi Deka
- 4) Smt Baby Rani Medhi.....Defendants

This suit coming on final hearing on 24/4/2015 in presence of

Advocate for the plaintiff..... Sri S Misra and other.

Advocate for the defendant.....J K Baishya and other.

And having stood for consideration to this day, the court delivered the following judgment:-

**J U D G M E N T**

1. The plaintiff's case in brief is father of plaintiff and defendants, Late Debendra Nath Deka, was the owner of land measuring 1 Bigha 1 Katha 7 lessas covered by P.P no 284 dag no 419 of Village Majgaon, the said land was purchased from Jogendra Prasad Baruah and mutated in the name of

Debendra Nath Baruah on 20/06/87. Said Debendra Nath Deka had constructed R.C.C building, Assam Type House and Ekchali house in the suit land. Debendra Nath Deka expired on 7/6/1999 leaving his wife , the plaintiff and the defendants as his legal heir and successor. The mother of the parties died on 9/12/2007 and after death of their parents, the plaintiff and defendant become the joint owner and possessor of the schedule land. They have mutated their names in record of right and plaintiff has been paying revenue regularly. It is stated that plaintiff has been residing with his wife and minor daughter jointly with the defendants in the house and structures standing over the schedule land. And some rooms are let out to tenant. Total rent for the tenanted rooms have been collected by the defendants and no share is paid to the plaintiff. The defendant used to pick up frequent quarrel with the plaintiff and Village Mel was held on 16/2/2009 and upon discussion it was agreed by both parties that plaintiff shall construct 1st floor of RCC building and Diganta Deka, defendant no 2 shall construct 2<sup>nd</sup> floor of the RCC building and sisters will occupy ground floor and let out to tenant for their maintenance. It has been stated that Diganta Deka refused to act upon as agreed by all on 16/2/09. A meeting was also held in Gaon Panchayat in this matter but matter was not settled. The plaintiff on several occasion requested to make partition of the schedule land but same is refused by the defendant for which the plaintiff filed a partition case no 118/2008-2009 before Circle Officer Tezpur and notices were served on the defendants. The defendants did not allow the laal mandal to measure the land and since 20/8/2010 the defendant has been denying the right, title of the plaintiff over suit land and house and threatened to construct and sale portion the suit land. **It is stated that being the legal heir of Debendra Deka plaintiff has joint right, title and interest along with the defendants in the schedule land and structure and is entitled to 1/5<sup>th</sup> share i.e 1 katha 5.4 lessas and for separate possession.**

2. The defendants had contested the suit by filing written statement wherein the defendants stated that there is no land measuring 1 bigha 1 katha as described in schedule of the plaint. That Debendra Deka , father of plaintiff

and defendants had purchased land measuring 1 bigha 1 katha but subsequently in the year 1984 the Collector & Land Acquisition Officer , Sonitpur acquired 4 kathas 10 lessas of the said land and their father received compensation after which only 1 katha 17 lessas of land remained. That Debendra Deka constructed one six room RCC building but there is no Assam type house except one Ekchali house and **after death of their parents said land and house devolved upon them by right of inheritance and they have been jointly possessing the same, mutated their names in the record of rights and paying land revenue jointly.** The plaintiff's family are residing in two 15 feet x 15 feet rooms in front side of the RCC building with separate mess. The defendant no 1 and 3 are unmarried daughters and are residing in two 15 feet x 15 feet backside room of the said building and defendant no 4 was given in marriage and residing at village Phulaguri. Defendant no 2 is residing in quarter in Silanijan T.E due to exigency of his service. Remaining two rooms are let out to tenants. It is stated that defendant had not picked up quarrel with the plaintiff and had not locked the two rooms which is in exclusive occupation of the plaintiff.

3. The defendants have further stated that they have no knowledge about meeting dated 16/2/2005 and no discussion took place on 16/2/2005, defendant never agreed that the plaintiff shall construct 1st floor of RCC building and Diganta Deka , defendant no 2, shall construct 2<sup>nd</sup> floor of the RCC building and sisters will occupy ground floor and let out to tenant for their maintenance. Since there is no agreement hence no question refusal to act by defendant no 2 arise at all.
4. The defendant stated that plaintiff surreptitiously filed Revenue Partition case 118/2008-2009 before Sadar Revenue Circle Tezpur and notices are served on them. No Lat Mandal was directed by any authority to measure the land and they are not aware of any order passed on 20/8/2010. It is denied that they are denying right title and interest of plaintiff over suit properties and from 5/5/2011 defendants have been threatening to make construction on the schedule land. It is stated that in reality plaintiff and his family are trying to

deprive the defendants. It is stated that plaintiff is not entitled to 1 katha 5.4 lessas of land as his share as land left by Debendra Deka is 1 katha 17 lessas.

In view of the above the defendants had prayed for dismissal of the suit.

5. After going through the pleading of both parties following issues were framed by my learned predecessor.

#### ISSUES

- 1) **Whether the suit is maintainable in its present form?**
- 2) **Whether the plaintiff had described the Schedule of his plaint property ?**
- 3) **Whether the plaintiff is entitled to partition as prayed for?**
- 4) **To what other relief the plaintiff is entitled to?**

The plaintiff side adduced evidence of 4 PWs and has exhibited some documents in support of her case. Defendant side has adduced evidence of two DWs in support of his case exhibited some documents.

On perusal of the case record it transpires that the plaintiff adduced evidence of 4 PWs namely Dibya Mukut Deka, Bhuban Deka, Nayanjyoti Baruah and Chikun Bora . The evidence of Dibya Mukut Deka is marked as evidence of PW 1, evidence of Bhuban Deka is marked PW 2. The evidence of Nayanjyoti Baruah and Chikun Bora are marked as PW 2 and 3 instead of PW 3 and 4. Accordingly the marking of evidence of Nayanjyoti Baruah and Chikun Bora as PW 2 and 3 will be treated as PW 3 and PW 4.

I have heard the arguments advanced by the learned counsel for the plaintiff and perused the material on record. The material on record and submission made on behalf of the plaintiff have received due consideration of this court.

#### **5) Discussion, Decision and Reason thereof**

#### **6) Issue No 1 -: Whether the suit is maintainable in present form?**

The defendant challenged the maintainability of the suit in his written statement and simply stated that the suit is not maintainable in its present forms. But there is no specific averment under what circumstances of facts

and law the suit is not maintainable. So, in absence of specific averment the suit in my considerate opinion is maintainable. Moreover **Section 54 and Order 20 Rule 18 of Civil Procedure Code** provides for provision for suit of partition which provides that "*where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Govt or for separate possession of the share of such an estate, the partition of the estate or separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with law*".

*This is a suit for partition of joint family property. In view of the above position of law, this court is of the opinion that this court has the jurisdiction to try the suit for declaration and separate possession and for partition through Collector. The pleadings of the parties do not disclose any procedural defect barring the jurisdiction of this court to try this suit. Therefore this Court is of the considered opinion that this suit is maintainable in its present form.*

Accordingly issue No (1) is decided in affirmative in favour of the plaintiff.

**7) Issue No 2:- Whether the plaintiff had described the Schedule of his plaint properly?**

The plaintiff in the plaint stated that Debendra Nath Deka was the owner of land measuring which was purchased from Jogendra Prasad Baruah and he constructed R.C.C building, Assam Type House and Ekchali house in the suit land and described the schedule of the plaint described the suit land as **1 Bigha 1 Katha 7 lessas** covered by P.P no 252(old) 284 (new) dag no 419 of Village Majgaon, including one RCC building and ekchali House/structures C.I Sheet, tin roof latrine bathroom kitchen etc standing there on. However there is no mention of Assam type house in the schedule of the plaint.

On the other hand, defendants in their written statement had admitted their father **Debendra Deka, father of plaintiff and defendant had purchased land measuring 1 bigha 1 katha** but in the year 1994, **4 kathas 10 lessas out of 1 bigha 1 katha 7 lessas had been acquired**

**by Acquisition Officer and land remained is 1 katha 17 lessas** and it is admitted that there is one RCC building and ekchali House and some structures but denied that there is Assam Type house thereon and stated that plaintiff had not described the schedule properly.

- 8) The plaintiff as PW 1 in support of the claim has exhibited the certified copy of Jamabandi of P.P no 284 Dag no 419 as Ext 1 which shows that total land measuring 1 bigha 1 katha 18 lessas in P.P no 284 Dag no419. The Ext 2 Mutation Certificate dated 6/3/2009 shows that name of plaintiff along with other 4 have been mutated in land measuring 1 bigha 1 katha 7 lessa out of land measuring 1 bigha 1 katha 18 lessas. The plaintiff has described the land on the basis of documents like Ext 1, jamabandi and Ext 2 mutation certificate which fortifies the description of the suit land.

However, in cross examination, the PW 1 has admitted that during lifetime of his father Govt has acquired some land but does not know exact land acquired. PW 2 also admitted in his cross examination that some land was acquired by the Govt during lifetime of Debendra Nath Deka. This admission shows that some land from the schedule mentioned land was acquired by Govt and plaintiff had knowledge of the same.

The defendant no 1 and 3 as DW 1 and DW 2 deposed that in the year 1994, 4 kathas 10 lessas out of 1 bigha 1 katha 7 lessas had been acquired by Acquisition Officer and land remained is 1 katha 17 lessas and their father received compensation against acquisition of land. But admittedly they have not submitted any documents regarding acquisition of land and receipt of compensation by Debendra Nath Deka. Moreover in cross examination the DW 1 and 2 also stated that during pendency of the suit lat Mandal has measured the suit land and found the land to be 3 kathas 4 lessas. However on perusal of case record nothing was found by this court regarding direction of this court for measurement of suit land by lat mandal before 12/9/14. No report by Laat mandal was exhibited by defendant to prove the above fact. In view of the above it can be said that defendant also failed to prove that land

measuring 4 kathas 10 lessas was acquired by Govt and 1 katha 7 lessas remained after acquisition.

But admittedly some land out of 1 bigha 1 katha 7 lessas was acquired by Acquisition Officer but neither party are able to state as the exact land acquired by Govt and land remained after acquisition. In view of the above it is possible to state the proper description of the schedule land.

In cross examination the DW 1 and 2 have admitted that being legal heir the plaintiff and defendants are entitle to the property of Debendra Nath and they have no objection if plaintiff get 1/5<sup>th</sup> share from the property. Only dispute is raised regarding the exact area of schedule land and, as discussed, it is not possible to state the exact area of land of Debendra Nath Deka which is left after acquisition.

- 9) Considering the above position of facts and considering the dispute of the schedule land, this court , on consent of both party, Vide order dated 12/9/14 appointed survey commissioner to make local inspection and submit report as to the land acquired from the suit land, and total land covered under the dag no 419 P.P no 252(old) 284 (new) of Village Majgaon. **Accordingly, the survey commissioner has submitted its report vide Memo No TRC 4/2004-2013/Part/3627 dated 20/12/2014.** Neither party raised any objection against the report of Survey Commissioner. Accordingly after hearing both sides the report was kept with the case record.

Vide the above report it is reported that as per the record of right the names of Debendra Nath Tamuli, Likhan Tamuli Sri Bhupen Tamuli Dhirendra Tamuli, Dibyamukut Deka, Baby Rani Deka, Karabi Deka, Purabi Deka, Diganta Deka have been mutated in land measuring 1 bigha 1 katha 18 lessas under dag no 419 P.P no P.P no 252(old) 284 (new) of Village Majgaon. **On survey it was found that in land measuring 2 katha 16 lessas out of 1 bigha 1 katha 18 lessas under dag no 419 P.P no P.P no 252(old) 284 (new) of Village Majgaon** is in possession of Dibyamukut Deka and 4

others. As both the sides did not raise any objection against the report and this court has not found any embellishment in the report. Hence as per the survey report it can be presumed that at present there is land measuring 2 katha 16 lessas in possession of the plaintiff and defendant under dag no 419 P.P no 252(old) 284(new) of Majgaon Village not land measuring 1 katha 7 lessas as claimed by defendants.

The learned counsel for the plaintiff has submitted that the land in schedule was described as per the available documents. However as survey commissioner has submitted the report describing actual land hence prayed for 1/5<sup>th</sup> share out of the land reported by survey Commissioner. The learned counsel for the defendant has submitted that after the report the schedule should have been amended but plaintiff failed to do so. However the learned counsel also submitted that if court find fit consider the report and pass order accordingly as per the report of survey commissioner.

This is a suit for partition and both party agreed that being legal heir they are entitled to 1/5<sup>th</sup> share in property of Debendra Deka but both party failed to give correct measurement of the lands of Debendra Deka , accordingly the suit land has been surveyed and report of survey commission have clearly and properly described suit land by which exact description of the suit land has been received by this Court which was accepted by both parties. Accordingly this Court is of the opinion that in view of the report of survey Commissioner whereby correct area of suit land has already been ascertained hence, the issue regarding improper description of the suit land by this Court has become redundant. As both party agreed that being legal heir they are entitled to 1/5<sup>th</sup> share in property of Debendra Deka the decision in this issue, in either way, will not have any adverse affect in the merit of the case.

Hence this Court is constrained from giving any decision in either way in this issue as this issue no 2 has become redundant in view of the report of Survey commission as discussed above.

10) **Issue No 5 :- Whether the plaintiff is entitled to partition as prayed for?**

Section 8 of Hindu Succession Act 1956 provides for the general rule of Succession in the case of male and provides that property of male Hindu Dying intestate shall devolve according to the provision of Chapter II of the Act and in order laid down in said section. By virtue of section 8(A) property of male Hindu dying intestate would devolve upon the heirs specified in class 1 of the Schedule.

Admittedly, the plaintiff and the defendants are the legal heirs of Late Debendra Nath Deka who was the owner of land measuring 1 bigha 1 katha 7 lessas covered by P.P no 284 dag no 419 of Village Majgaon.

11) PW 1 deposed that Debendra Nath Deka was the owner of land measuring **1 Bigha 1 Katha 7 lessas** covered by P.P no 284 dag no 419 of Village Majgaon, and constructed R.C.C building, Assam Type House and Ekchali house in the suit land which is described in the schedule of the Plaint. After death of their parents plaintiff became joint owner and possessor of the suit land and structures thereon along with defendants and is entitled to 1/5<sup>th</sup> share i.e 1 katha 5.4 lessas and for separate possession. PW 2 also corroborated the above averment of PW 1 and stated that after death of Debendra Nath DeKa plaintiff and defendant had become entitle to joint interest over the suit land. The PW and 2 deposed that being legal heir plaintiff is entitled to 1/5<sup>th</sup> share in the suit property.

12) The PW 1 and 2 have also deposed that plaintiff and defendant have been jointly residing in the schedule property and defendants have given the two rooms of RCC building and three rooms of Ekchali house on rent and has been receiving the rent and no share is paid to plaintiff, on 16/2/2009 village mel was held regarding dispute of parties and it was agreed by both parties that plaintiff shall construct 1st floor of RCC building and Diganta Deka, defendant no 2 shall construct 2<sup>nd</sup> floor of the RCC building and sisters will occupy ground floor and let out to tenant for their maintenance. But Diganta Deka refused to act upon as agreed by all on 16/2/09 .That plaintiff filed a partition

case no 118/2008-2009 before Circle Officer Tezpur in which defendants have appeared and filed written objection and vide order dated 20/8/2010 Circle officer directed the parties to institute the Civil suit. The PW 1 has exhibited the certified copy of Application for partition as Ext 5, Order dated 20/8/10 as Ext 6.

The plaintiff has examined Nayanjyoti Baruah as PW 3 and Chikun Bora as PW 4. PW 3 who was the then Secretary of Majgaon Gaon Panchayat deposed plaintiff had filed a complaint to Mazgaon Gaon Panchayat and one meeting was held on 20/2/2009 . PW 3 has exhibited the complaint as Ext 7 and report of Panchayat as Ext 8. Chikun Bora , PW 4 also deposed that Ext 7 was given by DibyaMukut Deka regarding family dispute accordingly meeting was held but no decision can be taken. PW 4 exhibited the signature of Bitopan Bora and Dibya Mukut Deka as Ext 7(3) and Ext 7(4). The PW 4 exhibited the report of Gaon panchayat as Ext 8. Signature of signatories of Ext 8 namely Chikun Bora, Paban Das, Bitopan Bora, Juwel Chakrabary, Manjul Pathak, Ashim Bharali, Bhuban Deka, Rup Bora, Durlav Deka, Debabrata Bora, Dibya Mukut Deka, Dharani Dhar Nath are exhibited as Ext 8(1), Ext 8(2), Ext 8(3), Ext 8(4), Ext 8(5), Ext 8(6), Ext 8(7), Ext 8(8), Ext 8(9), Ext 8(10), Ext 8(11), Ext 8(12) respectively.

- 13) The Defendant no 1 and 3 as DW 1 and 2 in their evidence and in cross examination had admitted that plaintiff and the defendants are the legal heirs of Lat Debendra Nath Deka and being legal heir entitled to equal share in suit property, they are residing in the suit RCC building. **In cross examination the DW 1 and DW 2 have also admitted that Suit land measuring 1 bigha 1 katha 7 lessas and suit house belonged to her father . After his death plaintiff and defendant became the joint owner of the suit land.** It is admitted that plaintiff's family are residing in two rooms, defendant no 1 and 3 are residing in two rooms and other two rooms and ekchali house with tin roof are given in rent to three families as defendant no 1 and 3 have no earning source. DW 2 admitted that they received Rs 1800/- as rent from the three families. DW 1 and 2 admitted that two rooms of the RCC building

were given in rent by them to one family and they receive Rent at the Rs 2000/- excluding the electricity Bill . In evidence the DW 1 and 2 have stated that they had no knowledge about the village mel dated 16/2/2009, However in cross examination admitted that there was a mel on 16/2/2009 and in that mel it was agreed that plaintiff will construct the first floor of the RCC building, defendant no 2 will construct the second floor of the RCC building and ground floor will be used by the defendant no 1 and 3. DW 2 admitted that it was agreed that the rent for the room in ground floor will be received by the defendant 1 and 3 for their maintenance but defendant did not agree to the decision. The claim of plaintiff regarding rent , village Mel etc get fortified by the admission of the defendants as stated above. **DW 1 and DW 2 have admitted that the five sons and daughters of Debendra Nath Deka has equal share in the suit land and house and she has no objection if the plaintiff gets 1/5<sup>th</sup> share in the suit property.**

It is settled law that admitted facts need not be proved. In view of the admission by the defendants in their evidence and cross examination it can be held that plaintiff and defendants are the joint owner of the properties of Debendra Deka and **admittedly being legal heir the five sons and daughters of Debendra Nath Deka i. e the plaintiff and defendants have equal share in the suit land and house and the admittedly the defendants have no objection if the plaintiff gets 1/5<sup>th</sup> share in the suit property.** Admittedly a meeting was held on 16/2/2009 in regarding family dispute between the parties. Admittedly the defendant no 1 and 3 are collecting the rent from the tenanted premises.

- 14) On perusal of the case in its entirety, evidence in chief and cross examination of witnesses of either side it is evident that **dispute is only regarding the area of suit land.** As discussed in issue no 2, the plaintiff is claiming 1/5<sup>th</sup> share out of 1 bigha 1 katha 7 lessas on the other hand the defendants claimed that father of plaintiff and defendants had purchased land measuring 1 bigha 1 katha but subsequently in the year 1984 but The Collector & Land Acquisition Officer , Sonitpur acquired 4 kathas 10 lessas of the said land and

their father received compensation after which only 1 katha 17 lessas of land remained their father received compensation against acquisition of land. But as admitted in the cross examination of DW 1 and 2 , defendants have not submitted any documents regarding acquisition of land and receipt of compensation by Debendra Nath Deka. Moreover in cross examination the DW 1 and 2 also stated that during pendency of the suit lat Mandal has measured the suit land and found the land to be 3 kathas 4 lessas. However on perusal of case record nothing was found by this court regarding direction of this court for measurement of suit land by lat mandal before 12/9/14.

In cross examination, the PW 1 has also admitted that during lifetime of his father Govt has acquired some land but does not know exact land acquired. PW 2 also admitted in his cross examination that some land was acquired by the Govt during lifetime of Debendra Nath Deka but has no knowledge about the land remained after acquisition. This admission shows that some land from the schedule mentioned land was acquired by Govt and plaintiff had knowledge of the same.

Hence, admittedly, some land was acquired by Acquisition Officer but neither parties are able to state as the exact land acquired by Govt and land remained after acquisition. Admittedly being legal heir the plaintiff and defendants are entitled to the property of Debendra Nath and defendant have no objection if plaintiff get 1/5<sup>th</sup> share from the property. Only dispute is raised regarding the area of schedule land as discussd in issue no 2.

- 15) Considering the above position of facts, on consent of both party, Vide order dated 12/9/14 this Court appointed survey commissioner to make local inspection of the suit land covered under the dag no 419 P.P no 252(old) 284 (new) of Village Majgaon. Accordingly, the survey commissioner has submitted its report vide Memo No TRC 4/2004-2013/Part/3627 dated 20/12/2014. Neither party raised any objection against the report of Survey Commissioner. This court does not find any embellishment in the report. Accordingly after hearing both sides the report was kept with the case record.

As discussed in issue no 2, survey commissioner reported that names of Debendra Nath Tamuli, Likhan Tamuli Sri Bhupen Tamuli Dhirendra Tamuli, Dibyamukut Deka, Baby Rani Deka, Karabi Deka, Purabi Deka, Diganta Deka have been mutated in land measuring 1 bigha 1 katha 18 lessas under dag no 419 P.P no P.P no 252(old) 284 (new) of Village Majgaon but **in survey it was found that land measuring 2 katha 16 lessas out of 1 bigha 1 katha 18 lessas under dag no 419 P.P no P.P no 252(old) 284 (new) of Village Majgaon** is in possession of Dibyamukut Deka and 4 others. This court has not found any embellishment in the report.

Hence in view of the report of **survey Commissioner it is held that at present the land remained is 2 katha 16 lessas under dag no 419 P.P no 252(old) 284(new) of Majgaon Village out of land measuring 1 bigha 1 katha 7 lessas as described in schedule.**

- 16) It is pertinent to mention that the defendants have stated there is one six room RCC building and ekchali house and some ekchali structures but there is no Assam type house in the suit land .PW 1 though in evidence has deposed that that there was Assam Type House in the suit land along with RCC building and ekchali House but there is no mention of the Assam Type house in the in schedule as per which there is RCC building and ekchali House/structures C.I Sheet, tin roof latrine bathroom kitchen etc standing there on. The PW 2 in his evidence also stated that there is only one RCC building and ekchali House over the suit land. . Hence it can be side that there is one RCC building and ekchali house over the suit land along with other structure except Assam Type House.
- 17) The learned counsel for the plaintiff has submitted that as survey commissioner has submitted the report describing actual land hence prayed for 1/5<sup>th</sup> share out of the land reported by survey Commissioner. The learned counsel for the defendants also submitted that if court find fit, consider the report and pass order accordingly as per the report of survey commissioner.

**It is settled law that admitted facts need not be proved.** Hence on the basis of the admission of the defendants in their written statement and cross examination of plaintiff and defendant and in view of the commissioner's report it is held that **land measuring 2 katha 16 lessas, as per the report of survey commissioner, under dag no 419 P.P no 252(old) 284(new) of Majgaon Village along with RCC building , ekchali House and some structures standing thereon out of the schedule land measuring 1 bigha 1 katha 7 lessas** is joint properties of plaintiff and defendants and as per section 8 of the plaintiff and defendants will have equal share there on . Accordingly plaintiff is entitled to 1/5<sup>th</sup> share in above mentioned property and has every right to seek partition of 1/5<sup>th</sup> share in the above mentioned property by metes and bound along with separate possession.

**The issue no 3 is decided in affirmative in favour of plaintiff.** The Plaintiff is entitled to 1/5<sup>th</sup> share in land measuring **2 katha 16 lessas, as per the report of survey commissioner, under dag no 419 P.P no 252(old) 284(new) of Majgaon Village along with RCC building , ekchali House and some structures standing thereon out of the schedule land measuring 1 bigha 1 katha 7 lessas** and plaintiff is entitled to partition of his 1/5<sup>th</sup> share in above land measuring 2 katha 16 lessas along with the houses and structures standing therein by metes and bound.

18) **To what other relief the plaintiff is entitled to?**

In view of the discussion in foregoing issues this court is of the opinion that as **land** measuring 2 katha 16 lessas, as per the report of survey commissioner, under dag no 419 P.P no 252(old) 284(new) of Majgaon Village along with RCC building , ekchali House and some structures standing thereon out of the schedule land measuring 1 bigha 1 katha 7 lessas is joint property hence after partition by competent authority plaintiff is also entitled to separate possession of his 1/5<sup>th</sup> share of land. The plaintiff is also entitled to prohibitory injunction restraining the defendants from making construction

and sale of the joint property till making of partition and giving of separate possession. The defendants are also permanently restrained from interfering and obstructing the separate possession of the plaintiff's land allotted to him after partition.

This issue is decided in affirmative.

### Order

In conclusion the suit is preliminarily decreed on contest with cost. It is declared that

- 1) land measuring **2 katha 16 lessas, as per the report of Survey Commissioner, in possession of plaintiff and defendant, under dag no 419 P.P no 252(old) 284(new) of Majgaon Village, along with RCC building , ekchali House and some structures standing thereon, out of schedule land measuring 1 bigha 1 katha 7 lessas, are joint properties of plaintiff and defendants** and plaintiff has right, title interest over 1/5<sup>th</sup> share in the aforesaid property and houses standing there on.
- 2) The plaintiff is entitled to preliminary decree of partition of 1/5<sup>th</sup> share in land measuring 2 katha 16 lessas, as per the report of Survey Commissioner, in possession of the plaintiff and defendant, under dag no 419 P.P no 252(old) 284(new) of Majgaon Village along with RCC building , ekchali House and some structures standing thereon, out of schedule land measuring 1 bigha 1 katha 7 lessas, by metes and bound and after partition the plaintiff is entitled to separate possession of the his 1/5<sup>th</sup> share.
- 3) Collector of the District Sonitpur, is to make partition accordingly. Commission be appointed in due course to effect partition of 1/5<sup>th</sup> share in the measuring 2 katha 16 lessas, as per the report of Survey Commissioner, in possession of the plaintiff and defendant, under dag no 419 P.P no 252(old) 284(new) of Majgaon Village along with RCC building , ekchali House and some structures standing thereon, out of schedule land measuring 1 bigha 1 katha 7 lessas, by metes and bound and to delivery separate possession of 1/5<sup>th</sup> share to the plaintiff.

- 4) The defendants with their men are also restrained from making construction and sale of the joint property till making of partition and giving of separate possession and also restrained from interfering and obstructing the separate possession of the plaintiff's land allotted to him after partition.

Prepare a decree accordingly.

This judgment and order is delivered and operative part of this judgment is pronounced in the open court today, the 22<sup>nd</sup> day of May 2015 under my hand and seal.

Munsiff No 1  
Sonitpur Tezpur

## **APPENDIX**

**(A) Plaintiff's Witness**

PW-1 --Dibya Mukut Deka  
PW 2 --Bhuban Deka  
PW 3 --Sri Nayanjyoti Baruah  
PW 4 --Sri Chikun Bora

**(B) Plaintiff's Exhibits**

Ext 1 certified copy of jamabandi of P.P no 284 Dag No 419 of village Mazgaon

Ext 2. Muatation Certificate dated 6/3/09.

Ext 3 Trace Map.

Ext 4 Revenue paying receipt dated 10/2/09.

Ext 5 Certified copy of partition case no 118/2008-2009

Ext 6 Certified copy of order dated 20/8/10 in partition case no 118/2008-2009

Ext. 7 copy of petition filed by Dibya Mukut Deka.

Ext 7(1) prayer for making inquiry.

Ext 7(3) signature of Bitopan Bora.

Ext 7(5) signature of Dibya Mukut Deka.

Ext 8 report of Majgaon Gaon Panchayat.

Ext 8(1) signature of Chikun Bora

Ext 8(2) signature of Paban Das

Ext 8(3) signature of Bitopan Bora

Ext 8(4) Signature of Juwel Chakrabary

Ext 8(5) signature of Manjul Pathak

Ext 8(6) Signatures of Ashim Bharali

Ext 8(7) Signature of Bhuban Deka

Ext 8(8) Signature of Rup Bora

Ext 8(9) Signature of Durlav Deka

Ext 8(10) Signature of Debabrata Bora

Ext 8(11) Signature of Dibya Mukut Deka

Ext 8(12) Signature of Dharani Dhar Nath  
to Ext 7(6) are the land revenue receipt.

**(C)Defendants witness**

1. DW 1 Smt Purabi Deka

2. DW2 Smt Karabi Deka.

**(D) Defendants Exhibits**

Nil

Munsiff No 1  
Sonitpur Tezpur