

FORM NO. (J) 2

HEADING OF JUDGEMENT IN ORIGINAL SUIT

DISTRICT : SONITPUR

IN THE COURT OF MUNSIFF, GOHPUR

Present : Sri S. Kaushik, Munsiff, Gohpur

Saturday, the 30th day of May, 2015

Title Suit No. 7/2012 (Old)
Title Suit No. 1/2014 (New)

Smti. Debobala Kakoti Plaintiff

-Vs-

Sri Gama Kakoti Defendant

The suit coming on for final hearing on 12.05.2015 in presence of –

Sri P.P. Borah Advocate for Plaintiff

None For the Defendant

And having stood for consideration to this day, the Court delivered the following
Judgement :

JUDGEMENT

1. This is a suit for declaration, recovery of possession and permanent injunction. The plaintiff Smti. Debobala Kakoti filed the suit against Sri Gama Kakoti for declaration of her right, title and interest over a plot of land measuring 4 katha covered by Dag number 133 and Periodic Patta number 4 of Hahara Pathar, Helem. The case of the plaintiff in brief is that the plaintiff had purchased land measuring 01 katha 10 lessas and 2 kathas 10 lechas covered by Dag number 133 and P.P. number 4 situated at Hahara Pathar, Mouza- Helem, District- Sonitpur on 08/05/95 and 06/09/96 from Sri Ratan Chandra Mazumder and Sri Nihar Ranjan Paul respectively by executing two registered sale deeds. Both the lands are compact block to each other and adjacent lands and hence, conjointly forms a single plot of land measuring 4 kathas covered by Dag number. 133 and P.P. number 3. Accordingly, the plaintiff got the khas possession of the land immediately after its purchase. Plaintiff has mutated her name in the said land and paid the land revenue regularly. The plaintiff had constructed a residential Assam type house on the aforesaid land. The defendant is the son of the plaintiff and with due permission from the plaintiff started residing at the house constructed by plaintiff from the year 2004. The plaintiff had been living with her husband Sri Jogen Kakoti in a separate house at village Amtola Borigaon, Helem. The plaintiff was a school teacher and after her retirement from service, she desired to reside in the house constructed by her at Hahara Pathar but defendant refused to keep the plaintiff with him and claimed ownership over that plot of land. The defendant even tried to transfer the said land to his name by putting forged signature of his mother and by knowing about that the plaintiff filed a case under section 107 Cr.P.C. at the Sub-Divisional Magistrate, Gohpur on 19/09/2011 but the defendant managed to stop the said proceedings. The plaintiff asked the defendant several times to vacate the house but the defendant thrown her out of the house by using force and used filthy language. The defendant has been still occupying the house illegally and hence, finding no other way the plaintiff has filed this suit for declaration of her right, title, interest over the schedule land and for recovery of possession and injunction.

2. The defendant contested the suit by filing written statement. He contested the suit on the ground such as suit is not maintainable, there is no cause of action for the suit, the suit is barred by limitation, the suit is bad for non joinder of necessary parties, court fee was not fully paid in the suit etc. The defendant contended that originally there was Assam Type house measuring about 42'x 19' in the suit land constructed by his parents and was let to S.S.B. department on rent and when the house was vacated by S.S.B., it was in dilapidated condition. The defendant constructed the dilapidated house and newly constructed 'Namghar', Garage, Shop house etc. The defendant since his marriage in 2001 started residing in the house with his wife and staying in the suit land till now. The defendant renovated the house several times. In the month of March, 2011 the plaintiff had agreed to either gift or sell the said property to the defendant and asked the defendant to get the relevant documents ready for such transaction. After that, the plaintiff concluded an oral agreement with the defendant in presence of the wife of defendant on 01.09.2011 to sell the suit land at a considered value of Rs.2 lakh as a lump sum value for the cost of construction already undertaken by the plaintiff. But later on plaintiff did not execute the sale deed as promised. Hence, the defendant made the counter claim that as the plaintiff had concluded a contract verbally to sell the suit land to defendant on 01.09.2011 and as the defendant has already performed his part of the contract by spending a considerable amount in renovation of the house and extending the house further and the defendant is still ready and willing to purchase the land at agreed price, hence plaintiff is bound to perform her part as per law. Hence, the defendant prayed for dismissing the suit with cost and pass a decree for specific performance of contract by plaintiff.

3. In the written statement to the counter claim, the plaintiff has denied that the 'Namghar', 'Garage', shop are ever constructed by the defendant and claimed that each and every structure over the suit land was constructed by plaintiff. The plaintiff also denied the claim of defendant that she had agreed to execute any kind of sale deed or gift deed in favour of the defendant.

4. ISSUES : Upon the perusal of the pleadings of the parties, the following issues were framed by my predecessor-in-office on 10.06.2013

- (i) Whether the suit is maintainable ?
- (ii) Whether the suit is barred by law of limitation ?
- (iii) Whether the suit is under valued ?
- (iv) Whether the suit is bad for non-joinder of necessary parties ?
- (v) Whether the plaintiff is entitled to the decree as prayed for ?
- (vi) To what other relief, parties are entitled ?

5. In the instant suit, the plaintiff had examined two witnesses including herself and the defendant examined three witnesses including himself.

6. During argument, the defendant side neither appeared nor showed any interest to take part in the argument despite several opportunities were given. Hence, the argument of only plaintiff was heard.

DISCUSSION, DECISIONS AND REASONS THEREOF :

7. Now, let me discuss the materials on record and try to arrive at a definite finding as regards the issues in this suit.

8. **Issue No. (i)** : The defendant has stated in his written statement that the instant suit is not maintainable as not conforming with the mandatory provisions of Rules 2,4,5,6,10 of Order 6 of C.P.C. and is barred under section 34 of the Specific Relief Act. But the defendant has not stated how the suit is not conforming with Order 6 Rule 2,4,5,6 and 10 C.P.C. Merely saying that suit is not conforming to some provisions of C.P.C. is not sufficient to hold a suit not maintainable. Moreover, section 34 of Specific Relief Act states that – “Any person entitled to any legal character, or to any right as to any property, may

institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief". But in the instant case, it is not clear how the plaintiff is barred from instituting a suit against the defendant especially when the plaintiff is the real owner of the land. In this case, the defendant has not furnished any ground why the suit is not maintainable. On perusal of the case record, it reveals that the court fees is fully paid, the suit is of civil nature and is not expressly or impliedly barred by any other law. Hence, I do not deem it fit to held the suit as not maintainable. Hence, the issue is decided in positive.

9. **Issue No. (ii)** : Regarding the period of limitation for filing the suit, the defendant had claimed that the suit is barred as not filed within the stipulated period for the time. Careful perusal of case record reveals that the defendant has claimed in his written statement as well as in his evidence as DW1 that he has been living in the suit land since 2001. In his cross examination, DW1 has stated that he went to the suit land in the year 2001 and then he went to Guwahati for a brief period of time and then again came to live in his father's house at Amtolaguri and from 2002, after his marriage he started living permanently in the house situated in the suit land. This suit is filed in the year 2012. The suit is for possession of immovable property based on title and the limitation period provided for such suit is 12 years. Hence, it appears that the suit is filed perfectly within limitation period. The issue is decided in negative.

10. **Issue No. (iii)** : The defendant has claimed in his written statement that the suit is not properly valued and no proper court fees is paid thereon. Hence, the plaint is not admissible under section 6 of Court Fees Act and needs to be rejected under Order VII Rule 11 of C.P.C. During the argument, the learned counsel for plaintiff has argued that the instant suit is a declaratory suit and court fee is fully paid as per section 7 (iv) (c) and (d) of The Court-fees Act, 1870. The learned counsel for the plaintiff has cited a case law Maya Rani Ghosh etc. Vs State of Tripura and others, 2007(1) GLT 669, in support of his claim. I have gone through the case where it was held that court fee is essentially a

matter between the state and the person, who comes to the Court. Non payment of court-fee cannot be made a ground to hold a decree inexecutable nor can such decree be set aside if the same is otherwise valid and effective in law, particularly, because it is possible for the Court to realize the court fee even at the time of execution of the decree.

On perusal of the case record, it appears that defendant had claimed that court fee is not duly paid by plaintiff but it is nowhere stated by defendant that what is the actual court fee that is required to be paid by plaintiff. Hence, mere claim that the suit is undervalued without assigning any reason is not tenable. This issue is decided in negative.

11. **Issue No. (iv)** : The defendant in his written statement has claimed that the instant suit is bad for non-joinder of necessary parties as the plaintiff acquired right, title and interest in respect of the suit land by purchasing the land out of the total income of the family including the income of her husband Sri Jogen Kakoti. As such the plaintiff has no absolute right over the suit land and in absence of Sri Jogen Kakoti, the suit cannot be adjudicated upon properly and hence, liable to be dismissed. The defendant as DW1 also deposed in his evidence that although his mother got the right and title over the suit land, but she cannot claim the property alone as the father of the defendant Sri Jogen kakoti also contributed to the amount required for purchasing the said schedule land. Hence, he must be made a party for proper adjudication of the case. I have gone through the sale deeds by which the schedule land was purchased by the plaintiff and exhibited as Exhibit-1 and Exhibit-2, both of which clearly reveals that the suit land was purchased by the plaintiff only and nowhere it is written that the husband of the plaintiff is also the owner of the suit land. The suit land was sold to the plaintiff only. The defendant also did not exhibit any document or deposed anything in his evidence which can prove that his father had also contributed money in the purchase of the suit land. The witnesses of the defendant also did not say anything in their evidence which proves that plaintiff's husband had paid for the purchase of the land. Hence, the claim of the defendant that his father should have made a party in this suit and without making him a party, the suit becomes bad for non joinder of necessary party is not sustainable. Hence, the issue is decided in negative.

12. **Issue no.(v) and (vi)** : For better appreciation of evidence these two issues are taken together. The PW1 has stated in her evidence that she had purchased first part of the suit land measuring 1 katha 10 lechas covered by Dag no.4 and P.P. No. 133 on 8/5/1995 through registered sale deed number 506/1995 from Sri Ratan Chandra Mazumder. She had also purchased 2 kathas 10 lechas of land covered by same Dag and Patta number on 6/9/1996 through the registered sale deed number 894/1996 from Sri Nihar Ranjan Paul. After purchase, the plaintiff had mutated her name over the suit land and since then she has been paying the land revenue regularly. PW1 has stated that as the defendant is her son, therefore, she had allowed him to live in the house after his marriage from 2004. But in 2011, when the plaintiff wanted to stay in the house, the defendant did not allow her to enter the house and claimed the house to be his own. PW1 has claimed that the 'Garage', temple etc. made over the suit land was made by her by spending her own money. The plaintiff as PW1 has exhibited the following documents to prove her title over the schedule land.

Ext.1 – Sale deed no. 506/1995

Ext.2 – Sale deed no. 894/1996

Ext.3A to 3D – Revenue paying receipts

13. In her cross examination, the PW1 has stated that she and her husband had selected the suit land in 1995 and 1996 but she has not made her husband a party in this case. PW1 has stated that in the sale deed, her husband did not put his signature. PW1 has stated that she submitted the revenue paying receipts of only 2001 and 2010. According to PW1, she had obtained the mutation of her name over the suit land. PW1 has admitted that her son has been occupying the land since 2004 and still he is living there along with his wife and children. PW1 has admitted that Gopal Chetry has been living with her since last five years and her daughter had not divorced her husband but she now lives in the house of PW1. On 27.09.2012, PW1 had declared the defendant to be not her son through a paper publication and cut down formally her relationship with her son. But PW1 has stated that she does not know whether she can discard her son in that way or not in the eyes of law.

14. PW2, Sri Ratan Chandra Mazumder has deposed in his evidence that on 8/5/1995, he had sold his land at Hahara pathar covered by Dag no.158/133 Patta no.4 to the plaintiff at Rs.8,000/- through registered sale deed and thereafter she is in possession of the said plot of land. PW2 has stated in his evidence that he has seen the plaintiff constructing house on the said land. Exhibit-1(a), Exhibit-1(b), Exhibit-1(c) and Exhibit-1(d) are the signatures of PW2 in the sale deed executed by him in favour of plaintiff.

15. In his cross examination, the PW2 has stated that suit land contains a house and the son of Smti Debobala Kakoti has been residing in that house. PW2 has stated that he is not aware that the house is constructed by the son of Debobala Kakati. PW2 has stated that he has forgotten whether at the time of purchase of the land, the husband of Debobala Kakoti was present or not.

16. The defendant as DW1 has deposed in his evidence the same story as that of the written statement and stated that originally there was a house measuring 19'x42' in the suit land. But later on, he constructed temple of measurement 8'x21' in the year 2009, shop house measuring 12'x28' in the year 2010-2011 and an extension of 16'x45' of the old house in the year 2011-2012. According to DW1, in this renovation and reconstruction of the new rooms, he has spent several lakhs of rupees and in turn, the plaintiff assured him that she would execute a sale deed or gift deed of the schedule land in his favour and on 01/09/2011 the plaintiff verbally executed a deed to sale the land to DW1 on the price of 2 lakh which was already spent by defendant in the new construction of the house. The defendant has claimed that he has spent all these money in the renovation and reconstruction of new rooms, temple, shop house etc. The DW1 has exhibited all the goods buying receipts by which he had purchased the raw materials for newly constructing the house. The following documents are exhibited by DW1 -

Exhibit ka to ha – Goods purchase receipts (33 nos.)

Hence, DW1 has claimed that as there was a verbal agreement between him and PW1, and he is ready and willing to perform his part, the plaintiff must also perform her part by selling or gifting the suit land to him.

17. In his cross examination, DW1 has stated that he has started living in the suit land from the year 2002. DW1 has admitted that the land was purchased by the plaintiff. In the year 2010, the plaintiff had told him that the plaintiff would gift DW1 the suit land by making a gift deed, but DW1 has admitted that there was no written agreement between him and the plaintiff. DW1 has stated that although he said that plaintiff had accepted money from her husband Sri Jogen Kakoti for purchase of the suit land, but he neither made Jogen Kakoti a witness in this suit nor he made him a witness in his counter claim. DW1 has also admitted that the first Assam type house was built by plaintiff over the suit land. DW1 also stated that although he mentioned that before his wife the plaintiff verbally promised him to gift the house but he has not made his wife witness in this suit.

18. DW2, Sri Lakhidhar Tamuli, who is the neighbour of defendant has stated in his evidence that as a neighbour he has noticed that stage by stage the defendant has been improving his house at the scheduled land and he has seen the defendant spending money for constructing house over the suit land and paying wage to the workers. In his cross examination, DW2 has stated that the defendant had constructed house over the suit land and due to that a quarrel took place between plaintiff and defendant in the year 2011.

19. DW3, Sri Krishna Kurmi has deposed in his evidence that the defendant has engaged him as Mason when he renovated his house standing over the suit land and paid all the wages of the labourer and the cost of construction materials. In his cross examination, DW3 has stated that he had worked as Mason during the construction of temple, shop house and extension of front part of the house standing at the suit land. DW3 has stated that he does not know whether the

defendant had paid the cost of construction materials in the shop or not but the defendant had paid the daily wage of all the labourers and Masons.

20. Now, having gone through the evidence on record and after perusal of documents available in the case record, it is clearly established that the schedule land was purchased by the plaintiff and she is the owner of the land. Even DW1 has admitted in his cross examination that the suit land was purchased by the plaintiff. The plaintiff as PW1, in her evidence-in-chief has exhibited and proved the two sale deeds i.e. deed no.506/1995 dated 08/05/1995 and deed no.894/1996 dated 06/09/1996 through which she has purchased the entire suit land of 4 kathas from Sri Ratan Chandra Mazumder and Sri Nihar Ranjan Paul and the same could not be rebutted by the defendant. The plaintiff has also proved that she has been paying the land revenue of the suit land by exhibiting the revenue paying receipts. During the cross examination of PW1, the defendant had tried to establish that plaintiff has submitted the revenue paying receipts of only the years 2001 and 2010 but other receipts were not submitted and in absence of other receipts it cannot be said that revenue is regularly paid by plaintiff. But that really does not affect the title and right of the plaintiff over the suit land as the defendant could not shatter the veracity of the revenue paying receipts submitted by plaintiff. It appears from the documents on record that the plaintiff has exhibited the revenue paying receipts of the year 2001, 2009, 2010 and 2012 which clearly establishes the fact that the plaintiff has been paying the land revenue. On the other hand, defendant has not exhibited any document by which it can be proved that plaintiff had not paid the revenue in the other years for which she has not submitted any receipt. As the title to the land is not at all disputed and admitted by the defendant, it is conclusively proved that the plaintiff is the owner of the suit land. But the defendant has been claiming the land on the ground that he has spent lots of money in the improvement of the old house constructed originally by the plaintiff and also invested lakhs of rupees in the extension of the house and due to that the plaintiff had verbally promised him to gift or sell the suit land to him. But the defendant could not substantiate his claim of verbal promise of plaintiff by adducing adequate evidence. The evidences of two witnesses of defendant also do not reveal anything which can be taken to prove that, in fact there was an agreement between the plaintiff and

the defendant for selling of the suit land. The defendant has only exhibited some pay invoice or cash memo by which he wants to prove that he has spent lots of money in the renovation and reconstruction of the old house that was originally built by his mother i.e. the plaintiff. But the claim of the defendant that he has spent money in the construction of the house at the suit land does not entitle him to establish his right over the house or the suit land as far as the plaintiff has already proved her title over the suit land. In one side, the defendant has failed to prove any oral agreement between him and the plaintiff for selling the suit land to the defendant and on the other side, the defendant did not claim any right over the suit land due to adverse possession. Moreover, the defendant claimed that plaintiff had made verbal agreement with him to sell the land in front of his wife but the defendant has failed to make his wife a witness in this case to prove his claim. Mere spending of money by the defendant for construction or maintenance of the suit land and the house over it does not entitle him to claim ownership over the property and that cannot be a ground for establishing better title over the suit land, at a time when otherwise the title is proved in favour of plaintiff. In the instant suit, the plaintiff's title over the suit land is conclusively proved. It is also proved that the plaintiff has been paying the land revenue from the time of purchase of the suit land and thereby acquired a right over the suit land to live there. On the other hand, the defendant could not prove any right over the suit land except his spending of some money in the construction over the suit land. Hence, it is held that the plaintiff has right, title and interest over the suit land and she is entitled to the relief as prayed by her. The issues are, thus, decided in affirmative.

ORDER

21. In conclusion, the suit is decreed in contest with cost.

22. The plaintiff is entitled to the decree for declaration of right, title and interest over the schedule plot of land measuring 4 kathas along with the house standing thereon. The plaintiff is entitled to recover the khas possession of the schedule land by evicting the defendant, his men and material. The plaintiff is also entitled to permanent injunction as prayed for.

23. Prepare the decree accordingly.

Given under my hand and seal of this Court on the 30th day of May, 2015

Munsiff
Gohpur, Sonitpur

APPENDIX

Plaintiff's Witnesses

PW1 – Smti. Debobala Kakoti

PW2 – Sri Ratan Chandra Mazumder

Defendant's Witnesses

DW1 – Sri Gama Kakoti

DW2 - Sri Lakhidhar Tamuli

DW3 - Sri Krishna Kurmi

Exhibits by the plaintiff

Exhibit 1 – Sale deed no 506/1995 dated 08/05/95

Exhibit 1(a) - Signature of seller on sale deed

Exhibit 1(b) - Signature of seller on sale deed

Exhibit 1(c) - Signature of seller on sale deed

Exhibit 1(d) - Signature of seller on sale deed

Exhibit 2 - Sale deed no. 894/1996 dated 06/09/96

Exhibit 3A - Revenue paying receipt

Exhibit 3B - Revenue paying receipt

Exhibit 3C - Revenue paying receipt

Exhibit 3D - Revenue paying receipt

Exhibits by defendant

Exhibit 'Ka' to 'ha' - Cash Memos (33 nos.)