

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT /CASE

DISTRICT :SONITPUR

**IN THE COURT OF CIVIL JUDGE, SONITPUR : : AT TEZPUR**

Present: Dr. C. Khanikar, AJS

15<sup>th</sup> day of December, 2022

**Title Suit No. 30 of 2022**

**Smti. Geeta Hazarika**

W/O Sri Mukul Hazarika

Village – Niz Halleswar

PO & PS –Tezpur

Mouza - Halleswar

Dist – Sonitpur, Assam

-- Plaintiff

**-Vs.-**

**Sri Prafula Chutia**

S/O Lt. Anandi Chutia

Village – Niz Halleswar

PO & PS –Tezpur

Mouza - Halleswar

Dist – Sonitpur, Assam

----- Defendant

On 11-11-2022 this suit/case coming on for final hearing in the present of:

Advocate for Plaintiff : Mrs. M. Bhagawati

Advocate for Defendant : None

and having stood for consideration to this day the court delivered the following Judgment:

## **Title Suit No. 30 of 2022**

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

1. This is a suit for specific performance of contract for sale of land, delivery of vacant and khas possession with alternative relief/s of compensation and damages, cost of the suit and other reliefs.

2. Brief fact of the plaintiff's case as projected in the plaint is that the defendant is the owner of the land measuring 1 K 5 L out of total land measuring 2 K being covered by Dag No. 895, PP No. 52 of Niz Halleswar village, Mouza-Halleswar, Sonitpur (hereinafter referred as suit land). On 30-10-2020, the defendant executed a deed of agreement for sale of the aforesaid suit lands in favour of the plaintiff for total consideration amount Rs. 8,50,000/-, by taking Rs. 8,25,000/- as advance money. It was agreed that the remaining amount of Rs. 25,000/- will be paid by the plaintiff at the time of the execution of the registered sale deed and that the defendant will obtain the necessary permissions from the concerned authorities for selling the suit land to the plaintiff. Thereafter the plaintiff requested the defendant for several times to execute the sale deed, but the defendants failed to execute the same. On 11-01-2021 when the plaintiff went to the house of the defendant, the defendant told the plaintiff that he will obtain necessary permissions very shortly and then he will register the sale document in favour of the plaintiff. On 18-02-2021 the plaintiff again went to the residence of the

defendant to enquire about the progress of obtaining land sale permission. On that day the defendant has told the plaintiff that he could not obtain the permissions as the offices were not functioning properly because of the Assam Assembly Election 2021 and he further told the plaintiff that he was serious about execution of the sale deed, as such she should not worry about it. The plaintiff also requested the defendant to handover the possession of the scheduled property and also offered to pay the balance sale consideration but the defendant refused to accept it. The plaintiff on several occasions met the defendant and requested him to execute the registered sale deed in favour of the plaintiff but the defendant refused to execute the sale deed in favour of the plaintiff. Hence, the plaintiff has instituted the suit praying for specific performance of contract for sale of suit land, delivery of possession, with alternative relief of compensation of Rs. 8,25,000/- along with costs of the suit and other relieves.

Hence, the present suit is.

3. The suit is proceeded ex-parte against the defendant as the defendant did not appear in-spite of due service of summons upon him.

4. Upon the pleadings the following points have been taken as points for determination:-

i) *Whether there is any valid agreement for sale of the suit land between the defendant and the plaintiff?*

ii) *Whether the plaintiff paid Rs.8,25,000/- to the defendant as advance money towards the payment of total sale consideration of the suit land?*

iii) *Whether the plaintiff is ready to perform her part of the agreement but the defendant failed/neglected to perform his part?*

iv) *Whether the plaintiff is entitled to any decree or relief as prayed for?*

5. At the trial the plaintiff has adduced two witnesses and also placed reliance on some documents in support of the case which are marked as Exhibits.

6. At the end of the trial the plaintiff's side has adduced oral arguments in support of the case.

7. Heard the learned lawyer. I carefully scanned the entire evidence as well as documents on records in order to arrive at a just decision in the suit.

#### **DISCUSSIONS, DECISIONS AND REASONS FOR DECISION**

##### **Point Nos. (i) & (ii):**

(i) Whether there is any valid agreement for sale of the suit land between the defendant and the plaintiff?

(ii) *Whether the plaintiff paid Rs.8,25,000/- to the defendant as advance money towards the payment of total sale consideration of the suit land?*

8. For convenience of discussion and to avoid unnecessary repetition, these two issues are taken together for discussion.

9. In this case PW.1 is the plaintiff Smti. Geeta Hazarika. She has re-iterated the facts stated in the plaint that she entered into an agreement for sale bearing No. 925 of 2020 dated 30-10-2020 with the defendant for sale of the suit land at Rs. 8,50,000/-. Accordingly, she paid Rs. 8,25,000/- as advance money towards the total sale consideration. It was agreed that the defendant will obtain the necessary sale permissions from the concerned authorities and thereafter will execute the registered sale deed in favour of the plaintiff within 8 months from the date execution of the notarized deed of agreement for sale dated 30-10-2020. In support of her plea she has executed the notarized deed of agreement for sale dated 30-10-2020 as Ext.1. She has further stated that defendant Sri Prafulla Chutia was the owner and possessor of the suit land. In support of that, she has exhibited the certified copy of Jamabandi of P.P No. 53 of Village:Niz-Halleswar, Mouza: Halleswar, District: Sonitpur, as Ext.2, which shows the name of the defendant as the pattadar. Plaintiff side has also exhibited the evidence of PW.2 Sri Rajib Borah, who is an attesting witness of Ext.1 notarized deed of agreement for sale. Like the plaintiff, he also stated in his affidavital evidence that the defendant entered into a notarized deed of agreement for sale of the suit land with the plaintiff,

bearing No. 925 of 2020 dated 30-10-2020. The defendant agreed to sell the suit land in favour of the plaintiff for Rs. 8,50,000/- and on the day of the execution of the deed of agreement for sale, the plaintiff paid Rs. 8,25,000/- as advance money to the defendant. It was agreed that the remaining Rs. 25,000/- will be paid within 8 months from 30-10-2020. Thus, the plaintiff side by adducing the evidence of PW.1 and PW.2 as well as the Ext.1 Notarized deed of agreement for sale, has, sufficiently proved that there is a valid agreement for sale of the suit land between the defendant and the plaintiff and the plaintiff paid Rs.8,25,000/- to the defendant as advance money towards the payment of total sale consideration of the suit land. The defendant side did not appear to rebut the plaintiff's evidence. Hence, in absence of any adverse evidence, I am of the opinion that **there is a valid agreement for sale of the suit land between the defendant and the plaintiff.**

10. It is also seen from the evidence of PW.1 as well as PW.2 that on 30-10-2020, the plaintiff paid Rs. 8,25,000/- as advance money towards the total sale consideration of Rs. 8,50,000/- to the defendant. The said fact is written in para-1 of the Ext.1 notarized deed of agreement for sale dated 30-10-2020. The said Ext.1 was signed by the defendant, his signatures are exhibited by PW.1, who is the plaintiff and PW.2 Sri Rajib Borah, who is an attesting witness to Ext.1. Thus, it appears that the

plaintiff side has also proved by adducing affidavital evidence as well as documentary evidence that the plaintiff has paid Rs. 8,25,000/- as advance sale consideration towards the total sale consideration of the suit land of Rs. 8,50,000/- to the defendant. Plaintiff's evidence to that effect is not rebutted by the defendant side or no adverse evidence is found. Hence, I am of the opinion that the plaintiff has also proved that the plaintiff has paid Rs.8,25,000/- to the defendant as advance money towards the payment of total sale consideration of the suit land.

Hence, point Nos. (i) & (ii) are decided **affirmative**.

**Point No. (iii)** : *Whether the plaintiff is ready to perform her part of the agreement but the defendant failed/neglected to perform his part?*

11. According to PW.1, the defendant promised that he would obtain the necessary sale permissions from the concerned authorities and thereafter will execute the registered sale deed in favour of the plaintiff within 8 months from the date of execution or the deed of agreement for sale of the suit land dated 30-10-2020. But after execution of the deed of agreement for sale, the plaintiff met the defendant on several occasions and requested to execute the registered sale deed in her favour. The plaintiff requested the defendant to obtain necessary permissions and also offered to receive the

balance sale consideration amount. But in every time the defendant failed to do so by citing different reasons and sought further time. But the defendant neither obtained the necessary sale permissions nor executed the sale deed. On 11-01-2021 and 18-02-2021, in fear of some misdeeds by the defendant, the plaintiff went to the house of the defendant and requested him to obtain the necessary sale permissions and to execute the registered sale deed. However, on 18-02-2021, the defendant told the plaintiff that the offices were not functioning properly to obtain the sale permissions because of the Assam Assembly Election, 2021. Then the plaintiff requested the defendant to hand over the possession of the suit land by accepting the balance consideration, but the defendant refused to accept the same. After 2021 Election, Covid restrictions were again imposed. Thereafter, on 21-09-2021, the plaintiff again approached the defendant to obtain permissions and to execute the registered sale deed by accepting the balance consideration. But the defendant told that offices were just opened and were not functioning properly. The plaintiff again approached the defendant on 02-11-2021, 26-12-2021 and 15-05-2022. On 15-05-2022, the defendant for the first time told the plaintiff that he was not willing to sell the suit land in favour of the plaintiff and he will not execute the registered sale deed in favour of the plaintiff. He will sell the suit land to some other person as he was getting higher price. That the agreement for sale dated 30-10-2020 is a concluded agreement and hence the



defendant will bound to sell the suit land to the plaintiff by accepting the balance consideration of Rs. 25,000/-. The plaintiff is always ready to pay the balance consideration of Rs. 25,000/-. But the defendant is neglecting to perform his part of the contract to obtain the necessary sale permissions and to execute the registered sale deed.

12. In support of her plea, the plaintiff has exhibited the Ext.1 deed of agreement for sale. In that Ext.1 the present defendant was the first party and the plaintiff was the second party. In paragraph-3 of the said Ext.1, it is written that the first party, i.e, the present defendant will obtain the necessary permissions for sale from the concerned authorities and if the second party, i.e, the present plaintiff will not arrange the balance consideration amount, the first party will return the advance amount to the second party. In paragraph 2 of the said Ext.1 also, it is written that the first party will obtain necessary permissions from concerned offices and will execute the registered sale deed in favour of the second party. The first party shall execute the registered deed of sale in favour of the second party and will accept the balance consideration amount. Thus, it is seen that it was agreed by the parties in writing that the defendant will obtain the necessary sale permissions from the concerned authorities and will execute the registered sale deed in favour of the plaintiff by accepting the balance consideration amount, i.e, Rs. 25,000/-. PW.2 Sri Rajib Borah has also stated that the it

was agreed by the parties that the defendant will obtain the necessary permissions and will execute registered sale deed in favour of the plaintiff by accepting the balance consideration amount, i.e, Rs. 25,000/-. But in spite of requests by the plaintiff on several occasions the defendant neglected to perform his part, i.e, neglected to obtain the necessary sale permissions and to execute the registered sale deed. PW.2 further deposed that on 15-05-2022, the defendant directly refused to sell the suit land to the plaintiff or to execute the registered sale deed in favour of the plaintiff as the defendant was getting higher price for the suit land from other person. Thus, the plaintiff side by adducing the evidence of PW.1 and PW.2 as well as by exhibiting the Ext.1 the deed of agreement for sale has proved that the defendant has to obtain the necessary sale permissions and to execute the registered sale deed in favour of the plaintiff by accepting the balance consideration. But in spite of repeated requests by the plaintiff, the defendant neglected and failed and finally refused to perform his part. On the other hand, the plaintiff was always ready to perform her part of contract, i.e, to pay the balance consideration amount of Rs. 25,000/- to the defendant. Hence, it is successfully proved that the plaintiff is ready to perform her part of the agreement but the defendant failed/neglected to perform his part.

Hence, Point No. (iii) is decided **affirmative**.

**Point No. (iv)** : *Whether the plaintiff is entitled to any decree or relief as prayed for?*

13. From the discussions of Point Nos.(i), (ii) and (iii), it is found that there is a valid agreement for sale of the suit land between the plaintiff and defendant and the plaintiff paid Rs.8,25,000/- to the defendant as advance money towards sale consideration of the suit land. The plaintiff is ready to perform her part of the agreement but the defendant failed/neglected to perform his part. As such, I am of the opinion that the plaintiff is entitled to the decree of specific performance by execution of the registered sale deed in respect of the suit land by the defendant in favour of the plaintiff, delivery of khas possession of the suit land along with costs of the suit. The plaintiff is also entitled to permanent and perpetual injunction restraining and prohibiting the defendant, her men, etc., from selling and transferring the suit land to any other person/s.

### **ORDER**

14. The suit is **decreed ex-parte with costs. The plaintiff is entitled to the decree of execution of the registered sale deed in respect to the suit land. The deed will be executed by the defendant in favour of the plaintiff on payment of the balance amount of Rs.25,000/-.** The plaintiff is also entitled to recover khas possession of the suit land and permanent and perpetual injunction restraining and prohibiting the

**defendant, her men, etc., from selling and transferring the suit land to any other person/s.**

15. Let prepare the decree.

16. Let copy of this Judgment be furnished to the parties subject to payment of costs.

Given under my hand and the seal of this Court on this 17<sup>th</sup> day of November, 2022.

**(C. Khanikar)**  
Civil Judge  
Sonitpur, Tezpur

*Dictated and corrected by me.*

**(C. Khanikar)**  
Civil Judge  
Sonitpur, Tezpur

## **APPENDIX**

### **Plaintiff's witnesses:**

PW-1: Smti. Geeta Hazarika, plaintiff

PW-2: Sri Rajiv Borah

### **Defendant's witnesses:**

None

### **Exhibits of the Plaintiff:**

Ext.1 : Agreement for sale dated 30-10-2020

Ext.2 : Certified computerized copy of Jamabandi of PP  
No.52, vill- Niz Halleswar, Mouza- Halleswar

### **Exhibits of the defendants :**

Nil

**(C. Khanikar)**  
Civil Judge  
Sonitpur, Tezpur