

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

18th day of June, 2022

Title Suit No. 32 of 2021

Sri Nayan Moni Das

S/O Late Harichandra Das

Permanent resident of -

Village – Tarajan Kumar Gaon

Mouza -Bhairabpad

PS- Tezpur

Dist – Sonitpur, Assam

Presently residing at -

Village – Patia Chuburi

Mouza -Haleswar

PS- Tezpur

Dist – Sonitpur, Assam

-- Plaintiff

-Vs.-

(1) Smt. Mamoni Das

W/o Late Ajanta Das

(2) Sri Baman Das

S/o Late Ajanta Das

(3) Miss Kumkum Das (minor)

D/o Late Ajanta Das

(being represented by defendant No.1, mother)

All residents of –

Village – Milanpur (Debapur)

Mouza -Haleswar
PS- Tezpur
Dist – Sonitpur, Assam

(4) Smt. Jonali Das @ Pinki Baruah

W/o Sri Jiban Baruah
D/o Late Ajanta Das
Resident of Deka Chuburi
Mouza -Haleswar
PS- Tezpur
Dist – Sonitpur, Assam ----- Defendants

On 13-06-2022 this suit/case coming on for final hearing in the present of:

Mr. P.C. Sarmah	Advocate for Plaintiff
None	Advocate for Defendants

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

Title Suit No. 32 of 2021

J U D G M E N T

1. This is a suit for specific performance of contract for sale of land, recovery of possession along with permanent injunction, cost of the suit and other reliefs.
2. Brief fact of the plaintiff's case as projected in the plaint is that the plaintiff entered into an Agreement with Ajanta Das for Sale of land measuring 2 Kathas covered by Dag No.483, PP No.183 of Saikia Chuburi, Teleria, Haleswar Mouza, Tezpur Revenue Circle, Sonitpur district along with all

structures and fixtures etc. in the suit land (hereinafter referred as 'suit land'). According to plaintiff, Ajanta Das was the then owner of the suit land who agreed to sale the suit land to the plaintiff for Rs.5,40,000/- and the plaintiff paid an advance of Rs.3,40,000/- to Ajanta Das by executing a notarized Deed of Agreement being Sl. No.1710/19 dated 04-11-2019 with the condition that balance amount of Rs.2 Lakhs will be paid at the time of execution of the registered sale deed. The possession of the suit land was also handed over to the plaintiff by Ajanta Das in presence of Lat Mandal and witness Sri Upen Das. Thereafter, on 24-07-2020, Ajanta Das died by leaving behind the defendant Nos.1 to 4 as his legal heirs. Again, the defendant No.1 and 2 have taken Rs.10,000/- from the plaintiff for performing funeral activities of Ajanta Das and the said amount of Rs.10,000/- shall be treated as additional advance for the total consideration for the suit land. After taking possession, the plaintiff dug a small pond and constructed one Ekchali temporary house, bamboo boundary fencing, permanent pucca latrine and bathroom, installed running water and took electricity connection in the name of Smt. Purnima Das, the wife of the plaintiff. After the death of Ajanta Das, the defendant Nos.1 to 4 became the sole owners of the suit land as the legal heirs of Ajanta Das and the names of defendant Nos.1 and 2 are mutated in the records or rights. Thereafter the plaintiff approached the defendant Nos.1 and 2 and requested to execute the registered sale deed as per the Deed of Agreement for sale

dated 04-11-2019 executed by Late Ajanta Das. But the defendant Nos. 1 and 2 refused to sell the suit land to the plaintiff at the value agreed by Ajanta Das as per the Deed of Agreement dated 04-11-2019 and raised the sale consideration of the suit land to the extent of Rs.5 Lakhs per Katha. In the year 2020, the plaintiff by putting the door lock in the suit property, went to Da-dhara Bamun Chuburi due to his mother's ailment. On 30-11-2020 when the plaintiff came back, he saw that a lock was fixed at the bamboo gate of the suit land and the defendant No.2 told him that the lock was fixed by the defendant No.2 and the plaintiff will not be allowed to possess the suit land and house and the defendant will not sell the suit land to the plaintiff. Then the plaintiff filed an FIR at I/C Bebejia OP against the defendant Nos.1 and 2 on 01-12-2020. The I/C Behajia OP called the defendant Nos.1 and 2 and directed them to open the lock of the gate and allow the plaintiff to enter into the house. The defendants agreed to do in front of the I/C but refused later on, for which, on 23-12-2020 the plaintiff again requested the I/C to help them in taking out his goods, articles, items from the house standing on the suit land and accordingly with the help of I/C, the plaintiff has shifted his goods from the house at suit property to a rented house at Patia Chuburi. The plaintiff also sent an advocate's notice dated 15-12-2020 to defendant Nos.1 and 2 to execute the registered sale deed of the suit land by accepting the balance amount of Rs.1,90,000/- but the defendants failed and neglected to do

so. Having no other way, the plaintiff filed this present suit for specific performance of contract of sale of the suit land, recovery of possession along with permanent injunction, cost of the suit and other reliefs.

Hence, the present suit is.

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

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

i) Whether there is a valid agreement for sale of the suit land dated 04-11-2019?

ii) Whether the plaintiff paid Rs.3,40,000/- to Ajanta Das as advance money towards the payment of total sale consideration of the suit land?

iii) Whether the plaintiff paid Rs.10,000/- to defendant Nos.1 and 2 as advance money towards the payment of total sale consideration of the suit land?

iv) Whether the plaintiff was in possession of the suit land but later on dispossessed by the defendants?

v) Whether the plaintiff is willing to perform his part of the contract but the defendants failed/neglected to perform their part?

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

5. At the trial the plaintiff has adduced 3 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 No (i): Whether there is a valid agreement for sale of the suit land dated 04-11-2019?

8. The plaintiff has stated that he had entered into a notarized Deed of Agreement with Ajanta Das for sale of the suit land for Rs.5,40,000/- and he paid Rs.3,40,000/- as advance money towards the total sale consideration of Rs.5,40,000/-. In support of his evidence, he adduced his own evidence as PW-1. He also exhibited the said notarized Deed of Agreement dated 04-11-2019 as Ext.1. He also adduced the evidence Sri Upen Das as PW-2, who is an attesting witness of the said Ext.1 Deed of Agreement for sale dated 04-11-2019 and PW-3 Smt. Purnima Das, the wife of the plaintiff. All these 3 witnesses PW-1, PW-2 and PW-3 have stated the same facts as stated in the plaint that the plaintiff entered into an Agreement with Ajanta Das, the predecessor-in-interest of defendants, for sale of the suit land at Rs.5,40,000/-. The suit land comprising of land measuring 2 kathas. Also seen the computer generated copy of

Jamabandi filed by the plaintiff where it is clearly visible that the suit land was earlier mutated in the name of Ajanta Das and thereafter vide order dated 15-09-2020 of Circle Officer, Tezpur Revenue Circle, the said land was mutated in the names of defendant Nos.1 and 2 as the legal heirs of Late Ajanta Das. Thus, at the time of execution of Deed of Agreement for Sale, Ajanta Das was the owner as per the records of rights and thereafter it was mutated in the names of his lineal descendants defendant Nos.1 and 2. It is seen that the plaintiff has successfully proved the agreement for sale of the suit land by adducing the evidence of PW-1, PW-2 and PW-3 as well as the original Deed of Agreement for sale of the suit land as Ext.1. Hence in absence of any adverse evidence or any material to rebut those evidence, I am of the opinion that there is a valid Agreement for Sale of the suit land.

Hence, point No. (i) is decided affirmative.

Point No. (ii) :Whether the plaintiff paid Rs.3,40,000/- to Ajanta Das as advance money towards the payment of total sale consideration of the suit land?

9. The plaintiff has stated that he paid Rs.3,40,000/- to Ajanta Das, the predecessor-in-interest of the defendants, as advance money towards the sale consideration of the suit land. The plaintiff has reiterated the same facts in his evidence as PW-1. PW-2 and PW-3 have also stated that they have personal knowledge about the payment of

Rs.3,40,000/- by the plaintiff to Ajanta Das as advance money towards sale consideration of the suit land. The plaintiff has also exhibited the Deed of Agreement for Sale dated 04-11-2019 as Ext.1, wherein it is clearly mentioned that Ajanta Das has accepted Rs.3,40,000/- from the plaintiff as advance money towards the sale consideration of the suit land. The said Deed of Agreement was duly signed by Ajanta Das. The plaintiff has also adduced the evidence of PW-2 who is an attesting witness to that Deed of Agreement for Sale. The attesting witness Sri Upen Das as PW-2 has authenticated the signature of Ajanta Das in Ext.1. Hence in absence of any adverse evidence, I am of the opinion that the plaintiff has successfully proved that he paid Rs.3,40,000/- to Ajanta Das as advance money towards the payment of total sale consideration of the suit land.

Hence, point No. (ii) is decided affirmative.

Point No. (iii) :? Whether the plaintiff paid Rs.10,000/- to defendant Nos.1 and 2 as advance money towards the payment of total sale consideration of the suit land?

10. In the plaint, the plaintiff has stated that he has paid Rs.10,000/- to defendant Nos.1 and 2 for funeral expenses of Ajanta Das and defendant Nos.1 and 2 assured that the said amount would be adjusted as additional advance amount towards the payment of total sale consideration of the suit land. However, the plaintiff did not ask for any money receipt for the said payment of Rs.10,000/- from defendant Nos.1 and 2. The plaintiff as PW-1 has reiterated the same

facts in his evidence. PW-2 Sri Upen Das has stated that the plaintiff asked him before payment of Rs.10,000/- to defendant Nos.1 and 2, but he has not stated that he has personally witnessed the payment of Rs.10,000/- by the plaintiff to defendant Nos.1 and 2. PW-3, who is the wife of plaintiff, has also stated that plaintiff has paid Rs.10,000/- to defendant Nos.1 and 2 at the time of funeral of Ajanta Das and defendant Nos.1 and 2 assured the plaintiff that the said advance money would be adjusted towards the payment of total sale consideration of the suit land. These are the only evidences regarding the payment of Rs.10,000/- by the plaintiff to defendant Nos.1 and 2 as advance payment. But it is seen that the plaintiff has admitted that there is no documentary evidence like money receipt in this regard. PW-1 is the plaintiff himself and PW-3 is his wife. PW-2, who is the independent witness, has not stated that he has witnessed the payment. Under these circumstances, I am of the opinion that some more convincing evidence in this regard is required to hold that the plaintiff has paid an additional advance of Rs.10,000/- to the defendant Nos.1 and 2 towards the payment of sale consideration of the suit land. Hence I hold that the plaintiff could not discharge the burden of proving that he has paid Rs.10,000/- as advance money towards the payment of total sale consideration of the suit land.

Hence, point No. (iii) is decided negative.

Point No. (iv) :? Whether the plaintiff was in possession of the suit land but later on dispossessed by the defendants?

11. In the plaint, the plaintiff has stated that Ajanta Das, prior to leaving for treatment, called the plaintiff and concerned Lat Mandal and handed over the physical possession of the suit land to the plaintiff. Thereafter, the plaintiff has constructed an Ekchali temporary house, permanent (pucca) latrine and bathroom, installed running water and taken electricity connection from APDCL in the name of his wife Smt. Purnima Das and erected bamboo boundary wall in the suit land. As proof, the plaintiff has exhibited the electricity bills & money receipts of APDCL as Ext.4, 4(1), 5 & 5 (1) respectively. In this way, the plaintiff was enjoying the possession of the suit land from the month of January, 2020 till he was dispossessed by the defendants in the month of November,2020. At the time of dispossessing, the plaintiff was with his mother at Da-dhara Bamun Chuburi due to his mother's ailment. On 30-11-2020 he came to his house at suit land and found that the defendant No.2 has put a lock in the boundary gate of the suit land. Thereafter, he filed FIR at Bebejia OP and on 23-12-2020 he shifted his goods/ articles from the suit property with the help of police to a rented house. The plaintiff in his evidence as PW-1 has stated the same facts in his affidavital evidence. PW-2 has also stated that he has personal knowledge about the fact of taking possession by the plaintiff and subsequent dispossession by the defendants. PW-3 is the

wife of the plaintiff. She has also stated that they were in possession of the suit land along with the plaintiff and subsequently defendants have dispossessed the plaintiff from the suit land and house standing thereon. Thus, in absence of any adverse evidence, I am of the opinion that plaintiff has successfully proved that the plaintiff was in possession of the suit land but later on disposed by the defendants.

Hence, point No. (iv) is decided affirmative.

Point No. (v) :? Whether the plaintiff is willing to perform his part of the contract but the defendants failed/neglected to perform their part?

12. The plaintiff has stated that he is willing to pay the balance amount to the defendants, but the defendants are neglecting to execute registered sale deed in favour of the plaintiff and they had enhanced the price of the suit land to Rs.10 Lakhs, in total. The plaintiff has stated that in gross violation of the terms of the Deed of Agreement for sale of the suit land dated 04-11-2019, the defendant Nos.1 and 2 has demanded Rs.5 Lakhs per Katha from the plaintiff i.e. Rs.10 Lakhs for the entire suit land. The plaintiff by showing the willingness to perform his part of contract has sent pleader's notice to the defendants and exhibited the same as Ext.2. The postal receipts of sending the said notice to defendant Nos.1 and 2 are exhibited as Ext.3 and Ext. 3(1). By that notice, the plaintiff stated about his willingness to pay

the balance amount of the total sale consideration of the suit land and requested the defendant Nos.1 and 2 to execute the registered sale deed of the suit land in favour of the plaintiff. The plaintiff as PW-1 as well as witnesses PW-2 and PW-3 have also stated that the plaintiff is willing to pay the balance amount and to get the suit land registered in his favour. But the defendants are neglecting to execute the registered sale deed in favour of the plaintiff and the defendant Nos.1 and 2 are demanding higher price for the suit land than the agreed rate. Thus, from the materials available in the record as well as evidence adduced, it appears that the plaintiff is willing to perform his part of the contract but the defendants failed/neglected to perform their part.

Hence, point No. (v) is decided affirmative.

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

13. From the discussions of Point No.1, it seen that there was a valid Agreement for Sale of the suit land which was executed by Late Ajanta Das, the predecessor-in-interest of the defendants. Later on, said land was mutated in the name of defendant Nos.1 and 2. The defendants are lineal descendants of Late Ajanta Das. As such, they are bound to perform the said Agreement to the extent of the estate they have inherited from Ajanta Das. From the computer generated Jamabandi, it is seen that they had inherited the

entire plot of land of Late Ajanta Das, covered under Dag No.483, PP No.183, which was earlier mutated in the name of Ajanta Das. Suit land is a part of said land of Ajanta Das under Dag No.483, PP No.183. Therefore, they are bound and liable to execute the said Deed of Agreement dated 04-11-2019 as it is within the sphere of the terms "to the extent of estate inherited". From Point No.(v), it is seen that plaintiff is willing to perform his part of the contract but the defendants have failed/neglected to perform their part. Hence plaintiff is entitled to the decree/relief to get the sale deed of the suit land registered in his favour, subject to payment of balance amount.

14. From the Point No.2, it is seen that plaintiff has paid Rs.3,40,000/- as advance money towards the payment of total sale consideration of Rs.5,40,000/-. But from the Point No.3 it appears that the plaintiff could not prove that an additional advance money of Rs.10,000/- was paid towards the payment of total sale consideration for the suit land. Hence it appears that the balance amount to be paid by the plaintiff is Rs.3 Lakhs.

15. In view of the above discussions, I hold that the plaintiff is entitled to the decree / relief to get the sale deed of the suit land registered in his favour on payment of balance amount of Rs.3 Lakhs.

16. From the discussion of Point No. (iv), it is seen that the plaintiff was in possession of the suit land later on he was dispossessed by the defendants. Hence the plaintiff is entitled

to the decree/relief of recovery of the suit land and the structures standing thereon, after registration of the sale deed.

ORDER

17. 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 defendants in favour of the plaintiff on payment of the balance amount of Rs.3,00,000/-. The plaintiff is also entitled to recover possession of the suit land along with the structures standing thereon, after registration of the sale deed.

18. Let copies of this Judgment be furnished to the parties subject to payment of costs.

21. Let prepare the decree.

Given under my hand and the seal of this Court on this 18th day of June, 2022.

(C.Khanikar)
Civil Judge, Sonitpur.

A P P E N D I X

Plaintiff's witnesses:

PW-1: Sri Nayan Moni Das, plaintiff

PW-2: Sri Upen Das

PW-3: Smt. Purnima Das

Defendant's witnesses: None

Exhibits of the Plaintiff.

- Ext.1 : Original copy of Deed of Agreement Sl. No.1710/2019 dated 04-11-2019
- Ext.2 : Advocate Notice served upon defendant Nos.1 and 2
- Ext.3 & 3(1) : postal receipts
- Ext.4 & 4(1) : APDCL Bills in the name of Smt. Purnima Das, the wife of plaintiff
- Ext.5 & 5(1) : Money receipts of APDCL Bills

Exhibits of the defendants :Nil

(C. Khanikar)
Civil Judge, Sonitpur