

HIGH COURT FORM NO.(J) 2.

HEADING OF JUDGMENT ON ORIGINAL SUIT.

District : Sonitpur.

IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

Present : **Sri M. Kalita,**
Civil Judge,
Sonitpur, Tezpur.

Friday the 15th day of June, 2012.

Title Suit NO. 04 of 2005.

1. Sri Ratan Kr. Agarwala,,
S/O Sri Subh Karan Agarwala,
Sole Proprietor of M/S Purbanchal
Steel, M.D. Road, Tezpur Town,
Dist. Sonitpur, (Assam) **Plaintiff.**

-VERSUS-

1. Smti Jaya Bhattacharya @ Bhattacharjee,
W/O Sri Siburam Bhattacharjee,
Resident of Indra Nagar,
13th Main, 80 Feet Road,
HAL IInd Stage,
Bangalore- 560008 **Defendant.**

This suit coming on for final hearing or having been
heard on 24th day of April, 2012.

Mr. S.K. Singh. Advocate ... For the Plaintiff

Mr. T.K. Maitra , Advocate For the defendant.

And having stood for consideration this day, the
15th June, 2012 the Court delivered the following
Judgment :

J U D G M E N T

1. This is the suit filed by the plaintiff Sri Ratan Kr. Agarwala against the defendant Smti Jaya Bhattacharya @ Bhatacharjee for the decree for specific performance of contract for sale of landed property. The suit is valued at Rs. 4,00,000/- for the purpose of jurisdiction and court fee and accordingly, the required court fee is paid.

2. As reflected in the plaint, the plaintiff's case in brief, is that the plaintiff has been occupying a portion of suit land measuring more or less 1000 square feet since December, 1990 as monthly tenant of the defendant. At the time of filing the suit he monthly rent was Rs.2250/-. The plaintiff has been regularly paying the rent for 4 months together amounting to Rs. 9,000/- by demand draft as advised by the defendant. The plaintiff has been running the business in the name and style "M/S Purbanchal Steel" from the tenanted premises. Then the plaintiff after getting information regarding the intention of the defendant for selling the entire suit land along with the tenanted premises, he offered to purchase one katha out of the suit land mentioned in the schedule of the plaint, for running the business successfully on the said premises. Then the defendant offered to purchase the plot of land over telephone on 19-11-2004 as plaintiff talked with the defendant on that day over phone. At that time the defendant also asked the plaintiff to come either personally or to send the representative to finalize the terms and conditions of sale. Thereafter, the plaintiff decided to send his father and brother-in-law to Bangalore where the defendant was residing, to finalize the total consideration price and the terms and conditions of the sale. At that time the plaintiff also sent a Draft of Rs. 10,000/- for the purpose of offering the same as advance. Then, the father of the plaintiff Subhakaran Agarwalla flew to Bangalore on 25-11-2004 with his son-in-law Ashok Khetawat to finalize the

terms and conditions of sale. On 27-11-04 the defendant met the plaintiff at her residence and after negotiation the total consideration was settled at Rs. 4,00,000/- and on being asked by the defendant the plaintiff's father handed over the draft of Rs. 10,000/- to the defendant as a token of advance. It was also decided that the plaintiff will bear all the expenditure for obtaining necessary permission for sale. The defendant also asked the plaintiff for completion of sale/purchase once the defendant finds suitable buyer for her remaining portion of suit land. It was also decided that within a month from the date of obtaining the permission, the balance amount will be paid by the plaintiff to the defendant, thereafter, the Sale Deed would be executed and registered at Tezpur by the defendant in favour of the plaintiff. It was also settled that the defendant will bear the cost for purchasing the stamps necessary for execution of sale deed and also the registration fees. Though the plaintiff was not instructed for obtaining the permission but it is found on 26-02-2005 that some persons who were residing near the suit land were trying to purchase the entire suit land measuring 2 kathas land from the plaintiff of which one katha is the part of the suit land. At that time, the plaintiff also apprehended that out of greed the defendant may sell the suit land to someone else ignoring the concluded contract that existed between the plaintiff and the defendant.

3. The plaintiff's further case is that he will suffer irreparable loss if the suit property is not sold to him and if it is sold to anybody by committing breach of contract. So, he is entitled to enforce the specific performance of contract of sale of the suit property as settled by fixing the consideration of sale at Rs. 4,00,000/-. Though the plaintiff is still ready and willing to pay the balance amount of consideration as soon as the defendant agrees to execute the sale deed, but the defendant is not willing to do so. The attitude of the defendant is contrary to law and all equitable considerations. Even the plaintiff is ready to deposit the balance

amount of consideration in the Court if it is permitted.

4. The cause of action for the suit arose on 19-11-04, 23-11-04, 27-11-04, 26-02-2005 and on every day thereafter. So, the plaintiff has prayed for a decree for specific performance of contract for sale of the suit property as per terms and conditions settled between the plaintiff and the defendant and also for delivery of khas and vacant possession therein. The plaintiff has further prayed for a decree for refund of Rs.10,000/- advanced by the plaintiff to the defendant on 27-11-04 with interest and also to grant a sum of Rs. 4,00,000/- as special damages if the decree for specific performance of cannot be granted. The plaintiff has also prayed for a decree for the cost of the suit along with the relief/reliefs as the court may deem fit and proper.

5. After receiving the summon, the defendant has contested the suit by filing the written statement through the constituent attorney on the grounds that the suit is not maintainable under fact, law and equity; the plaintiff has no right to sue against the defendant for the purported relief of specific performance, there is no cause of action for the suit, the suit is not properly valued and proper court fee has not not been paid.

6. The defendant has denied all the allegations of the plaintiff made in the plaint except few one in her written statement. Defendant has stated in the written statement that she is the owner of the land measuring 2 kathas covered by Dag No. 1095 and 1096 of PP NO. 525 of Tezpur town, third part, Mouza- Mahabhoirab within the District of Sonitpur along with houses, garrage and other structures standing thereon covered under Tezpur Municipality holding No.2734 (New -2203 / 2) of Ward No. 10. The plaintiff is the tenant of the defendant in respect of the garrage premises standing 1000 sq ft (approximately) of land and the plaintiff has been paying Rs. 2250/- per month as rent. He has been carrying a business in

the name and style "M/S Purbanchal Steel" from the tenanted premises. As the defendant being a married lady has been living at Bangalore with her husband, so the plaintiff used to pay the accumulated arrear of rents at a time to the defendant's mother at Tezpur who used to send the same to the defendant and the plaintiff paid a Bank draft of Rs. 9,000/- towards the arrear rents of four months in the month of November, 2004 through his father who had gone to Bangalore for treatment. Since, then the plaintiff has committed default in paying the house rent. The defendant has further stated in the written statement that she never intended to sale the entire land measuring 2 kathas and houses thereon as alleged by the plaintiff. So, the question regarding the offer made by the plaintiff to purchase 1 Katha land of the suit land with premises thereon for any purported purpose does not arise. Because the plaintiff never intended to sell the land either to plaintiff or to other person. Nor any talk was held between the plaintiff and the defendant on 19-11-2004 over telephone regarding the selling of land as alleged by the plaintiff and the plaintiff was also not asked by the defendant to go to Bangalore to finalize the purported terms and conditions of the sale. The defendant only received a Bank Draft of Rs. 9000/- for arrear rent in connection with the tenanted premises. She also never received a draft for Rs. 10,000/- drawn at Central Bank of India or otherwise as an advance as alleged by the plaintiff. She only received a draft of Rs. 9000/- from the father of the plaintiff who had gone to Bangalore for medical treatment. The defendant has also denied the fact that the plaintiff's father and his brother-in-law met at her residence at Bangalore for the purpose of negotiation regarding the sale of land and no such settlement was made for selling the land to the plaintiff at a consideration of Rs. 4,00,000/- as alleged by the plaintiff. The defendant has also denied the fact regarding her receipt of bank draft of Rs. 10,000/- as an advance money. No concluded contract for sale of the land was made between the plaintiff and the defendant either on 19-11-2004

or on 25-11-04 or on 27-11-2004 or at any time thereafter. So, there is no any enforceable agreement of contract in the matter of sale of suit land in question. So, the question of specific performance of contract does not arise under law and equity.

7. The defendant has also denied the fact that out of greed the defendant may sell the suit land to any other persons as alleged by the plaintiff because, the defendant never intended to sale the entire 2 kathas of land or any part thereof to anybody. The defendant has also denied the fact regarding the existence of any concluded contract which is enforceable by law between her and the plaintiff. So, the question of depositing the purported balance consideration amount in the court does not arise. Hence, the plaintiff is not entitled to any relief for specific performance of any purported contract for sale of suit property or for refund of purported advance of Rs. 10,000/- and for the relief for special damage amounting to Rs. 4,00,000/- as prayed by him. Rather, the suit is deserved to be dismissed with cost. So, the defendant has prayed for dismissing the suit with cost for the ends of justice and equity.

8. On the basis of contention raised in the plaint and the written statement and after hearing both sides, the following issues are framed :-

- 1.** Whether the suit is maintainable ?
- 2.** Whether there is any cause of action for the suit ?
- 3.** Whether the plaintiff has right to sue ?
- 4.** Whether the suit has been properly valued and proper court fee is paid thereon ?
- 5.** Whether there was a concluded contract for sale of suit property on 19-11-2004 or on 27-11-2004 by defendant to plaintiff at Rs. 4,00,000/- or for any sum on the terms and

conditions as alleged ?

6. Whether the plaintiff paid any sum towards purported advance towards consideration for sale of suit property to defendant as alleged ?

7. Whether the plaintiff paid Rs. 9000/- towards arrear rents and further Rs. 10,000/- towards over due arrear rents to defendant as claimed ?

8. Whether the plaintiff was and always is ready and willing to perform his part of purported contract for sale as alleged ?

9. Whether the purported contract for sale dated 19-11-2004 is capable for specific performance as claimed ?

10. Whether the plaintiff is entitled to decree for specific performance of purported contract for sale or for refund of purported advance of Rs. 10,000/- only and for special damage as claimed, if so, to what amount ?

11. To what other relief or reliefs the parties are entitled to ?

9. During the course of hearing, the plaintiff has examined 3 PWs including himself and proved 5 Nos of documents in support of his case.

The PWs who are examined by the plaintiff are as follows :-

1. PW 1 - Sri Subhakaran Agarwala
2. PW 2 - Sri Ashok Kherawat
3. PW 3 - Sri Ratan Kr. Agarwala

The documents exhibited by PW 3 are as follows :-

1. Ext. 1 (A) to 1(D) - The Air tickets,

- | | | |
|-------------|---|--------------------|
| 2. Ext. 2 | - | Cash Book |
| 3. Ext. 3 | - | Ledger Book |
| 4. Ext. 5 i | - | Copy of Jamabandi. |

10. I have also heard arguments from learned counsel of both sides and anxious consideration is given to the submission of learned counsels while deciding the issues.

11. So, on the backdrop of aforesaid materials on record, I like to discuss the issues one by one for final decision of the suit. For benefit of convenient discussion, I like to discuss the Issue No.5 first.

Issue No. 5.

12. Whether there was a concluded contract for sale of suit property on 19-11-2004 or on 27-11-2004 by defendant to plaintiff at Rs.4,00,000/- or for any sum on the terms and conditions as alleged ?

In regards to this issue, it is found from meticulous examination on record that the plaintiff has claimed in his plaint as well as in his evidence that he is the tenant of defendant in respect of a portion of suit land including one garage standing thereon. The talk was held between him and the defendant over telephone on 19-11-2004 for purchasing a portion of land measuring 1 katha out of suit land mentioned in the schedule of the plaint by the plaintiff. The plaintiff has further contended that as per advice of defendant he deputed his father Subhakaran Agarwala and his brother-in-law Ashok Khetawat to Bangalore where the defendant was staying for finalizing the terms and conditions of sale and after negotiation on 27-11-04 it was decided that the land would be sold at a consideration of Rs. 4,00,000/- and one bank draft drawn at Central Bank of India was handed over to the defendant as token of advance money. Thereafter, he came to know that some persons

residing near the suit land as trying to purchase the entire suit land from the plaintiff and thereafter the plaintiff apprehended that the suit land would be sold to other parties.

On the other hand, the defendant has contended in her written statement as well as in the evidence that no such oral agreement or contract was formulated as alleged by the plaintiff. No such talk was held between the plaintiff and her in regards to the sale of the land. And she only received a Bank draft of Rs. 9000/- in connection with the house rent of the tenanted premises. In the written statement she has stated that she did not receive the bank draft of Rs. 10,000/- from the father of the plaintiff but in the evidence, the defendant has admitted that she received the bank draft of Rs. 10,000/- in connection with the house rent only. So, it is found after going through the pleadings and evidence in case record that the plaintiff has claimed the existence of concluded contract which was made by the defendant with him. On the other hand, the defendant has denied such fact and further contended that no such concluded contract was made by her with the plaintiff. So, in view of the above allegation and counter-allegation and also in view of provision of section 101 of Indian Evidence Act, because I find that the plaintiff has tried to prove the existence of verbal contract between the plaintiff and defendant. The plaintiff has insisted on the fact that the defendant had received a bank draft of Rs. 10,000/- as a token of advance after settling of terms and conditions of the contract regarding the sale of the part of the suit land as the defendant had asked to pay the advance amount and in support of the said contention, the plaintiff has examined his father and brother-in-law as PW 1 and PW 2. He has also produced 5 Nos. of documents in support of his case.

13. On perusal of evidence of PW 2 and 3, it is found that both PWs claimed that they had gone to Bangalore to meet and

discuss with the defendant for finalizing the contract regarding the sale of land and accordingly, they met and finalized the agreement at her residence on 27-11-04 and they also handed over one draft of Rs. 10,000/- as an advance of the contract. On the other hand, the plaintiff has produced the Air tickets procured for travelling by his father and brother-in-law to Bangalore. He has also exhibited Cash Book, Ledger Book and the Audit report of his firm. But after going through the oral evidence as well as documentary evidence it is found crystal clear that the plaintiff has produced 2 Air tickets, Cash Book and Ledger Book of his own firm to prove the fact that the bank draft of Rs. 10,000/- was procured for handing over it to the defendant as an advance amount for sale of the land.

14. After meticulous examination of above documents and the evidence, it is found that the oral as well as the documentary evidence of PWs is not sufficient to prove the existence of concluded contract made orally by the plaintiff and defendant in regards to the sale of one part of the suit land.

In this context, I feel it necessary to cite the decision of Hon'ble Apex Court which has been mentioned in the submission of learned counsel of defendant in regards to the onus of proof for proving the existence of agreement because this decision is very much relevant for deciding this issue. In the case of **Thiruvengada Pillai V. Navaneethammal & another** reported in **AIR 2008 SUPREME COURT 1541**, the Supreme Court observed in para 17 as :

"17. The trial Court had analyzed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate Court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants. It was for the defendants to establish that the document was forged or

concocted, is not sound proposition. The first appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing ; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate Court lost sight of the fact that the party who propounds the document will have to prove it. In this case plaintiffs came to Court alleging that the first defendant had executed an agreement of sale in favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by the trial Court and High Court referred to earlier, when taken together. Rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of PW 1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate Court, does not call for interference.”

15. So, in view of the above observation of Hon'ble Apex Court and also in view of denial of defendant regarding existence of any agreement, it is found that the plaintiff has the burden to establish the existence of agreement made between the plaintiff and the defendant. It is also settled law that the plaintiff in a suit must succeeds in his own stand by citing adequate law in his support to discharge the onus on it regardless of the fact as to whether the defendant has proved its case or not.

In the instant case, the plaintiff has produced the

Ext.1,2,3 and 4 which are the documents maintained by the firm absolutely run by the plaintiff. And considering such fact, I am of the considered opinion that such documents is not reliable and cogent to prove the existence of agreement regarding the sale of landed property. So, considering the material on record in it's entirety and also in view of the above decision of Hon'ble Apex Court, I have no other option to hold the opinion that there is no such concluded contract for sale of the suit property on 19-11-2004 or on 27-11-2004 at a consideration of RS. 4,00,000/- between the parties and no such terms and conditions were settled as alleged by the plaintiff. So, for the reasons stated above, this issue is decided in negative.

Issue No. 1.

16. Whether the suit is maintainable ?

On examination of material on record, it is found that the plaintiff has filed the suit for decree of specific performance of oral contract and also for decree for special damage with refund of advance money. Considering the nature of the suit and the reliefs sought for by the plaintiff I find that the suit can not be dismissed simply by deciding it's merits on the aspect of maintainability of the suit. Hence for that reason this issue is decided in affirmative.

Issue No. 2.

17. Whether there is any cause of action for the suit ?

From the discussion of Issue No.5 it is found that the plaintiff has failed to prove with sufficient and reliable oral and documentary evidence regarding the existence of contract made by the plaintiff and the defendant in regards to the sale of the part of the suit land at a consideration of Rs. 4,00,000/-. And it is found also from the material on record that the plaintiff has filed the suit for a decree of specific performance of contract. As the plaintiff has failed to prove this fact regarding the purported concluded contract

so I am of the considered opinion that there is no cause of action for the suit and for the above reason, this issue is decided in negative.

Issue No. 3.

18. Whether the plaintiff has right to sue ?

On meticulous examination of material on record, it is found that the defendant's contention is that the plaintiff has no right to sue against the defendant as there is no any concluded contract between the parties. It has already been decided in the Issue No.2 that there is no any cause of action for the suit. So considering such facts and circumstances of the case, I am of the opinion that the plaintiff has no right to sue against the defendant and for the above reason, this Issue is also decided in negative.

Issue No. 4.

19. Whether the suit has been properly valued and proper court fee is paid thereon ?

In regards to this issue, it is found from the material on record that the defendant has raised the plea that the suit is not properly valued and he proper court fee is not paid. But examination of material on record in this regard, it is found that the suit is found properly valued and the proper court fee is also found paid by the plaintiff. Hence, considering such facts, this issue is decided in affirmative.

Issue No. 6.

20. Whether the plaintiff paid any sum towards purported advance towards consideration for sale of suit property to defendant as alleged ?

In regards to this issue, it is found from the meticulous examination of material on record that though the plaintiff has claimed that an amount of Rs. 10,000/- was given as advance

towards the consideration of sale of part of suit land to the defendant on 27-11-2004 but the plaintiff has failed to prove such contention with sufficient, reliable and cogent oral and documentary evidence. The plaintiff has also claimed that the draft of Rs. 10,000/- was handed over by his father to the defendant at Bangalore on 27-11-04 after finalizing the terms and conditions of the contract. On the other hand, the defendant has denied such fact and she has further admitted in the cross-examination that she received the amount in connection with rent of the tenanted premises only. In the cross-examination, the DW 1 has stated that the father and brother-in-law of plaintiff handed over the draft of Rs. 10,000/- and Rs. 9,000/- in connection with the house rent. It is also found from the discussion of Issue No. 5 that the plaintiff has failed to establish the proof of existence of oral contract between the parties. The plaintiff has also admitted in his plaint as well as in his evidence that he is the tenant of the defendant. So, he had the obligation to pay the rent for the purpose of tenanted premises. So, after considering the material on records in it's entirety, I am of the considered opinion that the plaintiff has failed to prove with sufficient, reliable and cogent evidence that he had paid the sum towards the advance for consideration amount for sale of one part of the suit property and for the reasons stated above, this issue is decided in negative.

Issue No. 7.

21. Whether the plaintiff paid Rs. 9000/- towards arrear rents and further Rs. 10,000/- towards over due arrear rents to defendant as claimed ?

In regards to this issue, it is found from the discussion of Issue Nos. 5 and 6 that the plaintiff only paid Rs. 9,000/- and Rs. 10,000/- in connection with the arrear rent of tenanted premises and the plaintiff has failed to prove the fact regarding the payment of advance of consideration of sale of land. So, in view of the

discussions stated in Issue No. 5 and 6, this issue is decided in affirmative.

Issue No. 8.

22. Whether the plaintiff was and always is ready and willing to perform his part of purported contract for sale as alleged ?

In regards to this issue, it has already been found that the plaintiff has failed to prove the existence of any concluded contract made by the plaintiff and the defendant in regards to the sale of the one part of the suit property so, I am of the considered opinion that this issue is not so much important for deciding the suit, because, the plaintiff's readiness and willingness is not so important if the existence of any concluded contract can not be proved.

The learned counsel for the plaintiff and defendant have submitted some decisions in regards to the plaintiff's readiness and willingness to perform his purported contract but considering the discussions of Issue Nos. 5 and 6, I find that such decision is not relevant for deciding the suit because, the plaintiff has even failed to establish that both the parties made a concluded contract in regards to the sale of part of the suit property. So, in view of the above discussion and reasons stated above, the decision of this issue is decided in negative.

Issue No. 9.

23. Whether the purported contract for sale dated 19-11-2004 is capable for specific performance as claimed ?

In regards to this issue, it is found from the examination of material on records that the plaintiff's contention is that the contract was made by the plaintiff with the defendant on 19-11-04 over phone regarding the sale of one part of the suit property along

with the structures standing thereon (tenanted premises). The plaintiff has further stated that the defendant also agreed and asked the plaintiff to come to Bangalore personally or to depute anyone for finalizing the terms and conditions of sale but it has already been decided in Issue No. 5 that the plaintiff has failed to prove the existence of such contract with reliable and cogent oral as well as documentary evidence.

24. In this context I like to cite the decision of Hon'ble Gauhati High Court, in the case of **Nibash Ch. Saha and another Vs. Champa Lal Ladhar** reported in **AIR 2010 Gauhati 137**. In para 27 of the said decision, it is observed by the Hon'ble Gauhati High Court that-

" Right to get a decree for specific performance of contract is a discretionary one. Section 20 of the Specific Relief Act, mandates that the jurisdiction to decree the specific performance of contract is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so ; however the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of scrutiny by higher Courts."

25. The Hon'ble Apex Court also observed in para 14 of the decision of the case of **Bal Krishna & another Vs. Bhagwan Das & others** reported in **(2008) 12 Supreme Court Cases 145** as :

"It is also settled by various decisions of this Court that by virtue of section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into

consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void."

Considering the facts and circumstances of the case, I find that the above decisions of Hon'ble Gauhati High Court and Hon'ble Apex Court which have been mentioned in submission of learned counsel of defendant during final hearing are very much relevant for deciding the issue because the Court needs to apply the discretion for granting relief for specific performance as per guidelines given in the said decision.

26. Considering the material on record in its entirety, it is found that the plaintiff has failed to prove with reliable and cogent evidence regarding the purported contract alleged to be made by the parties. So, the plaintiff is found not entitled to any relief for specific performance of contract as there is no ground to pass the equitable decree for specific performance of contract in this suit by applying the reasonable discretion and for the above reason this issue is decided in negative.

Issue No. 10.

27. Whether the plaintiff is entitled to decree for specific performance of purported contract for sale or for refund of purported advance of Rs. 10,000/- only and for special damage as claimed, if so, to what amount?

From the above decision of Issue No. 5 and 9 it is found that there is no any concluded contract regarding the sale of part of the suit land along with the standing structures thereon between the plaintiff and the defendant and the plaintiff has failed to prove that an amount of Rs. 10,000/- was given to the defendant as advance for the purpose of advance of sale consideration. Considering the reasons stated in the Issue No.9, I am of the considered opinion that the plaintiff is not entitled to the decree for specific performance of purported contract for sale or for refund of purported advance of Rs. 10,000/- only and for special damage as claimed and for the reasons stated above, this issue is decided in negative.

Issue No. 11.

28. To what other relief or reliefs the parties are entitled to ?

Considering the reasons stated in the foregoing issues, I find that the suit is deserved to be dismissed with cost, because the plaintiff has failed to prove with sufficient, reliable and cogent material that there is any cause of action for the suit.

O R D E R

29. The suit is dismissed on contest with cost.

Prepare decree accordingly.

30. Judgment is pronounced in an open court, written on separate sheets and enclosed with the case record.

31. Given under my hand and seal of this court, I have signed and delivered this judgment on this 15th day of June, 2012.

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Dictated and corrected
by me .

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Typedby me

(R.Hazarika)
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