

**High Court Form No. (J) 2.  
Heading of Judgment in Original Suit**

**District : Sonitpur.**

**In the Court of Munsiff No.1, Sonitpur, Tezpur.**

**Present : Sri Vishek Bhuyan, AJS,  
Munsiff No.1, Sonitpur, Tezpur.**

**Thursday, the 17<sup>th</sup> day of November, 2022**

**TITLE SUIT CASE NO. 108 OF 2021**

**Smt. Kajal Shil ..... Plaintiff**

***versus***

**1. Sri Dhruba Kalita**

**2.Sri Prasanta Kalita ..... Defendant**

**This suit/ case coming on for final hearing on  
20.11.2022 in the presence of -**

**Sri Tapan Ghosh ..... Advocate for the plaintiff;**

**and**

**None.....Advocate for the defendant**

**and having stood for consideration to this  
day, the court delivered the following  
judgment-**

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T.S Case No. 108 of 2021

## **JUDGMENT**

- 1.** This is a suit for specific performance of contract for sale of immovable property.
- 2.** The plaintiff's case as set out in the plaint is given briefly herein under :

### **Plaintiff's case**

**3.** That the plaintiff is a petty businessman deals is selling of vegetables at Mission Charali bazaar. The plaintiff and his family members reside in a rented house near the house of the defendants and there grew a good relationship with the defendants and their family members.

That the plaintiff was in search of a plot of land and when the defendants came to know about his intention the defendants offered to sell their land measuring 11 lessas covered under Dag No. 1114, PP No. 156, situated at village Saikia Chuburi, Dekargaon, Mouza Bhairabpad, District- Sonitpur, Assam (herein after in short is called as the suit land) which is more carefully described in the schedule below.

That the plaintiff went to the suit land and found the land suitable for him. The parties had a talk and after long marathon discussion both the plaintiff and the defendants entered into an agreement for sale on 18.06.2018 and the price of

the land was mutually fixed at Rs. 3,50,000/- (Rupees three lakhs fifty thousand) only. The other terms and conditions fro the completion of the sale/purchase were also dotted in balck and white to avoid future dispute if any. The said agreement was duly notorised before the Notray Public Vide SI No. 4824 dated 18.06.2018.

That as per the said agreement the plaintiff had paid to both the defendants a sum of Rs. 1,00,000/- (Rupees One Lakh) only on the very date of the execution of the said agreement. The defendants had acknowledged the receipt of the said amount of Rs. 1,00,000/- (Rupees One Lakh) only by the said agreement vide SI No. 4824) on 18<sup>th</sup> day of June, 2018, at Tezpur in presence of the witnesses.

That the plaintiff and the defendant also arrived at a consensus as to the fact that the defendants will have to obtain necessary permission from the concern offices and the plaintiff shall bear the registration and stamp duty at the time of registration of the final sale deed before the Sr. Sub Registrar. The plaintiff had handed over all necessary documents and put his sign upon the forms and handed over the same for obtaining necessary permission from the concern offices to the defendants. In return the defendants promised

to obtain the permission within couple of months.

That on 01.01.2019 this plaintiff approached the defendants and enquired about the update of the permissions and execution of the sale deed. The defendants showing this and that cause stated that the same is under process and assured the plaintiff that the permission will be in their hands within couple of months. The plaintiff believed their words and returned back with hope.

That more than a year passed by but the defendants were unable to obtain the requisite permission from the concerned office and execute the sale deed. The plaintiff had on numerous occasions approached them but every time he was made to hear a new excuse. Being fed up of all the excuses the plaintiff on the last week of 12.12.2019 approached the defendants and requested them to do the needful within a month or else he made his intention clear to approach the court for seeking justice. The defendants requested the plaintiff not to take any steps and assured him that they will take steps to execute the sale deed soon.

That the plaintiff approached the defendatns on 01.03.2020 and enquired them to update him about the status of the permission. The defendants this time stated that they were sort on finances and

hence were unable to obtain the permission from the Govt. Office. They requested the plaintiff for a further advance amount of Rs. 50,000/- (Rupees fifty thousand) only. That plaintiff had no other way but to adhere to their wishes as he required the work to be done at the earliest. Hence, considering the same the plaintiff paid an amount of Rs. 50,000/- (Rupees fifty thousand) only to the defendants on 12.03.2020 the receipt of which they acknowledged through a money receipt. The plaintiff was again made to return with empty hand and false promises.

That owing to the spread of COVID-19 Virus, the Central Government of India declared Nationwide Lockdown from the month of March, 2020 and it gave the defendants another excuse for not being able to obtain the permission required for effecting the sale deed. The intentions of the defendants were made abundantly clear when they failed to obtain the permission even months after the said lockdown was lifted by the Government.

That the plaintiff finding no other way then caused service of notice on the defendants on 04.01.2021 through his counsel, Tapan Ghosh. The said notice was delivered upon both the defendants but they did not turn up nor they replied to the notice. Finding no way out on 20.01.2021 the

plaintiff purchased the court fees and handed over to his counsel to file a suit. The defendant No. 1 came to know about the same and he approached the plaintiff and promised to execute the sale deed within a month. The defendant no. 1 to assure the plaintiff gave an undertaking on 21.01.2021 to the plaintiff in support of his promise.

That the plaintiff again approached the defendant on 02.03.2021 and requested him to execute the sale deed at this the defendants have started ignoring the plaintiff and showed least interest to reply to the plaintiff. The plaintiff returned back with broken heart and could not believe the assurance and false promise given by the defendants.

That this plaintiff makes it clear that he had always been and is still ready and willing to pay the balance amount of consideration as soon as the defendants agrees to execute and get registered a deed of sale in his favour after obtaining necessary permission. The attitude of the defendants are contrary to law and all equitable considerations. The defendants cannot be permitted to go back on their words or to sell the suit property at any price to any third party in breach of the concluded contract arrived at between the parties to the suit on 18.06.2018 specially considering the fact that

this plaintiff has all along been ready and willing to pay the balance amount of consideration and is ready to bear the full registration charge. The plaintiff is ready to deposit the balance amount of consideration with the Court, if so ordered.

That if for any unforeseen reason or for any change in the circumstances, it becomes difficult/impossible to enforce specific performance of the contract, this plaintiff would pray alternatively for a decree for refund of the amount he advanced, i.e. Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only to the defendants on various dates along with interest and for granting him special damages as the Hon'ble Court deems fit. This plaintiff is ready to pay further court fees on such amount of damage.

Summons were issued to the defendant but the defendant failed to enter appearance and contest the suit. Accordingly, vide order dated 30.03.2022 proceedings were drawn ex-parte against the defendant .

**4.** The plaintiff in order to prove its case adduced the evidence of two (2) numbers of witnesses.

**5.** Heard the arguments advanced by the learned counsel of the plaintiff.

**6.** Perused the case record.

7. The points for determination that has arisen in the instant case are as follows:

**Point for determination**

**1) Whether the plaintiff is entitled to decree for specific performance of contract of sale of the suit property on the conditions settled between them and with delivery of *Khas* and vacant possession thereof to the plaintiff?**

8. My decision of the above points for determination along with reasons is given hereinunder :

**Discussion, Decision and reasons therefore**

P.W-1 i.e plaintiff Sri Kajal Shil filed his evidence in affidavit reiterating the contentions in the plaint. P.W-2 Sri Sanjay Sarkar who is a witness to the agreement of sale has corroborated the Plaintiff

The Plaintiff has exhibited the following,

- Ext. 1- The agreement of sale No. 4824 dated 18.06.2018.
- Ext. 1(i) to (iii) are the signatures.
- Ext. 1 (iv) to (vi) are the signatures of defendant No. 1.



- Ext. 1 (vii) to (ix) are the signatures of defendant No. 2.
- Ext. 1 (x) is the signature of Sanjay Sarkar.
- Ext. 1 (xi) is the signature of Ramendra Deka.
- Ext. 1 (xii) is the signature of counsel.
- Ext. 2 - Money receipt dated 12.03.2020.
- Ext. 2 (i) & (ii) are the signatures of defendants.
- Ext. 3 is the downloaded copy of the jamabandi pertaining to the suit land downloaded from the official site Dhaitree.
- Ext. 4 is the advocate notice dated 04.01.2021.
- Ext. 5 is the postal receipts dated 04.01.2021.
- Ext. 6 is the undertaking dated 21.01.2021.
- Ext. 6(i) is the signature of defendant no. 1.

From documents exhibited above it is prima facie seen that the Plaintiff and defendant entered into the agreement of sale and the Plaintiff has already paid an amount Rs 1,50,000/- which is reflected in Ext-2, the Plaintiff is ready is ready and willing to perform the rest of the agreement but the defendant has failed to obtain the necessary permission till date. Furthermore, the Plaintiff as PW-1 has reiterated whatever has been stated in the plaint and she has been corroborated by PW-2.

The defendant despite being given the opportunity failed to adduce any evidence of his own to disprove the case of the Plaintiff.

As observed in Rangammal Vs. Kuppuswami and another (2011) 12 SCC 220, burden of proof lies on the plaintiff to establish his right, title and interest to suit property. Until that burden is discharged by plaintiff, the other party cannot be required to prove its case.

Thus, in the instant case burden of proof is on the plaintiff who is asserting his right, title and interest with respect to the suit land. Plaintiff has succeeded to prove his case on basis of material on record.

It is pertinent to mention section 101 of the Evidence Act, 1872:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist .

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

In Rangammal Vs. Kuppuswami and another (2011) 12 SCC 220 , The Hon'ble Supreme Court of India observed as follows:

“Thus, the Evidence Act clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.”

Therefore, in view of the above discussion and legal position stipulated in the Evidence Act, it is clear in the instant matter that the plaintiff has discharged his burden of proof successfully through the evidence adduced along with the various exhibits.

The points for determination stands answered in the positive in favour of the plaintiff. Thus, in view of the above discussion it is held that the plaintiff has been able to establish his pleadings and the suit is hereby decreed for specific performance of contract of sale of suit property on

the conditions settled between and with delivery of *Khas* and vacant possession thereof to the Plaintiff.

**ORDER**

**9. In the light of the foregoing discussion, plaintiff's suit is decreed ex parte with costs.**

**It is hereby decreed and declared that the plaintiff is entitled to decree for specific performance of contract of sale of suit property on the conditions settled between and with delivery of *Khas* and vacant possession thereof to the Plaintiff by the defendant.**

**The defendant is directed to execute the sale deed in favour of the plaintiff upon receipt of the balance amount from the plaintiff.**

**10. Prepare decree accordingly.**

**Given under my hand and the seal of this court on this the 17<sup>th</sup> day of November, 2022 at Sonitpur, Tezpur.**

**Sri. Vishek Bhuyan  
Munsiff No.1,  
Sonitpur, Tezpur.**

**APPENDIX**

**A. Plaintiff's Witnesses:**

1. P.W-1: Sri Kajal Shil
2. P.W-2: Sri Sanjay Sarkar

**B. Defendant's Witnesses: Nil**

**C. Plaintiff's Exhibits:**

- Ext. 1- The agreement of sale No. 4824 dated 18.06.2018.
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- Ext. 1 (iv) to (vi) are the signatures of defendant No. 1.
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- Ext. 6(i) is the signature of defendant no. 1.

**D. Defendant's Exhibit : Nil.**

**Sri Vishek Bhuyan  
Munsiff No.1,  
Sonitpur, Tezpur**