

HIGH COURT FORM NO.(J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

**DISTRICT: SONITPUR**

**IN THE COURT OF MUNSIFF NO. 2, SONITPUR,**

**TEZPUR**

Present: **Smti Priyanka Saikia, AJS,**  
**Munsiff No.2.**

**This the 26<sup>th</sup> day of October, 2022**

**Title Suit No. 119/2021**

**Sri Nandalal Choudhury**

S/o- Sri Ram Raj Choudhury

Village- Bhitor Parowa (Paramaighuli)

P.O.- Nikamul Satra

P.S.- Tezpur

Mouza- Halleswar

District- Sonitpur, Assam

**---Plaintiff**

**-vs-**

**Smti Basanti Devi**

W/o- Late Munilal Singh

Village- Bhitor Parowa (Paramaighuli)

P.O.- Nikamul Satra

P.S.- Tezpur

Mouza- Halleswar

District- Sonitpur, Assam

**--- Defendant**

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**CASE NO: T.S. 119/2021**

**1. Sri Dukharan Singh**

**2. Sri Subhash Singh**

Both are sons of Late Bujhawan Singh and

Resident of- Village- Bhitor Parowa

(Paraimaighuli),

P.O.- Nikamul Satra,

Mouza- Halleswar

P.S.- Tezpur,

District- Sonitpur (Assam)

**---Proforma Defendants**

This is a suit came up for final hearing on 27-09-2022 in presence of following Advocate:

Counsel for Plaintiff : Sri Sanjay Singh

Counsel for Defendant : None

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

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

**Plaintiff's case in brief:**

**1.** This is a suit for specific performance of contract and for permanent injunction.

**2.** That the plaintiff, defendant and proforma defendants are the resident of above mentioned place within the jurisdiction of this Hon'ble Court.

**3.** That the husband of the defendant Late Munilal Singh and the proforma defendants are own brothers and thereby, the defendant Smti Basanti Devi W/o- Late Munilal Singh is the sister-in-law of the proforma defendants and upon the death of the said Munilal Singh the defendant (wife of Lt. Munilal Singh) has inherited the share of her husband (Lt. Munilal Singh) morefully described in the Schedule mentioned below by the right of inheritance in place of her husband. Thus, the defendant along with the proforma defendants is the co owners and pattadars of a plot of land measuring 04 Bighas 04 Kathas 00 Lessas covered under Dag No. 74 of P.P. No. 17 class of land- Bhalbari, situated at village- Bhitor Parowa, Mouza- Halleswar, Revenue circle & Sub Registry- Tezpur, Dist- Sonitpur, Assam within the jurisdiction of this Hon'ble Court.

**4.** That initially, the proforma defendant no. 1 in the month of 2018 offered to sale the suit schedule land to the plaintiff and the plaintiff being shown his interest to purchase the same, after due bargaining sale consideration of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand) was verbally fixed to sale the suit land in favour of the plaintiff and consequent to that the defendant and proforma defendant no. 2 has given NOC in this regard stating that if the proforma defendant no. 1 Sri Dukharan Singh will sell 01 Bigha of land of Dag No. 74 of P.P. No. 17 class of land Bhalbari, situated at village Bhitor Parowa, Mouza-

Halleswar, Revenue Circle & Sub Registry – Tezpur, Dist-Sonitpur, Assam then they have no objection in this respect and thereafter, the seller purchaser and purchaser affidavits which are required to obtain sale permission/NOC from the District Administration are executed on 19<sup>th</sup> day of November, 2018 and on the same day the proforma defendant no. 1 took the signatures of the plaintiff in the sale permission/s form to obtain the same.

**5.** That five months later i.e., in the month of April 2019 the said proforma defendant no. 1 came to the house of the plaintiff and informed him that he (proforma defendant no. 1) had already sold his entire share of land and now his sister-in-law raise objection although she has given NOC earlier to sale her share of land and suggested the plaintiff to talk with her in this regard and the said proforma defendant no. 1 has also handed over the all documents including all those affidavits to the plaintiff on the same day.

**6.** That as per the suggestion of the said proforma defendant the plaintiff talked with the defendant in this aspect then the defendant told the plaintiff that she is willing to enter into a written agreement for sale of land by enhancing the price of the schedule land and refixing the price sale consideration amount at Rs. 3,00,000/- (Rupees Three Lakh) only which is the actual market value of the

locality at present. The plaintiff sought some time to discuss the same with his family members.

**7.** That after discussing the same with the family members the plaintiff again agreed to purchase again agreed to purchase the suit Schedule land at the said consideration price of Rs. 3,00,000/- (Rupees Three Lakh) only provided that the defendant provided that the defendant will hand over the possession of the suit land to the plaintiff wherein the plaintiff wants to construct his residential houses etc.

**8.** That accordingly a written agreement for sale of land was entered on 18/07/2019 in between the plaintiff and the defendant in respect of the Schedule land and on the same day the plaintiff has paid an amount of Rs. 2,00,000/- (Rupees Two Lakh) only as an advance against the total fixed sale consideration of Rs. 3,00,000/- (Rupees Three Lakh) only in presence of the two witnesses namely Sri Gobhi Nayak, the village headman/Sarkari (Govt.) Gaonburha of Parowa village and another witness is Sri Achol Singh of Bhitor Parowa village and the defendant has duly acknowledgement the receipt of the said advance amount by putting her thumb/signature upon the said agreement for sale of land and on the same day the defendant in presence of the above named witnesses and also in presence of the proforma defendants delivered the khas physical possession of the schedule land to the

plaintiff wherein the plaintiff has been residing along with family members by constructing houses and cowshed etc.

**9.** That although, further it was agreed that the remaining balance sale consideration amount of Rs. 1,00,000/- (Rupees One Lakh) only will be paid by the plaintiff to the defendant at the time of execution of the sale deed in favour of the plaintiff after procuring the necessary sale permissions/NOCs from the concerned authorities by the defendant, but the defendant showing the one and another pretext viz., she is going to solemnized the marriage of her elder daughter Smti Radha Singh therefore, she needs the remaining balance sale consideration amount.

**10.** That the plaintiff having no alternative way and on good faith paid the remaining balance sale consideration amount of Rs. 1,00,000/- (Rupees One Lakh) only on 20/08/2019 to the defendant and the defendant has issued one acknowledgement receipt acknowledging the receipt of the said balance amount and further, the defendant promised to the plaintiff she will obtain the sale permission/s or NOCs within six months from the date of receipt of the said amount.

**11.** That after six months when the plaintiff went to the house of the defendant and proforma defendants along with the witnesses no. 2 and asked the defendant about the status of sale permission/NOC then only the defendant

has asked the plaintiff to bring his necessary relevant documents which are required to obtain the sale permissions/NOCs and accordingly, the plaintiff has given all his particulars which are necessary in obtaining the sale permissions on dated 22/02/2020 and on the same day the defendant has also taken the signatures of the plaintiff in the sale permission/NOC forms of the Tezpur Municipal Board, Tezpur and also in the NOC form of the District Administration respectively.

**12.** That again on dated 24/11/2020 the plaintiff talked with the defendant over mobile phone to know the status of sale permissions then the defendant told him that due to lockdown on account of COVID 19 pandemic the required sale permission yet not been obtained although she (the defendant) had applied but the same has been pending before the concerned authorities and further the defendant sought some time from the plaintiff stating that she will procure the same within a very short span of time.

**13.** That on 10/03/2021 the plaintiff along with the witnesses no. 1 Sri Gobhi Nayak went to the house of the defendant to know the status of the sale and also to request the defendant to execute and register the proper deed of sale in respect of the suit schedule land agreed to sale if the sale permission /NOC has procured from the concerned authority i.e., from the District Administration. The defendant again replied in earlier manner that due to lockdown the same has yet not been received.

**14.** That the plaintiff himself made an enquiry in this regard and came to know that the defendant has as usual pretended to believe the plaintiff that she (the defendant) has already applied to obtain the required sale permission as necessary for registration of sale deed though in fact no such application has ever been made by the defendant for her ulterior motive and wrongful gain, and also without providing any information to the plaintiff the defendant suddenly stop to meet and talk with the plaintiff and avoided to receive any phone calls of the plaintiff since the month of August, 2021 and the defendant is now reluctant to meet the plaintiff and avoided him and hence, the plaintiff has to suffer a lot financially and mentally.

**15.** That from the conduct of the defendant, it is evident that the defendant has been bargaining to sell the suit Schedule land mentioned below to some other person depriving the plaintiff for a higher sale consideration amount or the defendant has been trying to cause encumbered the suit schedule land with intend to somehow deprive the plaintiff and thereby, to cause wrongful loss to him (the plaintiff).

**16.** That the plaintiff finding no alternative way is instituting this suit against the defendant for redressal of his grievances in the Court of law.



**17.** That as stated by the plaintiff herein above and here under the plaintiff is always ready to perform his part of contract but the defendant is knowingly and intentionally for her wrongful gain avoiding and delay to perform her part of contract i.e. to execute and register the deed of sale in favour of the plaintiff in respect of suit schedule property as she has already taken the entire sale consideration amount of Rs. 3,00,000/- (Rupees Three Lakh) only from the plaintiff and there was or is no jurisdiction of any further delay for specific performance of said consecutive contract of sale.

**18.** That the aforesaid contract of sale has been broken by the defendant in collusion with the proforma defendants as they all are belonged from the same family and systematically trap the plaintiff in their net and as such she is also liable to compensate the plaintiff under the relevant provision of the Specific Relief Act, 1963 and if the proforma defendants will raise any objection during the pendency of the suit then they will be treated as main/principal defendants as they have the knowledge about the present concluded contract for sale of land dated 18/07/2018.

**19.** That due to the aforesaid illegal acts of the defendant after the receipt of the total sale consideration, the plaintiff is compelled to institute this suit against her for specific performance of contract and there is no inordinate delay in instituting the suit for the relief of Specific

Performance of contract. The plaintiff is not at all liable for non performing of the aforesaid contract for sale and the plaintiff is ever ready to take the registration of sale deed at this own cost.

**20.** That the cause of action for the suit arose on and from 18/07/2019, the date when the defendant entered into agreement for sale of land 20/08/2019 the date when the defendant has issued one acknowledgement receipt in favour of the plaintiff acknowledging the receipt of the entire sale consideration amount of Rs. 3,00,000/- (Rupees Three Lakh) only; and since the month of August, 2021; when the defendant suddenly stop to meet and talk with the plaintiff and avoided to receive any phone calls of the plaintiff and thereby, the defendant has failed to obtain the necessary sale permissions and also to keep up her promise as promised with the plaintiff as per agreement dated 18/07/2019; and on every dates thereafter within the jurisdiction of this Hon'ble Court.

**21.** The plaintiff therefore prays:

- (i) to decree the suit for specific performance of the concluded contract of sale dated 18/07/2019 directing the defendant to execute proper deed of sale and get the same register as per law within a time bound period in respect of schedule land as the defendant has already accepted and acknowledged the receipt of the entire sale consideration amount

and has also already delivered the possession of the suit land;

(ii) in case if the defendant refuses and neglects or fails to obey the decree of the Hon'ble Court to pass an order to execute the necessary sale deed and get the same registered as per the provisions of Order XXI Rule 34 of CPC;

(iii) to decree the suit for alternative relief by directing the defendant to return the entire consideration amount paid by the plaintiff to the defendant along with adequate compensation if the specific performance of contract is not possible for any reason beyond the control of the defendant;

(iv) to decree the suit for permanent and perpetual injunction restraining and prohibiting the defendant, his men and agents etc., from selling and transferring the suit Schedule land to any other person/s by the defendant, her men and agents and associates etc.;

(v) to decree the suit for all costs of the suit against the defendant; and

(vi) to decree the suit for any other relief/reliefs as the Hon'ble Court may deems fit and proper under the facts and circumstances of suit.

**22.** The defendant and proforma defendants had not appeared in the proceeding inspite of duly service of summons on them on 30.11.2021 and thus the suit

proceeded ex-parte against him vide order dated 21.12.2021.

**23.** To bring home his case, the plaintiff adduced the evidence of three witnesses including him and the witnesses were not cross-examined by the defendant and proforma defendants as they remained absent without steps subsequently. Heard the argument of the counsel for the plaintiff and has exhibited some documents.

**24.** The following points for determination are considered in order to arrive at a proper decision:

- A. Whether the Agreement for sale dated 18.07.2019 is a concluded contract between the plaintiff and the defendant with respect to the suit land?
- B. Whether the plaintiff had performed his part of contract or is ready and willing to perform his part of contract?

**25.** Learned advocate appearing for the plaintiff vehemently submitted before this court that plaintiff's suit is liable to decreed with cost as the plaintiff established and proved the contentions of plaint by adducing trustworthy evidence before this court. Plaintiff side adduced both ocular as well as documentary forms of evidence. However, the defendant and proforma defendants did not appear for their cross-examination.

**26.** I have gone through the documentary evidence and oral evidence adduced by the plaintiff side.

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

**27.** To substantiate his claim plaintiff, Sri Nandalal Choudhury as **PW-1 has deposed** the same things as mentioned in the plaint.

**POINT NO. A:**

**28.** The plaintiff, more particularly PW-1 emphasized while justifying the suit that Ext-5 is the agreement for sale dated 18.07.2019 and Ext-6 is the acknowledgement receipt. The plaintiff stated that the defendant totally failed to perform her part in spite of her assurance and as per terms of the agreement and even repeated request of the plaintiff and the plaintiff will suffer immensely if the sale deed is not granted in his favour. P.W.2 Sri Gobhi Nayak and P.W.3 Sri Anchol Singh deposed that they are the attesting witnesses of the agreement for sale executed on 18.07.2019 between plaintiff and defendant. Exhibit 5(IX) and 5(X) are the signatures of P.W.2 and P.W.3 respectively on the agreement dated 18.07.2019.

**29.** The said exhibits specified that the defendant promised to execute Registered Deed of Sale in favour of the plaintiff but in fact the defendant did not do anything in this regard. In fact the defendant violated the terms and

conditions of the agreement for sale. The plaintiff is held to have succeeded in proving the documents by adducing its attesting witnesses. Preponderance of probability goes in favour of the plaintiff. Ext-5 & Ext-6 are being an agreement and acknowledgement receipt have the validity of the probability and the evidences rendered thereto are appreciable and it is therefore held that Ext-5 & Ext-6 can be treated as a valid agreement. Ext-5 and Ext-6 by which the defendant received the total consideration money from the plaintiff in respect of the suit land is appreciable because by the said exhibits defendant acknowledged the receipt of the total consideration amount from the plaintiff.

**30.** It is also a settled position of law that the initial burden of proof would be on the plaintiff in view of Section 101 of the Indian Evidence Act, 1872. In terms of the said provision the burden of proving the facts rests on the party who substantially asserts the affirmative issues. In terms of Section 102 of the evidence act, the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendants to prove to circumstances, if any, which would disentitle the plaintiff to the same.

**31.** As the witnesses of the plaintiff was not cross examined, his evidences and the documents submitted remained unrebutted. I have perused all the Exhibits furnished by the plaintiff in a very careful manner as well as evidences. Analysis of the evidences and materials

available in the record shows that the plaintiff has successfully substantiated his claim as put forth in the plaint. The evidence forwarded by the plaintiff is coherent and inspires the confidence of the Court.

Hence, this point is decided in the affirmative and in favour of the plaintiff.

**POINT NO. B:**

**32.** As discussed in point No. 1 the appreciation being done in the exhibited documents and the transaction between the parties through Ext.5 & Ext-6 (valid document), the plaintiff has substantiated that there was a concluded contract between the plaintiff and the defendant. As the defendant side did not appear in the suit and failed to rebut the claim of the plaintiff and her absence in spite of getting the opportunity to substantiate her claim draw an adverse inference against the defendant, hence did not cross examine the witnesses of the plaintiff, the entire evidence of the plaintiff side remained unchallenged and unrebutted. I see no justifiable reason to disbelieve the case and claim of the plaintiff, which has been corroborated by documentary evidence too. It is a settled principle of law that pleadings have to be specifically denied. If pleadings are not specifically denied the same is deemed to be admitted. In the present suit the defendant did not file any written statement to deny the averments made by the plaintiff in the plaint. The defendant also did not cross examine the plaintiff

witnesses to rebut the evidence adduced by him and as such Ext.5 & Ext-6 remains unchallenged. PW-2 and PW-3 identified the signature of the defendant in Ext.5.

**33.** I have given the matter due consideration and have gone through the evidences forwarded. It could be understood from the plaint that the defendant and proforma defendants are the co-owner of the suit land. Defendant had executed the sale agreement with the plaintiff. Defendant failed to appear despite receiving summon, however, considering the fact that the defendant executed the sale agreement. However, it cannot be denied that the defendant did take the total consideration amount of Rs.3,00,000/- (Rupees Three Lakh Only) in lieu of advance sale consideration. It is also seen that the plaintiff had made an alternative prayer for relief, same being, refund of the entire consideration amount of Rs.3,00,000/-. The defendant having paid entire consideration amount of the sale consideration as seen from Ext.6 proves that there was a contract between the parties.

**34.** This evidences of the Plaintiff Witness remained un rebutted. Hence there is no reason to disbelieve the pleadings and evidence of the plaintiff. Thus in the absence of anything to prove the contrary it is held that there was an agreement for sale between the plaintiff and the defendant and the defendant is bound by the contract and accordingly the plaintiff is liable to get a decree for specific



performance of contract for sale in pursuance to the agreement dated 18.07.2019.

**35.** The defendant is directed to execute the final sale deed for the suit land as described in the schedule in favour of the plaintiff and it is made clear herein that if the defendant neglect or refuse to comply the order and decree of this court, the court will execute the sale deed in favour of the plaintiff by exercising the provision under Order XXI Rule 34 of the CPC.

This point is decided in the affirmative and in favour of the plaintiff.

### **ORDER**

**36.** In the result, the suit of the plaintiff is decreed and disposed of ex-parte with cost. It is declared that the agreement dated 18.07.2019 is binding upon the defendants and the defendants are directed to perform their part of the contract and register final sale deed in respect of the suit property in favour of the plaintiff and it is made clear herein that if the defendant neglect or refuse to comply the order and decree of this court, the court will execute the sale deed in favour of the plaintiff by exercising the provision under Order XXI Rule 34 of the CPC. The defendant is also restrained permanently and prohibited from sale and transfer of the schedule land in any manner.

**37.** Prepare a decree accordingly within 15 days from today.

Given under my hand and seal of this court on this 26<sup>th</sup> day of October, 2022.

**(Smt. Priyanka Saikia, AJS)**

**Munsiff No. 2**

**Sonitpur, Tezpur**

**APPENDIX**

**Plaintiff's Witnesses:**

PW1: Sri Nandalal Choudhury

PW2: Sri Gobhi Nayak

PW3: Sri Achol Singh

**Plaintiff's Exhibits:**

Nil

**Defendant's Witnesses:**

Nil

**Defendant's Exhibits:**

Nil

**(Smt. Priyanka Saikia, AJS)**

**Munsiff No. 2**

**Sonitpur, Tezpur**