

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

District : SONITPUR.

**IN THE COURT OF MUNSIF NO. 1, SONITPUR,
TEZPUR**

**Present : Sri Vishek Bhuyan, AJS,
MUNSIF NO. 1, SONITPUR.**

Thursday the 22nd day of December, 2022

TITLE SUIT NO. 152 of 2022

**1. Sri Bishal Ghosh
2. Sri Pankaj Singha Plaintiffs**

-versus-

Smt. Lakhi Rani Ghosh Defendant

And

**1. Smt. Archana Ghosh
2. Smt. Bisaka Ghoshproforma defendants**

S. Mishra Advocate for the plaintiffs;

And

S. Rahman Advocate for the defendant,

JUDGMENT

1. That the plaintiff, defendant and the Proforma defendants are permanent residents of village- Alisinga Uriamguri, Mouza- Mahabhairab, P.O- Panchmile, P.S- Tezpur, District- Sonitpur, Assam and the schedule land is also situated in the same village, within jurisdiction of the Hon'ble Court.

That the Defendant is owner of the schedule land and her name is mutated as pattadar of the schedule land.

That the Defendant in the first week of August 2019 offered to sell the schedule land jointly to Dipak Ghosh (since deceased), S/O. Late Narendra Ghosh and Sri Pankaj Singha, S/O. Late Jyotish Singha i.e. the Plaintiff no. 2 and upon bargaining the Defendant has fixed sale consideration of Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand) only for the schedule land and both Dipak Ghosh and Pankaj Singha accepted offer of the Defendant and agreed to purchase the schedule land on sale consideration as fixed by the Defendant.

That the Defendant on 09.08.2019 requested Dipak Ghosh and Pankaj Singha to pay an advance amount of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand) only to the Defendant and accordingly

both of them on 09.08.2019 paid advance amount of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand) only to the Defendant in presence of witnesses.

That on receipt of the advance amount of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand) only as stated above on 09.08.2019, the Defendant on the same day i.e. on 09.08.2019 by executing Registered Deed of Agreement for Sale of schedule land being No. 1698 for the year 2019 of Tezpur Sr. Sub Registry Office, Tezpur Registered on 09.08.2019 entered into concluded contract for sell of the schedule land to Dipak Ghosh and Pankaj Singha jointly in presence of witnesses and acknowledged receipt of advance sale consideration of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand) only, Sri Satyajit Ghosh and Sri Ranjit Ghosh both sons of the Defendants have signed as witnesses in the Deed. The Defendant had undertaken to obtain requisite permission for sale of the schedule land from the competent authority and to accept the balance sale consideration amount of Rs. 5,000/- (Rupees Five Thousand) only at the time of execution of the registered sale deed.

That the Defendant and her sons obtained signatures of Dipak Ghosh and Pankaj Singha on several forms and papers for obtaining requisite permission for sale and taken copies of identity documents from Dipak Ghosh and Pankaj Singha and they promised to obtain requisite permission for sale of the schedule land within 1 (one) years.

That be here it stated that the Defendant in the year 2012 delivered possession of the schedule land to Dipak Ghosh and Pankaj Singha and allowed to construct their houses and structures over the schedule land. Pankaj Singha previously had been residing at Village- Tengabasti, Mouza- Mahabhairab, P.O- Panchmile, P.S- Tezpur, District- Sonitpur, Assam but from the year 2012 he has been residing over the schedule land at Village- Alisinga Uriamguri, Mouza- Mahabhairab, P.O- Panchmile, P.S- Tezpur, District- Sonitpur, Assam.

That Dipak Ghosh, S/O. Narendra Ghosh i.e. father of the Plaintiff No. 1 Bishal Ghosh and Proforma Defendant No. 2 Smt. Bisaka Ghosh and husband of Pro forma Defendant No. 1 Smt. Archana Ghosh expired on 18.09.2020 leaving the Plaintiff No. 1 and Pro forma Defendants as his heirs and successors. The Plaintiff No. 1 and the Pro forma Defendants being heirs and successors of Late Dipak Ghosh are

bound by terms and conditions of the Registered Deed of Agreement for Sale of land being No. 1698 for the year 2019 registered on 09.08.2019.

That after death of Dipak Ghosh the Plaintiff No. 1 and Pro forma Defendants on 20.12.2020 alongwith other persons met with the Defendant and requested to sell the schedule land in favour of the Plaintiff No. 1 alongwith the Plaintiff No. 2 as the Plaintiff No. 1 is the only son of Late Dipak Ghosh and has been maintaining his mother and sister i.e. Pro forma defendant No.1 and 2 respectively. The Defendant in presence of all on 20.12.2020 promised to sell the schedule land to the Plaintiff No. 1 alongwith Plaintiff No. 2. The Proforma Defendants have no claim over the schedule land, as the Plaintiff No. 1 has been maintaining them.

That the Defendant on 20.01.2021 obtained signatures of the Plaintiff on forms and papers for obtaining requisite permission for sale of the schedule land from the competent authority and promised to obtain the same within 31.08.2021, but the Defendant failed to obtain the same.

That the Plaintiffs on several occasions requested the Defendant to obtain and execute registered sale deed in favour of the Plaintiffs, but on all

occasions the Defendant requested to wait for some time.

That the Plaintiffs on several occasions tendered the balance sale consideration amount of Rs. 5,000/- (Rupees Five Thousand) only to the Defendant, but the Defendant has stated to accept the same on the day of execution of registered sale deed in favour of the Plaintiffs.

That the Plaintiffs were and are ready with the balance consideration amount and tendered to the Defendant on several occasions, but the Defendant on all occasions stated to accept the same at the time of execution of the registered sale deed.

That the Plaintiffs have performed their part of concluded contract, but the Defendant has failed to perform her part of contract.

That if the Defendant fail to perform her part of contract then the Plaintiffs shall suffer irreparable loss and injuries both in law and equity as stated above the Plaintiffs have their houses and structures over the schedule land and have been residing with their family members. The Plaintiffs have incurred Rs. 3,00,000/- (Rupees Three Lakhs) only as expenses in construction of houses/structures over the schedule land.

That on 25.07.2022 the Plaintiffs have come to know that the Defendant has been bargaining with some persons to sell the schedule land at a higher sale consideration in violation of the concluded contract, but nobody is ready to purchase the schedule land as the same is in possession of the Plaintiffs by constructing houses and structures thereon. The Defendant is liable to be restrained by permanent injunction from sell of the schedule land to any other person by executing registered sale deed or in any manner otherwise the Plaintiffs shall suffer irreparable loss and injuries both in law and equity.

2. Summon was duly served on the defendant. However, the defendant did not file written statement and instead filed an application for admission under Order XII Rule 6 of the Code of Civil Procedure for admission of fact.

3. In support of the instant case the plaintiff submitted the following documents:

I) Photo stat copy of Agreement for Sale of land being No. 1698 for the year 2019 of Tezpur Sr. Sub Registry Office, Registered on 09.08.2019.

II) Photo stat copy of certified copy of Jamabandi of PP No. 50 Dag No. 108, 152, 109 of Village- Alisinga Uriam, Mouza- Mahabhairab.

III) Photo stat copy of Death Certificate of Dipak Ghosh.

IV) Photo stat copy of Next of Kin Certificate.

4. That the Defendant admits all the averments of the plaintiff and he further admitted that he received the balance sale consideration on 29.11.2022. The defendant further states that he has no intention to neglect and refuse the registration of the suit land in favour of the Plaintiff within the stipulated time as agreed.

5. I have perused the pleadings of the Plaintiff and the application for admission of fact by the defendant of the claim of the Plaintiff. The defendant has admitted the averments of the plaintiff and that she is ready to perform her part of the contract.

6. Thus, the admission of the defendants regarding the whole claim of the plaintiff establishes the suit in favour of the Plaintiff. Further, it is well settled that on basis of admission Court has the discretion to take pass judgment upon satisfaction that the admission relied upon is cleared, definite and unequivocal. To be noted that it was observed in *Ut-tam Singh Duggal & Co. Ltd. Vs. United Bank of India, (2000) 7 SCC 120*

“Where one portion of the claim was admitted and the other portion was denied, and both the portions were severable, the plaintiff could ask for a judgment on the portion admitted by the defendant.”

Further in Nagindas Ramdas Vs. Dalpatram Iccharam, AIR 1974 SC 471 it has held

“Admission in the pleadings or judicial admissions made by the parties, at or before the hearing of the case, stand on a higher footing than evidentiary admissions and are binding on the party making them and constitute waiver of proof.”

7. Considering the above position of law and upon satisfaction of the application for admission of fact filed by the defendants admitting the claim of the plaintiff; I deem it fit to pass judgment.

8. Accordingly, it is held that, the plaintiff has been able to prove his case based on admission of fact by the defendants and hence, entitled to the decree with the following relief:

For specific performance of contract for sale of schedule property to the Plaintiff directing the Defendants to execute registered Sale Deed in favour of the Plaintiff only, the defendant already admitted that he received the balance sale consideration on 29.11.2022 and to have the Sale Deed registered as per law at the cost of the Plaintiff and for delivery of possession of the suit land within 15 days of this judgment, if required by evicting the

Defendants with their men, materials and servant there from.

Order

9. In the conclusion, the suit is decreed with cost with the below mention relief/s.

i. For specific performance of contract of sale of schedule land directing the defendant to execute registered sale deed in favour of the Plaintiff within 15(fifteen) days from the date of this judgment.

ii. For permanent injunction restricting and prohibiting the defendant from sale and transfer of the schedule land in any manner to any other person.

10. Prepare decree accordingly.

Given under my hand and the seal of this court on this the 22nd day of December, 2022 at Tezpur, Sonitpur.

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

APPENDIX

A. Plaintiff's Witnesses : Nil.

B. Defendant's Witnesses : Nil.

C. Plaintiff's Exhibits : Nil.

D. Defendant's Exhibits : Nil.

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