

HIGH COURT FORM NO.(J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

DISTRICT: SONITPUR

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

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

This the 17th day of January, 2022

Title Suit No.22/2010

On the death of Mantaz Ali his legal heirs

1. Musstt. Surja Begum

W/o- Late Mantaz Ali

2. Musstt. Johara Begum

D/o- Late Mantaz Ali

3. Musstt. Falima Begum

D/o- Late Mantaz Ali

4. Musstt. Jolekha Begum

D/o- Late Mantaz Ali

5. Md. Mozamit Haque

S/o- Late Mantaz Ali

6. Md. Sirajuddin Dala

S/o- Late Mantaz Ali

7. Md. Ser Shah Ali

S/o- Late Mantaz Ali

8. Musstt. Molisa Begum

D/o- Late Mantaz Ali

9. Md. Sahensa Ali

S/o- Late Mantaz Ali

10. Musstt. Jonaliala Begum

D/o- Late Mantaz Ali

11. Musstt. Nazma Begum

D/o- Late Mantaz Ali

12. Musstt. Asiya Begum

D/o- Late Mantaz Ali

13. Md. Mazarul Haque

S/o- Late Mantaz Ali

14. Musstt. Momta Begum

D/o- Late Mantaz Ali

15. Musstt. Lalmani Begum

D/o- Late Mantaz Ali

16. Musstt. Maleka Begum

D/o- Late Mantaz Ali

All are residents of Village Pithakhowa

Mouza- Bihaguri

Dist- Sonitpur, Assam

-----Plaintiffs

-VS-

Md. Samsuddin

S/o- Late Baharuddin

Resident of Village Niraiati (Siv Mandir)

Mouza- Bihaguri

Dist- Sonitpur, Assam

-----Defendant

This is a suit came up for final hearing on 18-12-2021 in presence of following Advocates:

Counsel for Plaintiffs : N.M. Goswami

Counsel for Defendant : F. Haque

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

JUDGMENT

Plaintiff's case in brief:

1. This is a suit for declaration of plaintiff's right, title and interest over the suit land with consequential relief of recovery of possession by evicting the defendant.

2. That originally 13 bighas 0 katha 18 lesas of land covered under Old Dag No. 253/564 under Old Periodic Patta No. 148 of the village: Neraiati, Mouza: Bihaguri, Dist- Sonitpur, Assam was owned by (1) Late Rama Kanta Nath, (2) Sri Hema Kanta Nath, (3) Sri Bidyadhar Nath, (4) Sri Debendra Nath all sons of Late Harial as per the old Chitha and other records of land. That after death of the Pattader No. 1 i.e. Rama Kanta Nath his 1/4th share in the said land was desolved upon his sons (1) Sri Purna Kanta Nath and (2) Sri Dharmeswar Nath by right of inheritance and their name were duly mutated as Pattadar No. 5 and 6 on 07.07.1971 in the draft chitha of the said land.

3. That by registered sale deed No. 3784 for the year 1979 dated 24.09.1979 of Tezpur Sub-Registry the said owner Pattader Sri Purna Kanta Nath and Sri Dharmeswar Nath absolutely sold 1 Bigha 2 Katha 19 Lessas of land

under Old Dag No. 253/564 of Old P.P. No. 148 of Village: Neraiati, Mouza: Bihaguri (along with another 1 Bigha of land under Dag No. 567/63 of Old P.P. No. 249 of village: Gerua gaon, Mouza- Bihaguri) to the plaintiff Md. Mantaz Ali for a valuable consideration of Rs. 3,000/- only and delivered possession thereof to the plaintiff, who became the true owner thereof having his name duly mutated in the draft chitha of the land on 28.01.07 and also duly mutated in the latest Jamabandi, of said suit land vide order dated 19.10.2007 of the Circle Officer Tezpur, and at the time of settlement operation the entire 13 Bighas 0 Katha 8 Lessas of said land was covered under new Dag No. 548 under new P.P. No. 168 of village Neraiati of Mouza:Bihaguri and the plaintiff's name stands mutated as pattadar No. 12 in the latest Jamabandi of the suit land, and mutation certificate for 01 bigha 02 kathas 19 lessas suit land, and mutation certificate for 01 bigha 02 kathas 19 lessas suit land under new Dag No. 548 of new Periodic Patta No. 168 was granted in the name of the plaintiff on 05.12.2009 by the Circle Officer of the Tezpur Revenue Circle.

4. That the plaintiff is a resident of Pithakhowa, Mouza: Bihaguri and the suit land, fully described in the schedule below is about 3 km away from his residence. But the plaintiff had been possessing and enjoying the suit land by paying the govt land revenue as the owner and recorded pattadar thereof.

5. That taking advantage that the plaintiff resides in the nearby village of Pithakhowa the defendant having no right title and interest over the suit land most illegally and forcibly trespassed into the suit land in the month of Oct' 2005 and forcibly erected an Ekchali house of C.I. Sheet roof with kutchra floor on a part of the suit land and started living there with his wife and family members most illegally and wrongfully, and despite repeated request from the plaintiff (who is a man about 75 years) the defendant refused to vacate the suit land by removing his unauthorized house therefrom. The defendant further illegally arranging for enfencing the suit land by bamboo fencing. The said illegal acts of the defendant has illegally invaded upon the lawfull right, title and interest of the plaintiff over the suit land for which it has become necessary to seek relief of declaration of plaintiff's right, title and interest over the suit land with consequential relief of recovery of vacant possession of the suit land by demolishing and removal of the defendant's said unauthorized house therefrom, to which the plaintiff is legally entitled. The defendant has no right or authority to wrong-fully occupy the suit land in any manner.

6. That of late the defendant filed a complaint dated 24.04.2006 in the Court of learned CJM at Tezpur falsely alleging that on 20.01.2004 the plaintiff, his son Muzamil Haque and son-in-law Md. Siraj Ali entered into an agreement for sale of 1 Bigha 3 Kahtas 10 Lessas of land at village: Neraiati and that they refused to execute sale

deed thereof by taking the balance consideration amount and also alleging that on 30.03.2006 the plaintiff, his son Muzamil Haque and son in law Siraj Ali trespassed into the suit land and committed mischief, cheating, criminal intimidation and destroyed a thatched house under construction by arson on the said land, and the said complaint petition was sent by the learned CJM at Tezpur P.S. for investigation who registered it as Tezpur P.S. Case No 217/06 out of which GR Case No. 576/06 was registered against them and after submission of charge-sheet against them the learned Court of CJM Tezpur committed the said accused to the Court of Session for trial which was registered as Session Case No. 189/07 and upon full trial the Hon'ble Court of Additional District and Session Judge (FTC) Sonitpur at Tezpur vide order and judgment dated 10.11.2009 held that the said accused persons including the plaintiff have not committed the said offence and was pleased to acquit all the accused persons therein.

7. That by the aforesaid false and wild allegations made against the plaintiff and said two others by the defendant, which was ultimately proved as false vide judgment dated 10.11.2009 by the Court of Session (FTC) Sonitpur, the valuable right, title and interest of the plaintiff was further illegally infringed and invaded upon by the defendant. For which the plaintiff has been compelled to institute this suit for reliefs claim thereunder. Hence, the instant suit.

The Gist of Defendant case:

8. On receipt of the plaint summons were served upon the defendant and submitted contested the suit by filing written statement. The defendant had stated there is no cause of action for this suit and this suit is hit by estoppels, waiver and acquiescence. The defendant denied all the allegations levelled against them. Hence, the defendant do pray for dismissal of suit by imposing compensatory cost on the Plaintiff.

9. Upon perusal of pleadings of both the sides the following were issues framed by my learned predecessors-in-office: Issues framed on 06.10.2015:

- i. Whether there is a cause of action for institution of this suit?**
- ii. Whether the suit land as described in the plaint is separate and distinct from the land measuring 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No- 168 possessed and accepted by the defendant?**
- iii. Whether the son of the plaintiff, Md. Mozammil Haque @ Mozammil Ali had alienate the land possessed by defendant i.e. 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No-168, in favour of the wife of the defendant, by executing an unregistered agreement to sale, for consideration and by delivering possession thereof?**

- iv. **Whether the alienation of 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No- 168 by the son of plaintiff Md. Mozammil Haque @ Mozammil Ali , is valid in the eyes of law?**
- v. **Whether the plaintiff has right, title and interest over the suit land?**
- vi. **Whether the defendant trespassed into the suit land and as such liable to be evicted therefrom?**
- vii. **Whether the plaintiff is entitled to the decree as prayed for?**
- viii. **To what other relief/s plaintiff is entitled for?**

10. I have heard the arguments of the learned Counsels for the Plaintiffs and defendant. I have considered the argument learned counsels for both the sides and also have perused the case record in detail. The plaintiff has adduced two evidences including Plaintiff as PW-1 in support of his case whereas the defendant have adduced the evidence of four witnesses including him. The materials on record and submissions made on behalf of both sides have received due consideration of this court.

Decision on issue no. i:

Whether there is a cause of action for institution of this suit?

11. "Cause of action" as envisaged under Section 20 (c) of the Code of Civil Procedure, it means a bundle of facts which are required to be proved. The defendant pleads that the plaintiffs do not have the cause of action for

institution of this suit. The cause of action is nothing but a bundle of material fact which the plaintiffs must allege and prove in order to succeed in his case. In the instant suit the plaintiffs prays for right, title over the suit land with consequential relief of permanent injunction prohibiting the defendant and evicting the defendant from the suit land and the denial of the same by defendant, arise a cause of action for the suit. Thus from the perusal of the above pleaded facts it is seen that there is cause of action for institution of this suit.

Decision on issue no. ii:

Whether the suit land as described in the plaint is separate and distinct from the land measuring 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No- 168 possessed and accepted by the defendant?

12. PW-1 and PW-2 have retreat the contents of plaint in their evidence. PW-1 has deposed in his cross examination stated that his father purchased the suit land in the name of his, his mother and his brother and the suit land was situated on the north of Tezpur Baihata National Highway. The suit land was purchased by his father in the year 1979 and mutated in his father's name in the year 2007. He further admitted that before mutated his father's name, defendant had constructed his house thereon and his family had started to live there. He also admitted that his father name was mutated by directly showing registered Sale Deed, not by doing mutation case. He further stated

that PW-2 was his brother-in-law and lived approximately 100 meter far from the suit land since 14 years long. PW-1 had not lodged any case before Police Station or any Court against the defendant. Rather, defendant had lodged a case before the Session Judge Court accusing them to illegally entering into suit land and burnt their house.

PW-1 admitted that he had received an amount of Rs.44,000/- but for another plot of land not for the suit land. He admitted Ext-A(1) is his signature and Ext-A(2) is his father's signature. Ext-A(3) is his brother-in-law's signature. PW-1 admitted that Exhibit B is prepared by himself in three paged B(1), B(2) and B(3). He also admitted that the price of land has increased near the suit land after the proposed establishment of Tezpur Medical College. PW-1 submits that defendant house was burnt by somebody else and there was a case against them.

After due consideration of contentions raised on behalf of both parties, I have arrived at the following decision in this issue. As discussed in the above paragraphs Exhibit-1 is not disputed by the defendant side. Plaintiffs side had not submitted any documents regarding PW-1 plea that the suit land was separate and distinct from the land measuring 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No- 168 which was possessed and accepted by the defendant's wife. This plea was not stated in the plaint by the plaintiffs. PW-1 and PW-2 also had not stated in their evidence that the suit land was distinct from the land which was purchased by his father.

Considering the above discussion this issue is decided in negative and in against the plaintiffs.

Decision on issue no. iii and iv:

Whether the son of the plaintiff, Md. Mozammil Haque @ Mozammil Ali had alienate the land possessed by defendant i.e. 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No- 168, in favour of the wife of the defendant, by executing an unregistered agreement to sale, for consideration and by delivering possession thereof?

And

Whether the alienation of 1 Bigha 2 Kathas 10 Lechas under the Dag No.548 of P.P. No- 168 by the son of plaintiff Md. Mozammil Haque @ Mozammil Ali , is valid in the eyes of law?

13. These two issues are co-related, therefore, I proposed to decide them together for the sake convenience and brevity.

It is apparent from the pleadings of both sides that PW-1 had categorically admitted that the suit land was purchased by the plaintiff's father originally in the name of his son Mozamil Ali @ Mozamil Haque, when the PW-1 was a minor at the relevant time and subsequently the name of the said son of the plaintiff viz. Mozammil Ali @ Mozammil Haque was mutated in the suit land and as such, the said Mozammil Ali @ Mozammil Haque had acquired the right, title and interest over the suit land and thereafter PW-1 alienated the suit land in favour of Mustt. Ashiya Begum by

executing and unregistered agreement of sale and by taking valuable consideration of Rs. 44,000/- (Rupees forty four thousand) only in cash against the total agreed consideration of Rs. 56,000/- (Rupees fifty nine thousand and five hundred) only and had handed over the delivery of possession of the suit land to the said Mustt. Ashiya Bgum and to the defendant (who is her husband) way back in the year 2004. PW-1 also admitted and proved his signature and his father's signature.

PW-1 and PW-2 also admitted that the Tezpur Medical College is about half KMs from the disputed land, where the land consideration is increased drastically. DW-1 & 2 had categorically stated in their evidence that after declaration of establishment of Tezpur Medical College, the cost of nearby land price of the suit land had increased high and the plaintiffs and his family became reluctant and refused to sale the suit land by executing registered deed offered by DW-1's wife. DW-2 also deposed that plaintiffs had adopted unfair, unjust and illegal means to evict them from their residential house by burning it down by setting fire for which a criminal case being registered as GR Case No.576/2006, which was later converted to Session case No. 189/2006.

But from the case record it reveals that the plaintiffs never tried to recovery of possession of the suit land from the possession of the defendant. If the defendant acquired the suit land illegally then the plaintiffs should take steps against the defendant. PW-1 also admitted that he

executed the agreement deed in respect of the suit land and his father was also witnessed the agreement.

When the plaintiffs have claimed right and title over the suit land, the initial burden lies upon the plaintiffs to establish preponderance of probability, the onus shifts to the defendant. It is clear from the exhibits that PW-1 has no right to sale the suit land as his father had purchased the suit land. Thereafter, the father of the PW-1 had neither mutated in his name nor he transferred his land. But the PW-1 had entered into an agreement to sale the suit land with the wife of the defendant in presence of his father in the year 2004. His father had witnessed the agreement and delivered the possession of the suit land. The wife of DW-1 has requested to execute the sale deed but the plaintiffs have refused to do the same. Therefore, the alienation was valid.

In this instant case, plaintiffs failed to proved their claim and accordingly, these issues are decided negative and against the plaintiffs.

Decision on issue no. v:

Whether the plaintiff has right, title and interest over the suit land?

14. PW-1 has deposed his evidence by retreated the contents stated in the plaint. PW-2 has supported the case of plaintiffs. DW-1 has also deposed in his evidence by retreating the contents stated in the written statement.

Evidence of DW-1 reflects that defendant's wife entered into an agreement for sale dated 20.01.2004 with

PW-1 in respect of the suit land, which is admitted by both PW-1 and PW-2. The evidence on record, both oral as well as documentary, clearly indicates that the defendant is in possession of the suit land.

The defendant had categorically alleged in his written statement as well as in evidence that the plaintiffs have tried to dispose the defendant from the suit land by burning their house and accordingly defendant also filed a criminal case before the Session Judge, Sonitpur.

PW-1 in his cross examination has admitted that his father had purchased the suit land in his name, his mother's name and his brother's name. It is also admitted that he entered into agreement with the defendant's wife and it is also admitted that he has not made Ashiya Begum as party in the suit.

PW-2 has deposing that the agreement for sale dated 20.01.2004 was entered into the PW-1 and defendant's wife and he stood as a witness including the others.

Another aspect I have considered is that according to the evidences adduced by the PWs, the suit land has been mutated in the name of both the PW-1 and his father. The Exhibit 3 is the order of Mutation.

In Balwant Singh and Anr.-vs- Doulat Singh(dead) by LRs and others reported in AIR 1997 SC 2719, it was held by the Hon'ble Supreme Court that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. Likewise mere mutation on revenue record over a plot of

land covered by Dag No. 548 will not automatically prove that the disputed land, where the defendant are holding possession, belonged to the plaintiffs. Thus, such mutation in the name of plaintiffs do not have any right over the suit land. In common parlance plaintiff had mutated their names without any right and title over the suit land.

Now, it is the burden of the plaintiffs to prove that it has valid right, title and interest over the suit land. To prove the same plaintiffs had exhibited the original sale deed as Ext-1, which was admitted by the defendant also. Further, plaintiffs had exhibited Jamabandi and Mutation copy. Mere placing of mutation record in relation with the disputed land cannot confer any right, title, interest over the land under possession of the defendant. As the PW-1 himself admitted that he had entered into agreement with the wife of the DW-1 and delivered possession in the year 2004 and the mutation of his father was done in the year 2007 by showing registered Sale Deed not by filing any mutation case.

Apart from that there are several pattadars who are not made party in this suit. Therefore, until the said pattadars and the wife of the defendant are made party in the instant suit, it cannot be determined that PW-1 has got valid right, title and interest over the suit land.

Therefore, considering the above, I am to hold that plaintiffs failed to prove their valid right, title and interest over the suit land.

Accordingly, this issue is decided in negative and in against the plaintiffs.

Decision on issue no. vi:

Whether the defendant trespassed into the suit land and as such liable to be evicted therefrom?

15. PW-1 has deposed in his evidence that his father purchased the suit land in the name of his, his mother and his brother the suit land was situated on the north of Tezpur Baihata National Highway. The suit land was purchased by his father in the year 1979 and mutata in his name in the year 2007. Before mutated his father's name, defendant had constructed his house thereon and his family had started to live there. He admitted that he had received an amount of Rs.44,000/- but for another plot of land not for the suit land. He admitted Ext-A(1) is his signature and Ext-A(2) is his father's signature. Ext-A(3) is his brother-in-law's signature. He also admitted that the price of land has increased near the suit land after the proposed establishment of Tezpur Medical College. He further state that PW-2 was his brother-in-law and lived approximately 100 meter far from the suit land since 14 years long.

It is not believable that a person without delivery of possession of land by the other party and remain silent for about 2/3 years without any objection.

PW-1 had not lodged any case before Police Station or any Court. If the defendant illegally possessed the suit

land then the plaintiffs obviously should taken steps for declaration of the agreement deed as null and void. But the plaintiffs had not taken any action. As per the evidence of the DW-1 that the land covered by the Dag No.548 is under their possession and have purchased possessory right over the 1 Bigha 3 Katha 18 Lechas for a consideration of Rs.56,000/-.

Considering the submission of the both sides and in view of pleadings on record, I am of opinion that DW-2 had categorically stated in his evidence that after declaration of establishment of Tezpur Medical College, the cost of nearby land price had increased high and the plaintiffs and his family became reluctant and refused to sale the suit land by executing registered offered by his wife. He also deposed that plaintiffs had adopted unfair, unjust and illegal means to evict them from their residential house by burning it down by setting fire for which a criminal case being registered as GR Case No.576/2006, which was later converted to session case No. 189/2006. But, the PW-1 & PW-2 were acquitted by the Hon'ble Court due to some technical reasons. PW-1, PW-2 and father of PW-1 in their statements recorded under Sec.313 of the CrPC had admitted the fact of selling the suit land and giving of delivery of possession of the suit land to the wife of defendant's wife in the said case, which were exhibited as Ext-C, D, E & F series. DW-2 in his cross examination deposed that the agreement was written by him and at first instant the measurement of land was 2

Bighas but later it was agreed on 1 Bigha 3 Kathas 10 Lechas. He had cut the letter 2 Bigha and corrected to 1 Bigha 3 Kathas 10 Lechas and put his signature.

DW-3 had deposed in his cross examination that he was present and put his signature when at the time the plaintiff Muzammil Haque had received the consideration amount. DW-4 (Moon Nath) i.e. independent witness, in his chief examination deposed that defendant and his family had occupied the suit land since 2004. DW-1 himself informed DW-4 that he had purchased the suit land in his wife's name. The suit land is situated by the side of the road and in the north side of the road in the suit land. In his cross-examination he deposed that defendant had showed him the agreement which was admitted by PW-1. He also deposed that he was at present possessed the suit land.

I have considered the Exhibit C which are the revenue paying receipts And found that defendant paid revenue from 2005 to 2009.

Considering the above discussion, it is clear that defendant had not trespassed in the suit land. Accordingly, this issue is decided in negative and in against the plaintiff.

Decision on issue no. vii and viii:

Whether the Plaintiffs are entitled to the decree as prayed for?

And

To what other relief/s plaintiff is entitled for?

16. In view of the discussion made in issue Nos. i, ii, iii & iv it is clear that the plaintiffs have failed to prove their own claim and in accordance they are not entitled to the decree as prayed for. Hence, both the issues are decided in the negative and against the plaintiffs.

From the discussion made in the forgoing issues the plaintiffs are not entitled to get any reliefs whereas the defendant are entitled to get the costs for the suit. This issue is decided accordingly.

ORDER

17. In the result, the suit of the plaintiffs fails and the same is dismissed on contest with costs. Prepare a decree accordingly.

Given under my hand and seal of this court on this 17th day of January, 2022.

Priyanka Saikia, AJS
Munsiff No.2
Sonitpur, Tezpur

APPENDIX

Plaintiff's Witnesses:

1. Md. Muzamil Haque.
2. Md. Siraj Ali.

Plaintiff's Exhibits:

Ext. 1: Registered Sale Deed of No. 3784 for 1979 of Tezpur Sub-Registry by Sri Purna Kt. Nath and Sri Dharmeswar Nath in favour of Md. Mantaz Ali dated 23-09-1979.

Ext. 2: Certified copy of jamabandi of P.P. No. 168 (Dag No. 548) of Village Neraiati, Mouza- Bihaguri, dated 24-03-08.

Ext. 3: Mutation Certificate No. TRC/18658 dated 05-12-09.

Ext. 4(A) and 4(B): Land revenue payment receipts for the suit land dated 08-04-09 and 28-10-14.

Ext. 5: Certified copy of Draft Chitha (old) Dag No. 253/548 of Village- Neraiati, Mouza- Bihaguri, dated 18-12-09.

Defendant Witnesses:

1. Md. Samsuddin.
2. Md. Alimuddin.
3. Md. Mobarak Ali.
4. Moon Nath.

Defendant Exhibit:

Ext. A: Deed of agreement for sale, dated 19-01-04.

Ext. B: Deed of agreement for sale, dated 20-01-04.

Ext. C to Ext. C(4): Land revenue payment receipts.

Ext. D, Ext. E and Ext. F: Recording of examination of accused persons.

Ext. D(1) to Ext. D(4): Signatures.

Ext. E(1) to Ext. E(4): Signatures.

Ext. F(1) to Ext. F(4): Signatures.

Ext. G: Certified copy of jamabandi of P.P. No. 139(old) 168(new) of Village- Neraiati, Mouza- Bihaguri.

Priyanka Saikia, AJS
Munsiff No.2
Sonitpur, Tezpur