

Assam Schedule VII: Form No. 132

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

IN THE COURT OF THE CIVIL JUDGE, SONITPUR, AT TEZPUR

Present: *Dr. C. Khanikar,*
Civil Judge, Tezpur, Sonitpur.

21st Day of December, 2022

TITLE SUIT NO. 28/2018

Sri Surjya Hazarika

S/o Lt. Dr. Dibakar Hazarika

Resident of village – Chiring Chapori

P.O & Dist. Dibrugar, Assam

-- Counter claimant/defendant No.1

-Vs.-

(1) Sri Phulin Das

S/o Lt. Molan Das

Resident of vill. Deka Chuburi Kundarbari,

P.O Dekargaon, Mouza. Haleswar,

P.S Tezpur, Dist- Sonitpur, Assam

--Defendant No.1/Plaintiff

(2) (i)Mrs. Jonali Bhuyan

W/o Rana Bhuyan

C/o Hotel Durba, Kabar Khana road,

P.O Tezpur, Dist. Sonitpur, Assam

--Defendant No.2(ii)

(2) (ii) Mrs. Rita Pathak

W/o Sri Jayanta Pathak

C/o M/s Agnigarh Construction,

2nd Floor, Gopal Complex, A.T. Road, Santipur,

Guwahati.

--Defendant No.2(ii)

(3) Sri Lohit Bhuyan

Son of Late Prabodh Bhuyan

C/o Hotel Mousumi, Murahtetli,

P.O Tezpur, Dist-Sonitpur, Assam

--Defendant No.3

Advocate for Counter claimant/Defendant No.1:Sri B. Nath.

Advocate for Defendant No.1/ Plaintiff : Sri S. Singh.

JUDGMENT ON COUNTER CLAIM**1. Counter claim of counter claimant/defendant**

No.1: The brief fact of the counter claimant as stated in his counter claim is that, the plaintiff Sri Phulin Das was engaged by the counter claimant to monitor the plots of land owned by him as mentioned in schedule A and B of the plaint. But Phulin Das had by taking the advantage of such engagement, somehow obtained the signatures of the counter claimant in blank papers and also illegally procured one blank cheque of the counter claimant of Punjab National Bank bearing No. 530120 dated 28-01-2018. Thereafter, Phulin Das served a demand notice of Rs. 20 Lakhs upon the counter claimant, for the said cheque. The counter claimant has not executed any agreement in

favour of Phulin Das. Notarised agreement No. 369 of 2016 dated 01-12-2016 and the agreement dated 23-11-2017 are illegal. No amount was paid by Sri Phulin Das to the counter claimant nor the counter claimant has not entered into any agreement for sale of the suit land with Sri Phulin Das. Hence, the present counter claim is.

2. The counter claimant has filed the counter claim for the following reliefs :

- (i) declaratory decree for rescinding the said two agreements dated 01-12-2016 (Notarised agreement No. 369 of 2016 dated 01-12-2016) and 23-11-2017 as illegal, inoperative, null and void;
- (ii) decree of consequential relief of rescinding the said previous and subsequent documents such as, Promissory Note dated 28-12-2017 and Special Power of Attorney vide Serial No. 32 dated 14-11-2017 and money receipt dated 13-09-2017 and 19-09-2017, 26-06-2017, 17-04-2017, 04-04-2017, 13-03-207, 03-10-2017, 23-12-2016 and two alleged agreements dated 23-11-2017 and Notarised agreement No. 369 of 2016 dated 01-12-2016 and the alleged cheque being cheque No. 530120 dated 28-01-2018 of the Punjab National Bank are liable to be

declared as cancelled rescinded, illegal and inoperative in law or;

(iii) Any other relief as the Hon'ble Court deem, fit and proper.

3. The plaintiff/defendant No.1 of the counter claim Sri Phulin Das, on 17-12-2022 filed petition No. 2902/2022 u/O. XII r. 6 r/w sec. 151 CPC by admitting the claim of the counter claimant.

4. The counter claimant has not adduced any evidence as the counter claim was admitted by the plaintiff/defendant No.1 of the counter claim Sri Phulin Das.

5. I have heard arguments advanced by the learned counsels for both sides.

DISCUSSIONS, DECISIONS, AND REASONS THEREOF:

6. Now let me discuss the materials on record and to try to arrive at a definite finding as regards the prayer of the counter claimant in his counter claim.

7. The plaintiff/defendant No.1 of counter claim Sri Phulin Das has admitted that he has received an amount of Rs.25 Lakhs (Rupees Twenty Five Lakhs) only from the defendant No.2(i) Smti. Jonali Bhuyan and defendant No.2(ii) Smti. Rita Pathak and also submitted that he has no objection if the counter claim of the defendant No.1/counter claimant Sri Surjya Hazarika is allowed for rescinding the two agreement dated 28-11-2016

(Notarised agreement No. 369 of 2016 dated 01-12-2016) and 23-11-2017. He has also submitted that he has no objection in allowing the prayer of the counter claimant to declare the promissory note, special power of attorney and money receipts are null and void and illegal. Vide the said petition No. 2902/2022, Sri Phulin Das has prayed to pass an admission decree of the counter claim.

9. Analysis of the materials available on record and admission of the plaintiff/defendant No.1 Sri Phulin Das shows that Sri Phulin Das has admitted the claim as put forth in the counter claim. From the materials on the case record, it appears that already Sri Phulin Das has received back the advance money paid by him and hence, I have found justifiable reason to consider the admission of Sri Phulin Das as genuine and also found justifiable reason for declaring the Notarised agreement No. 369 of 2016 dated 01-12-2016 and agreement dated 23-11-2017 as cancelled, rescinded, null and void and inoperative and to declare the money receipts, promissory note and the cheque No. 530120 dated 28-01-2018 are cancelled, rescinded and hence inoperative.

ORDER

10. The counter claim of defendant No.1 Sri Surjya Hazarika/ counter claimant is accordingly decreed on admission.

11. It is declared that the Notarised agreement No. 369 of 2016 dated 01-12-2016 and agreement dated 23-11-2017 is rescinded and cancelled. It is also declared that Promissory Note dated 28-12-2017 and Special Power of Attorney vide Serial No. 32 dated 14-11-2017 and money receipt dated 13-09-2017 and 19-09-2017, 26-06-2017, 17-04-2017, 04-04-2017, 13-03-207, 03-10-2017, 23-12-2017 and cheque No. 530120 dated 28-01-2018 of the Punjab National Bank are rescinded and cancelled, rescinded and hence are inoperative.

12. As it is an admission decree, there is no order as to costs.

13. Prepare decree accordingly.

Given under my hand and seal of this court on the 21st day of December, 2022.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

APPENDIX

WITNESSES

Witnesses for the Counter Claimant/Defendant No.1 : Nil.

Witnesses for the Defendants : Nil.

Exhibits : Nil.

(C. Khanikar)
Civil Judge,
Sonitpur, Tezpur