

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

District : Sonitpur.

In the Court of Munsiff No.1, Sonitpur.

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

Thursday, the 2nd day of November, 2022

TITLE SUIT CASE NO. 52 OF 2017

- 1. Md. Inamul Haque**
- 2. Md. Nasirul Haque**
- 3. Md. Shajahan Haque**
- 4. Md. Jakirul Haque**

Plaintiffs

versus

- 1.**
 - (i). Sri Raju Orang**
 - (ii). Smt. Paniary Orang**
 - (iii). Smt. Bhondi Orang**
 - (iv). Smt. Shaloni Orang**
 - (v). Smt. Simitra Orang**

- 2. Sri Dipak Orang**
- 3. Sri Hamea Orang**
- 4. Sri Driver Orang**

Defendants

And

- 1. Musst Zinnat Begum**
- 2. Musstt. Husna Ara Begum (Moina)**
- 3. Musstt. Nasim Ara Begum (Baby)**
- 4. Musstt. Nazina Ara Begum (Bhanti)**

Proforma defendants

This suit/case coming on for final hearing on 24.08.2022 in the presence of -

Sri P. Saikia Advocate for the plaintiffs;

and

Sri B. Mazumdar Advocate for the defendants.

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

JUDGMENT

- 1.** This is a Suit for declaration for recovery of possession, eviction and injunction.
- 2.** The plaintiff's case as set out in the plaint is given briefly herein under :

Plaintiff's case

- 3.** That Md. Abdul Latif, Abdul Wahab, Jainal Khatun, Abdul Gani, Rejia Khatun, Minnat Khatun, Shamsul

Haque and Nurul Haque, all sons and daughters of Late Mahammad Ahia were the joint owners, pattadars, possessors of land measuring 11(eleven) bighas 2(two) Kathas 13 (thirteen) lessas out of 12 bighas 2 katha 18 lessas under old Dag No. 53/182/199 of periodic Patta No. old 33/35/10 New 56 situated at village-No. 2 Dhanmara, Mouza-Missamari, District-Sonitpur, Assam. That said land is the suit land which is fully described in the schedule below.

That the names of aforesaid owners and pattadars were registered as pattadars in the land revenue record. That since then they are paid the land revenue of the said land to the Government. They were possessing the said land by cultivating the same through hired persons.

That on 05.06.1969 said owners 1. Abdul Latif, 2. Abdul Wahab, 3. Jainal Khatun, 4. Rejia Khatun, 5. Minnat Khatun had gifted their share of land by oral gift to 1. Abdul Gani, 2. Shamsul Haque and 3. Nurul Haque and delivered their possession of their shares of land to them. The aforesaid three brothers the donees took the possession of the gifted portion of the aforesaid donors by accepting the gift though the donees were jointly possessing the total suit

land along with aforesaid donors till 05.06.1969.

That thus said three brothers namely 1. Abdul Gani, 2. Shamsul Haque and 3. Nurul Haque became the absolute owners and possessors of total suit land since 05.06.1969. that aforesaid three brothers had also mutated their names in the total suit land in the revenue record on 28.07.1970 as per provision of Assam Land and Revenue Regulation 1886.

That during last settlement operation the Government had settled the suit land in the name of said Abdul Gani, Shamsul Haque and Nurul Haque and accordingly new periodic patta no. 56 with new dag no. 199 was granted in the name of said Abdul Gani, Shamsul Haque and Nurul Haque along with Siril Orang and Rajen Orang both sons of Late Bandhu Orang. That actually the total land of the suit dag is 12 bighas 2 kathas 18 lessas. Hence, said Siril Orang and Rajen Orang son of Late Bandhu Orang are the owners and possessors of land measuring 1 bigha 0 katha 5 lessas of the suit dag. Their aforesaid portion of land is in the adjacent western side of suit land.

That said Shamsul Haque died on 14.12.1970

leaving the plaintiffs as his heirs and successors. Thus the plaintiffs became the owners of share of land of their father along with other co-owners.

That out of aforesaid three brothers Nurul Haque died unmarried in the year 1984. Hence after his death his share of land has vested to his other brother Abdul Gani and the plaintiffs. Thus after the death of Nurul Haque his brother Abdul Gani and the plaintiffs became the absolute owners of the total suit land.

That said Abdul Gani died in the year 1989 leaving proforma defendants no. 1 to 4 as his heirs and successors. Thus all of them became joint owners in the share their deceased father Abdul Gani along with other co-owners.

That the suit land is an undivided land of the plaintiffs and the proforma defendants. The defendants had have no right, title and interest in the suit land. The plaintiffs and the proforma defendant till now have not mutated their names in revenue record in respect of the suit land but the plaintiffs are paying the land revenue of the suit land in the name of their predecessor-in-interest.

That during the life time of Mahammad Ahia he used to cultivate the suit land regularly and after his death his heirs were cultivating the suit land through hired persons till 05.06.1969. But subsequently it was not possible on the part of Abdul Gani, Shamsul Haque and Nurul Haque to cultivate the suit land by them as they were residing at Tezpur Town.

That the residential house of the predecessor-in-interest of the defendants was situated in the adjacent western boundary of the suit land. So, Abdul Gani, Shamsul Haque and Nurul Haque entrusted suit land to Siril Orang and Rajen Orang to look after and manage the suit land on behalf of them in the beginning of the year 1970. At that time they agreed to do so but requested said Abdul Gani, Shamsul Haque and Nurul Haque to allow them to cultivate the suit land for themselves. That aforesaid owners then told them they may cultivate in the suit land for themselves as permissive occupiers of them but whenever either the owners or their heirs asked them to vacate the said land then they shall have to vacate the suit land and handover the same to them. That said Siril Orang and Rajen Orang then agreed to look after the suit

land and accepted the aforesaid terms of the owners and promised to vacate the suit land as and when ask to do so by the owners of the suit land.

That said Siril Orang and Rajen Orang who was the predecessor-in-interest of the defendants no. 2, 3 and 4 since 1970 used to look after and occupying the suit land as permissive occupiers since the death of Rajen Orang and after the death of Rajen Orang said Siril Orang and the defendants no. 2, 3 and 4 as heirs of Late Rajen Orang have been in occupation of the suit land as permissive occupiers of the predecessor-in-interest of the plaintiffs and the proforma defendants and after their death as permissive occupiers of the plaintiffs and the proforma defendants.

That the plaintiff no. 1 went to the house of the defendants on 14.12.2015 along with other persons and met the defendants and informed them that the plaintiffs will start to cultivate the suit land from next cultivating session and requested them to handover the possession of the said land after harvesting the paddy therefrom. The defendants then agreed to do so.

That the plaintiff no. 1 along with a resident of

said village when went to visit the suit land on 28.04.2016 then the plaintiff no. 1 saw that the suit land was again prepared for cultivation. Then the said plaintiff met the defendant no. 1 Siril Orang and upon enquiry he told that the said plaintiff that the land was prepared for cultivation by them and they will not handover the vacant possession of the suit land to the plaintiffs as they are the owners of the suit land. The defendants prior to 28.04.2016 never claimed the ownership of the suit land at any time. Since then the defendants have started dispute of the plaintiffs over the suit land.

That the defendants are mere permissive occupiers of the suit land and they are legally bound to quit and vacate the same when the plaintiffs demanded them to do so.

Written statement of the defendants.

That the suit is bad for non-joinder of necessary parties. Abdul Latif, Abdul Wahab, Jainal Khatun, Rejia Khatun and Minnat Khatun who have allegedly made oral gift as regards their share of the suit land in favour of Abdul Gani, Shamsul Haque and Nurul Haque are the necessary parties in the suit. Without their absence no effective

decree can be passed against them declaring absolute right, title and interest of the plaintiffs on the entire suit land. Moreover the proforma defendants of the suit actually ought have been plaintiff. Non impleadment of them as plaintiffs in the suit indicates clear collusion amongst themselves. Moreover Sumari Orang wife of late Rajen Orang and Smt. Rajanti Orang D/O Late Rajen Orang are also necessary parties in the suit.

That the averments made in paragraph 1 of the plaint to the effect that Abdul Latif, Abdul Wahab, Jainal Khatun, Rejia Khatun, Minnat Khatun, Abdul Gani, Shamsul Haque and Nurul Haque are pattadars of the suit patta land is a matter of record which is to be proved by respective revenue records. Defendants however denied that they are owner of 11 bighas 2 kathas 13 lessas of land as they have claimed being totally baseless. The plaintiffs neither have submitted any document of their title as regards so much of land nor have submitted revenue documents to show as such.

That the averments of the plaintiffs made in paragraph 2 of the plaint to the effect that names of Abdul Latif, Abdul Wahab, Jainal Khatun, Rejia Khatun, Minnat Khatun and Abdul Gani were

registered as pattadars in the revenue record of the suit land is not true. It is also not true that they have paid or paying the land revenue of the suit land to the government and they as well as predecessors of the plaintiffs were possessing the suit land through hired persons. Hence the defendants denied the averments made in this paragraph except the fact that names of one Samsul Haque and Nurul Haque have been shown muted against the patta of suit land during last settlement operation without mentioning any share against their names.

That the averments made in paragraph 3 of the plaint are all absolute false, baseless and concocted story made out purposefully for illegal gain by misleading the Honourable Court and as such denied by the defendants. Neither Abdul Latif, Abdul Wahab, Jainal Khatun, Rejia Khatun, Minnat Khatun had absolute right, title, interest, possession and authority to made any gift of the suit land or any oral gift ever been made in favour of Abdul Gani, Shamsul Haque and Nurul Haque on 05.06.1969 as alleged. The defendants submitted herein that the entire plot of land measuring 12 bighas 2 kathas 18 lessas of P.P No. 56(New)

covered under dag no. 199 (New) of village-2 No. Dhanmara, Mouza-Missamari was all alone in possession of the defendants' predecessors and after their death these defendants have been possessing the same peacefully and uninterruptedly till date paying the land revenue to the government to the exclusion of other pattadars of the suit land openly to their knowledge and denying their right, title and interest thereon. Neither Abdul Latif, Abdul Wahab, Jainal Khatun, Rejia Khatun, Minnat Khatun nor predecessors of the plaintiffs and proforma defendants had been possession of the suit land before 05.06.1969 nor the predecessors of the plaintiffs and proforma defendants possessed the suit land for a single day after that date. There was no occasion of acted upon so called oral gift.

That the averments of the plaintiff made in paragraph 4 of the plaint to the effect that Abdul Gani, Shamsul Haque and Nurul Haque become absolute owner of the suit land since 05.06.1969 and their names have been muted in the revenue record on 28.07.1970 lawfully as per provision of Assam Land and Revenue Regulation, 1886 are false and baseless and denied by the defendants.

That the averments made in paragraph 5 of

the plaint are matter of revenue record. The defendants denied the averment of the plaintiff that they are owner of 1 bigha 5 lessas of land out of the total land measuring 12 bighas 2 kathas 18 lessas of PP No. 56 of village 2 No. Dhanmara. The defendants submits herein that present periodic patta No. 56 Dag No. 199 admittedly was covered under old patta No. 35. Out of the total land measuring 12 bighas 02 kathas 18 lessas of village 2 No. Dhanmara, Mouza- Missamari under present periodic patta No. 56 Dag No. 199 a plot of land measuring 12 bighas 2 kathas was settled by the government in favour of the predecessors' predecessor of the defendant No. 1 Biswanath Orang on payment of requisite Miyadi premium during settlement operation of 1930. Accordingly, the government had issued Periodic Khiraj Patta in his name vide K.P.P No. 35 of said village having effect from 01.04.1931 to 31.03.1961. Said Biswanath Orang hold and possessed said plot of land till his life time by paying the requisite land revenue to the government. Said Biswanath Orang died in between 1960-1965. After his death said 12 bighas 2 kathas of land had been owned and possessed by his only son since deceased Bandu Orang. Said Bandu Orang or his father Biswanath

Orang never been sold any portion of said 12 bighas 2 kathas of land during their life time. During last settlement operation said periodic patta No. 35 was converted to new patta No. 56. In said new patta, 18 lessas of more land added with 12 bighas 2 kathas of land of the original patta No. 35. Accordingly, a new Periodic Khiraj Patta has been issued as patta No. 56 in the name of Bandu Orang S/O Biswanath Orang with effect from 01.04.1973 to 2006. In the said patta names of Abdul Gani and Shamsul Haque both sons of Ahin have been cited as Pattadar No. 2 & 3 respectively without mentioning any share of them. They might have cited as pattadar of said extra 18 lessas of land.

That the defendants further submits herein that irrespective of the fact that Abdul Gani and Shamsul Haque both sons of Ahin have been cited as Pattadar No. 2 and 3 respectively without mentioning any share of them in the new periodic patta no. 56, said Bandu Orang till his life time had been enjoying the entire plot of land of said patta since the day of issuance of said patta openly and in uninterruptedly by paying the requisite land revenue to the government for the entire land to the knowledge of said pattadars denying their right,

title and interest. After the death of said Bandu Orang, the defendant no. 1 as well as his brother since deceased Rajen orang and now his heirs jointly occupying the entire land in the same manner as were possessing by their predecessors. Therefore, the right, title and interest whatever, accrued to above named Abdul Gani and Shamsul Haque in respect of a part of land covered by present Periodic Khiraj Patta has been acquiesced due to the effect of statutory period of limitation due to such adverse possession.

That in reply to the averments of paragraph 6 to 9 of the plaint the defendants submit that they have no knowledge as to when Shamsul Haque, Nurul Haque and Abdul Gani died and who are their heirs. Further averments of the plaintiffs to the effect of succession of the suit land by the heirs of said deceased persons are absolute false and baseless and hence denied by the defendants.

That the averments of the plaintiffs made in paragraph 10 of the plaint are totally false and baseless and denied by the defendants. None of them had any occasion to possess and cultivate the suit land for a single day.

That the averments made in paragraph 11, 12 and 13 of the plaintiff are all false, baseless and concocted story made in the plaint just to show some cause of action for the suit for illegal gain and as such the defendants stoutly denied all averments of said 2 paragraphs. The defendant No. 1 and his brother since deceased Rajen Orang never been came into possession of the suit land as permissive occupier of Abdul Gani, Shamsul Haque and Nurul Haque with the terms and conditions as stated in paragraph 11 of the plaint and had been possessing until 28.04.2016 as stated. The defendants submits that they are all along in possession of the suit land along with the remaining land of same patta in the manner aforesated. The defendants also denied that the plaintiff no. 1 met the defendants on 14.12.2015 along with other persons to give any information as to their intension to cultivate the suit land and to request to vacate the suit land.

That the averments of the plaintiffs made in paragraph 14 of the plaint that on 28.04.2016 the plaintiff no. 1 met the defendant no. 1 and upon enquiry said defendant for the first time claimed ownership of the suit land and refused to vacate the

same are all palpable false, baseless and cooked story to show cause of action. No such meeting and conversation was made on that date as alleged by the plaintiffs. The defendants reiterates here that they never been permissive possessor of the plaintiff or their predecessor in interest and as such question of vacating the suit land did not arise at all.

That under the above facts and circumstances the plaintiff have no cause of action for the suit and they have any right, title and interest on the suit land and have authority to sue the defendants. The defendants are very poor adibashi people having no literacy. Moreover the defendant no. 1 is suffering from old age related ailment. For about last 1 and half years he is totally bed ridden and not in a position to move. Taking the advantage of all those situations of the defendants, the plaintiffs with ulterior motive have under some conspiracy for illegal gain has instituted the suit. Hence the suit of the plaintiffs is liable to be dismissed with cost and compensatory cost of Rs. 50,000/- (Rupees fifty thousand) only for filing this vexatious suit with false and baseless averments.

4. Issues

- I)** Whether there is any cause of action for the instant suit ?
- II)** Whether the suit is bad for non-joinder of necessary party ?
- III)** Whether the plaintiffs along with proforma defendants have got valid right, title and interest over the schedule land ?
- IV)** Whether the defendant no. 2, 3 and 4 were permissive occupiers of the suit land under predecessors in interests of the plaintiffs ?
- V)** Whether the plaintiffs are entitled to a decree as prayed for?
- VI)** To what other relief/reliefs the plaintiffs are entitled to ?

Discussion, Decision and reasons therefore

- 5.** The plaintiff in order to prove its case adduced the evidence of three (3) numbers of witnesses.
- 6.** Heard the arguments advanced by the learned counsel of the plaintiff.
- 7.** Perused the case record.
- 8.** accordingly my discussion on framed issues are as follows:

A ISSUE No. 1, No. 2, No. 3, No. 4 and No. 5
Whether there is any cause of action for the
instant suit ?Whether the suit is bad for non-
joinder of necessary party ?Whether the
plaintiffs along with proforma defendants
have got valid right, title and interest over
the schedule land ?Whether the defendant
no. 2, 3 and 4 were permissive occupiers of
the suit land under predecessors in interests
of the plaintiffs ?

PW-1 Md. Inamul Haque has reiterated the contents of the pleading wherein he states that the father of the plaintiffs Late Samsul Haque became the absolute owners and possessor of the total suit land on 05-06-1969. The name of their father was mutated in revenue record on 28-07-1970. During last settlement operation the Government had settled the suit land in the name of said Abdul Gani, Shamsul Haque and Nurul Haque and accordingly new periodic patta no. 56 with new dag no. 199 was granted in the name of said Abdul Gani, Shamsul Haque and Nurul Haque along with Siril Orang and Rajen Orang both sons of Late Bandhu Orang. The Plaintiffs claim that they became the owner of share

of land of their father, after his death on 14-12-1970. After the death of Abdul Gani, his heirs successors i.e. proforma defendant no.1 to 4 became joint owners in the share of Abdul Gani. The plaintiffs claims that till date they have not mutated their names in respect of the suit land but they have been paying land revenue in respect of the suit, the plaintiffs have exhibited the revenue receipt as Ext-4. The father of the plaintiffs, Abdul Gani and Nurul Haque entrusted the suit land to Siril Orang and Rajen Orang to look after and manage the suit land but after their deaths, their successors i.e. defendants no. 2,3 and 4 have been in permissive occupation of suit land. The plaintiffs claim that on 14-12-2015 they went to the house of the defendants and informed them that they need the land for cultivation from next season but when the plaintiffs visited the defendants on 28-04-2016, the defendants refused to hand over the vacant possession of the suit land.

In their written statement, the defendants denied the averment of the plaintiffs that the predecessors in interest of the plaintiffs were registered as pattadars in the revenue record, furthermore, the defendants also alleged that the plaintiffs and their predecessors in interest were not paying any land

revenue to the government. The defendants in support of their contentions did not adduce any evidence, neither have they exhibited any document to disprove the claims of the plaintiffs. Whereas, PW-1 who deposed that the father of the plaintiffs got his name along with Abdul Gani and Nurul Haque mutated in the revenue records on 28-07-1970, was corroborated by both PW-2 and PW-3, and PW-1 also exhibited the certified copy of Jamabandi of Dag No. 199, P.P No. 56 of village no. 2 Dhanmora, Mouza- Missamari to prove their case. Additionally PW-1 was also corroborated by PW-2 and PW-3 regarding the fact that the plaintiffs have been paying land revenue with respect to the suit land. PW-1 also exhibited the revenue receipt vide Ext-4.

The defendants have denied rest of averments of the plaintiffs but they have failed to support their claims by adducing evidence. Considering the same, I am of the opinion that defendants have failed to disprove the averments made by the Plaintiffs.

B. ISSUE NO 5 and 6: *Whether the plaintiffs are entitled to a decree as prayed for? To what other relief/reliefs the plaintiffs are*

entitled to ?

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)
T.S Case No. 52 of 2017

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. From the evidence on record i.e. Ext-1, Ext-2, Ext-3 and Ext-4 and evidence on affidavit of all PWs it is proved by the plaintiffs in absence of rebuttal by the defendants that they are entitled to decree as claimed for.

The points for determination stands answered in the affirmative in favour of the plaintiff.

14. As per the findings, the suit is decreed with the following reliefs-

- The suit is decreed for plaintiff's right, title and interest over the suit land as described in schedule.
- The suit is decreed allowing permanent injunction by restraining and prohibiting the defendants and their men, agents, servants etc from entering into the peaceful possession of the plaintiff.

ORDER

15. The suit is decreed exparte with cost.

A decree declaring plaintiff's right, title and interest over the suit land and recovery of possession over the suit land by the Plaintiff and a decree for permanent injunction restraining and prohibiting the defendants and their men, employees, agents etc. into the suit land.

Draw up a decree accordingly within next 15 days from today.

Judgment is pronounced in open court. Suit is dis-

posed of ex-parte.

16. Given under my hand and the seal of this court on this the 02nd day of November, 2022 at Tezpur, Sonitpur.

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

APPENDIX

A. Plaintiff's Witnesses:

1. P.W-1 : Md. Inamul Haque.
2. P.W-2 : Md. Jakirul Haque.
3. P.W-3 : Md. Ramiz Ansari.

B. Defendant's Witnesses: Nil

C. Plaintiff's Exhibits:

Exhibit-1 : certified copy of the Jamabandi of Dag No. 199, P.P No. 56 of village 2 No. Dhanmora under Mouza-Missamari.

Exhibit-2 : certified copy of the Citha of Dag No. 182/199/53, P.P No. 33/35/10 of village 2 No. Dhanmora under Mouza - Missamari.

Exhibit-3 : Certified copy of the Jamabandi of Dag No. 126/127/128, P.P No. 33 of village 2 No. Dhanmora under Mouza-Missamari.

Exhibit-4 : land revenue paid receipt.

D. Defendant's Exhibit : Nil.

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