

**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 01st day of September, 2022

TITLE SUIT CASE NO. 52 OF 2021

Sri Madan Prasad

Plaintiff

versus

- 1. Smti. Hemjyoti Medhi**
- 2. Md. Saidul Hussain**

Defendants

And

- 1. Sri Jamuna Sharma**
- 2. Sri Rajesh Sharma**
- 3. Sri Ramesh Sharma**

Proforma defendants

**This suit/case coming on for final hearing on
04.08.2022 in the presence of -**

Sri T. Paul ... Advocate for the plaintiff;

and

**Sri D. Bose Advocate for the
defendant no.1,
Sri K. Deka and Sri C. Baruah
.....Advocate for defendant no. 2.**

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

JUDGMENT

- 1.** This is a Suit for declaration of right, title and interest of the plaintiff, confirmation of possession and consequential relief of permanent injunction.
- 2.** The plaintiff's case as set out in the plaint is given briefly herein under :

Plaintiff's case

- 3.** That the plaintiff and the defendants are the residents of the places as mentioned above.

That the plaintiff purchased a plot of land measuring 2 kathas under Dag No. 351(old), 145(new) covered by P.P No. 41 (old), 50 (draft), and 45 (new) situated at vill:Bitorsuti, Mouza: Bhairabpad, P.O : Koliabhomora, P.S: Tezpur, dist. Sonitpur, Assam, through registered Sale Deed No.

2512 of 2019 (Serial No. 2834) dated: 13.11.2019 of Tezpur Sub Registry from Proforma Defendant no. 1 and the Plaintiff purchased another plot of land measuring 2 kathas under Dag No. 351 (old), 145 (new) covered by P.P No. 41 (old), 50 (draft) and 45 (new) situated at vill: Bhitorsuti Mouza: Bhairabpad, P.O : Koliabhomora, P.S. Tezpur, Dist. Sonitpur, Assam through registered Sale Deed No. 2514 of 2019 (Serial No. 2836) dated : 13.11.2019 of Tezpur Sub Registry from Proforma defendants no. 2 & 3. Thus, the plaintiff bought 4 kathas of land in total and the proforma defendants delivered the khas possession of the land to the plaintiff.

That after purchase of the 4 kathas of land through 2 (two) Sale Deeds the plaintiff takes possession from the proforma defendants no. 1, 2 & 3 and mutated the said land in his name and he had been paying land revenue regularly for the same. The plaintiff raised pucca boundary wall on the schedule land and took peaceful possession over the said land.

That prior to purchase by the plaintiff, the proforma defendant no. 1 Sri Jamuna Sharma had purchased land measuring 2 kathas under Dag No.

351 (old), 145 (new) covered by P.P no. 41 (old), 50 (new) situated at vill:Bhitorsuti Mouza: Bhairabpad, P.O : Koliabhomora, P.S. Tezpur, Dist. Sonitpur, Assam, through registered Sale Deed No. 533 of 1985 (Serial No. 600) dated : 04.02.1985 of Tezpur Sub Registry from Original Pattadar Aktar Ali, son of Late Falu Hazi which is bounded by North : own land i.e. Aktar Ali, South : National Highway, East : Road, West : Own land i.e. Aktar Ali. The father of the proforma defendants no. 2 & 3 Jai Karan Sharma had purchased land measuring 2 kathas under Dag no. 351 (old), 145(new) covered by P.P No. 41 (old), 50 (new) situated at vill: Bhitorsuti Mouza: Bhairabpad, P.O : Koliabhomora, P.S. Tezpur, Dist. Sonitpur, Assam through Registered Sale Deed No. 534 of 1985 (Serial No. 601) dated : 04.02.1985 of Tezpur Sub Registry from original pattadar Aktar Ali, son of Late Falu Hazi which is bounded by North : Own land i.e. Aktar Ali, South : National Highway, East : Road, West : Own land i.e. Aktar Ali and both the proforma defendant no. 1 and father of the proforma defendants no. 2 and 3 were in peaceful possession over the schedule land from the date of purchase from 04.02.1985.

That the plaintiff is the absolute owner and possessor of the below mentioned land which he

got through purchase and peacefully possessing and prior to purchase by the plaintiff it was peacefully possessed by the proforma defendant no. 1 and father of the proforma defendants no. 2 & 3 from 1985.

That on 22.03.2018 the defendant no. 1 instituted a Title Suit being no. 15/2018 for specific performance of contract for sale of land against the defendant no. 2, which was decreed exparte on 05.04.2019. Upon the strength of such decree the defendant no. 1 filed Title Execution No. 6/2019 for registration of sale deed as per decree of the Court and for delivery of possession of the suit land. The plaintiff was not made a party in the suit either as a defendant or as Judgment debtor. The suit that was instituted by defendant was a collusive suit filed in connivance with the defendant no. 2. The defendant no. 1 misled the Hon'ble civil Judge, Tezpur and obtained a fraudulent decree in her favour. Upon such fraudulent decree she was able to get the order for execution of registered sale deed through the Sheristadar of the Court and got the sale deed registered.

That on the strength of orders dated

20.12.2019 and 01.03.2021 the defendants in a most illegal manner on 08.03.2021 accompanied by Lat Mandal, Civil Nazir with police tried to forcibly evict the plaintiff from schedule land but due to the resistance provided by him the defendants who were accompanied by the Lat Mandal and the Civil Nazir as per order of the Hon'ble Civil Judge, could not succeed in wrongful eviction of the plaintiff. The defendants have been threatening to evict the plaintiff from the schedule land by demolishing pucca boundary wall of the plaintiff from the schedule land. The defendants have warned the plaintiff that they would come with full preparation next time and shall evict the plaintiff from the schedule land by demolishing his pucca boundary wall.

That if the defendants succeed in evicting the plaintiff from the schedule land by demolishing his pucca boundary wall then the plaintiff would suffer irreparable loss and injuries both in law and equity. Moreover the plaintiff constructed the pucca boundary wall in the schedule land in the year 2019 by incurring heavy expenses.

That as a matter of fact the defendants have no right title and interest in the schedule land on

which she has been threatening to forcefully evict the plaintiff from the schedule land by demolishing pucca boundary wall. The original owner and pattadar of the said land was Aktar Ali and said Aktar Ali sold the 2 kathas of land to proforma defendant no. 1 and another 2 kathas to the father of the proforma defendants no. 2 and 3 in 1985 through 2(two) registered sale deeds and Jaykaran Sharma died and after which the proforma defendants no. 2 and 3 became the absolute owners and possessors of the said 2 kathas of land and thereafter proforma defendants no. 1, 2 and 3 sold the said 4 kathas of land to the plaintiff and thereafter the plaintiff became absolute owner and possessor of the schedule land and also has the right, title and interest over the schedule land.

That the act of dated 08.03.2021 of the defendants has created cloud over the right of the plaintiff.

That the proforma defendants have been made parties as they are necessary parties, the plaintiffs claim no relief/s against them. If the proforma defendants contest the suit of the plaintiff then they shall be treated as one of the main defendants.

4. Summons were issued to the defendants, the defendants appeared but despite being given several opportunities the defendants failed to contest the suit. Accordingly, vide order dated 07.10.2021 proceedings were drawn ex parte against all the pro-forma defendants and vide order dated 16.03.2022 the suit was proceeded for ex parte hearing against the defendants.

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. The points for determination that has arisen in the instant case are as follows:

Points for determination

- I) **Whether the Plaintiff is the owner and possessor of suit land as described in schedule of the plaint?**
- II) **Whether the Defendants on 08-03-2021 illegally tried to forcibly evict the Plaintiff from schedule land?**

III) Whether the plaintiff is entitled to get relief(s) prayed for?

9. Thereafter, Plaintiff along with 2(two) other witnesses submitted their evidences on affidavit.

I have heard the exparte-argument of the learned counsel for the plaintiffs.

10. My decision of the above points for determination along with reasons is given herein under:

Discussion, Decision and reasons therefore

11. PW-1 has reiterated whatever has been stated in the plaint and he has been corroborated by P.W-2 and P.W-3

PW-1 has also exhibited certain documents-

Exhibit-1 is the original sale deed being no. 2512 for the year 2019, dated 13.11.2019. Exhibit-2 is original sale deed being no. 2514 for the year 2019, dated 13.11.2019. Exhibit-3 is original sale deed being no. 533 for the year 1985, dated 04.02.1985. Exhibit-4 is original sale deed being no. 534 for the year 1985, dated 04.02.1985. Exhibit-5 is Original Jamabandi P.P No. 45 under Dag No. 145 of vill. Bhitarsuti, Mouza-Bhairabpad. Exhibit-6 is Original Draft Chitha Dag No. 245/351 dated 03.03.20. Exhibit-7 is Original copy of old Jamabandi P.P No.

41 under Dag No. 351 of vill. Bhitorsuti, Mouza-Bhairabpad dated 03.03.20. Exhibit-8 is Original land revenue pay receipt being serial no. 6167277 dated 02.11.2018 in the name of Jamuna Sharma. Exhibit-9 is original land revenue pay receipt being serial no. 6167276 dated 02.11.2018 in the name of Rajesh Sharma and Ramesh Sharma. Exhibit-10 is original copy of case records of T.Ex. 6/2019 of Civil Judge, Tezpur.

12. The evidence given PW-1, PW-2, and PW-3 as aforesaid oral and documentary has remained unrebutted. The defendants despite being given ample opportunity have failed to submit written statement, furthermore the defendants did not adduce any evidence against the claim and allegations of the plaintiff. The defendants also failed to cross examine the PWs. Upon a thorough analysis of the evidence of PWs as well as the documents exhibited it appears that the plaintiff has been successful in substantiating their claim as put forth in the plaint.

The defendants failed to rebut the claim of the plaintiffs and to cross examine the PWs. Hence there appears to be no justifiable reason to disbelieve the case and claim of the plaintiff which has been corroborated by oral and documentary

evidence. Hence the plaintiff is entitled to the relief as prayed for.

13. The points for determination stands answered in affirmative. Thus, in view of the above discussion it is held that the plaintiff has been able to establish his pleadings. As such the plaintiff is entitled to relief or decree as prayed 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 disposed of ex-parte.

16. Given under my hand and the seal of this court on this the 01st day of September, 2022 at Tezpur, Sonitpur.

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

APPENDIX

A. Plaintiff's Witnesses:

1. P.W-1 : Sri Madan Prasad.
2. P.W-2 : Sri Jamuna Sharma.
3. P.W-3 : Sri Ramesh Sharma.

B. Defendant's Witnesses: Nil

C. Plaintiff's Exhibits:

Exhibit-1 : original sale deed being no. 2512 for the year 2019, dated 13.11.2019.

Exhibit-2 : original sale deed being no. 2514 for the year 2019, dated 13.11.2019.

Exhibit-3 : original sale deed being no. 533 for the year 1985, dated 04.02.1985.

Exhibit-4 : original sale deed being no. 534 for the year 1985, dated 04.02.1985.

Exhibit-5 : Original Jamabandi P.P No. 45 under Dag No. 145 of vill. Bhitarsuti, Mouza-Bhairabpad.

Exhibit-6 : Original Draft Chitha Dag No. 245/351 dated 03.03.20.

Exhibit-7 : Original copy of old Jamabandi P.P No. 41 under Dag No. 351 of vill. Bhitarsuti, Mouza-Bhairabpad dated 03.03.20.

Exhibit-8 : Original land revenue pay receipt being serial no. 6167277 dated 02.11.2018 in the name of

Jamuna Sharma.

Exhibit-9 : original land revenue pay receipt being serial no. 6167276 dated 02.11.2018 in the name of Rajesh Sharma and Ramesh Sharma.

Exhibit-10 : original copy of case records of T.Ex. 6/2019 of Civil Judge, Tezpur.

D. Defendant's Exhibit : Nil.

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