

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 15<sup>th</sup> day of December, 2022**

**Title Suit No. 57/2016**

**Sri Narayan Chandra Das**

S/o- Late Motilal Das

Resident of Barika Chuburi Bamungaon,

Tezpur

Mouza- Mahabhairab

P.O. & P.S.- Tezpur

Dst- Sonitpur, Assam

**---Plaintiff**

**1. Smti Minakshi Das**

**2. Smti Manju Das**

**3. Smti Swapna Das**

All are daughters of Late Kalipada Das

**4. Sri Kalipada Das**

S/o- Late Motilal Das

All are residents of village- Gotlong, Bhitarsuti

Mouza- Bhairabpad

P.O.- Koliabhomora

P.S.- Tezpur

Dist- Sonitpur, Assam

**---Defendants**

This is a suit came up for final hearing on 15-11-2022, in presence of following Advocates:

Counsel for Plaintiff : Sri T. Paul

Counsel for Defendants : Sri A.K. Paul

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

## **J U D G M E N T**

### **Plaintiff's case in brief:**

**1.** This is a suit for declaration of right, title, and interest, recovery of possession, for eviction of defendants and for permanent injunction.

**2.** That the Plaintiff and the Defendant No. 2 are own brothers and the Defendant No. 1 is the wife of Defendant No. 2 and is the sister in law of the Plaintiff.

**3.** That the Plaintiff purchased a plot of land measuring 2 Kathas out of 3 Bighas 9 Lessas under Dag No. 257, covered by PP No. 87 of Vill. Bhitarsuti, Mouza: Bhairabpad from one Md. Akter Ali vide registered Sale Deed No. 1716 for the year 1990 of Tezpur Sub Registry dated 12-10-1990 which is fully described in the Schedule below. After purchase of the land the Plaintiff mutated his name and is

paying land revenue regularly and has also developed the land. He constructed one Assam type house consisting of 8 (eight) rooms, 2 (two) latrines and bathrooms, well and pucca boundary wall, the Plaintiff also obtained electric connection in his name. The adjacent northern 1 Katha plot of land under Dag No. 257 covered by PP No. 87 of Vill. Bhitarsuti, Mouza: Bhairabpad, was purchased by the Defendant No. 1 on the same day through a registered Sale Deed being No. 1717/1990 of Tezpur Sub Registry.

**4.** The Defendant No. 2 who retired from his service and approached before the Plaintiff to allow them to occupy his 2 (two) rooms out of total 8 (eight) rooms of the Assam Type house and to use the electricity connection, fan etc. so that he could construct an RCC house over his own land. The Plaintiff taking pity on the condition of his brother and sister in law permitted them to stay temporarily in 2 (two) rooms of his Assam type house till the Defendants complete their own construction.

**5.** That from first week of January 2008 the Defendants and their family entered into the 2 (two) rooms and thereafter Defendants forcibly broke the locks and occupied the another 5 (Five) rooms.

**6.** After occupation of the said 7 (Seven) out of 8 (Eight) rooms by the Defendants in this manner, the Plaintiff did not file any FIR in this regard because the Defendant No. 2 is the elder brother and Defendant No. 1

is the sister-in-law of the Plaintiff. The remaining 1 (One) room is still in the occupation of the Plaintiff. The Plaintiff several times requested the Defendants to release the said 7 (Seven) rooms, but the Defendants refused the request of the Plaintiff.

**7.** The Plaintiff who is residing at Barikachuburi, Tezpur in his own residence alongwith his family but facing lots of problems because of congestion in the said house and also there is some poor facilities in the said house.

**8.** Sometime in the month of October 2015, the Plaintiff went to the Defendants and requested them to move out to their own newly constructed RCC house measuring 2000 sq. ft., and to vacate the said 7 (Seven) Nos. of rooms which were forcefully occupied by the Defendants.

**9.** Plaintiff again on 10th February 2016 went to the Defendants and requested them to vacate the suit premises, this time also the Defendants sought time till the end of 31<sup>st</sup> May 2016.

**10.** The Plaintiff apprehends that even if the Plaintiff succeeds in getting a decree for declaration with consequential relief of recovery of possession as prayed in the suit and obtain possession of the suit premises of Schedule appended hereto on the strength of the decree passed in the suit, the Defendants may take forcible possession of the suit premises of Schedule appended

hereto ousting the Plaintiff and as such the Plaintiff has filed the suit seeking a decree of declaration with consequential relief of eviction of the Defendants with their men and materials and for permanent injunction.

**11.** Hence, the instant suit.

**The Gist of Defendants case:**

**12.** On receipt of the plaint summons were served upon the defendants and contested the suit by filing written statement. The defendants do not deny purchase of 2 kathas of land covered by Dag No. 257 of P.P. No. 87 of Village-Vitorsuti under under Bhairabpad mouza in the name of the plaintiff vide Regd. Sale Deed No. /1990 of Tezpur Sub-Registry office and 1 katha of land in the name of the defendant No. 1 under same dag & patta and same village from the same vendor vide registered sale deed No. 1717/1990.

**13.** The defendants submits herein that the defendant No.2 was an employee of Civil Defense Department and the defendant No. 1 was/is mere: house wife and have been dependant on her husband i.e. the defendant No.2. The defendant No.2 in consequence of his service was posted at Tezpur since 1978 to 1984. The plaintiff and the defendant were maintaining joint family at their ancestral house at Jorhat even before posting of the defendant No.2 at Tezpur. While the defendant No.2 posted at Tezpur, the plaintiff too in service of irrigation Department and was

posted at Tezpur. As such the plaintiff being un-married brother of the defendant No. 2 have been living as joint family member of the defendant No. 2 in the rented house at Lalmati, Tezpur.

**14.** The defendants submits that during the posting of the defendant No.2 at Shillong in the year 1990 both the plaintiff and defendant No. 2 decided to purchase jointly 3 kathas of land covered by Dag No. 257 of P.P. No. 87 of Village-Vitorsuti under under Bhairabpad mouza of Tezpur Sub-Division including the suit land for their residential purposes. Accordingly, both of them equally contributed to purchase the three kathas of land. The defendant No.2 due to his convenience to attend at Tezpur frequently, sent 50% of sale consideration of the total three kathas of land to the defendant No.1 and defendant No.1 believing the plaintiff in good faith being younger brother of her husband and joint family member handed over the money to the plaintiff for payment to their vendor to get the registered same deed.

**15.** The plaintiff was instructed by the defendant No.2 to purchase the total three kathas of land by a single sale deed jointly in the name of the defendant No.1 and plaintiff himself. The plaintiff thereafter informed the defendants that he has got the same executed as desired by the defendants and also taken possession of entire three kathas of land together The plaintiff did not show the aforesaid sale deeds to the defendants and the defendants

too did not ask him to show the plaintiff sale deed for three kathas of land as they have nothing to disbelieve the plaintiff. After taking possession of the entire 3 kathas of land the plaintiff and defendants jointly decided to construct residential house on a portion of said 3 kathas of land in the year 1991 joint equal contribution. Accordingly, the defendant No.2 used to sent his contribution from shilling to the defendant No.1 construct the house. Thus with the joint contribution of the defendant No.2 and the plaintiff one Assam Type house with total 8 numbers of rooms have been completed on a corner of front road side of total 3 kathas of land by the year 1995.

**16.** The plaintiff being not married till then and was living jointly with the defendants with joint fooding, he was occupying only one bed room and the defendants have been occupying the remaining rooms since beginning as per their mutual understanding.

**17.** When first Electricity Bill was received showing therein only name of the plaintiff as consumer, some doubt being created in the mind of the defendants, they then asked the plaintiff to show the sale deed of 3 kathas of land. Then only the plaintiff show the two sale deeds.

**18.** The defendants surprised by going throw the contents of those two sale deeds. Out of total 3 kathas land they agreed to purchase jointly, by the sale deed No.1616/1990 has shown to have purchased 2 kathas of

land in the name of the plaintiff covering total front road side and by the sale deed No. 1717/1990 has shown to have purchased in the name of the defendant No.1 remaining 01 katha of land by the back side of said 02 kathas of land that too without showing any provision of connecting road to excess the main road.

**19.** Irrespective of knowledge of the contents of aforesaid two sale deeds the defendants continued to possesses the Assam Type house constructed on the suit land till this date with their children continuously and denying his absolute right on the suit land and house standing thereon. The electricity bill also have been paying by the defendants for the electricity installed in the said house.

**20.** The defendant No. 2 never obtained permission from the plaintiff to reside in 2 rooms of the house standing on the suit land after his retirement to facilitate the construction of the R.C.C. house as stated. As stated herein above the defendant No.2 equally contributed in construction of the Assam Type house on the suit land assuming that the suit land measuring 2 kathas and 01 katha of land purchased in the name of the defendant No.1 as joint property of the plaintiff and the defendants and have been residing jointly with plaintiff since 1995 as their own property to the knowledge of the plaintiff and denying his absolute right thereon.



**21.** In the year 2000 plaintiff marriage at Mangaldoi without involvement of the defendants. However he by a letter to the defendant No. 2 dated 10/08/2000 expressed his deep repentance for that. After marriage he continued to reside at Mangaldoi with his wife. The one room of said house which is under his lock and key by taking food with the defendants. As regards the plaintiff averment to the effect that he requested the defendants several times to vacate the suit house, the defendants submits herein that since they irrespective of having plaintiff's title on the suit land as per sale deed, they have been occupying the suit land and house continuously, openly to the plaintiff's knowledge denying his absolute right thereon till date which is beyond the period of limitation.

**22.** Hence, the defendants do pray for dismissal of suit by imposing compensatory cost of Rs. 50,000.00 (Rupees fifty thousand) only.

**23.** Upon perusal of pleadings of both the sides the following were issues framed by my learned predecessors-in-office on 09-11-2016:

- i. Whether there is cause of action for filing the suit?
- ii. Whether the suit is maintainable?
- iii. Whether the suit is bad for non-joinder of necessary parties?
- iv. Whether the suit is barred by limitation?

- v. Whether the plaintiff has right, title and interest over schedule property?
- vi. Whether the defendants have illegally occupied the schedule premises and have been possessing the same illegally?
- vii. Whether the plaintiff is entitled to the decree as prayed for?
- viii. To what other reliefs the plaintiff is entitled to?

**24.** I have heard the arguments of the learned Counsel for the Plaintiff and defendants. I have considered the argument learned counsels for both the sides and also have perused the case record in detail. Learned counsel for the defendants relied on judgments **Mudi Gowda Gowdappa Sankh Vs Ram Chandra Ravagowua Sankh reported in 1969 (1) SCC 386**. The plaintiff has adduced his evidence and one official witness in support of his case whereas the defendants have adduced the evidence of two witnesses. The materials on record and submissions made on behalf of both sides have received due consideration of this court.

#### **DISCUSSION, DECISION & REASONS THEREOF**

##### **Decision on issue no. i:**

##### **Whether there is a cause of action for filing the suit?**

**25.** The defendant pleaded that the plaintiff 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 plaintiff must allege and prove in order to succeed in his case. In the instant suit the plaintiff prays for declaration of right, title, interest and recovery of possession and eviction of the defendants. The plaintiff has stated that plaintiff is the owner and possessor of the schedule land. However, the defendants illegally occupied the schedule land since 2008. On the other hand defendants pleaded that they are joint owner and possessor of the suit land. The defendants pleaded that defendant No.1 and plaintiff jointly constructed the Assam Type house over the suit land. The claim between the parties shows their respective genuine facts in their favour and therefore the bundle of facts arrayed by both the parties clearly gives rise to the aspect of cause of action. From the respective pleadings of both the side, there appears a clear cause of action for the suit which bears the potential of going for a full trial.

This issue is answered in affirmative.

**Decision on issue no. ii:**

**Whether the suit is maintainable?**

**26.** This issue relates to maintainability of the suit. The defendant has pleaded that suit is not maintainable, but defendant side have failed to specify how and in what manner the suit is not maintainable. In the face of the record it cannot be said that the suit is not maintainable. The suit is of civil nature and the present court is competent to try the same. On perusal of the pleadings

and on appreciating the evidences on record and other documents, it is evident that the suit is maintainable.

This issue is answered in affirmative.

**Decision on issue no. iii:**

**Whether the suit is bad for non-joinder of necessary parties?**

**27.** The defendants of this case in their written statement pleaded that suit is bad for non-joinder of necessary parties but they have not specifically mentioned in their pleadings.

**28.** Necessary party in a suit means the person whose presence is necessary for the proper adjudication of the matter. In fact, that party is necessary party in a suit in whose absence the disputed fact cannot be decided. In this instant suit the dispute centres around the suit land, which is alleged by the plaintiff that defendants illegally occupied the suit land. In regard to this issue, I have considered all aspects of the suit and the material on record. The issue relating to joinder and mis-joinder of necessary parties was settled many years ago by the Hon'ble Supreme Court in **Deputy Commissioner, Hardoi vs Rama Krishna Narain and Others (AIR 1953 SC 521)**. In this case the Hon'ble Court has laid down the tests to decide the question of non-joinder of necessary parties in civil suit. The tests are:-

**Firstly**, there must be a right against him in respect of a matter involved in the suit and

**Secondly**, the court must not be in a position to pass an effective decree in the absence of such a party.

**29.** Thus, Necessary parties are the parties who ought to have been joined, that is, parties necessary to the constitution of the suit without whom no decree can be passed.

**30.** The plaintiff suit is for declaration of right, title and interest and recovery of possession by evicting the defendants. Apparently, eviction has sought from the defendants only, hence, it cannot be said that plaintiff has a right against any other persons other than the defendants. In this suit, there is no other necessary parties for whose absence, this Court is in a position to pass effective decree against such party. Thus, this suit does not appear to be hit by Non-joinder parties so far as the eviction is concerned. Thus, with the law laid down in **Deputy Commissioner, Hardoi's case**, this Court is with the view that in the suit, there is no other necessary party. Therefore, it cannot be said that this suit is bad for non-joinder of necessary parties of unnecessary party.

Hence, this issue is decided in negative against the defendants.

**Decision on issue no. iv:****Whether the suit is barred by limitation?**

**31.** In the written statement the defendants have raised the plea that the suit is barred by law of limitation under Article 64 and 65 of The Limitation Act, 1963. The defendants have taken the plea of adverse possession. In case of plea of adverse possession the party taking that plea must show the date from which his possession becomes adverse. In this instant suit there is nothing in the evidence on record to substantiate the plea of the defendants that the suit is barred by limitation. The defendants have failed to show the date from which his possession becomes adverse. Therefore, the question of the suit being barred by limitation does not arise. Accordingly this issue is decided in negative against the defendants.

This issue is decided in favour of the plaintiff.

**Decision on issue no. v:****Whether plaintiff has any right, title and possession in respect of the suit land?**

**32.** PW-1 in his evidence stated that he had purchased a plot of land measuring 2 Kathas out of 3 Bighas 9 lessas under Dag No.257 covered by P. Patta No.87 of village-Bhitarasuti, under Bharabpad Mouza from one Md. Akter vide Register Sale Deed No.1716 of the year 1990 dated 12-10-1990 in Tezpur Sub-Registry. After purchase of the land, he had mutated his name and paying the land

revenue regularly and has developed the land. He has exhibited sale deed as Ext.1. To establish his title to the suit land, he further exhibited the Jamabandi copy as Ext.2. He has also exhibited land revenue receipts and house tax receipt as Ext.3 & 4 series respectively. Two numbers of PWs have been filed by the plaintiff but their cross-examination could not be recorded. Hence, the evidence of the other two witnesses cannot be taken into consideration. PW-2 Gagan Bania one of official witness has deposed that he is Sr. Asst. of Sub-Registrar and Ext.7 is the volume Register of 1991 and Ext.7(1) has the note of Deed No.1716 of 1990 and schedule contain 2 Kathas of land under Dag No.257 of Patta No.87 under Bharabpad Mouza, Ext.8 is the volume 10, Book No.1 1991 and Ext.8(1) is the description of Deed 1717 of 1990. The purchaser of the sale deed Pratima Das (defendant No.1) wife of Kali Prasad Das (defendant No.2) and the seller was Akter Ali and land measuring 2 Kathas covered by Dag No.257 and Patta No.87 of village – Bhitarkhuti under Bhairabpad mouza. In Ext.8(1) there was no mention of any road. In his cross examination he deposed that the two sale deeds i.e. 1716/1990 and 1717/1990 were registered on same day i.e. 12-10-1990 and two sale deeds were copied on 03-01-1992 and 04-01-1992 respectively. The PW-2 also in his evidence has corroborated the PW-1 is the owner of the suit land.

**33.** DW-1 in her evidence stated that in the year 1990 both plaintiff and defendant No.2 decided to purchase one land measuring 3 Kathas covered by Dag No.257 of P.P. No. 87 of Village-Bhitorsuti under Bhairabpad Mouza of Tezpur Sub Division. Plaintiff himself took initiatives to purchase said plot of land after consulting with defendant Nos. 1 & 2. They further deposed that defendant No.2 through defendant No.1 and the plaintiff equally contributed to purchase said 3 kathas of land. As defendant No.2 due to his convenience to attend at Tezpur frequently, sent 50% of sale consideration of the total 3 kathas of land to defendant No.1 and she handed over to the plaintiff in good faith being younger brother of defendant No.2 and joint family member to their common vendor to get the registered same deed. Plaintiff one day asked defendant No.1 to sign on some blank paper saying that those will be required for procuring sale permission and plaintiff told her that deed writer would fill up the forms for procuring permission. After some days plaintiff informed her and defendant No.2 that he has got the sale deed executed as desired by them. After taking possession of the entire 3 kathas of land the plaintiff and defendant No.2 decided to construct residential house on a portion of said 3 kathas of land in the year 1991 jointly and equal contribution. Defendant No.2 used to send his contribution to construct residential house over the 3 kathas of land. After completion plaintiff and defendant Nos.1 & 2 along with their daughter jointly shifted to the Assam Type



House in the year 1995. When first electricity bill was received showing therein only name of plaintiff as consumer, some doubt being created in the mind of them and asked plaintiff to show the sale deeds. Then only plaintiff showed two sale deeds of 3 kathas of land and came to know that suit land was purchased in the name of plaintiff.

**34.** In her cross examination she deposed that after purchased her land of 1 Katha, she had mutated her name in land records. She had deposed that after knowing the fact of 1 katha land, she did not filed any case against the plaintiff. DW-1 also deposed that she was present at the time of discussion of purchase the suit land. she also admitted that on the day of execution of the registered sale deed she was present along with plaintiff and the seller. After purchase the land, the seller has hand over the possession to DW-1 and she mutated her name in 1 Katha of land. Plaintiff had bear all expenses from sale permission of her land. Though DW-1 claim that she had bear 50% expenses to construct the Assam Type House over the suit land along with plaintiff but she failed to submit any documents to establish her claim. She has admitted that plaintiff has paid electricity bill of the Assam Type House over the suit land. She also admitted that she has been paying land revenue of her 1 katha suit land to the Mouzadar. DW-2 corroborated the evidence of DW-1.

**35.** When the plaintiff has claimed right and title over the suit land, the initial burden lies upon the plaintiff to establish preponderance of probability, the onus shifts to the defendant. Plaintiff had purchased 2 Katha of land out of 3 Bighas 9 Lessas under the Dag 257 of Periodic Patta no. 87 of village Bhitarsuti, Tezpur, Mouza- Bhairabpad, District- Sonitpur from its pattadar Md. Akter Ali vide Registered Sale No. 1716 for 1990 dated 12-10-1990 (Ext-1) of Tezpur Sub-Registry Office and obtained delivery of possession thereof from the above named vendor and got his name duly mutated over the suit land in the jamabandi thereof and thereafter the plaintiff became the sole and absolute owner of the suit land by right of purchase, which is supported and confirmed by the PW-2 i.e. official witness.

**36.** From the above discussion, after weighting the probabilities, it can be seen that as per Sec.101, Indian Evidence Act, the onus of proving that defendant No.2 had funded to purchase the suit land to the plaintiff as they mooted for it. DW-1 has deposed that defendant No.1 given half contribution regarding the purchase of 3 Kathas of land but failed to submit any documents. DW-2 has deposed in her evidence that one RCC foundation was constructed on her father's land. DW-2 also deposed that Ext.5 was the registered sale deed of defendant No.1 which reflected defendant No.1 purchased 1 katha of land. DW-2 has knowledge about that defendant No.2 paid the

land revenue for defendant No.1. DW-2 has also deposed that defendant No.2 has given money to construct the Assam Type House but did not submit any documents to prove their claim. Defendants have failed to prove the same as nothing on record to corroborate it. Defendant No.1 exhibited one land revenue receipt of the year 1999 of P.P No.87. But that really does not affect the title and right of the plaintiff over the suit land as the defendants could not shatter the veracity of the revenue paying receipts submitted by plaintiff. It appears from the documents on record that the plaintiff has exhibited the revenue paying receipts of the year 2005 to 2016, which clearly establishes the fact that the plaintiff has been paying the land revenue. On the other hand, defendants had not exhibited any document by which it can be proved that plaintiff and defendant No.1 jointly purchased 3 Kathas of land. As the title to the land is not at all disputed and admitted by the defendants, it is conclusively proved that the plaintiff is the owner of the suit land. The evidences of two witnesses of defendants also do not reveal anything which can be taken to prove that, the defendant No.2 had contributed half percentage of consideration to purchase the suit land. In the instant suit, the plaintiff's title over the suit land is conclusively proved. It is also proved that the plaintiff has been paying the land revenue from the time of purchase of the suit land and thereby acquired a right over the suit land to live there. On

the other hand, the defendants could not prove any right over the suit land.

**37.** 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 proved and the right, title and interest of the plaintiff over the suit land is established. Therefore, the defendants do not have any right, title and interest regarding the suit land. After perusal of the exhibited documents, it can be concluded that the plaintiff has title and subsequently right and interest over the suit land.

**38.** Hence, it is held that the plaintiff has right, title and interest over the suit land and he is entitled to the relief as prayed by him. The issue is, thus, decided in affirmative

**Decision on Issue no. vi:**

**Whether the defendants have illegally occupied the schedule premises and have been possessing the same illegally?**

**39.** There is no dispute that the plaintiff and the defendant No.2 are brothers. The plaintiff has taken the plea that the defendants are his permissive occupier in respect of the suit land. Now let me consider the relevant evidence on record to show whether the defendants are the permissive occupier of the defendants or not.

**40.** Plaintiff has averred in his plaint that due to construction of an RCC house on defendant No.1 land, the defendants approached the plaintiff and took permission to occupy two rooms in Annam Type House over the suit land.

**41.** Now, the admitted fact is that defendants are residing the suit land where an Assam Type House exists. **DW1 has admitted that the land was purchased by the plaintiff's and** she had also purchased land measuring 1 kathas from Md. Akter Ali vide registered Sale Deed 1717/1990 i.e. Ext. B. and she has mutated her name in the suit land and enjoyed and possessed the land. **DW-1 also admitted that the suit land was purchased by the plaintiff vide Registered Deed No. 1716/1990 i.e. Ext-1 on same day.** Thereafter, plaintiff had started construction an Assam Type House. The defendants claimed that the said Assam Type House was constructed jointly by plaintiff and defendant No.1. The defendants have been claiming the land on the ground that defendant No.2 had funded plaintiff to purchase the total 3 Kathas of land. It is also interesting that defendants claim for adverse possession in their written statement. DWs also deposed that they have been residing in the suit land more than 25 years by constructing the Assam Type house with plaintiff. In her cross-examination she denied that the plaintiff has allowed them to stay in the Assam Type House over the suit land.

**42. Now the admitted fact is that the defendants at the time of filing of the suit have living in the suit land without any right title on the suit land.** The defendants also not filed counter claim regarding their title to the suit land. Going by the competing probabilities, it can be held that defendant Nos. 1 & 2 were allowed by the plaintiff to stay in the 2 (two) rooms in the Assam Type House over the suit land as permissive occupier As the suit land was purchased to plaintiff by valid Registered deed and plaintiff acquired right, title, interest over the suit land and hence defendants are to vacate the suit land possessed by defendants. While title of the plaintiff is admitted by the defendant No.1, their staying in the suit houses for whatever long time may it be is nothing more than a permissive occupant. The defendants are the permissive occupiers of the suit houses and land in an implied manner.

Considering the above discussion this issue is decided in affirmative in favour of plaintiff.

**Decision on issue no. vii and vii:**

**Whether the plaintiff is entitled to the decree as prayed for?**

**&**

**To what other reliefs the plaintiff is entitled to?**

**43.** For convenience both these issues are taken up together for discussion. In the instant suit the plaintiff has

claimed his right, title, interest and possession over suit land and claimed for recovery of possession by evicting the defendants therefrom.

**44.** As transpires from the foregoing discussion in issue No v admittedly plaintiff is the owner of the Assam Type house over the suit land. It is further revealed that the defendants are the permissive occupier of the suit houses.

**45.** Considering the above discussion I find the story of the plaintiff sided to plausible and probable and convincing. Therefore the preponderance probability lies in favour of plaintiff. After considering all the fact and circumstances of the case I am of the opinion that the plaintiff is able to prove their case hence entitled to get the decree as prayed for.

**46.** Hence, it is held that the plaintiff has right, title and interest over the suit land and plaintiff is entitled to the relief as prayed by him. Thus, both the issues are decided in affirmative.

**ORDER**

**47.** In conclusion the suit is decreed on contest with cost. The plaintiff has right title and interest over suit land. The plaintiff is also entitled to recover the suit land by evicting the defendants. The defendants are restrained from entering into the suit land after their eviction.

**48.** Prepare a decree accordingly.

**49.** Judgment is pronounced in open court.

Given under my hand and seal of this court on this 15<sup>th</sup> December, 2022.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur



**APPENDIX**

**Plaintiff's Witnesses:**

PW-1: Sri Narayan Chandra Das

PW-2: Md. Abdul Salam

**Plaintiff's Exhibits:**

Ext.1– Photostat copy of original sale deed no. 1294 dated 13-09-90

Ext.2– Photostat copy of jamabandi under Lat No.5, of P.P. No. 87, Village- Bhitorsuti, Mouza- Bhairabpad

Ext.3(1) to 3(6)- Photostat copy of land revenue pay receipts

Ext.4(1) and 4(2)- Photostat copy of house tax under Dolabari Gaon Panchayat

Ext.5- Photostat copy of certified copy of sale deed no. 1717 of 1990 dated 28-05-16

Ext.6- Photostat copy of pension order from Irrigation Department, Assam

Ext.7- Copy of Volume 9 of register entry of sale deeds of the year 1991

Ext.7(1)- Copy of relevant entries of sale deeds

Ext.8- Copy of Volume 10 of register entry of sale deeds of the year 1991

Ext.8(1)- Copy of relevant entries of sale deeds

**Defendants Witnesses:**

DW-1: Pratima Das

DW-2: Minakshi Das

**Defendants Witnesses:**

Ext. A- Letter dated 10-08-2000

Ext. A(1) – Signature

Ext. B- Copy of sale deed no. 1717 of 1990

Ext. C- Copy of certified true copy of jamabandi

Ext. D- Copy of revenue receipt of suit land dated 18-04-99

Ext. E- Copy of LIC policy dated 01-05-2004.

Ext. F- Copy of electricity bill dated 08-02-2001

Ext. G- Copy of voters slips

Ext. H- Copy of FD with Golden Forest (India) Ltd.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur