

**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**

Saturday, the 19th day of November, 2022

TITLE SUIT CASE NO. 60 OF 2012

Smti. Anima Saikia

Plaintiff

versus

- 1. Sri Pranjal Kalita**
- 2. Sri Kuldip Saikia**

Defendants

And

- 1. Smti. Anjali Saikia (Borah)**
- 2. Smti. Arati Saikia**
- 3. Sri Bibek Bhatta**
- 4. Smti. Sashi Saikia**
- 5. Smti. Momi Saikia**
- 6. Smti. Mandira Saikia**
- 7. Smti. Miki Saikia**
- 8. Sri Chandan Saikia**
- 9. Smti. Boby Bhatta**
- 10. Smti. Ankita Bhatta**
- 11. Smti. Shivani Bhatta**

12. Smti. Geeta Bhatta
13. Smti. Bhanti Bhatta

Proforma defendants

**This suit/case coming on for final hearing on
20.10.2022 in the presence of -**

Sri A.K Paul Advocate for the plaintiff;

and

**B.Nath Advocate for the
defendant no.1 and 2.**

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

JUDGMENT

1. This is a Suit for declaration recovery of possession and injunction.

2. The plaintiff's case as set out in the plaint is given briefly herein under :

Plaintiff's case

3. That the plot of land measuring 1 Bigha 3 kathas 7 lessas covered by Dag No. 518(old) 281(new) of periodic patta No. 48 (old) 50(new), situated at village-Deorigaon, Mouza-Bhairabpad, District-Sonitpur, Assam (more particularly described in the

schedule-A hereinafter) absolutely owned and possessed by the father of the plaintiff Chenaram Saikia (Since deceased).

That the father of the plaintiff was originally resident of village-Bamparbatia under Tezpur Police Station. After his retirement, he constructed his residential house in the eastern side of the land described in the plaint schedule-A in or around 1970. Said residential house is situated in the suit land mentioned in the plaint schedule-B hereinafter. After construction of said residential house father of the plaintiff shifted his residence in the said house of plaint schedule-A land along with his family members except since deceased brother of the plaintiff namely Jiban Saikia. The proforma defendant nos. 4 to 8 are legal heirs and representatives of the Late Jiban Saikia deceased brother of the plaintiff. Said Jiban Saikia had given his share of paternal property at village-Parbatia which includes the first residence of the plaintiffs father. Therefore Jiban Saikia has not been given any share in the plaint schedule-A land and house.

That the father of the plaintiff chenaram Saikia died in the year 1978 leaving behind him the wife i.e. the mother of the plaintiff Golapi Saikia (since

deceased) two sons namely Jiban Saikia (since deceased) i.e. the predecessors of the proforma defendants no. 4 to 8, Sashadhar Saikia (since deceased) father of defendant no. 2 and 4 daughter e.g. Chaya Saikia (since deceased) mother of proforma defendant no. 3, the plaintiff herself and the proforma defendant no. 1 & 2.

That the plaintiff even after her marriage most of the time used to live with her mother and had been maintaining her. The parents of the defendant no. 2 though lived several years along with the mother of the plaintiff they did not maintain good relation with the plaintiffs mother. Finally, the father of the defendant no. 2 in consultation with his co-heirs including the plaintiff constructed separate residential house by the western side of the plaintiff schedule A land and started living in the said house along with his family including his wife since deceased and the defendant no. 2. Said separate part of the plaintiff schedule A land is described in the plaintiff schedule C hereinafter.

That since complete separation of the family of defendant no. 2, mother of the plaintiff became alone in the house constructed by the plaintiffs

father in the part of the plaint schedule A land. The family of the defendant no. 2 also did not take any care and nursing. Father of the defendant no. 2 died on 20.04.2004 and his mother died on 03.04.2007. Since after the death of parents of the defendant no. 2, he too became dependent of the plaintiff for his maintenance.

That all the legal heirs of plaintiff's father except his since deceased brother Jiban Saikia are entitled to share in the plaint schedule A land by way of inheritance. However, the proforma defendant no. 1 & 2 and mother of proforma defendant no. 3 had left their share at the disposal of their mother Golapi Saikia. Therefore, entire plaint schedule A land was mutated in the name of Sashadhar Saikia, the father of defendant no. 2 and Golapi Saikia, the mother of the plaintiff. Sashadhar Saikia as stated herein above had taken his share by the western side of the plaint schedule A land. Sashadhar Saikia himself also left the eastern half portion of the plaint schedule A land including the house standing thereon.

That the plaintiffs mother have been enjoying the right, title and possession of the eastern half

portion of the plaint schedule A including Assam Type House standing thereon peacefully. The plaintiff was visiting her regularly and was taking all care and nursing. After the death of mother of the defendant no. 2 he was suffering from severe mental infirmities. Due to his mental infirmities, he used to disturb the plaintiff's mother who alone used to reside in her said house. It was become difficult for the plaintiff to guard all the time as because in consequence of her service she has devote herself in the day time. Therefore, in the first part of December, 2008, plaintiff's mother let out her said residence on monthly tenancy to one Dr. Barhoi and she started living with the plaintiff in a rented house at Kamarchuburi, Tezpur under the care nursing and maintenance of plaintiff.

That the plaintiffs mother Golapi Saikia, since deceased out of her gratitude towards the plaintiff for the care, nursing and maintenance given by her gifted the eastern half share of the plaint schedule A land including the house standing thereon vide Registered Gift Deed No. 2607 dated 20.11.2009 executed by since deceased Golapi Saikia in favour of the plaintiff. Plaintiffs mother prior to making said gift in favour of the plaintiff had consultation with

proforma defendant no. 1 to 3 of the suit. The land and house gifted by that gift deed is described in the plaint schedule B hereinafter below. The defendant no. 2 also have the knowledge of the said gift. The plaintiff has also accepted the said gift from his mother by taking absolute physical possession thereof. Thereafter the plaintiff's mother died on 21.12.2010.

That the plaintiff since after the aforesaid gift deed had been enjoying the right, title, interest and possession of the plaint schedule B land peacefully till a month ago from today through different tenants. The defendant no. 1 out of greed, to illegally grasp the properties of the defendant no. 2 is staying with him as his shadow since last couple of months. Taking the advance of immature brain and instability of his mental soundness of the defendant no. 2, the defendant no. 1 is influencing him against the plaintiff. Due to such influence and unauthorized interference of the defendant no. 1 to the defendant no. 2, he started disturbing the plaintiff's tenants. Therefore, all the tenants of the plaintiff left the premises of plaint schedule B. The defendant no. 2 being the nephew of the plaintiff and she presently being any issueless have great

sympathy towards him and always owes his welfare. Therefore, the plaintiff refrained from any legal action against the defendant no. 2 and beared all tortures and illegalities. Under such circumstances, the plaintiff inspite of willingness let out the house premises of plaint schedule B land to nay new tenant kept it under his lock and key since 1st week of July, 2012.

That in the 1st week of July, 2012, the plaintiff went to the suit land and found break open to lock of the house standing on the plaint schedule B land. The plaintiff then entered in the house of defendant no. 2 to enquire the matter but found him absence in the house. The plaintiff then met the defendant no. 1 there. On being enquired to him the defendant no. 1 told the plaintiff that the defendant no. 2 has break open the doors. After 2/3 days thereafter the plaintiff again went there and met the defendant no. 2. He being enquired as to why he break open the door he started quarrel with the plaintiff and told that the plaintiff must face of dire consequences if she tries to enter into the house of plaint schedule B land.

Thereafter, on 22.07.2012 the plaintiff along

with her husband was proceeding towards Mission Chariali for some personal work. On her way to Mission Chariali she surprised to see that some construction is going on the north east corner of the plaint schedule B land. She also then saw that the defendant no. 1 is observing the construction. The plaintiff then asked the defendant no. 1 to know as to who is carrying out the construction. Said defendant then to told the plaintiff that he is carrying out the construction for shop rooms at the instruction of the defendant no. 2. The plaintiff then reminded the defendant no. 1 that the place of construction undertaken is belong to her and asked him to stop the construction. Inspite of that defendants continued the construction without having any right, title, interest and authority and against the will of the plaintiff. The plaintiff therefore, as a initial step made an application on 26.07.2012 before the Deputy Commissioner to take necessary action for that illegal construction. On the basis of that the Deputy Commissioner, directed the Dy. Director of Town and Country Development Authority to enquire into the matter. Thereafter the Town and Country Development Authority after a preliminary investigation into the matter vide a letter dated 31.07.2012 has stopped

the construction for the time being. However copy of said letter is not issued to the plaintiff.

That the plaintiff is the absolute owner of the suit land mentioned in the plaint schedule B. The defendants on the other land have no right, title, interest and possession over the said suit land. They without having any right or authority encroached into the plaint schedule B land and started construction. The defendants have already constructed 11 numbers of concrete post for construction of the shop rooms on the north-east corner of the suit land mentioned in plaint schedule B till filing of the suit.

That during pendency of the suit the defendant by violation the status quo order of this Hon'ble Court passed in Misc(J) Case No. 138/12 in connection with this suit during the long vacation of the Civil Court the defendants again started construction of the shop room with the support of aforesaid posts w.e.f. 22.10.2012 and more illegally completed the construction of one Assam Type ek-chali pacca house with four room shop with veranda by giving C.I. sheet sun set the north east corner of the plaint schedule B land. In this regard the

plaintiffs filed an FIR before the Tezpur Police Station. On the basis of which the police forwarded a NON FIR case before Executive Magistrate vide Kacharigaon Police out post NON FIR Case 16/2012 u/s 107 Cr.P.C. Be it mentioned herein that the defendant no. 1 also to counter the plaintiff filed an FIR before the Kacharigaon out post of Tezpur Police Station. On the basis of that the police forwarded another NON FIR case being Kachariagon Police out post Case No. 15/2012.

The defendant no. 2 is conspiracy with the defendant no. 1 also preventing the plaintiff from entering into the house situated on the plaint schedule B.

That under the above facts and circumstances, the plaintiff is compelled to approach before the Hon'ble Court for decree of declaration of her right, title and interest on the plaint schedule B land as mentioned hereinafter and eviction of the defendants along with their men and materials therefrom. The plaintiff is also to seek mandatory injunction, mandating and directing the defendants to remove or cause to be removed the Assam Type Ekchali Pucca concrete house with 4 rooms for shop along with veranda constructed on the north

eastern corner of the plaint schedule B land and also to seek permanent prohibitory injunction restraining and prohibiting the defendants, their men, agent and representatives from their re-encroachment into the suit land mentioned in the plaint schedule B or into the house standing thereon.

Written statement of the defendants

That the suit of the plaintiff is not maintainable in its present form in as much as the plaintiff has no locus standi to sue the defendants.

That suit is bad for non-joinder of necessary parties and mis-joinders of unnecessary party.

That the plaintiff did not impleaded Sri Shivani Bhatta, Smt. Geeta Bhatta, Bharati Bhatta and three legal heirs of Sankar Bhatta who are the daughters of and son of Chaya Saikia since deceased as said Chaya Saikia is the daughter of Late Cheniram Saikia who are also the legal heirs of father of the plaintiff. That the father of the plaintiff had one son also namely Mohini Saikia and the plaintiff willfully concealed said material fact only to gain wrongfully.

That the plaintiff mis-joined the defendants without any rhymes and reason for her wrongfully gain.

That the suit is barred by limitation as the suit properties is under continuous position of father of the defendant no. 2 since the year 1979 and thereafter the same was continuously possess by the said defendant by paying land revenue.

That there is no cause of action as alleged in page no. 2 as well as paragraph 14 of the plaint against the defendants.

That the suit is hit by principles of waiver, acquiescence and estoppel.

That the defendants deny and dispute all the statements made in paragraph 1-16 of the plaint save and except which are specially admitted hereunder and the plaintiff is to put strichest proof thereof.

That the statements made in paragraph made in paragraph 1 of the plaint is a matter of record

and proof and the plaintiff is to prove the same with cogent evidence.

That the defendants have no personal knowledge about the residential house of the father of the plaintiff as alleged in plaint paragraph no. 2.

That the statement of construction of the residential house in the eastern side of the schedule land in or around 1970 by the father of the plaintiff and thereafter he shifted to the alleged resident with his family members as contended in the said plaint paragraphs are out and out false, baseless, misleading and concocted.

That the defendants have no personal knowledge about the truth of the statements about non-shifting of Late Jiban Saikia and not allowed any shares to the suit property who is the brother of the plaintiff as alleged in the said plaint paragraph. But the said Jiban Saikia who is also the brother of plaintiff is a necessary party to the suit and without his or presence of his legal heirs is unfair to decides the case.

That the statements made in paragraph 3 of

the plaint are false, misleading and motivated.

That one Mohini Kr. Saikia and all the name of the legal heirs of Chaya Saikia who are son and daughters respectively of father of plaintiff have not disclosed in the said plaint paragraph only to gain wrongfully.

That it is a blatant piece of lie that the mother of the plaintiff was carrying and maintaining by her as alleged in plaint paragraph no. 4.

That it is also utterly false, unfounded and motivated that the father of the defendant no. 2 had only constructed the house structure as described in schedule C of the plaint.

That apart from the said house structure on schedule C of the plaint all wage structures standing on schedule mentioned land were constructed by the father of the defendant no. 2 during his life time and he resided therein with his mother Golapi Saikia and his family including defendant no. 2. That it may be stated here that the mother of the defendant no. 2 Smt. Arpana Goswami was the lecturer of the physics department of Darrang College, Tezpur and she also

contributed major amount for construction of the house structure standing on A schedule land of the plaintiff.

That the statements made in paragraph 5 of the plaint are false, unfounded and misleading.

That the mother of the plaintiff had not allowed to be lonely in any occasion as alleged in the said plaint paragraph. That it is also totally false that the defendant no. 2 was in any time dependent to plaintiff as contended in the said plaint paragraph.

That the statements made in paragraph 6 of the plaint is not based on reality, practical, acceptability and truth.

That the fact is that the suit property came to the share of the Sasadhar Saikia who is the father of the defendant no. 2 in the year 1979 on the basis of family partition executed by the legal heirs of Cheniram Saikia since deceased.

That the name of the plaintiff is also Smt. Maya Saikia and even she put her signature in the said deed of family partition.

That after the said family partition the suit property was exclusively owned, possess and enjoyed by the father of the defendant no. 2 and thereafter by the said defendant.

That accordingly the father of the defendant no. 2 with his wife constructed 2(Two) Assam Type house structure in the suit land one for his own used and other for rented purposes after the said family partition. That these material facts had wrongfully concealed only to gain wrongfully and for illegal gain the plaintiff divided the suit property as schedule B and schedule C by the speculation imagination in the said plaint paragraph. That it is also unfounded that the proforma defendant no. 1 & 2 and the mother of the defendant no. 3 has/had relinquished any share in favour of Golapi Saikia as alleged in the said plaint paragraph.

That it is not true that the mother of the plaintiff has enjoying any alleged eastern half portion of Assam type house exclusively as alleged in plaint paragraph no. 7. That it is also false and misleading that the plaintiff had cared her mother after her marriage as contended in the said plaint paragraph.

That it is true that the defendant no. 2 is suffering from some mental pressure and stress but which does not led to make annoyance to the mother of the plaintiff as stated in said plaint paragraph. That one Dr. Borhai was not the tenant of any portion of the suit land to the mother of the plaintiff as alleged in said plaint paragraph.

That it is true that sometimes the mother of the plaintiff used to visit to the house of plaintiff for love and affection to her daughter bit it is totally false that she was permanently staying with plaintiff for her care, nursing and maintenance as alleged in said plaint paragraph. That fact is that Baptist Christian Hospital was the tenant of defendant no. 2 in the schedule premises since 2008 through different official and finally the tenancy was terminated from 14.07.2012. That even one Mr. Manik Ch. Doimari and one official of Indian Air Force were also the tenants of defendant no. 2 since 2007 & 2008 respectively in the schedule premises.

That the defendants have no personal knowledge about the truth of the statements made in paragraph 8 of the plaint. That the mother of the plaintiff was very much sick from the first part of

the 2009 for her mental dementia due to her old age and she started to forget all reality and relationship.

That by taking such advantage the plaintiff most illegally may execute alleged gift deed on 20.11.2009 by violating existing principles of execution of gift deed. That the mother of the plaintiff has no right to execute alleged gift deed in favour of the plaintiff.

That the mother of the plaintiff was able body to put her signature but it was utter surprised about putting of her thumb impression in the alleged gift deed. That the mother of the plaintiff has no right to gift more than her own share to anyone by way of any instrument hence the alleged gift deed was no force in law. That moreso the alleged property gifted by way of alleged gift deed is a join property and the mother of the plaintiff have not obtained any no objection from other pattadars of the said property.

That the statements of consultation with proforma defendants no. 1, 2, 3 and acceptance of alleged gifted property by taking possession are unfounded, motivated and misleading. That the fact

is that the plaintiff has no possession over any part and parcel of the suit property as falsely contended in the said plaint paragraph. That as no possession of plaintiff is/was in any portion of the schedule premises on the strength of alleged gift deed and any attempt made by her to do do by the said alleged gift deed shall be challenged its legality and operation of the same by the defendant no. 2 accordingly.

That the statements made in paragraph 9 of the plaint is false, vague and unspecific.

That as stated in the above paragraph that the plaintiff has no possession over the suit land as well as she has no right, title and interest over it on the basis of the family partition executed in the year 1979.

That the defendant no. 1 is a friend of the defendant no. 2 and sometimes he helps him out of their friendly relationship. That the said defendant did nothing with defendant no. 2 for any of his illegal gain as alleged in said plaint paragraph. That the defendant no. 2 was exclusively enjoying the suit property after death of his parents hence no question had arisen to disturb any imaginary tenant

of plaintiff and vacated the alleged tenanted premises which is alleged under lock and key from 01.07.2012 as alleged to had been in said plaint paragraph.

That the rest part of the statement about the breaking of lock and key and conversation between plaintiff and defendant no. 1&2 and threatening of the defendant no. 2 for dire consequences as alleged in said plaint paragraph are false, concocted and misleading and the said statements are averted in the said plaint paragraph only to sue the defendants.

That the statement made in paragraph 10 of the plaint are false, baseless and misleading. That it is true that plaintiffs is an employee of the Deputy Commissioner and tried to stop the repairing and some renovation works in the suit land illegally for her illegal gain which was initiated by the defendant no. 1 and completed prior to institution of the suit as well as misc case.

That as stated above the father of the defendant no. 2 with his wife constructed 2(two) Assam Type house structure in the suit premises for

their own used as well as rented purposes hence there is necessity to continue the process of living and renting in the suit premises for convenience safety and security of the defendant no. 2 with his tenants. That it can be stated here that the defendant no. 2 is a unemployed person who is dependent to his tenants who are staying in the tenanted premises of the suit land.

That the defendant has no personal knowledge about the application submitted by the Deputy Commissioner and any official letter of Town Country Development Authority dated 31.07.2012 as alleged in the plaint paragraph which are the matter of record and proof.

That the defendants stoutly deny and dispute the statements made in paragraph 12 of the plaint that the defendant no. 2 is not owner, possessor of B schedule land hence there is no question of encroachment over it as alleged in said plaint paragraph.

That the defendant no. 2 only for his survival uses part of the suit land with some tenancy by letting out tenanted room of suit property for the

reason of which no conspiracy in entering the suit premises is there by the defendants as alleged in said plaint paragraph.

That for ill health condition of defendant no. 2 he is being protecting and helping by the defendant not from encroachment of suit property by some outsider who wants to grab the suit property including plaintiff and out of gauge this false suit is instituted by her against the defendants.

Written statement of proforma defendants.

That this suit is bad for waiver, acquiescence and estoppel.

That the suit is bad for suppression of material facts.

The plaintiff is bound to prove such facts as are not specifically admitted herein and facts not admitted herein are denied.

That the answering proforma defendants are not a necessary party in the present suit. The plaintiff has falsely impleaded this proforma defendants in the present case and hence bad for

mis joinder of unnecessary party.

That the answering proforma defendants reserve its right to file an additional written statement if the exigencies so demand by seeking leave of this Hon'ble Court.

That with reference to the statement made in paragraph 1 to 3 of the plaint these answering proforma defendants admits that the same.

That answering to the statements made in paragraph 4 to 10 of the plaint this answering proforma defendant admits the same. The answering proforma defendant submits here that the mother of the defendant no. 2 whose name was Aparna Saikia was a Psychiatric patient. She did not treat well with her mother in law or with any other legal heirs of Late Chenaram Saikia. Initially she along with her husband and was living along with late Golapi Saikia in the Assam Type house constructed by Chenaram Saikia in the eastern portion of the total suit land. About 10/12 years ago from today the parents of the defendant no. 2 mutually divided plaint schedule A land half/half each and father of the defendant no. 2 took his share in the eastern half portion of the said

schedule land. With the contribution of parents of defendant no. 2 they constructed separate residential house in their share and started living separately in the said. In the eastern half portion of the plaint schedule A land including old Assam type house was given in the share of Late Golapi Saikia. Late Golapi Saikia was living in the said house with the care and maintenance of the plaintiff. In the last two period of the life of Golapi Saikia she passed in the rented house of plaintiff of Commer Chuburi where she also died.

That it is also a fact that late Golapi Saikia was satisfied with the care and maintenance of the plaintiff and therefore she desired to gift the plaint schedule B land in favour of plaintiff. Before execution of the deed of gift she consulted with the answering proforma defendants and all the proforma defendants did not raised objection that hence she gifted the said land and premises in favour of the plaintiff.

That answering to the statement made in paragraph 11 & 12 of the plaint these proforma defendants states that they have no personal knowledge as to the facts that actually who is on are carrying out the construction of a house in the

eastern portion of the plaint schedule A land. But it is a fact that a construction is going thereon.

That as per the information of the answering proforma defendants, the defendant no. 2 at present is not in a sound state of mind. He may not have capacity to judge what is right and what is wrong. Some one else is now misleading him to capture the property illegally.

Issues framed by Learned predecessor in office

I) Whether is there any cause of action for the suit ?

II) Whether the suit is not maintainable in its proper form ?

III) Whether the suit is bad for non joinder of necessary parties ?

IV) Whether the suit is barred by law of limitation ?

V) Whether the suit is hit by principles of waiver, estoppels and acquiescence ?

VI) Whether the plaintiff is entitled for decree for declaration of right, title and interest upon schedule B land and house premises standing thereon ?

VII) Whether the plaintiff is entitled for

decree for eviction of defendant from schedule B land and house with their men and materials ?

VIII) Whether the plaintiff is entitled for decree of mandatory injunction and permanent prohibitory injunction ?

IX) Whether the plaintiff is entitled for any other relief as prayed for ?

4. Summons were issued to the defendants, the defendants appeared and filed their written statements, the proforma defendants also submitted their written statements. Vide Order dated wherein proceedings were drawn ex-parte against defendant no.2 and vide order dated 18.09.2021 the suit was abandoned by the plaintiff against defendant no.1.

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.

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

Discussion, Decision and reasons therefore

ISSUE No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7 and No. 8 Whether there is any cause of action for the instant suit ?Whether the suit is not maintainable?Whether the suit is bad for non-joinder of necessary party ?Whether the suit is barred by law of limitation? Whether the suit is hit by principles of waiver, estoppels and acquiescence? Whether the plaintiff is entitled for decree for declaration of right, title and interest upon schedule B land and house premises standing thereon? Whether the plaintiff is entitled for decree for eviction of defendant from schedule B land and house with their men and materials? Whether the plaintiff is entitled for decree of mandatory injunction and permanent prohibitory injunction?

The Plaintiff in her Complaint stated that the father of the plaintiff was originally resident of village-Bamparbatia under Tezpur Police Station. After his retirement, he constructed his residential house in the eastern side of the land described in the complaint schedule-A in or around 1970. Said residential house is situated in the suit land mentioned in the complaint schedule-B. Entire Complaint schedule-A land was mutated in the name of the father of defendant

no.2 and the mother of the Plaintiff. The father of defendant no.2 had taken his share of land to the western side of schedule-A land. The mother of plaintiff gifted her eastern half share of schedule-A land which includes the house standing thereon vide registered gift deed no. 2607 dated 20-11-2009 executed in favor of the plaintiff, which is described in schedule B of the plaint.

The plaintiff has reiterated the same in her evidence on affidavit and she has also been corroborated by PW-2 who claims that she knows the plaintiff well and on 20-11-2009 the mother of the plaintiff invited her to be present at the executing the gift deed. PW-3 has also corroborated the evidence of PW-1/Plaintiff. The plaintiff has also exhibited the said gift deed bearing no. 2607/2009 as exhibit no.3 along with jamabandi of deuri gaon patta no. 48 and patta no. 50 as Ext no.1 and Ext no.2 respectively.

The defendant no.2 in his written statement has denied the averments made by the plaintiff. He has stated in the joint written statement filed by him and defendant no.1 that the mother of the plaintiff has not been enjoying the suit premises as alleged by the Plaintiff and the same has been in

occupation and possession of the father of defendant no.2. But defendants in support of their contentions did not adduce any evidence, neither have they exhibited any documents to disprove the claims of the Plaintiffs. Considering the same, I am of the opinion that defendant no.2 has failed to disprove the averments made by the Plaintiff.

ISSUE NO 8 and 9: *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) 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 rest of the exhibits 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 favor of the Plaintiff.

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 B and house premises standing thereon;
- The suit is decreed for eviction of the defendants from plaint schedule B land and house with their men and materials
- The suit is decreed allowing permanent injunction by restraining and prohibiting the defendants and their men, agents, servants etc from re-entering into the into the suit land land and premises of plaint schedule B after their eviction.

ORDER

11. The suit is decreed exparte with cost.

The suit is decreed for plaintiff's right, title and interest over the suit land as described in schedule B and house premises standing thereon;

The suit is decreed for eviction of the defendants from plaint schedule B land and house with their men and materials

The suit is decreed allowing permanent injunction by restraining and prohibiting the defendants and their men, agents, servants etc from re-entering into the into the suit land land and premises of plaint schedule B after their eviction.

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

Judgment is pronounced in open court. Suit is disposed of ex-parte.

12. Given under my hand and the seal of this court on this the 19th day of November, 2022 at Tezpur, Sonitpur.

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

APPENDIX

A. Plaintiff's Witnesses:

1. P.W-1 : Smt. Aniam Saikia
2. P.W-2 : Smt. Rina Borah
3. P.W-3 : Smt. Sadhani Borah

B. Defendant's Witnesses: Nil

C. Plaintiff's Exhibits:

Exhibit-1 : Certified copy of old jamabandi patta no.
48 of Deori gaon

Exhibit-2 : Certified copy of new jamabandi patta
no.50 of Deori gaon

Exhibit-3 : Original registrar sale deed no.
2607/2009.

Exhibit- 3 (1) to 3 (9)- Thumb impression of plaintiff's mother Golapi Saikia. 3 (10) and 3 (11) 1 is the signature of witness Golapi Saikia. 3 (12) 2 is the signature of witness Rina Borha. 3 (13) is the deed writer Kiran Das.

Exhibit-4 : Notice on Misc Case no. 16/107/2012.

Exhibit-5 : Khazana receipt.

Exhibit-5(1): Clearance certificate of khazana receipt paid by Mouzadar of Bhairabpad Mouza. 5(2) to 5 () is the receipt of khazana receipt.

Exhibit-6 : Trace map given by Circle Officer, Tezpur.

Exhibit-7 : Record of disposed case of Misc(J) Case

No. 138/2012

Exhibit-8 : Record of Misc Case No. 296/2012.

D. Defendant's Exhibit : Nil.

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