

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

**District : Sonitpur.**

**In the Court of Munsiff No.1, Sonitpur, Tezpur.**

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

**Thursday, the 17<sup>th</sup> day of November, 2022**

**TITLE SUIT CASE NO. 64 OF 2022**

**Ajoy Paul ..... Plaintiff**

***versus***

**Samir Mandal .....Defendant**

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

**S. Dasgupta ..... Advocate for the plaintiff;**

**and**

**D. Baruah .....Advocate for the defendant**

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

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## **JUDGMENT**

- 1.** This is a suit for specific performance of contract compelling the defendant to sell the landed property of the schedule by executing registered sale deed, delivery of vacant and khas possession, compensation/damages and for permanent injunction with the alternative relief/s.
- 2.** The plaintiff's case as set out in the plaint is given briefly herein under :

### **Plaintiff's case**

- 3.** That the defendant is the owner and possessor of the land measuring 12.5 lessas under dag 245 covered by PP No. 31 of vill: Bhitorsuti, Mouza: Bhairabpad, Police Station : Tezpur; Sub Registerar Office : Tezpur, District: Sonitpur, Assam,. The above land was purchased by the Defendant vide registered sale deed being no. 1934 of 2019 dated 11.09.2019 of Tezpur Sub registry as such the Defendant is the absolute owner and possessor of the Schedule land which is mentioned in Schedule below.

That sometime during the first part of June 2021 the Defendant offered to sell Land measuring 12.5 Lessas under Dag No. 245 covered by P.P No. 31 of Vill: Bhitorsuit, Mouza: Bhairabpad, Police Station: Tezpur; Sub Registerar Office: Tezpur,

District: Sonitpur, Assam, as mentioned in the Schedule below to the Plaintiff as they were in need of money and the Plaintiff who is also looking for a plot of land is keen to purchase the land and contacted the Defendant and agreed to purchase the suit land from the Defendant and upon some bargaining the Defendant fixed the sale consideration at Rs. 3,00,000/- (Rupees Three Lakhs) only for the Schedule land.

That during the middle part of June 2021 the Defendant requested the Plaintiff to pay some advance money in respect of the proposed Sale Agreement between them and so, the Plaintiff advised the Defendant to prepare a Deed of Agreement for Sale of land and accordingly on 17.06.2021 the Defendant executed the Agreement for Sale in favour of the Plaintiff. After being satisfied with the writing of the Agreement by the Defendant, the Plaintiff paid a sum of Rs. 2,90,000/- (Rupees Two Lakhs Ninty Thousand) only out of total consideration amount of Rs. 3,00,000/- (Rupees Three Lakhs) only to the Defendant in presence of witnesses. After receiving the advance amount the Defendant were signed in the Agreement for Sale in presence of the Plaintiff and the witnesses. The witnesses also signed in presence of the Plaintiff and the Defendant. The said agreement was

executed on 17.06.2021 but the said agreement was notarised on 19.06.2021. Remaining amount of Rs. 10,000/- (Rupees Ten Thousand) only will to be paid at the time of registration of the original Sale Deed. The Defendant promised that they should obtain the necessary permissions from the concerned authorities and thereafter execute the registered Sale Deed in favour of the Plaintiff as soon as permission is obtained.

That after execution of the Agreement as referred to above the Plaintiff met the Defendant on several occasions and requested the Defendant to execute the registered Sale Deed in his favour after obtaining permissions and offered them to accept the balance sale consideration amount but the Defendant failed to do so every time citing one or other reason/s and sought further time to register the sale deed and asked the Plaintiff to rest assured.

That in this way on 14.08.2021 & 24.09.2021 the Plaintiff requested the Defendant various time to obtain necessary permission but he delay the matter as such the Plaintiff decided to obtain necessary permission in his own cost so, the Plaintiff requested the Defendant to sign in the permission from for Deputy Commissioner Sonitpur, Tezpur and also Tezpur Town Development Authority permission

form and also provide necessary documents (Adhar Card, Pan Card and Voter ID) but they could not sign in the permission form from Deputy Commissioner Sonitpur, Tezpur and Tezpur Town Development Authority permission form and also could not provide any documents (Adhar Card, Pan Card and Voter ID).

That thereafter on 31.12.2021, 08.02.2022 the Plaintiff frequently requested the Defendant to sign in the permission form from Deputy Commissioner Sonitpur, Tezpur and Tezpur Town Development Authority permission form also provide necessary documents (Adhar Card, Pan Card and Voter ID). But the Defendant could not response the request of the Plaintiff. As such the Plaintiff could not apply regarding Sale permission from Deputy Commissioner Sonitpur, Tezpur and the Defendant intentionally delay the matter. But the Plaintiff always ready to perform his part to hand over the balance sale consideration of Rs. 10,000/- (Rupees Ten Thousand) only. But the Defendant always avoid to do so. That on 26.03.2022 the Defendant finally refuse to except balance sale consideration of Rs. 10,000/- (Rupees Ten Thousand) only.

That upon concluded Agreement for Sale dated 17.06.2021 the Defendant are bound to sell the schedule land to the Plaintiff by accepting the

balance sale consideration of Rs. 10,000/- (Rupees Ten Thousand) only which the Plaintiff is always ready to pay to the Defendant. The Plaintiff is and was always ready to perform his part of contract. The Plaintiff has nothing to do but to pay the balance sale consideration amount for which he was and is ready. The Defendant were utterly failed to perform their part of contract for sale of the suit land by violating terms and conditions of the Agreement for Sale. Due to the said illegal act of the Defendant, the Plaintiff has already suffered heavy losses as the said land was to be purchased by him for some specific purposes, on the other hand, the Defendant were wrongfully gained.

That from the very beginning the Plaintiff was ready to perform his part of contract i.e., ready to pay the balance sale consideration amount of Rs 10,000/- (Rupees Ten Thousand) only to the Defendant but the Defendant have failed to perform their part of contract i.e., to accept the balance sale consideration and to execute the registered Deed of Sale in favour of the Plaintiff.

Summons were issued to the defendant but the defendant failed to enter appearance and contest the suit. Accordingly, vide order dated 21.07.2022 proceedings were drawn ex-parte against the defendant .

4. The plaintiff in order to prove its case adduced the evidence of two (2) numbers of witnesses.
5. Heard the arguments advanced by the learned counsel of the plaintiff.
6. Perused the case record.
7. The points for determination that has arisen in the instant case are as follows:

**Point for determination**

**I) Whether the plaintiff is entitled to decree for specific performance of contract of sale of schedule land to the Plaintiff directing the defendant to execute registered sale deed in favour of Plaintiff at Rs 3,00,000/- only by accepting balance consideration of Rs 10,000/- only and to have sale deed registered as per law at the cost of Plaintiff?**

8. My decision of the above points for determination along with reasons is given hereinunder :

**Discussion, Decision and reasons therefore**

P.W-1 i.e plaintiff Sri Ajay Paul filed his evidence in affidavit reiterating the contentions in the plaint. P.W-2 Sri Sagar Mandal has corroborated the Plaintiff. The Plaintiff has exhibited the T.S Case No. 64 of 2022

following,

- Ext. 1- Agreement for sale Notarial Registration Number 941 of dated 19.06.2021 but agreement for sale is executed on 17<sup>th</sup> of June 2021.
- Ext. 2: Original sale deed being No. 1934 of 2019 dated 11.09.2019 which is purchased by the plaintiff.
- Ext. 3: Land Revenue pay Receipt vide Serial No. 7507620, dated 23.11.2019.
- Ext. 4: Land Revenue pay Receipt vide Serial No. 8300430, dated 23.11.2019.
- Ext. 5: Land Revenue pay Receipt vide Serial No. 9248364, dated 23.10.2021.
- Ext. 6: Original jamabandi of PP No. 31 of village: Bhitorsuti, Mouza: Bhairabpad, Dist- Sonitpur, Assam, dated 14.10.2019.

From documents exhibited above it is prima facie seen that the Plaintiff and defendant entered into the agreement of sale and the Plaintiff has already paid an amount Rs 2,90,000/- which is reflected in Ext-1, the Plaintiff is ready is ready and willing to perform the rest of the agreement but the defendant has failed to obtain the necessary permission till date. Furthermore, the Plaintiff as PW-1 has reiterated whatever has been stated in



the plaint and she has been corroborated by PW-2. The defendant despite being given the opportunity failed to adduce any evidence of his own to disprove the case of the Plaintiff.

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.

The points for determination stands answered in the positive in favour of the plaintiff. Thus, in view of the above discussion it is held that the plaintiff has been able to establish her pleadings and the suit is hereby decreed for specific

performance of contract of sale of schedule land to the Plaintiff directing the defendant to execute registered sale deed in favour of the Plaintiff at Rs 3,00,000/- only by accepting the balance sale consideration of Rs 10,000/- and to have sale deed registered as per law at the cost of Plaintiff and for delivery of possession of the suit land.

**ORDER**

**9. In the light of the foregoing discussion, plaintiff's suit is decreed exparte with costs.**

**It hereby declared and declared that the plaintiff is entitled to decree for specific performance of contract of sale of schedule land to the Plaintiff directing the defendant to execute registered sale deed in favour of the Plaintiff at Rs 3,00,000/- only by accepting the balance sale consideration of Rs 10,000/- and to have sale deed registered as per law at the cost of Plaintiff and for delivery of possession of the suit land.**

**10. Prepare decree accordingly.**

**Given under my hand and the seal of this**

**court on this the 17<sup>th</sup> day of November, 2022  
at Sonitpur, Tezpur.**

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

**APPENDIX**

**A. Plaintiff's Witnesses:**

1. P.W-1: Sri Ajay Paul
2. P.W-2: Sri Sagar Mandal

**B. Defendant's Witnesses: Nil**

**C. Plaintiff's Exhibits:**

- Ext. 1- Agreement for sale Notarial Registration Number 941 of dated 19.06.2021 but agreement for sale is executed on 17<sup>th</sup> of June 2021.
- Ext. 1 (1), Ext. 1(2), Ext. 1(3), Ext. 1 (4), Ext. 1(5), Ext. 1 (6)- Signatures of plaintiff.
- Ext. 1(7), Ext. 1(8), Ext. 1 (9), Ext. 1 (10), Ext. 1 (11), Ext. 1 (12)- Signatures of plaintiff.
- Ext. 1 (13)- Signature of witness no. 1.
- Ext. 1 (14)- Signature of witness no. 2.
- Ext. 1 (15)- Drafted and typed by S. Kalita, Advocate, Tezpur
- Ext. 1(16), Ext. 1 (17), Ext. 1 (18), Ext. 1 (19), Ext. 1 (20), Ext. 1 (21)- Signature of Notary Putul kr. Borah.

- Ext. 2: Original sale deed being No. 1934 of 2019 dated 11.09.2019 which is purchased by the plaintiff.
- Ext. 3: Land Revenue pay Receipt vide Serial No. 7507620, dated 23.11.2019.
- Ext. 4: Land Revenue pay Receipt vide Serial No. 8300430, dated 23.11.2019.
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- Ext. 6: Original jamabandi of PP No. 31 of village: Bhitorsuti, Mouza: Bhairabpad, Dist-Sonitpur, Assam, dated 14.10.2019.

**D. Defendant's Exhibit : Nil.**

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