

**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.**

**Thursday the 10<sup>th</sup> day of November, 2021**

**TITLE SUIT NO. 68 of 2022**

**Smt. Tassi Sherpa**

.....

**Plaintiff**

***-versus-***

**Sri Daneial Munda @ Daneial Mura**

.....

**Defendant**

**H. Baruah .....Advocate for the plaintiff;**

**and**

**J.P Mishra ..... Advocate for the defendant/s,**

## **JUDGMENT**

**1.** That the plaintiff and the defendant are permanent residents of village- No. 2 Malijan and village- Solabasti, P.O- Bokajan, P.S- Tezpur, Mouza- Goroimari, Dist- Sonitpur (Assam). The plaintiff and the defendant maintained cordial relation with each other.

That the plaintiff was in search of suitable plot of land and sometime during the month of October, 2019 the plaintiff came to know that the Defendant was seized and possessed of a plot of Land as absolute Owner thereof- as the more particularly described in the schedule below, within the jurisdiction of this Hon'ble Court.

That immediately thereafter the Plaintiff contacted the Defendant in the presence of the common acquaintances of the plaintiff and the defendant and the defendant showed his willingness to sell the landed property of the schedule hereto in consideration of a reasonable price as might be negotiated and settled. The defendant also showed title documents relating to the land in his name and furnished photo copy of the Jamabandi to the Plain-

tiff, wherefrom it was disclosed that the name of defendant was mutated in the land as pattadar and the defendant happened to be in possession of scheduled mentioned land by paying the land revenue thereof.

That the plaintiff having been satisfied about the title of the defendant to the land, negotiated for sale thereof and ultimately in the presence of the common acquaintances and well wishers a deal for the sale of land mentioned in the scheduled below to the plaintiff in consideration of a sum of Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand) only was concluded between the Plaintiff and the defendant and the defendant asked the plaintiff to tender advance amount against the sale and the plaintiff accordingly requested the defendant to reduce the agreement in black and white and agreed to tender advance amount to the defendant and accordingly on 25<sup>th</sup> October, 2019 the Defendant prepared an agreement for sale in favour of the plaintiff through advocate Rajni Kant Pandey, after being satisfied with the writing of the agreement and after taking information from the defendant, the plaintiff paid the sum of Rs. 1,60,000/- (Rupees one

lakh sixty thousand only) out of the total sale consideration amount of Rs. 1,70,000/- (Rupees one lakh seventy thousand) only to the defendant in the presence of the witnesses namely Md. Safikul Hussain and Md. Zakir Hussain and after receiving the advance amount the Defendant put his signatures in the agreement for sale in the presence of the plaintiff and the witnesses and duly registered the same in the office of the Sr. Sub Registrar, Sonitpur, Tezpur vide deed no. 2358 of 2019, dated 25.10.2019 and the defendant also executed and put his signature in the money receipt and acknowledged to have received of the advance amount of Rs. 1,60,000/- (Rupees one lakh Sixty thousand) only from the plaintiff. The remaining consideration amount of Rs. 10,000/- (Rupees Ten thousand) only was to be paid by the plaintiff to the defendant at the time of registration of final sale deed. The defendant also promised that he would obtain the necessary sale permission from the concerned authorities and thereafter execute the register the sale deed in favour of the plaintiff immediately within a period of 2 (two) months from the date of

execution and registration of the said deed of Agreement for sale.

That after execution and registration of the said deed of agreement for sale as referred to above the plaintiff met the defendant on several occasions and requested him to execute and register the sale deed in favour of the plaintiff after obtaining permission from the concerned authorities and deliver the khas vacant possession of the scheduled land and offered him the balance of sale consideration amount, but the defendant failed to do so every time citing one reasons or another and sought further time to register the sale deed and asked the plaintiff to rest assured.

That in this way time passed by but the defendant did not executed the sale deed in favour of the plaintiff, fearing some misdeeds by the defendant the plaintiff went to the residence of the defendant on 13.11.2019, 24.12.2019, 11.03.2020, 27.08.2020, 16.11.2020, 27.01.2021, 17.04.2021, 25.07.2021, 13.11.2021, 25.01.2022, 27.03.2022 and requested him to execute and register the deed of sale, but every time the defendant reassured the plaintiff that very soon he would obtain the sale

permission and execute and register sale deed in favour of the plaintiff, which never happened.

That the plaintiff to enquire as to what had happened again visited the defendant on 15.04.2022 and for the first time came to know that he have done nothing to obtain permission in favour of the plaintiff from the concerned authorities and instead of showing his inability to execute and register the sale deed in favour of the plaintiff, he told the plaintiff that he no longer desires to sell the land to her as other customers are giving more money for this land and that he is about to sell the land to some other person/s.

That the defendant have neglected to perform his part of contract with a malafide intention to avoid and refuse Specific Performance of Contract for sale of the suit land, dated 25.10.2019 which amounts to refusal to perform the Defendant's part of contract.

That upon concluded agreement for sale dated 25.10.2019 the defendant is bound to sell the scheduled land to the plaintiff by accepting the balance of sale consideration amount of Rs. 10,000/-

(Rupees ten thousand) only which the plaintiff is and was always ready to pay and perform her part of contract. The plaintiff has nothing to do but to pay the balance sale consideration amount for which she was and is ready. The defendant has utterly failed to perform his part of contract for sale of the suit land by violating terms and conditions of the agreement for sale.

That the plaintiff would suffer irreparable injury if the property is sold to anybody else in breach of the contract as aforesaid as such she is entitled to enforce the specific performance of contract of sale of the landed property as settled in consideration of the price thereof being Rs. 1,70,000/- (Rupees one lakh seventy thousand) only.

That from the very beginning the plaintiff was ready to perform her 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 his part of contract, i.e. to accept the balance sale consideration amount and to execute and register the sale deed of scheduled mentioned land in favour of the plaintiff and to deliver khas vacate possession

of the scheduled mentioned land in favour of the plaintiff.

That the plaintiff says and submits that the attitude of the defendant is contrary to law and all equitable considerations and he cannot be permitted to sell the landed property mentioned in the schedule below at any price to any third party in breach of the concluded contract of 25.10.2019 between the plaintiff and the defendant and especially when the plaintiff has been always ready and willing to pay the balance of sale consideration amount of Rs. 10,000/- (Rupees ten thousand) only as settled (and the plaintiff offers to tender and deposit the said amount unto the Court, if so ordered), there is no scope to the defendant act otherwise causing the plaintiff to suffer unbearable loss and injury.

The suit has been filed by the Plaintiff for specific performance of contract for sale of schedule property to the Plaintiff directing the Defendants to execute registered Sale Deed in favour of the Plaintiff at Rs. 1,70,000/- (Rupees one lakh seventy thousand) only by accepting the balance sale consideration of Rs. 10,000/- (Rupees ten Thousand) only and to have the Sale Deed registered as per law at the



cost of the Plaintiff and for delivery of possession of the suit land, if required by evicting the Defendants with their men, materials and servant there from.

**2.** Summon was duly served on the defendant. However, the defendant did not file written statement and instead filed an application for admission under Order XII Rule 6 of the Code of Civil Procedure for admission of fact.

**3.** In support of the instant case the plaintiff submitted the following documents :

I) Deed of agreement for sale of land executed and registered by the defendant in favour of the plaintiff in the office of the Sr. Sub Registrar, Tezpur being No. 2358 of 2019.

II) Money receipt signed by the defendant.

III) Copy of Jamabandi.

**4.** That the Defendant admitted that the defendant entered into an agreement for sale of suit land with the plaintiff on 25.10.2019 and the same was

duly registered in the office of the Sr. Sub Registrar, Sonitpur at Tezpur vide Deed No. 2358 of 2019.

That it is also admitted that the price of the suit land was fixed at Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand) only and the defendant received an amount of Rs. 1,60,000/- (Rupees One lakh Sixty Thousand) only from the plaintiff as and by way of advance payment against the sale of suit land out of total consideration amount of Rs. 1,70,000/- (Rupees One Lakh seventy thousand) only and the defendant undertook to register the sale deed of scheduled mentioned land in favour of the plaintiff upon tender of the balance consideration amount of Rs. 10,000/- (Rupees ten thousand) only within a period of 2 (Two) months from the date of execution of the said deed of agreement.

That the defendant admits that he failed to execute and register the sale deed of the scheduled mentioned land in favour of the plaintiff within the stipulated time, but the defendant failed to execute and register the sale deed in favour of the plaintiff because of the Covid-19 Pandemic situation, moreover the health condition of the defendant was also not well as such he could not obtain the necessary

sale permission from the authority concerned and ultimately failed to execute and register the sale deed of the suit land in favour of the plaintiff.

That the defendant had not such intention to neglect and refuse the registration of the suit land in favour of the plaintiff within the stipulated time as agreed, but just because of the aforementioned reasons the defendant failed to execute and register the sale deed of the suit land in favour of plaintiff.

That now the defendant is ready to perform his part of contract by executing and registering the sale deed of the suit land in favour of the plaintiff upon tender of the balance of the sale consideration amount of Rs. 10,000/- (Rupees ten thousand) only by the plaintiff.

**5.** I have perused the pleadings of the Plaintiff and the application for admission of fact by the defendant of the claim of the Plaintiff. The defendant has explicitly admitted selling the suit land in favor of the Plaintiff for Rs. 1,70,000/- (Rupees one lakh seventy thousand) only out of which Rs. 10,000/-

(Rupees ten thousand) only is the balance consideration payable by the Plaintiff.

**6.** Thus, the admission of the defendants regarding the whole claim of the plaintiff establishes the suit in favour of the Plaintiff. Further, it is well settled that on basis of admission Court has the discretion to pass judgment upon satisfaction that the admission relied upon is cleared, definite and unequivocal. To be noted that it was observed in *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India, (2000) 7 SCC 120*

*“Where one portion of the claim was admitted and the other portion was denied, and both the portions were severable, the plaintiff could ask for a judgment on the portion admitted by the defendant.”*

*Further in Nagindas Ramdas Vs. Dalpatram Iccharam, AIR 1974 SC 471 it has held*

*“Admission in the pleadings or judicial admissions made by the parties, at or before the hearing of the case, stand on a higher footing than evidentiary admissions and are binding on the party making them and constitute waiver of proof.”*

**7.** Considering the above position of law and upon satisfaction of the application for admission of fact filed by the defendants admitting the claim of the plaintiff; I deem it fit to pass judgment.

**8.** Accordingly, it is held that, the plaintiff has been able to prove his case based on admission of fact by the defendants and hence, entitled to the decree with the following relief:

For specific performance of contract for sale of schedule property to the Plaintiff directing the Defendants to execute registered Sale Deed in favour of the Plaintiff at Rs. 1,70,000/- (Rupees One lakh Seventy thousand) only by accepting the balance sale consideration of Rs. 10,000/- (Rupees ten Thousand) only and to have the Sale Deed registered as per law at the cost of the Plaintiff and for delivery of possession of the suit land, if required by evicting the Defendants with their men, materials and servant there from.

### **Order**

**9. In the conclusion, the suit is decreed with cost with the below mention relief/s.**

**For specific performance of contract for sale of schedule property to the Plaintiff directing the Defendants to execute registered**

**Sale Deed in favour of the Plaintiff at Rs. 1,70,000/- (Rupees One Lakh Seventy thousand ) only by accepting the balance sale consideration of Rs. 10,000/- (Rupees ten Thousand) only and to have the Sale Deed registered as per law at the cost of the Plaintiff and for delivery of possession of the suit land, if required by evicting the Defendants with their men, materials and servant there from.**

**10. Prepare decree accordingly.**

**Given under my hand and the seal of this court on this the 10<sup>th</sup> day of November, 2022 at Tezpur, Sonitpur.**

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

## **APPENDIX**

**A. Plaintiff's Witnesses :**

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

**C. Plaintiff's Exhibits :** Nil.

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

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