

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 1st day of December/2022

Title Suit No. 72/2018

Sri Jona Ram Nath

S/o- Late Bogiram Nath

R/o- Village- Prajabasti Gaon

Mouza and P.S.- Dhekiajuli

District- Sonitpur, Assam

---Plaintiff

-versus-

1. Sri Ringu Proja @ Riju Proja

2. Sri Jambi Proja

Both are sons of Late Peo Proja @ Puyi
Proja

R/o- Village- Prajabasti Gaon

Mouza and P.S.- Dhekiajuli

P.O.-Narengkati

District- Sonitpur, Assam

---Defendants

1. Sri Dimbeswar Nath

2. Sri Sonaram Nath

Both are sons of Late Bogiram Nath

3. Sri Bhuban Nath

S/o- Late Begejia Nath

H/o- Late Balika Devi

4. Sri Ghana Nath

5. Sri Kanta Nath

Both are sons of Late Balika Devi and
Sri Bhuban Nath

6. Smti Tehati Devi

D/o- Late Bogiram Nath

W/o- Late Ratneswar Nath

7. Smti Maheswari Devi

W/o- Late Gobin Nath

D/o- Late Bogiram Nath

All are residents of

Village- Puthimari

Mouza- Bihaguri

District- Sonitpur, Assam

8. Sri Motilal Proja

S/o- Late Ashru Proja

R/o- Village- Prajabasti Gaon

Mouza and P.S.- Dhekiajuli

District- Sonitpur, Assam

---Proforma Defendants

This is a suit came up for final hearing on 19-09-2022, in presence of following Advocates:

Counsel for Plaintiff : Sri P.C. Sarmah

Counsel for Defendants : Sri T. 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, recovery of possession, eviction and permanent injunction.

2. That the plaintiff is presently residing at his own residence house, situated at village Prajabosti Gaon, Mouza- Dhekiajuli, District- Sonitpur, Assam, within the jurisdiction of this Hon'ble Court.

3. That the plaintiff and the defendants are Hindu by religion governed by the Hindu Succession Act 1956.

4. That the plaintiff is a farmer by profession and his residing place is about 1 (one) KM away from the suit land which is in the same village i.e. Prajabosti Gaon, Mouza- Dhekiajuli, District- Sonitpur, Assam.

5. That the father of the plaintiff named Bogiram Nath had purchased the possessory right of a plot of annual patta land (Kacha Patta) measuring 1 Bigha being annual

patta no. 3, covering Dag No. 148 under Mouza- Dhekiajuli situated at Village- Prajabosti Gaon, District- the then Darrang and presently Sonitpur, Assam from Sri Ashru Proja, S/o- Late Chamuro Proja of Village- Prajabasti Gaon, P.S. – Dhekiajuli, Mouza- Dhekiajuli, District- Sonitpur, Assam on 19-07-1977 by executing a Kacha Sale Deed dtd. 19-07-1977 during his survival and delivered possession of the said land on the date of selling the possessory right to the purchaser. The father of the plaintiff expired in the year 1984 and thereafter the plaintiff became the owner of the possessory right of the said land and since then the plaintiff has been enjoying the land by cultivating therein.

6. That Late Bogiram Nath, the father of the plaintiff left behind him the plaintiff, the proforma defendant nos. 1, 2, 6 & 7 as his legal heirs and another daughter Balika Devi who died leaving behind her proforma defendants 3, 4 & 5 at the time of her death being her husband, the proforma defendant nos. 3 and 4, 5 are her sons.

7. That Sri Ashru Proja, the father of the defendants and proforma defendant no. 8, expired in the year 2004 and after his death the proforma defendant no. 8 as per discussion between the plaintiff and the defendants filed petition for conversion of the land from annual patta to periodic patta of the suit land in the name of a son of Ashru Proja, as the revenue of the suit land was paid in the name of Ashru Proja. The said petition was registered as

“Myadi” case no. 37/2014 – 15 in the Office of the Circle Officer, Dhekiajuli Revenue Circle and after depositing the amount as required for conversion of land through Challan bearing No. 2007539 in the name of Motilal Proja and land was converted from annual patta to periodic patta by the Circle Officer, Dhekiajuli Revenue Circle, vide his order dtd. 06-04-2015 for the purpose of transferring the land into the name of the plaintiff on the basis of sale of possessory right by Ashru Proja, the father of the defendants and proforma defendant no. 8. Thereafter, the said land under Dag No. 148 of P.P. No. 38 was transferred in the name of the plaintiff from the name of Motilal Proja, the proforma defendant no. 8 by virtue of sale by the Circle Officer, Dhekiajuli Revenue Circle vide his order dtd. 29-09-2015.

8. That the suit land was possessed and occupied by Late Bogiram Nath, the father of the plaintiff since the date of purchase of possessory right during his life time and after his death was in possession of the plaintiff till 29-05-2016. But the defendants on 30-05-2016 illegally and unlawfully possessed the said land by constructing a temporary shed thereon with plastic roofing, bamboo stick wall by erecting bamboo fencing denying the right, title, interest of the plaintiff inspite of knowing the fact that they are not owner of the said land without having any right, title and interest therein. Nor even the defendants are not any way related with Late Ashru Proja.

9. That the plaintiff reached the place getting information and asked them for illegal encroachment of the land and then the defendants without any speech, accidentally intimidated the plaintiff saying that it would be a dire consequences if the plaintiff arises the matter again. The plaintiff then without getting any way left the place and letter on though the plaintiff again made contact with the defendants they avoided the plaintiff to make any discussion with the plaintiff and with the Proforma defendant no. 8.

10. That the plaintiff hereinafter informed the matter to the local Gaonburah and with the help of said Gaonburah held meeting for amicable settlement of the occurrence and called the defendants along-with local inhabitants but no settlement was made due to adamant nature of the defendants. The defendants are none but mere trespassers of the suit land.

11. That the plaintiff hereafter served an advocate notice to the defendants dated 06-03-2018 for vacating the suit land and house constructed thereon described in the schedule below along with men and materials within 7 (seven) days from the date of receipt of advocate notice and thought the said notice was delivered to the defendants, they did not give reply of the same and they are still giving their stand on the suit land.

12. That the plaintiff has no alternative way than to institute this suit against the defendants under the above facts and circumstances. The defendants have no legal right to take forceful possession of the suit land by dispossessing the plaintiff denying the legal right, title and interest of the plaintiff over the suit land.

13. That for such type of illegal, unlawful acts and conducts of the defendants it has become necessary to get a decree of declaration of right, title and interest over the land of 1 Bigha fully mentioned in the schedule below and also to evict the defendants from the suit land with men and materials there from and to recover possession to the plaintiff.

14. That the cause of action for the suit arose on and from 30-05-2016; the date of encroachment the suit land and 02-06-2016; the date of meeting with Gaonburah and the defendants with local inhabitants and 06-03-2018; the date of advocate notice to the defendants and on each and every dates thereafter the cause of action subsisting.

15. It is therefore prayed that the Hon'ble Court may be pleased:-

(i) decree for declaration of right, title and interest of the plaintiff over land measuring 1 (one) bigha mentioned in the schedule below under Dag No. 148 and patta no. 38;

(ii) decree for eviction of the defendants with men and materials from the land described in the schedule here under;

(iii) decree for recovery of possession of the land described in the schedule below to the plaintiff by evicting the defendants with men and materials there from;

(iv) decree for permanent prohibitory injunction against the defendants restraining and prohibiting the defendants, their men, relatives, friends and other person engaged by them in taking forceful possession in the suit land after their eviction;

(v) decree for cost of the suit against the defendants;

(vi) any other relief/reliefs which may be deemed fit and proper by the Hon'ble Court for giving effect of the decree.

16. Under these compelling circumstances, the plaintiff's has filed the instant suit against the defendants.

Defendants version:

17. The defendants have appeared in the proceeding and could not file written statement and thus the suit proceeded ex-parte against them vide order dated 15.09.2018 proforma defendants also did appear in this suit.

18. To bring home his case, the plaintiff adduced the evidence of two witnesses including Plaintiff No.1 as PW-1 and the witnesses were not cross-examined by the defendants as they remained absent without steps subsequently. Heard the argument of the counsel for the plaintiff and has exhibited some documents.

19. The following points for determination are considered in order to arrive at a proper decision:

(A) Whether the Plaintiff has right, title and interest over the suit land?

(B) Whether the plaintiff is entitled to decree as prayed for?

20. Learned advocate appearing for the plaintiff vehemently submitted before this court that plaintiff suit is liable to decreed with cost as the plaintiff established and proved the contentions of plaint by adducing trustworthy evidence before this court. Plaintiff side adduced both ocular as well as documentary forms of evidence. However, the defendants did not appear for their cross-examination.

21. I have gone through the documentary evidence and oral evidence adduced by the plaintiff side.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

22. To substantiate his claim plaintiff, **Sri Jona Ram Nath** as **PW-1** and **Sri Sonaram Nath** as **PW-2** have deposed the same things as mentioned in the plaint.

23. I have carefully gone through the evidences on record and it finds that all the documentary forms of evidences presented before this court in the forms of proved in original and the aforesaid evidence on record as well as the documents relied on by the plaintiff remains unchallenged and unrebutted. As such this court not finds anything to disbelieve the evidences on record.

24. To sum up the ocular as well as documentary forms of evidences offered by the plaintiff side, this court finds nothing to disbelieve the evidence on record. PW-1, & PW-2 in their evidences supported and corroborated the entire versions of the plaint by way of deposing. Both the witnesses above further affirmed and proved that defendants have illegally occupied the plaintiff schedule land and when plaintiffs requested to vacate the suit land, the defendants declined to do so and got out plaintiff No.1 from the schedule land.

25. The documentary forms of evidences makes it crystal clear that plaintiff is the owner and possessor of the suit land measuring an area of 1 Bigha covered by dag no-148

of P.P. No-3 of Revenue village: Projabasti Gaon under Mouza- Dhekiajuli of Sonitpur District. Perusal of Exhibit – 3 & 4 shows that it is the copy Jamabandi of dag no-148 of P.P. No-3(old)/38(new) of Revenue village: Projabasti Gaon under Mouza- Dhekiajuli Sonitpur District which proves schedule land was mutated in the name of plaintiff.

26. As the witnesses of the plaintiff are not cross examined, their evidence and the documents submitted remained unrebutted. On the other hand, defendants remain absent and failed to adduce any evidence in support of them. The documents exhibited by plaintiff are duly proved, which proves that plaintiffs are the lawful owner of the suit property. I have perused all the Exhibits furnished by the plaintiff in a very careful manner as well as evidences. As the defendants side did not appear in the suit and hence did not cross examine the witnesses of the plaintiff, the entire evidence of the plaintiff side remained unchallenged and unrebutted. Thus, from the above discussion and evidence, it is clear that the plaintiff have been able to establish his right, title, interest and possession over the suit land to the satisfaction of the Court. The documents exhibited by plaintiff are duly proved, which proves that plaintiff is the lawful owner of the suit property and the defendants illegally occupy the schedule land and that defendants have no right, title and interest over the suit property. Hence there is no reason to disbelieve the pleadings and evidence of the plaintiff.

27. Thus from the above discussion and evidences, it is clear that the plaintiff has been able to establish his right, title and possession over the suit land to the satisfaction of the Court. The version of plaintiff and other witnesses further proved that defendants refused to vacate the Schedule land and plaintiff stands proved his title and this court not finds anything to disbelieve the versions of the witnesses as his evidences remains unshaken and un-rebutted.

28. Because of the above discussion and decision reached, it is clear that plaintiff has right, title and interest over the Schedule land. Hence, the plaintiff is entitled to decree of declaration of his right, title and interest and to the decree of recovery of possession over schedule land. Besides, plaintiff as PW-1 & PW-2 have deposed that the defendants have illegally and unlawfully possessed the schedule land by denying the right, title and interest over the schedule land. The evidences of plaintiff remained unrebutted. Therefore in the light of oral and documentary forms of evidences this court finds that the right of ownership and possession of plaintiff over the suit land is under threat of breach from the defendants. Hence, the plaintiff is also entitled to evicting the defendants therefrom.

29. In view of the discussion made in issues, it is clear that the plaintiff has succeeded to prove his claim and in accordance he is entitled to the decree as prayed for.

ORDER

30. In the result, the suit is decreed with cost with following reliefs:

a. It is declared that the plaintiff is the owner of the said land having right, title and interest on the same.

b. It is hereby declared that plaintiff is also entitled to recover possession of the Schedule land.

c. The defendants are liable to be evicted from the Schedule land.

d. The plaintiff is further entitled to get permanent injunction restraining the defendants from taking forceful possession in the schedule land.

e. Cost of the suit.

31. Prepare a decree accordingly.

32. Judgment is pronounced in open court.

Given under my hand and seal of this court on this 1st day of December, 2022.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur

APPENDIX

Plaintiffs Witnesses:

PW-1 : Sri Jona Ram Nath

PW-2 : Sri Sonaram Nath

Plaintiffs Exhibits:

Ext-1 Copy of Kacha Sale Deed executed by Ashru Proja for the year 1977 dated 19-07-1977

Ext-1(1) Signature

Ext-2 Copy of premium paid receipt

Ext-3 and Ext-4 Copy of jamabandi of P.P. No. 38 Dag No. 148

Ext-5 to Ext-9 Copy of land revenue receipts dated 17-01-2022

Defendants Witnesses:

None

Defendants Exhibits:

Nil

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur