

HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

DISTRICT: SONITPUR

**IN THE COURT OF MUNSIFF NO.2, SONITPUR,
TEZPUR**

Present: **Smti Priyanka Saikia, AJS,
Munsiff No.2.**

This the 31st day of October, 2022

Title Suit No. 97/2020

1. Sri Golap Koch

2. Smti Manoma Koch

D/o- Late Rupeswar Koch

3. Sri Hiren Koch

4. Sri Jayanta Koch

All sons of Late Rupeswar Koch

Permanent Residents of Village- Katakai

Chuburi (Likhakgaon),

Mouza- Bihaguri,

P.S.- Tezpur,

District- Sonitpur, Assam

Presently residing at Village- Harigaon,

Mouza- Haleswar,

P.S.- Tezpur,

CASE NO: T.S. 97/2020

District- Sonitpur, Assam

---Plaintiffs

-versus-

Sri Dambaru Bhuyan

S/o- Sri Khargeswar Bhuyan

Resident of Village- Kataki Chuburi

Mouza- Bihaguri,

P.S.- Tezpur,

District- Sonitpur, Assam

---Defendant

This is a suit came up for final hearing on 01-10-2022, in presence of following Advocates:

Counsel for Plaintiffs : Sri Krishna Sarmah

Counsel for Defendant : None

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

EX-PARTE JUDGMENT

Plaintiffs' case in brief:

1. This is a suit for declaration of right, title, recovery of possession, eviction and for compensation.

2. Plaintiffs' grand-father Late Dinanath Bhuyan had originally been the owner, possessor and occupier of a plot of land measuring 1 Bigha 2 Katha covered under Dag No.344 of Periodic Patta No.129 of Village: Kataki

Chuburi(Likhakgaon), Mouza- Bihaguri, in the district of Sonitpur described as Schedule A.

3. The said Late Dinnath Bhuyan had four sons namely Sri Khargeswar Bhuyan, Late Rupeswar alias Rupeswar Koch, the father of all plaintiffs', Sri Jogeswar Bhuyan and Sri Punyeswar Bhuyan and they are his legal heirs and successors and after his death the said four sons jointly inherited and succeeded all the properties left by Late Dinanath Bhuyan. The said four sons of Late Dinanath Bhuyan had divided the entire properties into four equal parts with their mutual consent and understanding. As per their mutual partition, the land measuring 0 Bigha 3 Katha 10 Lessas covered under Dag No.344 of Periodic Patta No.129 of Village: Kataki Chuburi(Likhakgaon), Mouza- Bihaguri, in the district of Sonitpur described as Schedule B is included in the share of Late Rupeswar Bhuyan @ Rupeswar Koch, the father of plaintiffs'. After death of Rupeswar Bhuyan @ Rupeswar Koch, all plaintiffs' acquired all right, title, interest and ownership in Schedule B.

4. Late Rupeswar Bhuyan @ Rupeswar Koch, the father of plaintiffs' had been working in Assam Police Dept. and as such he and his family had to stay away from the suit land since long back and still his family, plaintiffs' have been residing at village-Harigaon, Mouza-Haleswar in the district of Sonitpur about 20 KM away from the suit land and as such the suit land had been lying vacant.

5. That, on 20.01.2017, when plaintiff No.1 went to the locality of their permanent residence to fetch produce of their agricultural lands of their father's share, he saw that the defendant had already constructed one Kachcha house illegally on a part of schedule B land with bamboo fencing and having seen the illegal construction by the defendant, plaintiff No.1 inquired of the defendant as to why the defendant constructed the house on the suit land and occupied the suit land illegally without permission of the plaintiffs', but the defendant, instead of answering to the questions of the plaintiff No.1, he threatened with dire consequence if plaintiff No.1 tried to occupy the suit land and asked the plaintiff No.1 to leave the place. Having no other option, plaintiff No.1 had to leave the suit land in fear of being attacked by the defendant.

6. That on 27.05.2017, the plaintiff No.2 went to the suit land and tried to make the defendant understand the consequences of his act of illegally constructing house and occupying the suit land, but the defendant would not listen to the plaintiff No.2 at all and the defendant threatened the plaintiff No.2 also similarly as he had done to the plaintiff No.1. Thereafter, plaintiffs' again and again tried to settle the issue with the defendant with the help of other brothers of Late Rupeswar Bhuyan @ Rupeswar Koch, but the defendant would not listen to anyone.

7. That the defendant has not only been denying the right, title, interest and ownership of the plaintiffs' on and over their share in joint property, Schedule B land and also threatened that he would not ever allow the plaintiffs' to possess and occupy the schedule B land which the plaintiffs' obtained by their right of inheritance and succession from their deceased father Late Rupeswar Bhuyan @ Rupeswar Koch, in the joint family property.

8. Under these compelling circumstances, the plaintiffs' have filed the instant suit against the defendant.

Defendant's version:

9. The defendant has not appeared in the proceeding in spite of duly service of summons on him on 18.11.2021 and thus the suit proceeded ex-parte against him vide order dated 17.02.2022.

10. To bring home their case, the plaintiffs' adduced the evidence of two witnesses including Plaintiff No.1 as PW-1 and the witnesses were not cross-examined by the defendant as he remained absent without steps subsequently. Heard the argument of the counsel for the plaintiffs'.

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

- a. Whether the Plaintiffs' have right, title and interest over the suit land?

- b. Whether the plaintiffs' are entitled to decree as prayed for?

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

13. I have gone through the documentary evidence and oral evidence adduced by the plaintiffs' side.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

14. To substantiate their claim plaintiffs', **Sri Gopal Koch** as **PW-1** and **Sri Munindra Nath, independent witness** as **PW-2** have deposed the same things as mentioned in the plaint and exhibited relevant documents.

15. 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 plaintiffs' remains unchallenged and unrebutted. As such this court not finds anything to disbelieve the evidences on record.

16. To sum up the ocular as well as documentary forms of evidences offered by the plaintiffs' 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 defendant has illegally occupied the plaintiffs' schedule land and when plaintiffs' requested to vacate the suit land, the defendant declined to do so and got out plaintiff No.1 from the schedule land.

17. The documentary forms of evidences makes it crystal clear that plaintiffs' are the owner and possessor of the suit land measuring an area of 1 Bigha 2 Kathas 0 Lessas covered by dag no-344 of P.P. No-129 of Revenue village: Katakhi Chuburi (Likhakgaon) under Mouza- Bihaguri of Sonitpur District. Perusal of Exhibit – 1 shows that it is the copy Jamabandi of dag no-344 of P.P. No-129 of Revenue village: Katakhi Chuburi (Likhakgaon) under Mouza- Bihaguri of Sonitpur District which proves schedule land was mutated in the name of deceased fathers of plaintiffs'.

18. As the witnesses of the plaintiffs' are not cross examined, their evidence and the documents submitted remained unrebutted. On the other hand, defendant remain absent and failed to adduce any evidence in support of him. The documents exhibited by plaintiffs' are duly proved, which proves that plaintiffs' are the lawful

owner of the suit property. I have perused all the Exhibits furnished by the plaintiffs' in a very careful manner as well as evidences. As the defendant side did not appear in the suit and hence did not cross examine the witnesses of the plaintiffs', the entire evidence of the plaintiffs' side remained unchallenged and unrebutted. Thus, from the above discussion and evidence, it is clear that the plaintiffs' have been able to establish their right, title, interest and possession over the suit land to the satisfaction of the Court. The documents exhibited by plaintiffs' are duly proved, which proves that plaintiffs' are the lawful owner of the suit property and the Defendant illegally occupy the schedule land and that defendant has no right, title and interest over the suit property. Hence, there is no reason to disbelieve the pleadings and evidence of the plaintiffs'.

19. Thus from the above discussion and evidences, it is clear that the plaintiffs' have been able to establish their right, title and possession over the suit land to the satisfaction of the Court. The version of plaintiff No.1 and other witnesses further proved that defendant refused to vacate the Schedule land and plaintiffs' stands proved their title and this court not finds anything to disbelieve the versions of the witnesses as their evidences remains unshaken and un-rebutted.

20. Because of the above discussion and decision reached, it is clear that plaintiffs' have right, title and possession over the Schedule land. Hence, the plaintiffs'

are entitled to decree of declaration of their right, title and possession and to the decree of recovery of possession over schedule land. Besides, plaintiff No.1 as PW-1 & PW-2 have deposed that the defendant had illegally encroached the schedule land by claiming that he was the real owner and possessor of the schedule land. The evidences of plaintiffs' remained unrebutted. Therefore in the light of oral and documentary forms of evidences this court finds that the right of ownership and possession of plaintiffs' over the suit land is under threat of breach from the defendant. Hence, the plaintiffs' are also entitled to evict the defendants therefrom.

21. In view of discussion, it is clear that the plaintiffs' have succeeded to prove their claim and in accordance they are entitled to the decree as prayed for. The plaintiffs' are also entitled to get the cost of the suit.

ORDER

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

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

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

c. The defendant is liable to be evicted from the Schedule land.

d. The plaintiffs' are further entitled to get permanent injunction restraining the defendant from entering into the schedule B land.

e. Cost of the suit.

23. Prepare a Decree accordingly.

24. Judgment is pronounced in open court.

Given under my hand and seal of this court on this 31st day of October, 2022.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur

APPENDIX

Plaintiffs' Witnesses:

PW-1 : Sri Golap Koch.

PW-2 : Sri Munindra Nath.

Plaintiffs' Exhibits:

Ext 1: Copy of jamabandi of Village Likhakgaon (Kataki Chuburi), Dag No. 344 of P.P. No. 129 under Mouza-Bihaguri, P.S.- Tezpur, Dist- Sonitpur

Ext 2: Death certificate of Rupeswar Koch.

Ext 3: Death certificate of Bina Koch.

Ext 4: Affidavit.

Defendant's Witnesses:

None

Defendant's Exhibits:

Nil

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur