

HIGH COURT FORM NO.(J) 2
HEADING OF JUDGMENT ON ORIGINAL APPEAL

IN THE COURT OF THE CIVIL JUDGE, SONITPUR, TEZPUR

Present: **Dr. C. Khanikar**
Civil Judge
Sonitpur, Tezpur

08th September, 2022

TITLE APPEAL NO. 12/2019

- (1) Sri Somra Munda**
Son of Late Gobai Munda
- (2) Sri Johan Munda**
Son of Late Gobai Munda
- (3) Sri Kinoo Munda**
Son of Late Gobai Munda
- (4) Sri Danel Munda**
Son of Late Gobai Munda

All are residents of Santipukhuri
PO- Barsola, PS- Dhekiajuli
Mouza- Barsola
Dist - Sonitpur, Assam

----- Appellants/Plaintiffs

-Versus-

- (1) Md. Abdul Basar**
S/o Md. Sirajul
- (2) Md. Zakir Hussain**
S/o Md. Abdul Basar

Both are residents of Santipukhuri
PO- Barsola, PS- Dhekiajuli
Mouza- Barsola
Dist - Sonitpur, Assam

----- Respondents/Defendants

(1) Sri Illiyas Munda

S/o Late Anu Munda

(2) Sri Amrush Munda

S/o Late Gobai Munda

(3) Sri Rakish Munda

S/o Late Gobai Munda

All are residents of Santipukhuri
PO- Barsola, PS- Dhekiajuli
Mouza- Barsola
Dist - Sonitpur, Assam

----- Proforma Respondents

This appeal has been preferred u/O-XLI
r/w Sec. 96 of CPC, against judgment
and decree dated 18-02-2019 passed by
the learned Munsiff, No.1, Tezpur, in
Title Suit No.92 of 2014, dismissing the
suit, and came up for final hearing on
17-08-2022 in presence of following
Advocates:-

For the Appellants : - Sri S. K. Singh, Advocate

For the Respondents : - Sri A. Mahanta, Advocate

J U D G M E N T

1. This appeal is preferred against the judgment and decree dated 18-02-2019 passed by Id. Munsiff No.1, Tezpur in Title Suit No.92 of 2014.

2. Before I go into the grounds of appeal, I would precisely refer here to the case of both the parties in the aforementioned Title Suit.

3. The case of the plaintiff in brief is that the plaintiffs are the recorded right holders of the suit land by way of inheritance. The plaintiffs have inherited the suit land measuring 10 B 2 K 5 L covered under dag No. 276 of PP No. 145 of village: Satipukhuri, Mouza: Borsola, P.S Dhekiajuli, District: Sonitpur, Assam and mutated their names accordingly in respect to the said land. During first part of 2012, the plaintiffs due to great financial hardship mortgaged the suit land to the defendants for Rs. 1 Lakh by executing a deed in presence of witnesses. Accordingly the possession of the suit land was handed over to the defendants on the condition that the defendants will enjoy the usufruct till the plaintiffs re-pay the money. The defendants started ploughing over the suit land and also informed the plaintiffs that the defendants will construct a Kacha hut on the suit land to keep an eye upon the grown up paddy and promised to remove the hut as an when directed by the plaintiffs. On 02-09-2013, the plaintiff No. 1 while went to the Circle Office at Dhekiajuli for obtaining

a certified copy of the Jamabandi of the suit land, he found that defendant No. 1 and 2 have illegally got the suit land mutated in their names. When the plaintiffs enquired about the matter, the defendants asked the plaintiffs to re-pay the money and told that their names will be deleted from the records of rights upon repayment of money. Thereafter, the plaintiffs approached the defendants for several times to receive back the debt. But the defendants refused to accept the money. Then the plaintiffs filed their written complaint before the Circle Officer, Dhekiajuli for which the Circle Officer issued notice bearing No. NBODRC-15/2001-08/416 dated 03-05-2014 and directed the parties to appear on 19-05-2014 with necessary documents. On 19-05-2014, the plaintiffs again requested the defendants to receive back the money, but the defendants did not receive the money and threaten to kill the plaintiffs for which an FIR was filed at Dhekiajuli P.S on 20-05-2014 against the defendants. On 13-06-2014, the plaintiffs sent a pleaders notice upon the defendants to take back Rs 1 Lakh and to hand over the possession of the suit land to the plaintiffs within 7 days from the date of receipt of notice, but the defendants did not pay any heed. Having no other way, the plaintiffs has filed the suit for declaring plaintiffs' right, title and interest over the suit land, eviction of defendants, permanent injunction and cancellation of mutation order in the name of defendants along with cost of the suit.

4. The defendants appeared and contested the suit by filing Written Statement and denied the claims of the plaintiffs and stated that there is no cause of action, the suit is bad for non-joinder of parties, barred by limitation, false, bad for waiver, acquiescence and estoppel and liable to be dismissed.

5. According to defendants, defendant No. 1 has purchased the suit land from the plaintiffs and proforma defendant No.1 for Rs. 7,40,000/- and constructed four residential houses thereon. The defendants also use to cultivate paddy on the suit land. Thereafter, defendant No.1 sold out 1 Bigha from land of the suit land to Md. Zahar Ali from whom the defendant No. 1 has taken a loan at the time of purchasing the suit land. Zahar Ali also constructed his house in the suit land. Defendant No. 1 has nine family members and Zahar Ali is also in possession of a part of the suit land. But the plaintiffs have not made the other family members of the defendant No.1 and Md. Zahar Ali, parties to the suit. Against the order of Circle Officer dated 10-09-2013 of mutation of the suit land in favour of the defendant No.1, the plaintiffs filed objection before the Circle Officer. But later on plaintiff No. 3 Sri Kinoo Mura and Plaintiff No. 4 Sri Danel Munda have withdrawn their objection by filing withdrawal petition by admitting that the suit land was sold out to defendant No.1 for consideration of Rs. 7,40,000/-. The story of the plaintiffs about mortgaging

the suit land is totally false and hence the suit of the plaintiffs is liable to be dismissed with compensatory cost.

6. Upon the pleadings of both the parties the following issues have been framed:-

- I. Whether there is any cause of action for the suit?
- II. Whether the suit is bad for mis-joinder of defendant No. 2 and bad for non-joinder of family members of defendant who are possessing the suit land?
- III. Whether the suit is bad for estoppels waiver and acquiescence?
- IV. Whether the suit is valued properly and proper court fee is paid thereon?
- V. Whether the plaintiffs have any right, title and interest over suit land?
- VI. Whether the plaintiffs have given the possession of the suit land to defendants as mortgage to obtain loan of Rs. 1 Lakh? If so whether the plaintiff is entitled to recover the possession from the defendants on payment of loan amount?
- VII. Whether the defendants have mutated his name in the suit land on 10-09-2013 illegally without having any right, title and interest and if so whether it is liable to be cancelled?
- VIII. Whether the plaintiffs are entitled to the decree as prayed for?

IX. To what other relief the plaintiffs are entitled to?

7. At the trial the plaintiffs have adduced two witnesses and also placed reliance on eleven documents in support of their case which are marked as Exhibits. The defendants have also adduced three witnesses but adduced no documentary evidence.

8. At the end of the trial both sides have adduced oral arguments in support of their case.

9. After hearing both sides, the Id. trial court dismissed the suit with cost.

10. Having been highly aggrieved by the said judgment and decree, dated 18-02-2019, the plaintiffs/appellants preferred this appeal on the grounds enumerated in the Memorandum of Appeal, such as that the Id. trial Court did not consider the entire pleadings of the plaintiffs at the time of consideration of issue No. VIII and considered only the reliefs claimed specifically.

11. Having considered the ground arisen in the Memorandum of Appeal, I have formulated the following point for determination in this appeal :

POINT FOR DETERMINATION :

Whether the impugned judgment and decree passed by the Id. trial court is just and proper or needs any interference in this appeal?

DECISION AND REASONS THEREOF

12. I have heard arguments advanced by Id. counsels appearing for the appellants as well as respondents and carefully examined the entire materials on record for arriving at a just decision in the case. To decide the appeal, let me deal with the findings of the Id. trial court issue wise :

Issue No. I – Whether there is any cause of action for the suit?

13. In Issue No.1, Id. trial court has discussed that the plaintiffs have claimed that the suit land was mortgaged to the defendants for Rs. 1 Lakh and when again approached the defendants to get back the suit land, the defendants denied to accept Rs. 1 Lakh and claimed their right, title and interest over the suit land on the basis of their mutation, by taking the plea that the suit land was sold out to the defendant No.1 for Rs. 7,40,000/-. On perusal of the case record, it appears that both sides have adduced their evidence in respect to their pleas. As such, it appears that there are bundle of facts alleged by the

plaintiffs and denied by the defendants. In view of the aforesaid facts, Id. Trial Court has held that there is cause of action for the suit. Considering the pleadings of the parties as well as evidence on the record, it appears that there is a clear dispute between the parties regarding the title over the suit land. Both the parties have claimed that they have their title over the suit land. Hence I found no infirmity in the decision of the Id. Trial Court in issue No.I and I concur with the findings of the Id. Trial Court that **there is cause of action for the suit** which is to be decided by a Civil Court of law.

Hence, issue No. I is decided **affirmative**.

Issue No.II – Whether the suit is bad for mis-joinder of defendant No. 2 and bad for non-joinder of family members of defendant who are possessing the suit land?

14. On perusal of the plaint, it appears that the plaintiffs have claimed that the suit land was mortgaged by the plaintiffs to the defendants i.e defendant No.1 and defendant No.2. The plaintiffs adduced their evidence accordingly, claiming that the suit land was mortgaged by the plaintiffs to defendant No.1 and defendant No.2. The basis of the plaintiffs' claim is the said alleged mortgage deed upon which the plaintiffs claimed that the defendants have illegally mutated the name of defendant No.1 over the suit land and hence prayed for cancellation of said order and also sought for the relief of evicting the

defendants from the suit land by restraining and prohibiting them permanently from entering the suit land. As such, the plaintiffs sought relief against defendant No. 2 also on the basis of the alleged mortgage, irrespective of the fact that the suit land was mutated only in the name of defendant No. 1. As such, I am of the opinion that the Id. trial court has **rightly observed that the defendant No. 2 is a proper and necessary party to this suit and this suit is not bad for mis-joinder of defendant No.2.**

15. The defendants have again claimed that the suit is bad for non-joinder of necessary parties. According to the defendants, the family members of defendant No.1 are necessary parties to the suit as his family members are also in possession of the suit land. Again it is claimed that Md. Zahar Ali is a necessary party to the suit as defendant No. 1 has sold out a portion of the suit land to Md. Zahar Ali. However, upon going through the pleadings, it appears that the plaintiffs have filed this suit claiming their right, title and interest over the suit land against the illegal mutation of the defendant No.1. This is not suit for possessory right. Although, the son, daughter, wife etc., of the defendant No.1 are residing with him, they are residing in the suit land by virtue of the right acquired by the defendants through the alleged mortgage deed. Apart from that, the mutation order which was challenged is also not in the name of the son, daughter or wife of defendant No.1. As such, I do not find any infirmity in the observation

of Id. Trial Court regarding the fact that the **other family members of the defendant No.1 are not necessary parties to the suit.**

16. This suit of the plaintiffs arising out of an alleged mortgage deed of the suit land which was between the plaintiffs and the defendants. The plaintiffs have also challenged the order of mutation passed by the Circle Officer, Dhekiajuli Revenu Circle, dated 10-09-2013 which was in the name of the defendants. Here Md. Zahar Ali has no role to play. Although, the defendants claimed that the defendant No. 1 has sold out a portion of suit land to Zahar Ali, for that, at first defendant No.1 must prove his valid right over the suit land. **The mortgage was not with Md. Zahar Ali. The mutation order, which is challenged, is not in the name of Md. Zahar Ali.** Hence, **I have not seen any reason here to hold any right of Md. Zahar Ali over the suit land and to hold him as a necessary party to the suit.** As such, I concur with and **upheld the decision of the Id. Trial Court that the suit of the plaintiffs is not bad for non-joinder of necessary party.**

Hence, issue No. II is decided **negative.**

Issue No.III – Whether the suit is bad for estoppel, waiver and acquiescence?

17. The defendants have claimed that the suit is bad for estoppel, waiver and acquiescence. But the

defendants have not lead any specific plea or proof as to how the suit is bad for estoppel, waiver or acquiescence, except taking a mere plea. According to the plaint, both the parties had entered into an agreement of mortgage of the suit land for Rs. 1 Lakh. But this mortgage does not debar the plaintiffs from claiming their right, title and interest over the suit land after cessation of the mortgage agreement. Upon consideration of the entire materials available in the record including the pleadings as well as the evidences, nowhere it is found that the plaintiffs have waived their right, title or interest over the suit land or by operation of any law, the plaintiffs are debarred from claiming their right, title and interest as well as possession over the suit land. As such, I am of the opinion that the Id. Trial Court has rightly held that **the suit is not barred by waiver, estoppel and acquiescence** and hence I uphold the same.

Hence, issue No. III is decided **negative**.

Issue No.IV – Whether the suit is valued properly and proper court fee is paid thereon?

18. The defendants have claimed that they have purchased the suit land at a sale consideration of Rs. 7, 40,000/-. As such, the plaintiffs have not paid proper court fee or not valued the suit properly. However, the defendants could not adduce any documentary evidence to show that the suit land was purchased by the defendants

or the defendants have paid Rs. 7,40,000/- to the plaintiffs for the suit land. As the defendants have claimed that the suit is undervalued, it was the duty of the defendants to prove their plea. On the other hand, the plaintiffs have claimed that the suit was mortgaged to the defendants at a consideration of Rs. 1 Lakh. Therefore, **in absence of any proper evidence/document regarding the sale of the suit land for Rs. 7,40,000/-, I am of the opinion that the defendants have failed to prove their plea that the suit is undervalued or no proper court fee has been paid.** Hence, I uphold the decision of the Id. Trial Court in issue No. 4.

Hence, issued No. IV is decided **affirmative.**

Issue No.V – Whether the plaintiffs have any right, title and interest over suit land?

19. The **right, title and interest of the plaintiffs over the suit land prior to the alleged mortgage or alleged sale is not disputed** here. Therefore, now the **question to be decided here is that, whether the right, title and interest of the plaintiffs over the suit land has transferred to the defendants.** The defendants have claimed that the suit land was sold out to the defendant No.1. On the basis of the said sale, the defendants are claiming their right, title and interest over the suit land. However, in support of their plea the defendants could not adduce any title deed.

The defendants side has adduced one certified copy of Jamabandi as Ext. Ka. It is a settled position of law that Jamabandi is nothing but a revenue record. It is not a proof of title. DW.1 in his evidence stated that he purchased the suit land from the plaintiffs through registered sale deed executed at the Circle Office, Dhekiajuli Revenue Circle. But, except merely making that statement, he could not adduce the original or certified or even a photo copy of the said sale deed. Hence, in absence of any documentary evidence, I am of the opinion that the defendants have failed to prove that any sale deed as alleged has executed or that the suit land was sold out by the plaintiffs to the defendants. Thus, transfer of right, title and interest over the suit land from the plaintiffs to the defendants are not proved. Hence, I hold that the plaintiffs have not sold out the suit land to the defendants and the **plaintiffs have right, title and interest over the suit land**. The decision of the Id. Trial Court in issue No. 5 is not interfered and I uphold the same.

Hence, issue No. V is decided **affirmative**.

Issue No.VI – Whether the plaintiffs have given the possession of the suit land to defendants as mortgage to obtain loan of Rs. 1 Lakh? If so whether the plaintiff is entitled to recover the possession from the defendants on payment of loan amount?

20. The plaintiffs have stated that the possession of the suit land was delivered to the defendants by executing

a deed of mortgage by taking Rs. 1 Lakh as mortgage money from the defendants. When the plaintiffs approached the defendants for redemption of his mortgaged land by paying the debt of Rs. 1 Lakh, the defendants refused to receive back the money and to hand over the possession of the suit land to the plaintiffs. PW.1 has reiterated the same in his evidence. It is also stated by the PW.1 that on 02-09-2013, he became aware of the fact that the defendant have mutated their names in respect to the suit land. DW.1 in his evidence also stated that he acquired his right, title and interest over the suit land on the basis of registered sale deed as he purchased the suit land from the plaintiffs. DW.1 has denied the existence of any mortgage deed. On the other hand, the defendants side has exhibited certified copy of Jamabandi of the suit land as Ext. 'Ka', wherein the name of defendant No. 1 has been mutated in respect to the suit land by right of purchase. However, the defendants side has failed to produce any sale deed to show that the defendants have purchased the suit land from the plaintiffs. Although, the plaintiffs have claimed that the possession of the suit land was handed over to the defendants by entering into a mortgage agreement, the plaintiffs' side also could not adduce any mortgage deed to prove their claim. Thus, from the pleadings as well as evidences of the both parties, it is seen that the plaintiffs have claimed the existence of a mortgage deed by virtue of which the defendants took possession of the suit land. On the other

hand, the defendants have denied the existence of the said mortgage deed and claimed that the defendants have purchased the suit land from the plaintiffs. But neither party could prove their pleas. Neither the mortgage nor the sale is proved. As such, I am of the opinion that the Id. Trial Court has **rightly held that the plaintiffs side could not prove that the plaintiffs have given the possession of the suit land as mortgage to obtain loan of Rs. 1 Lakh and I uphold the same.**

21. As the mortgage is not proved, there is no question of recovery of possession by payment of loan amount.

Hence, issue No. VI is decided **negative.**

Issue No.VII – Whether the defendants have mutated his name in the suit land on 10-09-2013 illegally without having any right, title and interest and if so whether it is liable to be cancelled?

22. The defendants have claimed that they have purchased the suit land from the plaintiffs. In support of their plea the defendants have exhibited the certified copy of Jamabandi of the suit land as Ext. 'Ka', wherein it is written that the name of the defendant No. 1 was mutated by dint of purchase of the suit land. But the defendants could not adduce any deed of sale to show their title. Jamabandi is not a proof of title. It is only a revenue

record. Mere entry of name in record of rights does not confer on a party any right, title and interest as per the provision of Civil Law. The defendants could not prove their title over the suit land by adducing any title deed. On the other hand from the issue No. V, it is seen that the plaintiffs have right, title and interest over the suit land. As such, I am of the opinion that the defendants have mutated their names illegally in respect to the suit land on 10-09-2013 without having any right, title and interest over there and the said mutation is liable to be cancelled.

Hence, issue No. VII is decided **affirmative**.

Issue No.VIII and IX:

(VIII) Whether the plaintiffs are entitled to the decree as prayed for?

(IX) To what other relief the plaintiffs are entitled to?

23. For convenience of discussion and to avoid unnecessary repetition, these two issues are taken together for discussion.

24. In the original plaint the plaintiffs have prayed for the decree of eviction of the defendants, cancellation of mutation order dated 10-09-2013 in the name of defendants and permanent injunction. But, in the said plaint there was no prayer for declaration of right, title and interest for which the Id. Trial Court has held that the plaintiffs are not entitled to any decree, the prayers being

within the category of consequential reliefs only. However, the plaintiffs were allowed to amend the said plaint in this appeal vide order dated 24-02-2020, which was affirmed by the Hon'ble High Court by order dated 21-12-2021 passed in CRP(I/O) No. 9/2021. Accordingly, the plaint was amended and the prayer for declaration of plaintiffs' right, title and interest was inserted. As per the amended plaint the plaintiffs have prayed for declaration of right title and interest, permanent injunction prohibiting the defendants and their men from entering the suit land, cancellation of mutation order dated 10-09-2013 in the name of the defendants and the cost of the suit.

25. From the decision of issue No. I, II, III and IV, it is seen that there is cause of action for the suit, the suit is not bad for non-joinder or mis-joinder of parties or not bad for estoppel, waiver or acquiescence and the suit is properly valued and proper court fee was paid. Again, from the decision of issue No. V, it is seen that the plaintiffs have right, title and interest over the suit land. As such, I am of the opinion that the appellants/plaintiffs are **entitled to the decree for declaration of appellants/plaintiffs' right, title and interest over the suit land.**

26. From the discussion of issue No. VI, it is seen that the plea of the plaintiffs of mortgaging the suit land to the defendants is not proved. From the decision of issue

No. VII, it is seen that the defendants have illegally mutated their names in the suit land on 10-09-2013 without having any right, title and interest over there and the same was liable to be cancelled. On the other hand, as neither the mortgage nor the sale of the suit land is proved and the present possession of the suit land by the defendants are also proved by admission of both the parties, it appears that the respondents/defendants are illegally possessing the suit land. As the plaintiffs have right, title and interest over the suit and the defendants are illegally possessing the same, **the respondents/defendants are liable to be evicted from the suit land.** As a preventive relief, the plaintiffs are also entitled to decree for **permanent injunction restraining the respondents/defendants and their men from entering the suit land.**

27. As from the issue No. VII, it appears that the mutation order dated 10-09-2013 in the name of the respondents/defendants in respect to the suit land is illegal, the plaintiff is also entitled to the decree for cancellation of the said mutation order dated 10-09-2013 in the name of the respondents/defendants in respect to the suit land.

ORDER

28. The appeal is **allowed on contest with cost.**

29. The judgment and decree dated 18-02-2019 passed by Id. Munsiff No.1, Tezpur in Title Suit No.92 of 2014 is hereby **set aside**.

30. The appellants/plaintiffs are entitled to a decree for **declaration of their right, title and interest over the suit land; eviction of the respondents/defendants and their men from the suit land; permanent injunction restraining and prohibiting the respondents/defendants and their men and associates from entering the suit land; cancellation of mutation order dated 10-03-2013 in the name of the respondents/defendants in respect to the suit land and cost of the suit.**

31. Prepare the decree accordingly.

32. Send down the case record of TS No.92/2014 to the trial court with a copy of this judgement and decree.

33. Let copy of this Judgment be furnished to the parties subject to payment of cost.

Given under my hand and seal of this court on this the 08th day of September, 2022.

Dictated and corrected by me.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

APPENDIX

Plaintiff's witnesses:

PW-1: Sri Somra Munda, plaintiff

PW-2: Md. Ilimuddin

Defendant's witnesses:

DW-1: Md. Abdul Basar, defendant

DW-2: Md. Zahar Ali

DW-3: Md. Jakir Hussain, defendant

Exhibits of the Plaintiff:

- Ext.1 : Photo copy of Kiraj Patta
- Ext.2 : Certified copy of Jamabandi
- Ext.3 : Mutation certificate
- Ext.4 : Land Revenue Clearance certificate dated 28-05-2014
- Ext.5(1) to 5(2) : 2 Nos. of Khajana Receipts (not found in the case record)
- Ext.6 : Complaint to the Circle Officer dated 21-04-2014 (not found in the case record)
- Ext.7 : Notice of Circle Officer dated 03-05-2014 (not found in the case record)
- Ext.8 : FIR dated 20-05-2014 (not found in the case record)
- Ext.9 : Petition filed u/s- 107 Cr.P.C dated 10-06-2014 (not found in the case record)
- Ext.10 : Legal Notice dated 13-06-2014
- Ext. 11 : Postal Receipt (not found in the case record)

Exhibits of the defendants :

- Ext. Ka : Certified copy of Jamabandi

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur