

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

04th November 2022

TITLE APPEAL NO. 06/2022

- (1) Sri Bikash Paul**
Son of Late Binod Bihari Paul
- (2) Sri Sukumar Paul**
Son of Late Naresh Chandra Paul
- (3) Smti. Kalpana Paul**
Wife of Sri Sadhan Paul

All are residents of Ward No. 15,
Madhyapara, Tezpur Town,
Mouza- Mahabhairab
PO & PS- Tezpur
Dist - Sonitpur, Assam
----- Appellants/Plaintiffs

-Versus-

Sri Dipankar Basu
S/o Late Jitendra Chandra Basu
R/o- Ward No. 9, N.C. Road, Tezpur Town
Mouza- Mahabhairab
P.O & P.S- Tezpur
Dist- Sonitpur, Assam
----- Respondent/Defendant

This appeal has been preferred under section 96 r/w
U/O-41 Rule 1 and 2 of CPC, against judgment and
decree dated 02-03-2022 passed by the learned

Munsiff, No.1, Tezpur, in Title Suit No.33 of 2020, dismissing the suit with cost, and came up for final hearing on 26-10-2022 in presence of following Advocates:-

Advocate for the Appellants : - Sri T. Paul

Advocate for the Respondent : None

J U D G M E N T

1. This appeal is preferred against the judgment and decree dated 02-03-2022 passed by Id. Munsiff No.1, Tezpur in Title Suit No.33 of 2020.

2. Before I go into the grounds of appeal, I would precisely refer here to the case of the plaintiffs in the afore-mentioned Title Suit. The suit proceed ex-parte, as the defendant did not appear after service of summons.

3. The case of the plaintiffs, in brief, is that on 16-12-2019 the defendant executed a deed of agreement for sale of the suit land measuring 1 K 6 L covered by Dag No.199 (O) / 998 (N), PP No.37(O)/697(N) of Tezpur Town 4th Part, Mouza- Mahabhairab, District- Sonitpur, Assam for Rs. 1,50,000/-, by taking Rs. 1,45,000/- as advance amount. It was agreed that the remaining amount of Rs. 5,000/- will paid at the time of execution of the registered sale deed. Thereafter, the plaintiffs requested the defendant on several occasion to execute the sale deed, but the defendant failed to do so. Without executing the sale deed, the defendant went to Kolkata

and started to reside there permanently. Then the plaintiffs requested the defendant over phone to execute the sale deed by obtaining necessary permissions from the concerned authorities. However, on 16-03-2020, the defendant told that, the defendant is no longer desiring to sell the suit land to the plaintiffs because he is getting higher price from some other persons and told the plaintiff to vacate the suit land. Therefore, the plaintiffs filed the suit for specific performance of contract praying for directing the defendant to execute the registered sale deed by accepting the balance consideration of Rs. 5,000/- and for a delivery of possession of the suit land by evicting the defendant with compensation, permanent injunction, cost of the suit and any other relief/s.

4. The appeal is proceeded ex-parte against the respondent as the respondent did not appear in-spite of due service of summons upon him.

5. Upon the pleadings of the plaintiffs, Id. trial court has taken the following points as points for determination:-

(i) Whether the Defendant on 16-12-2019 entered into an agreement for sale of the suit land with the plaintiffs for a total consideration of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only and whether in pursuance of the said agreement the plaintiffs paid an advance amount of Rs. 1,45,000/- (Rupees One Lakh

Forty Five Thousand) only to the Defendant and whereby an amount of Rs. 5,000/- (Rupees Five Thousand) only remained as balance consideration amount for purchase of the Suit land ?

(ii) Whether the Defendant refused to perform his part of the contract and whether the Plaintiffs are ready and willing to perform their part of the alleged contract?

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

6. At the trial the plaintiffs have adduced one evidence and also placed reliance on some documents in support of their case which are marked as Exhibits.

7. At the end of the trial the plaintiff's side has adduced oral arguments in support of the case.

8. After hearing plaintiffs' sides, the Id. trial court has dismissed the suit of the plaintiffs.

9. Having been highly aggrieved by the said judgment and decree dated 02-03-2022, the plaintiffs preferred this appeal on the grounds enumerated in the Memorandum of Appeal.

10. 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

11. I have heard Id. counsel for plaintiffs' sides and also perused the pleadings of the parties and considered the evidence on record, both oral and documentary. Let me deal with the findings of the Id. lower court point wise.

Point No.(i) – *Whether the Defendant on 16-12-2019 entered into an agreement for sale of the suit land with the plaintiffs for a total consideration of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only and whether in pursuance of the said agreement the plaintiffs paid an advance amount of Rs. 1,45,000/- (Rupees One Lakh Forty Five Thousand) only to the Defendant and whereby an amount of Rs. 5,000/- (Rupees Five Thousand) only remained as balance consideration amount for purchase of the Suit land ?*

12. In issue No. 1 Id. trial court has discussed the law relating to admissibility of an unregistered deed of agreement for sale and held that Ext. 1 Deed of

Agreement for sale exhibited by the plaintiffs is admissible as evidence.

13. Ld. Trial court has discussed the provision of section 49 of the Registration Act, 1908, which states that an unregistered document affecting immovable property may be received as evidence of a contract in a suit for specific performance under Specific Relief Act, 1877. I have not found any infirmity of the trial court in deciding the Ext. 1 unregistered deed of agreement for sale as an admissible evidence.

14. Now came the question of proof. According to the plaintiffs case Ext.1 was executed in presence of two attesting witnesses namely Sri Arun Das and Smti. Minu Das. In the suit, the plaintiffs have adduced the evidence of plaintiff No.1 as PW.1. No other evidence was adduced by the plaintiffs. Ld. Trial Court has held that the execution of the Ext.1 was not proved by adducing evidence of any attesting witness of Ext.1. Hence, the Id. Trial court has decided the issue No. 1 negative on the ground that the Ext. 1 was not proved.

15. According to section 68 of Indian Evidence Act, 1872:

“ If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an

attesting witness in proof of the execution of any document, not being a will , which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

16. The document here adduced by the plaintiffs side is an unregistered deed of agreement for sale. A Deed of Agreement for sale is not a document of the type which is compulsorily required by law to be attested. Under such circumstance, it appears that law has not mandated for adducing the evidence of attesting witness to prove such document. The original copy of Ext.1 is adduced by the plaintiffs and hence the said Ext. 1 can be used as evidence and considered as proved. On the other hand, the defendant has neither appeared in the suit nor appeared in the Appeal to challenge the said deed of agreement for sale. In such circumstance, I have not found any reason to consider the Ext.1 as not an evidence or proof of agreement for sale of the suit land between the plaintiffs and the defendant. Hence, **I hold that that, the defendant, on 16-12-2019 entered into an agreement for sale of the suit land with the plaintiffs for a total consideration of Rs. 1,50,000/- only.**

17. In the Ext. 1 agreement itself, it is written that Rs. 1,45,000/- was paid by the plaintiffs to the defendant as advance consideration in presence of witnesses, out of total consideration of Rs. 1,50,000/-. Ext.1 was signed by

the defendant. Thus, this is also proved from the Ext.1 that the defendant has received Rs. 1,45,000/- as advance money towards the payment of total sale consideration of the suit land of Rs. 1,50,000/- and remained Rs. 5,000/- as balance consideration amount. Therefore, I hold that the plaintiffs have proved that **the defendant on 16-12-2019 entered into an agreement for sale of the suit land with the plaintiffs for a total consideration of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only and whether in pursuance of the said agreement the plaintiffs paid an advance amount of Rs. 1,45,000/- (Rupees One Lakh Forty Five Thousand) only to the Defendant and whereby an amount of Rs. 5,000/- (Rupees Five Thousand) only remained as balance consideration amount for purchase of the Suit land.**

Hence, point No. (i) is decided **affirmative.**

Point No.(ii) – *Whether the Defendant refused to perform his part of the contract and whether the Plaintiff is ready and willing to perform his part of the alleged contract?*

18. From Ext.2 Jamabandi and Ext.3 Land Revenue Receipt, it appears that the defendant has right, title and interest over the suit land. From Ext.1 Deed of Agreement for sale it is seen that the defendant has agreed to sale the suit land to the plaintiffs for Rs. 1,50,000/- and received Rs. 1,45,000/- as advance amount. The said deed of

agreement for sale was executed on 16-12-2019 and the suit of the plaintiffs was filed on 06-07-2020 i.e after 6 months of the execution of the deed of agreement for sale. Till then the defendant left the locality and started to reside at Kolkata permanently. The plaintiff No.1 as PW.1 has deposed on oath that he requested the defendant for several times to execute the sale deed but the defendant failed to do so and on 16-03-2020 the defendant over phone told the plaintiffs that he is no longer desiring to sell the suit land to the plaintiffs, because he is getting higher price from other persons. From this conduct of the defendant, it appears that the defendant was neglecting to execute the registered sale deed after execution of the deed of agreement for sale and finally he went to Kolkata without executing the sale deed. On the other hand, the plaintiffs have already paid a major amount of the total sale consideration, i.e, 1,45,000/- to the defendant and remained only Rs. 5,000/- as balance consideration. The plaintiffs have requested the defendant several times to execute the sale deed and finally for execution of the same the plaintiffs approached the Civil Court, which shows the willingness on the part of the plaintiffs. In view of the above observations, I am of the opinion that **the defendant refused to perform his part of the contract and the Plaintiffs are ready and willing to perform their part of the alleged contract.**

Hence, point No. (ii) is decided **affirmative.**

Point No.(iii) – *Whether the plaintiffs are entitled to the decree as prayed for?*

19. From the materials available on the case record, it appears that the defendant has right, title and interest over the suit land. There is an agreement for sale of the suit land between the defendant and the plaintiffs for consideration of Rs. 1,50,000/-. Out of the total sale consideration amount, plaintiffs paid Rs. 1.45.000/- to the defendant with the condition that the remaining Rs. 5,000/- will be paid at time of the execution of the sale deed. After execution of the deed of agreement for sale the defendant neglected and refused to perform his part of the contract, i.e, to execute the registered sale deed whereas the plaintiffs are ready and willing to perform their part. Therefore, **the plaintiffs are entitled to the decree of specific performance of contract for execution of the sale deed regarding the suit land in favour of the plaintiffs on payment of the balance consideration of Rs. 5,000/- along with permanent injunction restraining the defendant from selling/transferring the suit land to any other person. As a consequential relief the plaintiffs are also entitled to the delivery of possession of the suit land by the defendant and cost of the suit.**

ORDER

20. The appeal is **allowed ex-parte with cost.**

21. The judgment and decree dated 02-03-2022 passed by Id. Munsiff No.1, Tezpur in Title Suit No.33 of 2020 is hereby **set aside**.

22. The appellants/plaintiffs are **entitled to the decree of specific performance of contract for execution of the sale deed regarding the suit land in favour of the plaintiffs on payment of the balance consideration of Rs. 5,000/- along with permanent injunction restraining the defendant from selling/transferring the suit land to any other person. As a consequential relief the plaintiffs are also entitled to the delivery of possession of the suit land by the defendant and cost of the suit.**

23. Prepare the decree accordingly.

24. Send down the case record of TS No.33/2020 to the trial court with a copy of this judgment and decree.

Given under my hand and seal of this court on this the 04th day of November, 2022.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

Dictated and corrected by me.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

APPENDIX

Plaintiff's witnesses:

PW-1: Sri Bikash Paul, plaintiff

Defendant's witnesses:

None

Exhibits of the Plaintiffs:

Ext.1 : Deed of Agreement for sale of the suit land executed between Plaintiff No.1 with Plaintiff No. 2, 3 and the Defendant on 16-12-2019

Ext.2 : Jamabandi of P.P No. 37(Old), 697(New) of Tezpur Town 4th Part, Mouza: Mahabhairab, PO & PS- Tezpur, Dist- Sonitpur, Assam dated 03-06-2020

Ext.3 : Land Revenue Pay receipt being serial No. 8157287 dated 08-06-2020

Exhibits of the defendant :

Nil

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur