

**Assam Schedule VII Form No. 132**

**HIGH COURT FORM NO. (J)2**

**HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE**

**District : Sonitpur**

In The Court of the Munsiff No. 1, Tezpur, Sonitpur

**Present : Smt. G. Rabha, AJS**

\_\_\_\_\_Friday, the \_23<sup>rd</sup>\_ day of \_\_\_March'2012

\_\_Title Suit / Case No. \_\_19\_\_ of 2005

**1. Late Khurshed Ali**

**Substituted legal heirs**

**1. Atabur Rahman**

**2. Julhas Ali**

**3. Nazirul Islam ..... Plaintiffs**

**- Versus -**

**1. Hamid Ali**

**2. Golab Hussain ..... defendants**

This Suit coming on for final hearing on<sup>(1)</sup> 12-1-12, 27-2-12, 12-3-12,  
19-3-12 Give date or dates, in the presence of

Mr. S.C. Acharya, Advocate Advocate(s) / for Plaintiff(s)

Mr. R. Upadhya Advocate (since deceased)

Mr. Pramod Sharma, Advocate Advocate(s) / for Defendant(s)

and having stood for consideration to this day 23/3/12 the  
Court delivered the following Judgment:-

## **JUDGMENT**

1. This suit has been filed for declaration of Right, Title and Interest over the suit land and for Khas possession by evicting the defendant no.1 and for declaration that the sale deed no: 351 13-3-2002 is null and void.

**2. Schedule of the suit land as described in Schedule A**

2 katha 10 lecheas (out of 1 B-2 K 19L) covered by dag no. 204 of P.P. no. 20 (O) 19 (N) of Bokajan revenue Mouza: Goroimari, dist . Sonitpur [Assam],

3. **The facts of plaintiff's case:** In nutshell the case of the plaintiff Khurshed Ali is that he had purchased the suit patta land measuring 2 katha 10 lessaa vide two sale deed no: 1464 dated 1992 and Sale deed no: 60 of 1993 respectively. The plaintiff stated that the suit land was jointly cultivated by his four sons Atabur, Julhas Ali, Naziruddin and Golab Hussain. The plaintiff pleaded that on 15-3-2002 when he went to cultivate his land he found that the defendant no.1 had forcibly dispossess him from 2 kathas 10 lessas of land. The plaintiff further disclosed that on enquiry he found that his son Golab Hussain had executed sale deed no: 351 in the year 2002 in favour of the defendant no.1 and on basis of the sale deed the defendant had mutated his name in the records of right. The plaintiff stated that the sale deed no: 351 was executed without any rights and title and the same is liable to be cancelled as illegal. Hence this case has been filed.

4. **The facts of the case as per written statement:** The principal defendant no. 1 had filed written statement inter alia stating that this suit is bad for non joinder of necessary parties. The defendant stated that the averments made in the plaint are totally false and baseless. The defendant stated that the suit was purchased by Golap Hussain, def no.2 from Late Lalu Mura and lawfully mutated his name. The defendant further stated the defendant no-2 has right and title over the suit land and he had lawfully executed the sale deed no: 351 in his favour. The defendant denied that there was any forcible possession and prayed to dismiss the suit.
5. Considering the pleading of both sides this Court has framed the issues as given below.:
- 1) *Whether the suit is maintainable in its present form?*
  - 2) *Whether the plaintiff has right , title and interest over the suit land?*
  - 3) *Whether the suit is barred by limitation ?*
  - 4) *Whether the sale deed bearing no: 351 of 2002 dated 13-3-2002 is null and void and inoperative?*
  - 5) *Whether the mutation entry of defendant no.2 in respect of the suit land in the jamabandi is illegal and liable to be cancelled?*
  - 6) *Whether the plaintiff is entitle to relief as prayed for ?*
  - 7) *To what other relief /reliefs the parties are entitled.*

6. The plaintiff had examined three witnesses PW.1 Khurshed Ali, PW-2 Fazar Ali and PW-3 Aitab Hussain , the plaintiff had adduced the following documents:

Exhibits no. 1 Sale deed no: 351 of 2002.

Exhibits no. 2 sale deed no. 60 of 1993

Exhibits no. 3 sale deed no: 1464 of 1992.

Exhibits no. 4 Jamabandi copy

7. The defendant Hamid Ali had examined himself DW-1.

#### DECISION, DISCUSSION AND REASONS THEREOF:

*Issue no, a and c*

*Whether the suit is maintainable in its present form?*

*Whether the suit is barred by limitation ?*

8. Two issues were raised challenging the maintainability of this suit.
  - a. Non-joinder of necessary parties
  - b. Point of Limitation.
9. **Non-joinder of necessary parties:** The plaintiff Khurshed Ali has pleaded that he is the sole pattadar of the suit land and hence he had filed this suit as sole plaintiff. On the other hand the defendant challenged the legal status of the plaintiff and denied the claim that plaintiff Khurshed Ali is the sole pattadar. It is the submission of learned counsel of the defendant that since Khurshed Ali died after his evidence got recorded, all the sons and daughters of deceased Khurshed Ali are necessary parties in this

suit, hence non impleadment of their names as parties in this suit had effected the merit of the suit and the suit is liable to be dismissed.

10. Considering the submission of both sides, and in view of pleadings on record, I am of opinion that the subject matter of the suit does not involves the question of shares and partition, it is a simple case for declaration and cancellation of sale deed no: 351 as null and void on the ground that the vendor had no right over the suit land at that point of time thus the impleadment of all the sons or daughters of Khurshed Ali (since deceased) is not necessary for adjudication of this suit. In so far as substitution is concerned the sons of Khurshed Ali were substituted as his legal heirs and the second son Golap Hussain was already arrayed as defendant no.2. That apart, it is settled law that as against a stranger who has dispossessed the land, even one of the legal heir could maintain the suit. Thus, I am of opinion that the defendants had failed to show that this case is not maintainable in its present case. The issue is thus decided in positive in favour of the plaintiff.

#### **Point of Limitation**

11. The defendant did not submitted how this suit is hit by law of limitation. Thus issue no. c is decided in favour of the plaintiff.

Issue no. b,

*Whether the plaintiff has right , title and interest over the suit land?*

12. The plaintiff Khurshed Ali alleged that during his life time his eldest son Golap Hussain had executed the sale deed no. 351 in favour of the defendant no.1 Hamid Ali, when Golap Hussain has had no such right, title and interest over the suit. PW-1 had averred that he had purchased the suit patta land measuring 2 katha 10 lessaa vide two sale deed no: 1464 dated 1992 (Ext-2) and Sale deed no: 60 of 1993 (Ext-3) respectively and accordingly mutated his name in records of right (Ext-4). PW-1 admitted the joint possession of Golap Hussain over the suit land along with his other sons. According to this witness all his four sons Atabur, Julhas Ali, Naziruddin and Golab Hussain used to cultivate the land on his behalf and he (PW1) was in peaceful possession. On that date he found that the defendant no.1 had forcibly dispossessed him from 2 kathas 10 lessas of land. The plaintiff on enquiry found that his son Golab Hussain had executed sale deed no: 351 in the year 2002 in favour of the defendant no.1 and on basis of the said sale deed the defendant had mutated his name in the records of right. The plaintiff stated that the sale deed no: 351 was executed without any rights and title of the vendor and the same is liable to be cancelled as illegal.
13. Per contra the defendant Hamid Ali denied the right and title of Khurshed Ali as sole pattader and averred as DW-1 that Golap Hussain has right and title over the suit land on his right on strength of purchase deed executed in his favour by one tea-labour. Thus Golap Hussain being the owner had transferred his right and title vide sale deed no: 351 in favour of DW1 and hence at present he is the lawful title holder over the suit land measuring 2 katha 10 lessas.
14. In view of the discussion aforesaid, I would like to point out the facts which is not disputed:

- i. The suit land is claimed by both sides to be personal property, so there is no question of succession and share.
  - ii. The right of vendor Golap Hussain to execute sale deed no: 351 of 2002 is in dispute.
- 15. I am only concerned with the question as to whether the original plaintiff Khurshed Ali (since deceased) had acquired the property on purchase or was it his son Golap Hussain who had purchased the suit land. Let me visit the deposition of PW-1 Khurshed Ali, wherein he had deposed that he had purchased 2 Katha 10 Lessas of land vide sale deed no. 60/ 1993 covered under dag no: 240 and P.P no: 20 (O), 19 (N) and another plot of same dag and patta vide sale deed no: 1464 of 1992 and mutated his name over the 1 Bigha land as sole pattadar. PW-2 Fazar Ali and PW-3 Aitab Hussain both the plaintiff witnesses had deposed that PW-1 was the sole pattadar of the suit land and his sons were cultivating the land on his behalf. In support of the right and title of PW-1, the plaintiff had exhibited certified copy of sale deed no. 60/ 1993 (Ext-2), sale deed no: 1464 of 1992 (Ext-3) and Jamabandi copy (Ext-4). I have gone through the contents of the sale deeds, and compared them with the scheduled land and I find that PW-1 had indeed purchased the suit land from Gobardhan Mura on consideration and on strength of these two sale deed exhibited . By exhibiting the jamabandi PW-1 has led some evidence of his coming into possession of the suit land and this aspect has been supported by PW2 and PW3.
- 16. Mr. R. Upadhyaya, learned counsel of plaintiff had submitted that the registered sale deed is one of the recognized and valid mode of transfer of immovable property under the Transfer of Property Act. Such transactions of immovable property by the pattadar

through registered sale deed convey title and create interest in an immovable property upon the purchaser. I agree with the submission of Mr. R. Upadhyaya and with this in mind when I have gone through the contents of the sale deeds, viz sale deed no. 60/1993 (Ext-2) and sale deed no: 1464 of 1992 (Ext-3). I found that contents of the sale deeds reflects that Gobardhan Mura, who has right and title over the suit land had lawfully conveyed title of the suit property upon the plaintiff on consideration .

17. While discussing on the value of jamabandi (Ext-4), which is definitely records of right, I would like to point out that under the Assam Land and Revenue Regulation, only if these records of right are prepared and maintained in accordance with law or in consonance with the provisions of the said Regulation, they have certain evidentiary value to establish the possession and also to certain extent even title of a person. However, the condition precedent is that it must be proved that the entering of the name in the records of right has been done on sound legal principles. In this instant case the plaintiff has been able to prove that the mutation in the name of Khurshed Ai (since deceased) was prepared on the basis to sale deeds viz, Ext- 2 and 3. Thus, as per the Assam Land and Revenue Regulation, Ext-4 Jamabandi will be considered as documents of possession as well as of title of Khurshed Ali. Thus issue no. b decided in positive in favour of plaintiff.

*Whether the sale deed bearing no: 351 of 2002 dated 13-3-2002 is null and void and inoperative?*

*Whether the mutation entry of defendant no.2 in respect of the suit land in the jamabandi is illegal and liable to be cancelled?*

18. While discussing issue no. d and e, I would like to continue the thread of discussion on record of rights. I reiterate jamabandi is definitely records of right, under the Assam Land and Revenue Regulation, only if these records of right are prepared and maintained in accordance with law or in consonance with the provisions of the said Regulation. With this mind set I have revisited the deposition of DW-1, wherein he claim that defendant no-2 had lawfully transferred his title upon him and in support of his defence the learned counsel of defendant had pointed out that the name of Golap Hussain is mutated as one of the pattader in Ext-4 jamabandi. Learned counsel of defendant had stress the point that all the three plaintiff witnesses had admitted in their cross-examination that Golap Hussain has been in continuous possession over the suit land. I am not convenience by this argument of possession since it has been already been clarified above that Golap Hussain is in possession over the suit land on behalf of his father Khurshed Ali for cultivation of land . It will be not out of place to put forward that as per Muslim Law unlike Hindu law there is no question of joint property and thus the possession over his father's land for cultivation does not confers any right upon Golap Hussain.
19. Now coming back to the point of record of right in the name of Golap Hussain, I would like to point out that the onus shift to defendant to prove that Ext-4 Jamabandi in the name of Golap Hussain was prepared and maintained in accordance with law or in consonance with the provisions of the said Regulation. The defendant no. 1 though took the plea that Golap Hussain had purchased the suit land but he miserably failed to adduce any such documents. In his cross-examination DW-1 admitted that he had not submitted the sale deed by virtue of which he claims that

Golap Hussain had purchased the suit land, thus the defendant failed to establish his claim with cogent evidence.

20. In view of above discussion I am of opinion that when the plaintiff side had successfully proved the source of property acquired by Khurshed Ali and established his right and title as pattadar of the suit land and where the defendant not only failed to prove the source of title of vendor Golap Hussain but he had also failed to proof on what basis the Golap Hussain had mutated his right. Thus such mutation in the name of Golap Hussain doesnot creates any right and when the vendor Golap Hussain doesnot have any right over the suit land, he does not have any legal title to transfer upon the defendant. In common parlance Golap Hussain has executed the Sale deed no. 351 without any right and title over the suit land and hence the sale deed is illegal in law. Issue no. d and e are decided in negative.

Issue no.f and g

*Whether the plaintiff is entitle to relief as prayed for ?*

*To what other relief /reliefs the parties are entitled.*

21. In view of discussion and decision aforesaid I am of opinion that the plaintiff is entitled to relief as prayed for.

22. The plaintiff is entitled to following reliefs:

- 1) The suit is decreed with declaration that the plaintiff Khurshed Ali (since deceased) has right Title and interest over the suit land.
- 2) The sale deed no: 351 of 2002 is declared null and void, illegal and liable to be cancelled.
- 3) The mutation entry in the name of Golap Hussain is illegal and liable to be cancelled
- 4) Cost of the suit.

23. Thus both this two issues are decided in positive in favour of the plaintiff.

#### 24. ORDER

The suit is decreed on contest with cost.

The plaintiff is entitled to following reliefs:

- 1) The suit is decreed with declaration that the plaintiff Khurshed Ali (since deceased) has right Title and interest over the suit land.
- 2) The sale deed no: 351 of 2002 is declared null and void, illegal and liable to be cancelled.
- 3) The mutation entry in the name of Golap Hussain is illegal and liable to be cancelled
- 4) Cost of the suit.

Prepare the decree accordingly within 15 days and place it before this Court.

Thus this Judgment and Order is passed under the hand and seal of this Court on 23<sup>rd</sup> march'2012.

Gitali Rabha  
(Munsiff no.1, Tezpur)

#### Annexure

##### Plaintiff Witnesses

PW.1 Khurshed Ali,

PW-2 Fazar Ali and

PW-3 Aitab Hussain ,

##### Plaintiff Exhibits

Exhibits no. 1 Sale deed no: 351of 2002.

Exhibits no. 2 sale deed no. 60/ 1993

Exhibits no. 3 sale deed no: 1464 of 1992.

Exhibits no. 4 Jamabandi copy

##### Defendant witness

DW-1 Hamid Ali.