

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

**District : Sonitpur.**

**IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.**

Present : **Sri M. Kalita,**  
**Civil Judge,**  
**Sonitpur, Tezpur.**

Tuesday the 17 th day of July, 2012.

**Title Suit NO. 24 of 2004.**

1. Sri Khitish Tarafdar,  
S/O Late Nanda Kishore Tarafdar,  
resident of Madhyapara, Tezpur Town,  
Dist. Sonitpur, (Assam) ..... **Plaintiff.**

**-VERSUS-**

1. Smti Manju Rai,  
W/O Sri Ratan Kr. Rai, Vill - Rubber Bagan,  
Tezpur, Mouza - Mahabhairab,  
Sonitpur.
2. Sri Niranjan Sarkar, S/O Sri Rabindra Sarkar,  
Vill - Bhitorsuti, Mouza- Bhairabpad,  
Dist. Sonitpur.
3. Smti Nivarani Debnath,  
W/O Late Sunil Debnath,  
Vill - Bhitorsuti, Mouza- Bhairabpad,  
Dist. Sonitpur.
4. Sri Biswajit Talukdar,  
S/O Sri Satyendra Talukdar,  
Vill - Bhitorsuti, Mouza- Bhairabpad,  
Dist. Sonitpur(Assam). ..... **Defendants.**

This suit coming on for final hearing or having been  
heard on 6<sup>th</sup> day of July,2012.

Mr. P. C. Sarmah, Advocate ... For the Plaintiff

Mr. S. Misra, Advocate .... For the defendants.

And having stood for consideration this day, the  
17th July, 2012 the Court delivered the following  
Judgment :

**J U D G M E N T**

1. This is the suit filed by the plaintiff Sri Khitish Tarafdar against the defendant Smti Manju Rai and 3 others for declaration, cancellation, eviction, recovery of possession, realisation of compensation and for permanent prohibitory injunction. The suit is valued at Rs. 2,27,000/- and the advolerum court fee is paid accordingly.

2. As reflected in the plaint, briefly the plaintiff's case is that the plaintiff being the resident of Madhyapara, Tezpur, Mouza-Nahabhairab within the district of Sonipur was the absolute owner, title holder and possessor of the land measuring 10 bighas 2 kathas covered by PP No. 3 (old) 115 (new) and Dag No. 224 situated at village Bhitorsuti under Bhairabpad Mouza within the district of Sonipur which is specifically mentioned in the schedule of the plaint. As the plaintiff was in need of huge amount of money for the purpose of medical treatment of his wife Mrs. Chameli Tarafdar, he wanted to sell a major portion of the said land and accordingly asked the defendant No.4 Sri Biswajit Talukdar who was well known as land broker to arrange the sale of one portion of land measuring 4 bighas 2 kathas 10 lessas out of total land measuring 10 bighas 2 kathas and the said portion of land is specifically mentioned in schedule 'A' of the plaint. Then, the defendant No. 4 also agreed to pay the sale consideration amount of Rs. 60,000/- per katha to the plaintiff depending upon execution of the sale deed in favour of the purchasers. Thereafter, the plaintiff executed the sale deed in favour of 8 Nos of purchasers namely, Sri Nirmal Paul, Sri Samir Das, Sri Sujit Debnath, Sri Puran Tan, Sri Sudhan, Smti Rupali, Sri Baba and Sri Purna after receiving the sale consideration amount of Rs. 8,70,000/- and after receiving the said amount the plaintiff spent whole amount for the medical treatment of his wife at Tezpur, Nagaon, Howra, Guwahati, Kolkata, Hyderabad. Even then as the wife of the plaintiff did not recover so, the plaintiff asked the defendant No.4 to pay an amount not less than Rs. 3,00,000/- by selling the remaining portion of land. On 3-05-2003 the defendant

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No.4 approached the plaintiff and told him that he had already made contract with 3 persons for selling the land measuring 3 kathas 10 lessas. At that time the plaintiff asked the defendant No.4 to pay an amount of Rs. 1,00,000/- as advance as the money was urgently needed for treatment of his wife at Bangalore. Thereafter, the defendant No.4 on 13-05-03 obtained the signatures of the plaintiff on 13 numbers of blank stamp papers, on 3 numbers of blank papers and on 3 numbers of typed/printed papers by telling the plaintiff that these were required for receiving the advance payment from the purchasers as well as to obtain the permission from the Deputy Commissioner. The plaintiff also on good faith signed on the papers without any hesitation as he was in urgent need of money. Though at the time plaintiff asked the defendants to pay an amount of Rs. 1,00,000/- within the evening of next day but the defendant No.4 did not pay the money to the plaintiff. When the plaintiff and his son Monoj Tarafdar searched for the defendant No.4 but they could not trace out him and finding no other way the plaintiff had to postpone the programme of taking his wife to Bangalore due to lack of money. Till that time the defendant Nos. 1,2 and 3 were not known to him.

**3.** The plaintiff's further case is that in the last part of July, 2003 the plaintiff came to know that a plot of land measuring 3 kathas 10 lessas had already been sold to defendant Nos. 1,2 and 3 on 17-05-03 by executing 3 numbers of separate sale deeds in their names which were registered in the Office of Sub-Registrar, Dhekiajuli though the plaintiff was not present in the office of Sub-Registrar, Dhekiajuli on that day. After obtaining the certified copy of such sale deeds on 04-08-03 the plaintiff came to know that said sale deeds were written by one Smti Kiran Devi, the petition writer of Tezpur Court and the deeds were registered at Dhekiajuli Sub-Registrar Office on the insistence of defendant No.4 as defendant No.4 put the signatures of the plaintiff on the backside of the first page of stamp paper of each sale deeds. At that time the defendant No. 4 identified himself as Kshitish Tarafdar (plaintiff) as the vendor of the land. The defendant No. 4 also acknowledged regarding the

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receipt of the consideration amount from the purchasers (from the defendant Nos, 1,2 and 3). He also came to know that a plot of land measuring 2 kathas was purchased by Smti Manju Rai, the defendant No.1 at a consideration amount of Rs. 42,000/- by virtue of sale Deed No. 581/2003. Sri Niranjan Sarkar, the defendant No.2 purchased the land measuring 1 katha at a consideration of Rs. 2000/- vide registered sale Deed No. 583/2003 and Smti Nibharani Debnath, defendant No. 3 purchased the 10 lessas of land at a consideration of Rs. 10,000/- vide registered Sale Deed No. 584/2003. The sale consideration was not paid to the plaintiff by the defendant No.4 though he had received the consideration amount from the defendant No.1,2 and 3. The Sale Deeds were registered at Dhekiajuli Sub-Registrar Office to conceal the fact from the plaintiff. The Sub-Registrar, Dhekiajuli also registered the sale Deeds without any sale permission from the Deputy Commissioner, Sonitpur, Tezpur which was compulsorily required. Thereafter the defendant Nos. 1,2 and 3 mutated their names in their respective plots of land at the Office of Circle Officer, Tezpur Revenue Circle. Though the plaintiff filed objection against the petition filed by the defendants for mutating their names but Circle Officer did not give any importance to the objection raised by the plaintiff.

**4.** The plaintiff's further case is that on 24-03-04 the plaintiff came to know from his son that the defendant No.1 had completed 60% of the construction work of a Assam type pucca house on the land mentioned in the schedule 'A' of the plaint which is the part of total land mentioned in schedule of the plaint. At the time the defendant No.1 told that she had purchased the land from the defendant No.4 and possession of land was also given to him by defendant No.4. As the defendant No.4 could know about the boundaries of the land at the time of selling of the land measuring 4 bighas kathas 10 lessas to 8 purchasers so, the defendant No.4 was able to handover the possession of the land specifically mentioned in schedule 'B', 'C' and 'D'. The defendant Nos. 1,2 and 3 have no legal right to take possession of the said land by virtue of said sale deeds which are null, void and inoperative in law and the defendant

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No.4 had no legal right to hand over the possession of the said land to them. The defendant No. 4 being a broker deliberately cheated the plaintiff by taking the advantage of busy for the treatment of his wife, fraudulently registered the Sale Deeds putting the signatures of the plaintiff by presenting himself as vendor in place of plaintiff and registered the Sale Deeds in the office of the Sub-Registrar, Dhekiajuli without registering the same in the office of the Sub-Registrar, Tezpur. So, the said Sale deed Nos. 581/2003, 583/2003 and 584/2003 are required to be cancelled as these Sale Deeds are null, void and inoperative. Moreover, the mutation order passed by the Circle Officer, Tezpur Revenue Circle on the basis of such fraudulent Sale Deeds are also required to be cancelled. The defendant No.1 is also required to be evicted from the land as described in the schedule 'B' of the plaint by demolishing her illegal construction. The plaintiff also obstructed the defendant No.2 and 3 from taking the possession of the land mentioned in the schedule 'C' and 'D' so they could not succeed to their illegal attempt. So, they are required to be restrained and prohibited by granting permanent injunction. As the plaintiff suffered immense mental pain and agony for for willful, deliberate and fraudulent action of the defendant No. 4 so, the plaintiff is also entitled to compensation for an amount of Rs. 1,25,000/- from the defendant No.4.

**5.** The cause of action arose on and from 03-05-03, 13-05-03, 17-05-03, 04-08-03, 30-09-04 and every dates thereafter within the jurisdiction of this Court. So, the plaintiff has prayed -

(i) for a decree of declaration that the Sale Deed Nos. 581/2003, 583/2003 and 584/2003 as cancelled as the Sale Deeds are null and void and inoperative in law:

(ii) for a decree of declaration that the mutation done in the name of defendant Nos. 1,2 and 3 on the strength of such Sale Deeds as cancelled, null and void and inoperative in law ;

(iii) for a decree of recovery of khas possession by evicting the defendant No.1 from the possession of the land mentioned in schedule 'B' of the plaint ;

(iv) for a decree of realisation an amount of Rs.

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1,25,000/- from the defendants as compensation along with interest @ 6% on the decretal amount till to the realisation of the amount;

(v) for a decree of permanent prohibitory injunction restraining the defendant Nos. 1,2 and 3, their men, relatives, friends or any persons from taking illegal possession of the land mentioned in the schedule 'C' and 'D';

(vi) for a decree of the cost of the suit and any other reliefs as fit and proper by the Court.

**6.** After receiving the summon, the defendants have contested the suit by filing the written statement by the grounds that the suit is not maintainable as there is no cause of action for institution of the suit and the suit is bad for principle of waiver, estoppel and acquiescence. The defendants have denied most of the allegations of the plaintiff. The defendants have further stated in the written statement that the defendant No. 4 is not a land broker as alleged by the plaintiff and he never agreed to pay the consideration amount of Rs. 60,000/- per katha to the plaintiff. He had no any business to fix the sale consideration of land of the plaintiff. But the plaintiff himself was responsible for sale transaction and registration of the sale deeds in favour of the different purchasers and defendant No.4 had nothing to do with said transaction. The plaintiff himself transferred his said land by bargaining the sale consideration with the said purchasers. He directly received the sale consideration from the purchasers. The plaintiff sold his land to the purchasers namely, Sri Nirmal Paul, Sri Samir Paul, Sri Sujit Debnath, Sri Purna Tan, Sri Sudha, Smti Rupali, Sri Baba and Smti Manju Rai. Sri Niranjan Sarkar and Smti Nibharani Debnath. The defendant No. 4 never went to the plaintiff on 03-05-2003 to provide help for selling the land measuring 3 kathas 10 lessas as alleged by the plaintiff and the plaintiff never told him to pay Rs. 1,00,000/- as advance. The defendant No. 4 never went to the plaintiff along with 13 numbers of blank stamp papers and 3 numbers of blank papers and 3 numbers of typed/printed papers on 13-05-03 or on any other dates. The defendant No.4 did not approach the plaintiff for obtaining signatures on 13 numbers of

blank stamp papers and 3 numbers of blank papers and 3 numbers of typed/printed papers.

**7.** The defendants have further stated in the written statement that the defendant Nos.1,2 and 3 were personally known to plaintiff since long as the defendant No.1 was the neighbour of the plaintiff and defendant Nos. 2,3 and 4 were the residents near the plot of land mentioned in the schedule of the plaint. The plaintiff offered to sale his land in the month of October/02 to the defendant Nos. 1,2 and 3 and they accepted the offer of the plaintiff and agreed to purchase the respective plot of land mentioned in the schedule 'B' , 'C' and 'D'. The plaintiff himself fixed the sale consideration of the land after bargaining with the defendant Nos 1, 2 and 3 and he himself undertook to obtain permission from the Deputy Commissioner and Tezpur Development Authority. And accordingly, he had taken charges, fees and expenses from the defendant No.1,2 and 3 for obtaining such permission for execution of the Sale Deeds in their favour and also obtained their signatures on different forms, papers. At that time though the plaintiff demanded the sale consideration from the defendant No. 1,2 and 3, but they assured the plaintiff to pay the amount after obtaining the required permission for sale of the land. On 16-05-03 the plaintiff informed the defendant No. 1, 2 and 3 that he had already obtained the requisite permission. Then on 17-05-03 they paid full and final sale consideration amount to the plaintiff for the land and the plaintiff acknowledged the receipt of amount. The defendant No.1 paid Rs. 42,000/- , defendant No.2 paid Rs. 20,000/- and defendant No. 3 paid Rs. 10,000/- to the plaintiff and on the same day, the plaintiff executed the registered Sale Deeds in favour of the defendant Nos. 1,2 and 3. On 18-05-03 the plaintiff in presence of other villagers and neighbouring people delivered khas possession of the land mentioned in the schedule 'B' to the defendant No.1, the land mentioned in the schedule 'C' to the defendant No.2 and the land mentioned in the schedule 'D' to the defendant No.3 and accordingly, they had entered into their respective part of the land.

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And they have been still possessing their respective part of the land by constructing the house and wall. So, the plaintiff has no possession over such land.

The defendants have further stated in the written statement that the defendants have their right, title, interest and possession in their respective plot of land and the plaintiff ceased himself the right, title, interest and possession of the land after execution of the sale deeds and delivery of khas possession of the land. Because the plaintiff upon receipt of the full sale consideration executed the registered sale deeds in favour of the defendant Nos. 1,2, and 3 and delivered khas possession of the land mentioned in the schedule 'B', 'C' and 'D'. The plaintiff with malafide intention has instituted this suit with ulterior motive and false allegation. He has been trying to recovery the possession of the land by evicting the defendant Nos. 1,2 and 3. The plaintiff has also been trying to cheat the defendants by selling the land to other persons. The suit filed by the plaintiff is totally false and vexatious. So, he is not entitled to any relief sought by him. Hence, the defendants have prayed for dismissing the suit of the plaintiff with compensatory cost.

**8.** On the basis of contention raised in the plaint and the written statement and after hearing both sides, the following issues are framed :-

- 1.** Whether there is any cause of action for the suit ?
- 2.** Whether the suit is bad for principles of waiver, estoppel and acquiescence ?

**3.** Whether in the evening of 13-05-03 the defendant No.4 took signatures of the plaintiff on 13 numbers of blank stamp papers, 3 numbers of blank papers, 3 numbers of typed/printed papers for receiving the advance payment from the purchasers (defendant Nos. 1,2 and 3) as well as to obtain permission from the

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Deputy Commissioner, Soniptur, Tezpur  
assuring to pay the amount of Rs.  
1,00,000/- in the evening of next day ?

**4.** Whether the Sale Deed Nos. 581/2003,  
583/2003 and 584/2003 were executed  
when the plaintiff was not present in the  
Office of the Sub-Registrar, Dhekiajuli, for  
putting his signatures on the Sale Deeds as  
well as in the official record book of the  
Office at the time of registration of said  
Sale Deeds without making any payment as  
assured by the defendant No.4 to the  
plaintiff ?

**5.** Whether the mutation was done in the  
name of the defendant Nos. 1, 2 and 3 on  
the strength of the said fraudulent, forged  
Sale Deeds in respect of the land as  
described in the schedule 'B', 'C' and 'D'  
are null, void and inoperative in law ?

**6.** Whether the plaintiff is entitled for recovery  
of khas possession of the schedule "B" land  
after eviction of defendant No.1 ?

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

**9.** During the course of hearing, the plaintiff has examined as  
many as 4 PWs including himself and one official witness from Sub-  
Registrar Office, Dhekiajuli and proved 6 Nos of documents in  
support of his case.

The PWs who have been examined by the plaintiff are  
as follows :-

1. PW 1 - Sri Khitish Tarafdar,
2. PW 2 - Sri Monoj Tarafdar,
3. PW 3 - Sri Sunil Das,
4. PW 4 - Sri Dina Ranjan Bora.

The documents exhibited by PWs are as follows :-

1. Ext. 1 to 3 - The Sale Deeds Nos 581/03, 583/03 and 504/03 respectively
2. Ext. 4 - Jamabandi Copy,
3. Ext. 5 - Letter sent to the SDC Office, Dhekiajuli.
4. Ext. 6 - Postal receipt.

**10.** On the other hand, the defendants have examined 4 DWs including the defendant Nos. 1,2,3 in support of their case and proved one number of document (the case record of CR No. 73/05).

The DWs who are examined by the defendants are as follows :-

1. DW 1 - Smti Manju Rai,
2. DW 2 - Sri Niranjan Sarkar,
3. DW 3 - Smti Nibharani Debnath,
4. DW 5 - Sri Ratan Kr. Roy.

**11.** After close of final hearing, the judgment is delivered. The issues are discussed and decided one by one for finally deciding the suit.

**12.** For benefit of convenient discussion, I like to discuss the Issue No.4 first.

**Issue No. 4.**

**13.** Whether the Sale Deed Nos. 581/2003, 583/2003 and 584/2003 were executed when the plaintiff was not present in the Office of the Sub-Registrar, Dhekiajuli, for putting his signatures on the Sale Deeds as well as in the official record book of the Office at the time of registration of said Sale Deeds without making any payment as assured by the defendant No.4 to the plaintiff ?

In regards to this issue, the plaintiff has brought

allegation against the defendants in his plaint as well as in his evidence that on 03-05-03 the defendant No.4 approached the plaintiff and told him that he had already made arrangement to sell the plot of land measuring 3 kathas 10 lessas to 3 purchasers and on 13-05-03 the defendant No.4 met the plaintiff and obtained his signatures on 13 numbers of blank stamp papers, 3 numbers of blank papers, 3 numbers of typed/printed papers for the purpose of receiving the advance payment from 3 purchasers (defendant Nos. 1, 2 and 3) as well as to obtain permission from the Deputy Commissioner, Soniptur, Tezpur as required for selling the land. And accordingly, he (plaintiff) put his signatures on the blank stamp papers, on the blank papers and on the typed/printed papers without any hesitation as the defendants assured him to pay the amount of Rs. 1,00,000/- as requested by him within the next day. But the defendant No.4 failed to pay the money within the next day and after making enquiry, the plaintiff came to know that the said land measuring 3 kathas 10 lessas had already been sold to the defendant No.1, 2 and 3 on 17-05-03 by executing 3 numbers of separate sale Deeds in favour of the defendants in the Office of the Sub-Registrar, Dhekiajuli in absence of plaintiff.

**14.** The plaintiff who has examined himself as PW 1, has exhibited the Sale Deed No. 581/03 as Exhibit 1 and stated that his signatures appears on the said Sale Deed are not his signatures. PW 1 has also exhibited the Sale Deed No. 583/03 as Exhibit 2 and stated that his signatures appears on the said Sale Deed are not his signatures. PW 1 has further exhibited the Sale Deed No. 584/03 as Exhibit 3 and stated that his signatures appears on the said Sale Deed are not his signatures. The PW 1 has also produced the copy of one application which was earlier submitted by him before the Sub-Registrar, Dhekiajuli as Ext. 5. In the said application the plaintiff had stated that the 3 Sale Deeds executed in the Dhekiajuli Sub-Registrar Office without having any sale permission. PW 2 Monoj Tarafdar has also deposed in his evidence that the Sale Deed Nos. 581/2003, 583/2003 and 584/2003 were executed in the Office of the Sub-Registrar, Dhekiajuli, in favour of the defendant No.1

Smti Manju Rai, defendant No.2 Sri Niranjan Sarkar and defendant No.3 Smti Nibharani Debnath respectively in absence of his father as vendor and the sale consideration was not given to his father. PW 3 Sri Sunil Nath has stated that while he was residing in the rented house of the plaintiff on one day he witnessed that defendant No.4 Biswajit Talukdar came and obtained the signatures of plaintiff Khitish Tarafdar on some blank stamp papers and blank papers. On that day Biswajit Talukdar also assured the plaintiff that he would pay the amount of Rs. 1,00,000/- but the money was not paid by him. PW 4 , the Office Assistant of Dhekiajuli Sub-Registrar Office has deposed that the Sale Deed Nos. 581/2003, 583/2003 and 584/2003 were registered at Dhekiajuli Sub-Registrar Office and Khitish Tarafdar put his signatures on the Sale Deeds at the time of registration. He also put his signatures on the Register Book. He has exhibited the Register Book as Ext. 6. He has further stated that the signatures put on the Register Book and the stamp papers were the signature of Khitish Tarafdar. But in the cross-examination, the PW 4 has stated that the signatures of vendor/seller were usually taken on the backside of the stamp papers but the signatures were taken over the white colour (used the whitener) used before taking the signatures of the plaintiff. PW 4 has also admitted that he did not know about the person who had used the whitener before taking the signatures of plaintiff Khitish Tarafdar.

**15.** In the cross-examination the plaintiff (PW 1) has denied some suggestion put to him by the defendant regarding the execution of Sale Deeds and fixation of sale consideration for the purpose of selling the land to defendant Nos. 1, 2 and 3. PW 1 has further stated that the defendant Nos. 1, 2 and 3 were not known to him though they were the residents near the suit land. In the cross-examination, the PW 2 has denied the fact that 3 numbers of Sale Deeds were executed by Biswajit Talukdar by receiving the sale consideration from the defendant Nos. 1,2 and 3 in absence of his father. In the cross-examination, PW 3 has stated that Biswajit Talukdar came to the residence of plaintiff Khitish Tarafdar on 13-05-03 and obtained his signatures on stamp blank papers and blank

papers but he had no any knowledge regarding the discussion that was taken place between the plaintiff and Biswajit Talukdar on that day.

**16.** On the other hand, the defendant Nos. 1,2 and 3 who have examined as DW 1, DW 2 and DW 3 have deposed that the sale Deeds were executed by the plaintiff himself though Biswajit Talukdar put his signatures as witness. The sale consideration was directly paid to the plaintiff by them and the sale consideration was fixed by them after discussing with the plaintiff. Biswajit Talukdar was not connected with the transaction and no discussion was made by Biswajit Talukdar on behalf of them with the plaintiff in regards to the purchase of the land. And after execution of the Sale Deeds the possession of respective plot of land were handed over to them by the plaintiff and thereafter they got possessing of the land and got right, title and interest over the respective plot of land by them by virtue of said registered Sale Deeds. But, in the cross-examination, the DW 1 Manju Rai has stated that at the time of registration of sale Deeds, the persons namely, Niranjan Sarkar, Ratan kr. Rai, Biswajit Talukdar, Ujjal Seal Sarma and Nalinibala Debnath were present and they signed on the Sale Deeds as witnesses. In the cross-examination DW 2 has admitted that Biswajit Talukdar made arrangement to sell the land of the plaintiff. In his cross-examination he has clearly stated that he purchased one katha of land from the plaintiff and he was not present at the time of execution of the registered sale Deeds. In the cross-examination, the DW 3 has denied the fact that Biswajit Talukdar had arranged for purchasing the land from the plaintiff and she was not present at the time of registration of the Sale Deeds. DW 5 Ratan Kr. Rai has stated that he was present when the discussion was made by the defendants Manju Ray, Niranjan Sarkar and Nibharani Debnath with the plaintiff regarding the purchase of the land and the plaintiff himself executed the sale deeds in favour of the defendants and the plaintiff had obtained the signatures of the defendants on some papers for the purpose of obtaining the necessary permission from the concerned department. In the cross-examination, the DW 5 has

stated that the defendant No.1 is his wife and the disputed land is situated within the jurisdiction of Tezpur Sub-Registry Office. As he was not present at the time of registration of the Sale Deeds so he has no knowledge about the persons who had signed on the sale Deeds.

**17.** It is also pertinent to mention that though the DWs namely, Biswajit Talukdar and Ujjal Seal Sarma submitted their evidence-in-affidavit but they were not present for cross-examination. Hence, their evidence have been expunged. But they are the attesting witnesses of the concerned Sale Deeds.

So, after meticulous examination of materials on record, it is found that the concerned Assistant of Dhekiajuli Sub-Registry Office (PW 4) has admitted that the signatures of Khitish Tarafdar appears on the backside of the stamp paper of the Sale Deeds which were taken after putting whitener (over the white colour). The disputed Sale Deeds were registered in the Dhekiajuli Sub-Registrar office though the disputed land is situated within Bhoirabpad Mouza of Tezpur town which falls within the jurisdiction of Tezpur Sub-Registrar Office. The defendant No.1 has admitted in her cross-examination that Biswajit Talukdar made arrangement for transfer of the land and he also helped for fixation of sale consideration. Defendant Nos. 2 and 3 have admitted that they were not present at the time of registration of the sale Deeds.

**18.** After going through the Exhibit 5, the application addressed to Sub-Registrar, Dhekiajuli, it is also found that the plaintiff submitted the application before the Sub-Registrar Office, Dhekiajuli on 19-08-04 regarding the illegality committed in registering the sale Deeds No. 581/2003, 583/2003 and 584/2003 without verifying the sale permission from the concerned authority.

**19.** During the final hearing the learned counsel for the defendants has submitted that there is no legal bar to register the Sale Deeds in the Office of the Sub-Registrar, Dhekiajuli as it is situated within the jurisdiction of Deputy Commissioner, Sonitpur, Tezpur. Another pertinent fact which is required to be mentioned

here that though the plaintiff has stated that the Sale Deeds were registered in his absence by committing fraud by putting his forged signatures but the plaintiff has not taken any step for Expert opinion in regards to the genuineness of signatures appears in the Sale Deeds.

After considering the materials on record in its entirety, it is found that the defendants have stoutly denied the allegation of the plaintiff regarding the execution of forged sale Deeds without payment of sale consideration to the plaintiff. But the plaintiff to substantiate his allegation regarding forged Sale Deeds he has examined the Assistant of Sub-Registrar Office of Dheikiajuli as PW 4 and PW 4 has clearly admitted that the signatures appears on the stamp papers of the Sale Deeds was taken on the white colour (after using of whitener). The PW 4 has also further admitted that he had no knowledge who had taken the signatures of the plaintiff and who had used the whitener before taking the signatures of the plaintiff. So, in view of the above fact brought by the plaintiff side, I am of of the considered opinion that the onus of proof regarding the genuineness of the Sale Deeds has shifted to the defendant as provided U/s 111 of Evidence Act. But after appreciation of evidence of DWs, it is found that DWs 1,2 and 3 have stated some contradictory fact in their cross-examination regarding the registration of Sale Deeds because the DW 1 has admitted that the Sale Deeds were registered in the Tezpur Sub-Registrar Office. DWs 2 and 3 have admitted that they were not present at the time of registration of the Sale Deeds. So, such infirmity and contradiction appears in their evidence has casted the cloud of doubt in the reliability of their evidence. Moreover, the defendants have failed to examine any attesting witness to prove the genuineness of the documents though they have the burden to establish the fact with sufficient and reliable evidence regarding the genuineness of the documents (registered sale deeds).

**20.** On the back drop of aforesaid material on record, it has become crystal clear and it is evident that the signatures of

executant (vendor) appears to be taken on the stamp paper of Sale Deeds by using whitener (by using the white correction fluid), the Sale Deeds were registered in absence of plaintiff, these were registered at Dhekiajuli Sub-Registrar Office without verifying sale permission though it was very much convenient to register the same at Tezpur, Sub-Registrar Office, the sale consideration was not paid to vendor to have the transaction as effective sale and though the plaintiff has brought major allegation against the defendant No. 4 but the defendants have failed to examine him to disprove the allegations.

So such facts appears on the record has led me to hold the opinion that the alleged Sale Deeds were not properly executed by plaintiff as vendor.

**21.** In this context, I like to cite the observation made by Hon'ble Gauhati High Court in the case of **Tandonbi Devi & ors Vs. Kalamu Singha & Ors reported in 2009 (3) GLT 2006** which is very much relevant in the instant case. In para 5 of the said decision it is observed as -

***" There is no dispute to the proposition of law that mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in the document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue."***

So, after going through the entire material on records and after appreciation of evidence in the light of above observation of Hon'ble High Court, I am of the considered opinion that as the plaintiff has proved that the Sale Deed Nos. 581/2003, 583/2003

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and 584/2003 which were executed and registered fraudulently on 17-05-03 in his absence even without any sale permission from the concerned authority. The defendants have also failed to prove the truth of the contents of the Sale Deeds by examining the attested witnesses though the defendants have the burden to establish such fact. So, for the reasons stated above, I find that the Sale Deed Nos. 581/2003, 583/2003 and 584/2003 were executed when the plaintiff was not present in the Office of the Sub-Registrar, Dhekiajuli, for putting his signatures on the Sale Deeds as well as in the official record book of the Office at the time of registration of said Sale Deeds without making any payment as assured by the defendant No.4 to the plaintiff.

So, for the reasons stated above, this issue is decided in affirmative.

**Issue No. 1.**

**22.** Whether there is any cause of action for the suit?

In regards to this issue, it is found from the material on record that the defendants have contended that there is no cause of action to institute the suit by the plaintiff as the plaintiff himself registered the sale Deeds and handed over the possession of the suit land mentioned in the schedule 'B', 'C' and 'D' to the respective purchasers. On the other hand the plaintiff has alleged in the plaint that the Sale Deeds were executed by committing fraud in his absence and no sale consideration was paid to the plaintiff. After going through the content of the plaint and written statement, I am of the considered opinion that there is cause of action to institute the suit by the plaintiff against the defendants.

So, for the reasons stated above, this issue is also decided in affirmative.

**Issue No. 2.**

**23.** Whether the suit is bad for principles of waiver, estoppel and acquiescence ?

In regards to this issue, it is found from the material on

record that the defendants have contended that the suit is filed by the plaintiff is bad for principles of waiver, estoppel and acquiescence as the plaintiff received the sale consideration before the execution of the sale Deeds in presence of witnesses.

On the other hand, in the evidence of DWs 1,2 and 3 have stated that the plaintiff had earlier filed one complaint case against the defendants but the said case was compromised by the plaintiff after deposing the evidence before the Judicial Magistrate. So, the suit is bad for principles of waiver, estoppel and acquiescence. But the contention of plaintiff is that the alleged sale Deeds were not genuine. These were executed fraudulently without paying the sale consideration. Moreover, it can be stated that the decision of Criminal case has no binding in Civil suit. Moreover, it has already been decided in Issue No. 4 that the alleged sale Deeds were registered in absence of the plaintiff (vendor) without getting any sale permission and without payment of sale consideration. So, I am of the considered opinion that the suit filed by the plaintiff is not bad for principles of waiver, estoppel and acquiescence and for the reasons stated above, this Issue is decided in negative.

**Issue No. 3.**

**24.** Whether in the evening of 13-05-03 the defendant No.4 took signatures of the plaintiff on 13 numbers of blank stamp papers, 3 numbers of blank papers, 3 numbers of typed/printed papers for receiving the advance payment from the purchasers (defendant Nos. 1,2 and 3) as well as to obtain permission from the Deputy Commissioner, Soniptur, Tezpur assuring to pay the amount of Rs. 1,00,000/- in the evening of next day?

In regards to this issue, it is found from the material on record that the contention of plaintiff is that on 13-05-03 the defendant No.4 approached the plaintiff in pursuance of his earlier talk held on 03-05-03 regarding the sale of plot of land measuring 3 kathas 10 lessas to three purchasers. At that time the defendant No. 4 obtained the signatures of the plaintiff on 13 numbers of blank

stamp papers, 3 numbers of blank papers, 3 numbers of typed/printed papers for the purpose of receiving the advance payment of sale consideration as well as for the purpose of required sale permission from the Deputy Commissioner, Soniptur, Tezpur. The plaintiff has further contended that on that day the defendant No. 4 assured him that he would pay Rs. 1,00,000/- after receiving the amount from the defendant Nos. 1, 2 and 3 as advance payment within the next day but the defendant No.4 never paid such money nor he was found traceable though the plaintiff and his son searched for him. On the other hand, the defendants have contended in their written statement that no such signatures were obtained by the defendant No.4 on blank stamp papers and on blank papers as defendant No. 4 was no way connected for the transaction of money as well as the fixation of the sale consideration. The plaintiff at his sweet will executed the sale Deeds and also took the responsibility for obtaining the sale permission from the concerned authority, so the question for obtaining signatures on blank stamp papers and blank papers does not arise. In support of the contention of the plaintiff, he has examined the PW 3 who has stated that on 13-05-03 when he was present at the residence of plaintiff and he saw that the defendant No.4 met the plaintiff and obtained the signatures on some blank papers. On the other hand, though the defendants have denied such contention but the defendants have failed to substantiate their contention by examining any independent witness or the defendant No.4.

**25.** So, after appreciation of evidence of PWs and DWs, it is found that such contention of the plaintiff has been adequately substantiated by the evidence of PW 3 regarding obtaining the signatures of plaintiff on blank stamp papers and blank papers by the defendant No. 4. On the other hand, the defendants have failed to substantiate their contention in this regard. It has already been found from the discussion of Issue No.4 that the sale Deeds were found forged, so considering such fact, I am of the opinion that the plaintiff has proved with sufficient oral as well as documentary evidence that 13-05-03 the defendant No.4 took signatures of the plaintiff on 13 numbers of blank stamp papers, 3

numbers of blank papers, 3 numbers of typed/printed papers for receiving the advance payment from the purchasers (defendant Nos. 1,2 and 3) as well as to obtain permission from the Deputy Commissioner, Soniptur, Tezpur. On that day also the defendant No. 4 assured the plaintiff regarding the payment of amount of Rs. 1,00,000/- within the next day.

So, for the reasons stated above, this Issue is decided in affirmative.

#### **Issue No. 5.**

**26.** Whether the mutation was done in the name of the defendant Nos. 1, 2 and 3 on the strength of the said fraudulent, forged Sale Deeds in respect of the land as described in the schedule 'B', 'C' and 'D' are null, void and inoperative in law ?

In regards to this issue, it has already been found from the discussion of Issue No. 4 that the alleged Sale Deeds bearing Sale Deeds Nos. 581/2003, 583/2003 and 584/2003 are false, it was executed for fraudulent purpose. So, these Sale Deeds are found null, void and inoperative in law. The mutation done in the name of defendant Nos. 1, 2 and 3 by virtue of such Sale Deeds is also null and void and inoperative in law, as such Sale Deed has no effect in regards to transfer of the right, title and interest of land and there can not be the effective sale by considering the proposition of law. So, for the reasons stated above, this Issue is decided in affirmative.

#### **Issue No. 6.**

**27.** Whether the plaintiff is entitled for recovery of khas possession of the schedule "B" land after eviction of defendant No.1 ?

On the basis of foregoing discussion of other issues, it is found that the alleged Sale Deeds are found forged. It was executed in fraudulent purpose. So such sale Deeds can not confer any right, title and interest on the defendant No.1 as no payment was made

regarding the sale consideration so, alleged sale can not be completed in view of the provision of section 54 of Transfer of Property Act. So, I am of the considered opinion that the plaintiff is entitled for recovery of khas possession of the land mentioned in the schedule 'B' after eviction of the defendant No.1 and for the reasons stated above, this Issue is also decided in affirmative.

**Issue No. 7.**

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

On the basis of the above discussion of different issues, it is found that the plaintiff is entitled to a decree as prayed by him for declaration of sale Deed Nos. 581/2003, 583/2003 and 584/2003 as cancelled, null and void and inoperative in law and the mutation done by virtue of said sale Deeds as cancelled, null and void and inoperative in law.

The plaintiff is also entitled for a decree for recovery of khas possession of the land mentioned in the schedule 'B' by evicting the defendant No.1 and also for permanent prohibitory injunction by restraining the defendant Nos. 1, 2 and 3 from taking the possession of the land mentioned in the schedule 'B','C','D'. But considering the facts and circumstances of the case, I find there is no justified ground to pass the decree for realisation of amount of Rs. 1,25,000/- from the defendant No.4 as claimed by the plaintiff. But the plaintiff is entitled for the cost of the suit.

**O R D E R**

**29.** The suit is partly decreed on contest with cost for the following reliefs:-

i) It is declared the sale Deed Nos. 581/2003, 583/2003 and 584/2003 as cancelled, null and void and inoperative in law and the mutation done by virtue of said sale Deeds as cancelled, null and void and inoperative in law.

ii) It is also decreed for recovery of khas possession of the land mentioned in the schedule 'B' by evicting the defendant No.1 and also for permanent prohibitory injunction by restraining the defendant Nos. 1, 2 and 3 from taking the possession of the land mentioned in the schedule 'B','C','D'.

Prepare decree accordingly.

**30.** Judgment is pronounced in an open court, written on separate sheets and enclosed with the case record.

31. Given under my hand and seal of this court, I have signed and delivered this judgment on this 17<sup>th</sup> day of July, 2012.

(M. Kalita)  
Civil Judge,  
Sonitpur, Tezpur

Dictated and corrected  
by me .

(M. Kalita)  
Civil Judge,  
Sonitpur, Tezpur

Typed by me

(R.Hazarika)steno