

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.

Thursday the 23rd day of August, 2012.

Title Suit NO. 13 of 2011.

1. Sri Rohini Kr. Das,
S/O Late Kanak Ch. Das,
Resident of BSNL Colony, Tezpur
Tezpur Town,
Dist. Sonitpur, (Assam) **Plaintiff.**

-VERSUS-

1. Sri Robin Pataniga,
S/O Late Khagendra Patangia,
Resident of Kalibari, Ward No.11,
P.O.& P.S.- Tezpur,
Dist. Sonitpur, Assam. **Defendant.**

This suit coming on for final hearing or having been
heard on 10th day of August, 2012.

Mr. T.K.Maitra, Advocate ... For the Plaintiff

Mr. S. Misra, Advocate For the defendant.

And having stood for consideration this day, the
23rd August, 2012 the Court delivered the following
Judgment :

J U D G M E N T

1. This is the suit for Specific Performance of Contract for sale of the suit land and for permanent injunction or for alternative relief of refund of money advanced with compensation for breach of contract. The suit is valued at Rs. 2,50,500/- for the purpose of jurisdiction and court fee and accordingly, the required court fee is paid.

2. As reflected in the plaint, the plaintiff's case in brief, is that the defendant being the owner and possessor, having right, title and interest of a plot of land measuring 3 bighas 3 katha 10 lessas covered by Dag No. 365 of PP No. 21 situated at Kolibari within Tezpur town under Mahabhairab Mouza within the district of Sonitpur, executed an agreement for sale of a plot of land measuring 1 katha out of above land which is specifically mentioned in the schedule of the plaint at a consideration price of Rs. 2,00,000/-. The defendant also received Rs. 20,000/- as an advance amount on 07-12-2009. The defendant executed the agreement for sale binding himself to obtain necessary permission from the concerned authority for registration of sale Deed by receiving the balance amount of Rs. 1,80,000/-. The defendant also received the remaining balance consideration before execution of registered sale deed on different dates in different instalments. Thus, the plaintiff has already paid the total consideration amount to the defendant and in spite of receiving the total consideration amount the defendant has failed and neglected to execute the registered sale deed for the suit land in favour of the plaintiff as per terms and conditions of the contract. Even the defendant received another amount of Rs. 20,000/- in addition to sale consideration for the purpose of registration of the sale

deed. The defendant is avoiding to perform the said contract for sale without any just and reasonable cause with ulterior motive. The defendant with malafide intention is even trying to sell/transfer the suit land to some other 3rd party by committing breach of contract for sale dt. 07-12-2010. The defendant is legally and equitably bound to register the sale deed in favour of the plaintiff as he has already received the total sale consideration amount and also cost of the registration of the sale deed. The defendant is also liable to pay the compensation of Rs. 50,000/- for committing breach of contract for sale.

3. The cause of action for the suit arose on from 7-12-09, 26-01-10, 16-03-10, 23-04-10, 21-05-10, 24-05-10, 18-06-10, 22-06-10, 11-07-10, 14-08-10, 30-08-10, 16-09-10, 25-09-10, 11-10-10, 26-10-10, 24-11-10 and thereafter at Tezpur within the jurisdiction of this court. So, the plaintiff has prayed for a decree for specific performance of contract for sale or the decree of alternative relief for refund of Rs. 2,20,000/- that has been received by the defendant. The plaintiff has prayed for decree of compensation of Rs. 20,000/- for breach of contract and for permanent injunction along with the cost of the suit.

4. After receiving the summon, the defendant has contested the suit by filing the written statement on the grounds that the suit is not maintainable under fact and there is no cause of action for institution of the suit. The defendant has admitted the fact regarding the execution of agreement for sale on 07-12-09 and also regarding the fact of receiving the total consideration from the plaintiff. But the defendant has denied all the averments made by the plaintiff. The defendant has stated in the written statement that he has not received Rs. 20,000/- in addition to sale consideration. The defendant has also stated in the written

statement that he is not liable to pay the compensation as claimed by the plaintiff because, the facts mentioned in the plaint are false, baseless, concocted and frivolous. The defendant has further stated in the written statement that he even requested the plaintiff to get the suit land measured and after measurement of the land, the land measuring 13 lessas only remained and not one katha as claimed by the plaintiff. The plaintiff also refused to purchase 13 lessas land by knowing such fact. Hence, the plaintiff directed the defendant to refund the sale consideration within 10 days but the defendant requested the plaintiff to allow him time for 6 months to refund the sale consideration amount as it is not possible for him to sell the land measuring one katha. Hence, the defendant has prayed for dismissing the suit of the plaintiff.

5. 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 maintainable ?
3. Whether the plaintiff is entitled for a decree of Specific Performance of Contract for Sale of suit land, as prayed by him ?
4. To what other relief / reliefs the parties are entitled ?

6. During the course of hearing, the plaintiff has examined himself only as PW 1 and proved 2 kinds of documents in support of his case. On the other hand, the defendant has not examined any witness.

7. I have also heard arguments from learned

counsel of both sides and anxious consideration is given to the submission of learned counsels while deciding the issues.

8. On the backdrop of aforesaid materials on record, I like to discuss the issues one by one for final decision of the suit. For benefit of convenient discussion, I like to discuss the Issue No.3 first.

Issue No. 3.

9. Whether the plaintiff is entitled for a decree of Specific Performance of Contract for Sale of suit land, as prayed by him ?

Regarding this issue, the plea of plaintiff as reflected in his plaint as well as in his evidence is that the defendant executed the agreement of sale on 07-12-2009 by receiving initially Rs. 20,000/- as advance by fixing total sale consideration at Rs. 2,00,000/-. Subsequently, the defendant received total sale consideration on different dates and on different instalments. On the other hand, the defendant has admitted in the written statement regarding the execution of agreement for sale on 07-12-2009 and regarding the fact of receiving the total sale consideration. But the defendant has stated that he has only 13 lessas of land as remaining vacant land as some other persons encroached the land. So, he is not able to sale one katha land to the plaintiff. Even the plaintiff (PW 1) has admitted in the cross-examination that the defendant informed him that as he had not one katha land so the defendant expressed his willingness to return the money received from the plaintiff. On examination of materials on record, it is found that the plaintiff himself has prayed for alternative relief if it is not possible to pass the decree for specific

performance of contract. So, in view of the above fact, I am of the considered opinion that the plaintiff is not entitled for a decree of Specific Performance of Contract as he has already made prayer for alternative relief. Because, he has already informed by the defendant that the defendant has only 13 lessas of land. So, it is not possible to execute the registered sale deed for the land measuring 1 katha and for the reasons stated above, this issue is decided in negative.

Issue No. 1.

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

Regarding this issue, though the defendant has stated in the written statement that there is no cause of action for the suit. But on meticulous examination of materials on record, it is found that the defendant has already received total sale consideration on different dates on different instalments. So, it is found that though the defendant has raised this plea but he has failed to substantiate such plea with sufficient and reliable oral and documentary evidence. Hence for the reasons stated above, this issue is decided in affirmative.

Issue No. 2.

11. Whether the suit is maintainable ?

Regarding this issue, it is found from the examination of the materials on record that the plaintiff instituted the suit for Specific Performance of Contract for sale or for alternative relief if it is not possible for passing the decree of Specific Performance of Contract. So, considering such plea taken by the plaintiff, I am of the opinion that the suit is maintainable. Though the defendant

has raised this plea but he has failed to substantiate such plea with sufficient and reliable oral and documentary evidence. Hence, the plea raised by the defendant in regards to the maintainability of the suit is not believable and accordingly, this issue is also decided in affirmative.

Issue No. 4.

12. To what other relief / reliefs the parties are entitled ?

In regards to this issue, It has already been decided in the Issue No.3 that the plaintiff is not entitled for a Specific Performance of Contract as he had already prayer for alternative relief. The defendant has also admitted in the written statement that he received the total sale consideration. So, considering such revelation made by the defendant, I am of the opinion that the plaintiff is entitled to a decree for refund of advance money along with the cost of the suit. But considering the facts and circumstances of the case, I do not find any justified ground to allow the prayer of compensation and permanent injunction.

O R D E R

13. The suit is decreed on contest with cost for refund of Rs. 2,00,000/- as alternative relief to the Specific Performance of Contract for sale.

Prepare decree accordingly.

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

15. Given under my hand and seal of this court, I have signed and delivered this judgment on this 23rd day of August, 2012.

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Dictated and corrected
by me .

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Typedby me

(R.Hazarika)
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