

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: Mrs.Chitra Rani Saikia, AJS

Wednesday, the 13th day of February ,2013

Title Suit No. 16/2008

Smti Nomai Devi----- Plaintiff
-Versus
Sri Rajesh Nath & others---- Defendant

The suit coming on for final hearing on 29th January, 2013 in the presence of:-

Sri Ashok Kr. Mahanta and Smti Gangotri Bhuyan -----

Advocates for the plaintiff ,

And

Sri Biraj Nath Advocate for the Defendant

And having stood for consideration to this day the court delivers the following judgment.

JUDGMENT

1. The plaintiff's case in brief as averred in the plaint is that the plaintiff(since deceased) purchased 1 katha 8 lessas of land from the heirs of one Late Binodini Devi covered under Dag Nos 379 and 380 in P.P.Nos 242 and 243 vide registered Sale Deed No 311/98 dated 16.03.1998 of Tezpur Sub-Registry. After the purchase of the said land the plaintiff took possession of the said plot of land along with one Assam type house structure standing thereon bearing old holding Nos of Tezpur Municipal Board 1527 and 1528 which have been given new holding Nos 1832 and 1833 by Tezpur Municipal Board. After the purchase the plaintiff managed the said property through her son and there are nine tenants in the suit land. The plaintiff further avers that the defendants had fraudulently executed and registered the Sale Deed No 1817 dated 31.10.2007 at Dhekiajuli Sub-Registry with a view to grab the vacant land owned by the pro-forma defendant. The defendant No 4 further fraudulently got executed and registered the Agreement dated 19.12.2007 being No 2030 with the plaintiff to the effect that the

plaintiff shall deliver 7 Lessas of land with house thereon to the defendant No 4 out of 1 Katha 8 Lessas of land owned and possessed by her. Hence this suit.

2. The defendants contested the suit by filing their written statement. The defendants challenged maintainability of the suit and stated inter alia that the suit is bad for non-joinder of necessary party. The answering defendants have denied any ownership and possession of the plaintiff over the suit land. The defendants therefore pray for dismissing the suit.

3. After perusal of the pleadings of both sides my learned predecessor in this office vide its order dated 20.06.2008 framed the following issues of this suit:

(i) Whether the suit is maintainable in its present form?

(ii) Whether the suit is bad for non-joinder of necessary parties?

(iii) Whether the plaintiff has right, title and interest over the Schedule A land as stated in the plaint?

(iv) Whether the Sale Deed No 1817 dated 31.10.07 of Dhekiajuli Sub Registry office and the Deed of Agreement No 2030 dated 19.12.07 of Tezpur Senior Sub Registry office are null and void and liable to be cancelled?

(v) Whether the plaintiff is entitled to a decree as prayed for?

(vi) To what other relief/reliefs the parties are entitled to?

4. During the course of trial plaintiff side adduced the evidence of as many as seven witnesses to establish its case. Unfortunately the plaintiff being PW 1 expired before she could be cross examined and accordingly her evidence-in –chief on affidavit stood expunged vide the order of this court dated 17.06.09. Plaintiff side exhibited 20(twenty) documents. Defendant side adduced the evidence of four witnesses. Defendant side did not exhibit any document.

5. I have heard the arguments as advanced by learned counsels of both sides, perused the evidence on record, perused the various case laws as referred by learned counsel for the defendant and arrived at the decision as follows.

DISCUSSION, DECISION AND REASONS THEREOF:

Issue No (i): Whether the suit is maintainable in its present form?

6. Section 9 of The Code of Civil Procedure, 1908 gives ample power to the civil court to entertain the civil suit where there arises the question regarding the infringement of civil rights. Maintainability of a civil suit is to be determined on the basis of the pleadings

of the parties. Maintainability does not depend upon the evidence of the parties. In this instant suit I find no express or implied bar on the trial of suit in the pleadings of the parties. The pleadings of the parties do not disclose any procedural defect barring the jurisdiction of this court to try this suit. Therefore this court is of the considered opinion that this suit is maintainable in its present form.

Accordingly issue No (i) is decided in favour of the plaintiff.

Issue No(ii): Whether the suit is bad for non-joinder of necessary parties:

7. The defendants challenged the suit for the non-joinder of necessary parties. In their written statement the defendants have stated that in the Periodic Patta Nos 242 and 243 in which the suit land is included there are as many as twenty two pattadars including the legal heirs of Late Binodini Devi. According to the defendants as all those pattadars have not been impleaded as parties to this suit, this suit is bad for non-joinder of necessary parties.

8. Necessary parties to a suit imply the parties whose presence is essential and in whose absence no effective decree can at all be passed. In the instant suit at hand the main dispute arises between the parties regarding the execution of a Sale Deed No 1817 dated 31.10.07 and a Deed of Agreement dated 19.12.07 executed between the plaintiff(since deceased) and defendant No 4. To determine that issue the presence of all the pattadars of suit land and its adjacent land is not necessary. There is nothing in the pleadings of the parties and in the evidence on record to show that in the instant suit no effective decree can at all be passed in absence of all the pattadars of Patta Nos 242 and 243. Therefore in my considered opinion they are not necessary parties to this suit. As such this issue is also decided in favour of the plaintiff.

Issue No: (iii) Whether the plaintiff has right, title and interest over the Schedule A land as stated in the plaint?

9. PW 2 Monohar Sarma being the son of the deceased plaintiff deposed in his evidence in chief that his mother purchased the suit land(Schedule A land) along with two holdings of the Municipality standing on that land vide Sale Deed No 311/98 dated 16.03.98 of Tezpur Sub Registry. This evidence of PW 2 is supported by Exhibit 2 which is the Sale Deed executed in favour of his mother. PW 2 was cross examined at length but nothing could be elicited from his cross examination to shatter the evidence that his mother purchased the suit land vide exhibit 2. In his cross examination PW 2 reiterated that his mother purchased the suit land vide Exhibit 2.

In his evidence PW 2 further deposed that after the said purchase he has been looking after the said property on behalf of his mother. He testifies that he collects the rent from the tenants who are residing in the houses situated in the suit property. He deposed that there are nine tenants in the houses standing in the suit land.

10. The evidence of PW 2 that there are tenants in the suit property and he has been collecting the rents from those tenants is supported by the evidence of PW 3 and PW 4. PW 3 Nitai Das is one of the tenants of the plaintiff who has been running a laundry in a room situated in the suit land. PW 3 testifies that he has been paying his rent to Monohar Sarma and no body comes to ask for rent from him except Monohar Sarma. He deposed that he came to know from Monohar Sarma that mother of Monohar Sarma purchased the suit land. In his cross examination PW 3 denied the suggestion that he was not a tenant under Nomai Devi.

11. In his evidence PW 4 Biswanath Bhargav deposed that the owner of the room in which he has been residing as tenant was Bonodini Devi and in 1998 Nomai Devi purchased the suit land from the legal heirs of Bonodini Devi. He deposed that till date he has been paying his rent to Monohar Sarma. According to him after the suit land was purchased by Nomai Devi in 1998 no other person has come to take possession of the suit land. In his cross examination PW 4 stated that he has been staying as tenant under Monohar Sarma for the last eleven years. PW 4 deposed before the court on 10.08.09. Therefore, it is easily inferred that PW 4 has been staying as tenant under Monohar Sarma since 1998 till 10.08.09. Therefore from the evidence of PW 4 continuous possession of the plaintiff side in the suit land is established.

12. The fact that the original plaintiff(since deceased) purchased the suit land vide exhibit 2 is also corroborated by the evidence of PW 5. PW 5 being the extra writer in the office of Senior Sub-Registrar, Tezpur deposed that as per Volume Register No 4 of 2000 from page Nos 246 to 253 , Sale Deed No 311 of 1998 was executed by Monoranjan Nath ,Rajesh Nath, Shyama Nath, Ranjita Devi and Maya Devi in favour of Nomai Devi. He deposed that vide that Sale Deed 1 Katha 8 Lessas of land was sold. He deposed that exhibit 2 is the certified copy of the said Sale Deed. This evidence of PW 5 lends more force to exhibit 2 and thereby fortifies the evidence of PW 2. Accordingly exhibit 2 gets proved.

13. From the evidence of PW 2, PW 3, PW 4 and PW 5 as discussed in the above paragraphs the fact that the original plaintiff purchased the suit land vide exhibit No 2 is established. From the evidence of these witnesses the fact that the suit land has been in the possession of the plaintiff side is also established.

14. At this point it would be appropriate to consider the contention of learned defence counsel Sri Biraj Nath. According to the learned counsel on behalf of the defendant the evidence of PW 2, PW 3 and PW 4 is not believable because there is apparent discrepancy in their evidence regarding the number of tenants staying in the suit land. It is contended that while PW 2 deposed that there are nine tenants in the suit land, PW 3 deposed that there are six tenants and PW 4 deposed that there are four tenants in the suit land. It is contended by the learned counsel for the defendant that in view of such discrepancy the evidence of these witnesses is to be rejected outright. After considering the material portion of the evidence of these witnesses I am of the opinion that the discrepancy regarding the number of tenants in the evidence of these witnesses is not a material one to affect their veracity. Therefore, I respectfully reject this contention raised by learned counsel for the defendant.

15. Defendant side has not challenged the exhibit 2. There is nothing in the evidence of the witnesses for the defendant to show that exhibit 2 Sale Deed vide which the plaintiff purchased the suit land is not valid. In his cross examination DW 1 Anup Bora being the subsequent purchaser denied any knowledge about the plaintiff purchasing the suit land. DW 1 stated categorically, “ I do not know that the Schedule A land with the house thereon was sold to the plaintiff, Nomai Devi, since deceased, by the legal heirs of Binodini Devi.”

16. While DW 1 is totally ignorant about the purchase of the suit land by the plaintiff, he can not even say that the suit land is not in the possession of the plaintiff. DW 1 denied generally that the suit land is not in the possession of the plaintiff, but he fails to adduce any evidence to show in whose possession the suit land was before his purchase. Similarly the evidence of other DWs also fails to show that the suit land is not in the possession of the plaintiff. Therefore, from the evidence as discussed above I find more force in the evidence of the witnesses for the plaintiff. It is seen that the balance of preponderance lies in favour of the plaintiff.

Hence this issue is decided in favour of the plaintiff.

Issue No (iv): Whether the Sale Deed No 1817 dated 31.10.07 of Dhekiajuli Sub Registry office and the Deed of Agreement No 2030 dated 19.12.07 of Tezpur Senior Sub Registry office are null and void and liable to be cancelled?

17. The plaintiffs have prayed for cancellation of the Sale Deed No 1817 dated 31.10.07 registered at Dhekiajuli Sub-Registry office. PW 2 deposed that his mother purchased 1 Katha 8 Lessas of land covered under Dag Nos 379 and 380 in P.P.Nos 242 and 243

along with houses thereon having two holdings of Tezpur Municipality vide registered Sale Deed No 311/98 dated 16.03.1998 of Tezpur Sub-Registry(exhibit 2). According to PW 2 defendant No 4 illegally purchased 2 Kathas 2 Lessas of land from the legal heirs of Binodini Devi from P.P. Nos 242 and 243 which included the suit land already purchased by his mother vide exhibit 2.

18. As discussed in issue No 3 the fact that the plaintiff purchased the suit land vide exhibit No 2 is established. Exhibit 2 Sale Deed was executed on 16.03.98. There is nothing in the evidence of the defendant side to show that exhibit 2 Sale Deed is not valid. Therefore exhibit 2 remains unchallenged. As the fact that the plaintiff purchased the suit land measuring 1 Katha 8 Lessas is not challenged by the defendant, subsequent purchase by the defendant No 4 of a plot of land measuring 2 Kathas 2 Lessas vide Sale Deed No 1817 dated 31.10.07 including 1 Katha 8 Lessas of land previously purchased by the plaintiff can not be valid. While the fact of previous purchase by the plaintiff of the same plot of land is not challenged by the defendant, the defendant can not legally claim any right to the same plot of land by way of subsequent purchase.

19. In his evidence- in- chief DW 1 Anup Bora deposed that after he took the possession of 2 Kathas 2 Lessas of land after its purchase vide Sale Deed 1817 dated 31.10.07 the plaintiff asked him to solve the issue. According to him the plaintiff entered into an agreement with him on 19.12.07 and vide that agreement both of them partitioned the said land into two parts consisting 1 Katha 1 Lessa in each. DW 1 further deposed that he left 1 Katha 1 Lessa of land from his possession in favour of the plaintiff. This evidence of DW 1 appears to be self-contradictory. While DW 1 denied any right of the plaintiff over the suit land, he relinquishes his right over 1 Katha 1 Lessa of land in favour of the plaintiff just to solve the dispute. This evidence of DW 1 is not believable.

20. DW 1 deposed that the said agreement was executed as per consent of both sides and it was registered. According to him as the matter was solved as demanded by the plaintiff, the plaintiff has no right to question the legality of the said agreement.

21. PW 2 deposed that the said Deed of Agreement was executed by cheating his mother. According to him defendant No 4 assured him that he would take possession of 14 Lessas of land leaving for them 1 Katha 8 Lessas of land. PW 2 deposed that defendant No 4 said to them that as there is no passage to enter into the said 14 Lessas of land he would purchase a road from them by paying due value and for that purpose he asked the plaintiff to enter into an agreement with him. PW 2 deposed that as defendant No 4 assured them

their right over 1 Katha 8 Lessas of land , his mother entered into the agreement with defendant No 4.

22. Learned counsel for the plaintiff has submitted that apart from that agreement(exhibit 7) there is no force for the defendant. Learned counsel for the plaintiff Sri Ashok Kumar Mahanta contended that as the said agreement was executed by cheating the plaintiff (since deceased) taking advantage of her innocence, the said agreement is to be cancelled.

23. Learned counsel for the defendant Sri Biraj Nath contended that the defendant side has successfully proved the legality of the said agreement by the evidence of DW 4, the advocate who prepared the draft of the said agreement. From the evidence of DW 4, Sri Debabrata Bose, learned advocate of Tezpur Bar it is seen that he prepared the draft agreement as per consent of both parties. Therefore, learned counsel for the defendant contended that the said agreement is a valid one which is prepared with consent of the parties.

24. I have considered the contentions of learned counsels of both sides on this issue. The plaintiff side has not denied the agreement. The only contention on behalf of the plaintiff is that the agreement does not contain the points upon which it was agreed by the plaintiff.

25. After due consideration of contentions raised on behalf of both parties I have arrived at the following decision in this issue. As discussed in the above paragraphs exhibit 2 is proved and the right, title and interest of the plaintiff over the suit land is established. Therefore, the defendant does not have any right, title and interest regarding the suit land. As such he has no any authority to enter into any agreement regarding that land. Therefore, the Deed of Agreement No 2030 dated 19.12.07 is null and void and liable to be cancelled.

For the reasons as discussed above this issue is decided in favour of the plaintiff.

Issue No(v) :Whether the plaintiff is entitled to a decree as prayed for?

26. The plaintiff has prayed for a decree of right, title and possession of the plaintiff over the suit property. The plaintiff also prays for a decree of declaration that Sale Deed No 1817 dated 31.10.07 and the Deed of Agreement No 2030 dated 19.12.07 are null and void and inoperative against the plaintiff and Schedule A suit property. She also prays for issuing citation to Tezpur and Dhekiajuli Sub-Registry with a direction to cancel the said Sale Deed and the Deed of agreement. The plaintiff also prays for an order of injunction

restraining defendant No 4 from interfering with the right, title and the possession of the plaintiff over the suit property. She further prays for the cost of the suit.

27. As issue No (iv) and issue No (v) is decided in favour of the plaintiff, the plaintiff is entitled to a decree of declaration of right, title and possession over the Schedule A suit property. In the light of the decision in the foregoing issues the plaintiff is entitled to a decree of declaration that the Sale Deed No 1817 dated 31.10.07 and the Deed of Agreement No 2030 dated 19.12.07 are null and void.

The plaintiff is not entitled to get the other decree as prayed for because nothing is brought forth in the evidence to show that the plaintiff is entitled to get the decree as prayed for.

Accordingly, this issue is decided partly in favour of the plaintiff.

Issue No(vi) :To what other relief/reliefs the parties are entitled to?

28. In view of the discussion in issue No (v) the plaintiff is entitled to get the relief as decided in issue No (v). Apart from that the parties are not entitled to get any other relief. This issue is decided accordingly.

ORDER

29. This suit is decreed partly with cost. The plaintiff is entitled to the decree of declaration of right, title and possession in the suit land. The plaintiff is also entitled to a decree of declaration that the Sale Deed No 1817 dated 31.10.07 and the Deed of Agreement No 2030 dated 19.12.07 are null and void.

Prepare the decree accordingly.

This judgment is delivered in the open court, the operative part of this judgment is pronounced in the open court and it is given on this 13th day of February 2013 under the hand and seal of this court.

CHITRA RANI SAIKIA
Munsiff No 1, Tezpur

APPENDIX

A. Plaintiff's witness:

- (1) PW 1-----Namai Devi(since deceased)
- (2) PW 2---Sri-Monohar Sarma
- (3) PW 3----Sri Nitai Das
- (4) PW 4----Sri Biswanath Bhargav
- (5) PW 5----Sri Gajendra Sarma
- (6) PW 6----Sri Tanka Bahadur Chetry
- (7) PW 7-----Sri Bipul Bhagabati

B. Plaintiff's exhibits :

- (1) Exhibit 1: Copy of Sale Deed No 1112 dated 02.03.73 vide which Binodini Devi purchased 1 Kath 8 Lessas of land from former pattadars;
- (2) Exhibit 2: original of Sale Deed No 311 dated 16.03.98 executed in favour of Nomai Devi for 1 Katha 8Lessas of land with houses thereon;
- (3) Exhibit 3: copy of the petition to the Deputy Commissioner dated 10.12.07;
- (4) Exhibit 4: copy of exhibit 3 given to the Circle Officer;
- (5) Exhibit 5: Map of Schedule "Ka" and "Kha" as mentioned in the plaint;
- (6) Exhibit 6: copy of the objection dated 11.12.07 filed before Deputy Commissioner, Sonitpur ;
- (7) Exhibit 7: Deed of agreement No 2030 dated 19.12.07;
- (8) Exhibit 8: General Power of Attorney being No 548 given by Ranjita Devi to her father Monoranjan Nath;
- (9) Exhibit 9: Jamabandi of P.P.No 243;
- (10) Exhibit 10: Jamabandi of P.P.No 242;
- (11)Exhibit 11: Revenue receipt;
- (12)Exhibit 12: Revenue receipt;
- (13)Exhibit 13: Receipt of payment of tax of Tezpur Municipal Board for holding No 1832;
- (14)Exhibit 14: Receipt of payment of tax of Tezpur Municipal Board for holding No 1833;
- (15)Exhibit 15: Affidavit of no objection given by the sellers of schedule A land and houses thereon in changing the municipal holding to the name of Nomai Devi;
- (16)Exhibit 16: Photocopy of the Sale Deed No 1817
- (17) Exhibit 17: Power of Attorney executed in favour of Pradip Patangia and Papu Kalita;
- (18) Chitha of oold P.P. No 232 of Dag No 1411 OF Tezpur town;
- (19) Original Jamabandi of P.P. No.242;
- (20) Original Jamabandi of P.P. No. 243.

C. Defendants' witnesses:

- (1). DW 1—Sri Anup Bora
- (2) DW 2—Sri Dipak Barua
- (3) DW 3---Sri Chandan Bora
- (4) DW 4 –Sri Debabrata Bose

D. Defendant's exhibits: Nil.

CHITRA RANI SAIKIA
Munsiff No 1, Tezpur