

Assam Schedule VII, Form No. 133

FORM NO. (J) 3

HEADING OF JUDGMENT ON APPEAL.

District :- Bongaigaon.

IN THE COURT OF CIVIL JUDGE, BONGAIGAON.

Present :- Smti M.C. Bordoloi.

**Civil Judge,
Bongaigaon.**

Wednesday, the 26th day of April, 2017.

Title Appeal No. 15 of 2015.

1. Ratneswar Ray,
S/O Late Buduram Ray @ Budor Ram Ray.
Village Borigaon,
P.O. Abhayapuri,
P.S. Abhayapuri,
Dist – Bongaigaon. (Assam)

.....Plaintiff.

VERSUS

1. Shri Basanta Kumar Ray,
S/O Late Budhram Ray @ Budar Ray,
R/O Vill. Brigaon,
P.O. Abhayapuri,
P.S. Abhayapuri,
Dist – Bongaigaon. (Assam)

.....Defendant.

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1. Sri Debojit Das,
2. Sri Alakesh Das,
3. Sri Sanjib Das,
All are sons of Late Subudh Das,
R/O Abhayapuri Town,
P.S. Abhayapuri,
Dist. Bongaigaon, Assam.

..... Proforma Defendants.

The appeal coming for final hearing on (Give date or dates) 8.02.2017, 19.4.2017 in the presence of :-

Mr. Abdus Samed, Jahan Uddin, Advocate for Appellants

Mr. S.Kr Sarkar, Advocate for Respondents

And having stood for consideration on the 26th day of April, 2017 the Court delivered the following Judgment :-

T.A. 15/2015.

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

1. Challenge in this appeal is made to the judgment dated 24.9.2015 and decree dated 9.10.2015 passed by the learned Munsiff, North Salmara, Abhayapuri in Title Suit no. 76/10 whereby and whereunder the learned Court had dismissed the plaintiff's suit on contest with costs.

2. Being highly aggrieved by the aforesaid judgment of dismissal, the original plaintiff in the Title Suit No. 76/10 has preferred the present appeal impugning the judgment aforesaid.

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3. Upon receipt of the memorandum of appeal, the same being on time was admitted for hearing and notice was directed upon, the respondents, and the case record of Title Suit 76/10 was called for from the learned Court below.

4. The respondents entered appearance while the proforma-respondents failed to contest the appeal and accordingly vide order dated 9.2.2016, the appeal proceeded ex parte against the proforma respondent No. 1 and 2. The proforma-respondent No. 3 reportedly expired before the passing of the impugned judgment whereby abatement against proforma-respondent No. 3 had already taken effect.

5. The records of Title Suit No. 76/10 received on requisition is perused at length and the arguments heard.

6. The facts leading to the instant appeal is narrated briefly herein below :

Plaintiff's case

That the plaintiff Ratneswar Ray as plaintiff filed the above mentioned Title Suit in the court of learned Munsiff North Salmara Abhayapuri for declaration of his right, title, interest in respect of the suit land and for eviction of the defendant therefrom amongst other reliefs. It was the case of the plaintiff that he was the owner and possessor of a plot of land measuring 2.4 lechas situated at Abhayapuri Town, morefully described in the schedule to the plaint and that the plaintiff had purchased the said land from the proforma-defendants vide a registered sale deed dated 27.11.2000, for

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consideration of Rs. 60,000/- (Rs. Sixty thousand) and secured delivery of possession of the same and subsequently mutated the land records in respect of the suit land in his name. It was also the case of the plaintiff that after securing the delivery of possession of the suit land he caused the renovation of the house standing thereon and started a stationary business therein requiring the defendant being his own unemployed to manage the said business.

It was averred that the plaintiff with the defendant carried on business smoothly for a period of 4/5 years, but after his marriage the defendant, allegedly separated from the plaintiff and on 29.8.2006 ousted the plaintiff from the suit premises. It was averred further, that the plaintiff requested the defendant to vacate the suit premises, but the defendant failed to yield to the request thereby compelling the plaintiff to institute a suit for declaration of his right, title, interest for eviction of the defendant from the suit premises, along with costs of the suit.

7.

Defendant's case

The defendant and proforma-defendant entered appearance pursuant to summons and filed their joint written statement. The defendants and proforma-defendants raised the pleas of absence of cause of action, non-maintainability, under valuation etc. Besides the aforesaid pleas, the defendants and proforma-defendants raised the plea of defendant being a co-sharer in respect of the suit land. The defendant and proforma-defendant averred that the plaintiff was not the sole owner of the suit land and that after the death of the parents of the plaintiff and the defendant, the plaintiff became the 'Karta' of the joint family and that on 6.6.1996 the defendant took on rent the

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suit premises from the proforma-defendant 1 for starting of a business therein for a period of 5 years with effect from 6.6.1996 to 6.6.2001, fixing the advance money for the house rent at Rs. 25,000/- (Rs. Twenty five thousand) out of which 10,000/- (Rs. Ten thousand) was paid and remaining amount was made adjustable with the monthly house rent fixed at Rs. 6,00/- (Rs. Six hundred), requiring the payment of Rs. 300/- in cash and the remaining amount of Rs. 300/- made adjustable from the money taken in advance and further that the remaining advance amount was agreed to be paid on 6.6.1996, whereafter the proforma-defendant No. 1 delivered possession of the suit premises to the defendant and defendant having taken over the possession of the suit house, started to run a shop of books, magazines therein under the name and style M/S "Gyandeep". It was also averred that defendant had also secured a loan of Rs. 24,000/- (Rs. Twenty four thousand) on 22.7.2002 for the aforesaid business.

It was pleaded that during the continuation of the business, the proforma-defendant on 1.11.2000, proposed to sale the suit premises to the defendant and the defendant thereafter in consultation with his elder brother agreed to purchase the suit premises jointly, for a consideration fixed at Rs. 60,000/- (Rs. Sixty thousand) , whereby the defendant paid a sum of Rs. 30,000/- (Rs. Thirty thousand) and the balance money was agreed to be paid by the plaintiff at the time of execution of the registered sale deed and that 27.11.2000, was scheduled for execution of the registered sale deed, when the plaintiff and the proforma-defendants went to the Sub-Registrar's Office Abhayapuri, to the exception of the defendant, who failed to go due to his business occupation and also on being assured by the plaintiff that the suit land would be purchased in their joint names but unknown to him the proforma-defendant allegedly executed the registered sale deed only in the name of the

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plaintiff on receipt of the balance amount of Rs. 30,000/- (Rs. Thirty thousand). The defendant worked under belief that the suit land was a joint property. It was also averred that the defendant after his marriage got separated from the plaintiff in the year 2007 and have been running his business over the suit land till date and only on 29.3.2011 having received the summons of the case, he could acquire the knowledge that the suit land was not purchased in the joint name, whereafter he had approached the plaintiff, when the plaintiff assured him to deliver half portion of the suit land, but the same had not been given. The defendant claimed to have been in adverse possession over the suit premises from 6.6.1996 till date by being in open, peaceful and continuous possession over the suit land and denied being the trespasser over the suit land as alleged. The defendant prayed for dismissal of the suit.

8. Upon perusal of pleadings the learned trial Court, vide order dated 13.3.2012 framed the following issues for adjudication which are given hereinunder :

Issues :

- 1) Whether there is any cause of action for the suit ?***
- 2) Whether the suit is maintainable in law as well as in facts ?***
- 3) Whether the plaintiff has got any right, title and interest over the suit land ?***
- 4) Whether defendant is liable to be evicted from the suit premises ?***
- 5) Whether the plaintiff is entitled to a declaration of khas possession over the suit land ?***

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6) To what relief or reliefs the plaintiff is entitled to ?

9. Both sides adduced oral as well as documentary evidence. Both parties cross-examined each other's witnesses.

10. Arguments forwarded by the learned counsels of both sides were heard by the learned trial Court. **Upon perusal of the pleadings and the evidence on record, the learned trial Court vide judgment dated 24.9.2015, non-suited the plaintiff.**

11. **It is this judgment which is impugned in the present appeal.**

12. The original plaintiff in Title Suit No. 76/10 as appellant has assailed the judgment aforesaid on the following grounds amongst others.

GROUNDS:

a) *That the learned trial Court erred in law and facts, while passing the impugned judgment ;*

b) *That the learned trial Court erred in holding that plaintiff has right, title, interest over the suit land while denying the relief of recovery of possession of the suit land ;*

c) *That the learned trial Court failed to appreciate the issues of cause of action and maintainability of the suit in their proper perspective;*

d) *That the learned trial Court erred in holding that the*

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plaintiff ought to have approached the Court under the Assam Urban Areas Rent Control Act 1972 and denying relief to the plaintiff ;

e) That the learned trial Court failed to appreciate the admission of the defendant that he was in a joint family with the plaintiff till his separation in the year 2007 and that the plaintiff had taken care for the defendant's well being and thereby arrived at a wrong finding in respect of issue No. 2, that the defendant was possession of the suit house by his own right ;

g) That the learned trial Court arrived at a wrong finding in respect of defendant's possession as a tenant in respect of the suit land, when it was averred by the defendant that he was a co-owner in respect of the suit premises ;

i) That the judgment impugned is not sustainable in law and is liable to be set aside

Arguments :

13. Heard the arguments advanced by the learned counsels of both sides. Learned counsel for the appellant side submits that the judgment impugned is not sustainable in law for the grounds mentioned in the memorandum of appeal and same is liable to be interfered with, by this Court.

13.(i) Learned counsel further submits that defendant had one point of time, had taken the plea of he, being a co-sharer and on the other hand, had raised the plea of adverse possession which are mutually contradictory pleas. Learned counsel further points out that the learned trial Court in the impugned judgment had held that the plaintiff had right, title, interest over the suit land and as no cross-appeal or cross-objection had been filed against the

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aforesaid finding of the learned Court, the said finding stands on record and that being the position, the plea of defendant being a co-sharer will not subsist so also the plea of adverse possession will not find any footing.

Learned counsel further points out that the holding of the learned trial Court that the suit is not maintainable for not being filed under the provisions of Assam Urban Areas Rent Control Act. 1972 is not proper as at no point of time plaintiff had claimed that the defendant was his tenant. Learned counsel submits that the suit being one filed for recovery of possession, plaintiff's title being present the suit ought to have been decreed. Learned counsel urges for setting aside the judgment impugned and to decree the suit.

13.(ii). Learned counsel for the respondents side, refuting the submissions of the learned counsel for the appellant side, submits that the plaintiff's suit have been rightly dismissed by the learned Court below, as a tenant will remain a tenant always, even though there is a change of ownership. In the present case, suit property having changed hands from the proforma-defendants to the plaintiff, defendant being a tenant under the proforma-defendant 1 automatically became a tenant under the new purchaser that is the plaintiff, and the defendant / tenant is evictable only under due process of law and not by a suit for declaration and consequential relief, for which the finding of the learned trial Court does not suffer from any infirmity. Learned counsel supporting the judgment impugned urges that the judgment passed by the learned Court below is proper and is not required to be interfered with in appeal.

14. Heard both sides. Perused the case record.

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15. The point for determination that has arisen in the instant appeal is :

Point for determination :

(1) Whether the judgment dated 24.9.2015 and decree dated 9.10.2015 passed by the learned trial Court in Title Suit no. 76/10 is sound in law and facts or whether the same lacks propriety requiring interference in appeal ?

16. My decision on the above point for determination along with reasons is given hereinunder :

Discussion, Decision and Reasons There For :

To address the above point for determination, which has arisen in the instant appeal, I propose to discuss the impugned judgment issue wise, addressing simultaneously the grounds taken up in the memorandum of appeal, relevant to the context of each issue, as and when the same would arise for consideration.

17. **Issue No. 1 :**

Issue No. 1 relates to the question of presence of cause of action for the suit.

Learned trial Court decided the issue in the negative in favour of the defendant.

Learned trial Court discussing the evidence on record arrived at a finding that the plaintiff failed to prove the presence of cause of

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action for the suit on 29.8.2006, as claimed and decided the issue against the plaintiff.

To address the propriety of the said finding let me visit to the case record of Title Suit No. 76/10.

Perusal of the case record of Title Suit No. 76/10, discloses that plaintiff had instituted the suit against the defendant praying for the eviction of the defendant from the suit premises on the ground that the defendant was a trespasser on his purchased land. It was the plaintiff's pleaded case that the refusal of the defendant to vacate the suit land despite requests, had infringed his right to enjoy his purchased land, purchased vide a registered sale deed.

On the other hand, the defendant denying the plaintiff's case of he being a illegal trespasser over the suit land, claimed to be a co-sharer in the suit property, he having paid part consideration amount for purchase of the suit land. It was the defendant's plea that he had originally taken the suit premises on rent from the proforma-defendant No. 1 and had been running his own business therein and that during the continuation of such tenancy the proforma-defendants proposed to sale the suit land to the plaintiff and defendant, whereafter the plaintiff and defendant jointly purchased the suit land, though the sale deed was executed in favour of the plaintiff only without the defendant's knowledge. The defendant further claims to be in open uninterrupted possession of the suit premises.

Perusal of the pleadings of the parties discloses that plaintiff claims the suit property as his purchased land while the defendant claims to be a co-owner as well as claims to be in long standing possession of the suit land.

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It is at this juncture required to be understood that “cause of action is not an isolated” event. “Cause of action” means those circumstances forming the infraction of the right of the individual or those circumstance which brings out the immediate occasion for the action. In the wider sense, it means the necessary conditions for maintenance of the suit including not only the infraction of the right but the infraction coupled with the right itself. Compendiously, cause of action means every fact which would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the Court. In fact, cause of action constitutes a bundle of facts, which gives cause to enforce the legal injury for redress in a Court of law. Each and every fact, however pleaded by the plaintiff in his application would not give rise to a cause of action unless those facts pleaded, are such, which have a nexus with or are relevant with the 'lis'.

Perusal of the respective pleadings of the parties discloses that plaintiff having alleged infraction of his right to enjoy the suit land and thereby had made out grounds for maintenance of the suit. In fact, plaintiff has succeeded in preparing the necessary conditions for maintaining the suit.

A substantial issue as to whether the plaintiff has right, title, interest over the suit land and whether the defendant is evictable therefrom has arisen for consideration before the Court, requiring a decision of the Court on merits. A cause of action apparently is made out.

Now learned trial Court while discussing issue No. 1 had come to a finding that the pleadings of the plaintiff were in variance with the evidence adduced. Plaintiff had in his plaint mentioned the date of his ouster from the suit premises on 29.8.2006, but in the evidence, the plaintiff had stated that he was ousted from the suit premises on 27.4.2006. But it must be

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remembered that the said date is only an isolated date and it will not materially and substantially effect the bundle of facts which constituted the 'lis' between the parties. Fact remains that plaintiff seeks redressal of his injury to his alleged right to enjoy the scheduled property against the defendant. In the instant case, though there may be some variance in the date of accrual of cause of action, but nevertheless the alleged cause of action has arisen in the year 2006 and the plaintiff had brought about the suit for recovery of possession in the year 2010 which is within 12 years.

Hence considering the loose pleadings of parties, generally seen in the 'moffusils', the application of the maxim "Secundum allegata et probata" which means according to claims and proof, requiring that things alleged are required to be proved cannot have strict application herein. Accordingly I am unable to agree with the findings of the learned trial Court and I am of the considered view that there was cause of action for the suit. The finding of the learned trial Court in respect of the present issue is reversed accordingly.

The issue stands answered in the affirmative in favour of the plaintiff.

18. **Issue No. 3 :**

Issue No. 3 relates to the question of presence of plaintiff's right, title, interest over the suit land.

Learned trial Court decided the issue in the affirmative in favour of the plaintiff. **There is no cross-objection filed against the aforesaid finding of the learned trial Court by the respondent side. However, since the entire judgment has been impugned in the instant appeal, the propriety**

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of the finding in respect of issue No. 3 is also addressed herein.

Plaintiff claim ownership over the suit property by dint of purchase vide registered sale deed, purchased from the proforma-defendants. It was also the plaintiff's pleaded case that he had caused renovation of the suit house after purchase and had started a stationary shop of books and magazines therein.

PW 1- the plaintiff Ratneswar Ray reiterated his pleaded case in his evidence-in-affidavit. In support of his case of purchase, PW 1 exhibited Ext 2 being the original purchase deed, being 1601 executed on 27.11.2000 and had also exhibited Ext 1 being the sale permission obtained from the Office of the Deputy Commissioner, Bongaigaon. PW 1 also exhibited the certified copy of jamabandi as Ext 4, Revenue Paying Receipt as Ext 5.

PW 2 and PW 3 supported the PW 1 in all material particulars.

On the other hand, defendant claimed that he had taken the suit premises on rent from the proforma-defendant No. 1 and had been running his business of books and magazines, therein and that during the subsistence of tenancy, pursuant to the proposal of the proforma-defendants to sell the suit land, he had negotiated and paid consideration of Rs. 30,000/- (Rs. Thirty thousand) towards total fixed consideration of Rs. 60,000/- (Rs. Sixty thousand) and remaining part was paid by the plaintiff at the time of execution of the registered sale deed and that said property was jointly purchased by them. Defendant claims to be a co-owner in respect of the suit premises.

DW 1 in his evidence in affidavit reiterated his pleas and DW 2 supported DW 1 in all material particulars.

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However DW 1, in his cross-examination disclosed that he did not put his signature on the application seeking permission for sale of the suit land and that he along with the plaintiff had gone to pay Rs. 30,000/- (Rs. Thirty thousand) and that he advanced the said amount from his pocket.

DW 1 further admitted that plaintiff had taken all his responsibility and expenditure for his education since the time of his father's death and further admitted that the permission for opening the suit shop stood in the name of the plaintiff and that he had not submitted any receipt of payment of Rs. 30,000/- (Rs. Thirty thousand) as advance amount for purchase of the land and that the shop was registered in the name of the plaintiff. DW 1 disclosed that the shop's registration fee was also paid by the plaintiff. DW 1 further admitted that the registered deed was executed in the sole name of the plaintiff.

Again DW 2 in his cross-examination disclosed, the defendant and the plaintiff came together for paying the advance amount of Rs. 30,000/- (Rs. Thirty thousand) for purchase of the suit land and that the amount was paid with the hand of Ratneswar Ray that is the plaintiff and he was ignorant if the defendant had any share in that amount as the defendant had never told him about his share.

Perusal of the aforesaid evidence discloses that admittedly Ext 2 was executed by the proforma-defendants in favour of the present plaintiff. The Ext 4 which is the certified copy of jamabandi discloses that the suit property stood in the name of the proforma-defendants. Defendant had also not disputed the original title of the proforma-defendants in respect of the suit land. Nor it is in dispute that the proforma-defendants had executed the sale deed in favour of the plaintiff only. Infact defendant had not disputed Ext 2.

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The only allegation is that he also had paid the part consideration for purchase of the suit land and only on being assured by the plaintiff that the registered sale deed would be executed also in his name he did not go to the Sub-Registrar's Office on the scheduled date of execution of the registered sale deed and continued to work under the belief that the sale deed was executed in their joint names.

Defendant though had claimed to have given part consideration, but DW 2 one of the seller whose evidence he had adduced, pleaded complete ignorance as to the fact of defendant giving Rs. 30,000/- (Rs. Thirty thousand). Rather he had disclosed about the receipt of the same from the hand of the plaintiff himself. No money receipt in the defendant's favour issued by the seller / proforma-defendants in respect of receipt of Rs. 30,000/- (Rs. Thirty thousand) as claimed by him had been exhibited. Infact, defendant failed to prove that he had made payment of part consideration of Rs. 30,000/- (Rs. Thirty thousand) towards purchase of the scheduled property.

Further the averment of the defendant that after the execution of the registered sale deed he continued to remain under the impression, that the same was executed in their joint names is highly improbable for, had he made a payment, he would have insisted on production of the registered sale deed executed by the seller. The registered sale deed admittedly was executed in the year 2000. He would not have set back idle, thinking that the suit property was in his and plaintiff's joint names without requiring the production of the registered sale deed, for it has already been pleaded that he had separated from the plaintiff, and in such circumstances question of blind faith on his brother from whom he had separated would not arise. Further that defendant was unemployed and was maintained by the

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plaintiff was an admitted fact. In such circumstances, the defendant failed to show how he could manage the capital of Rs. 30,000/- (Rs. Thirty thousand) for the alleged purchase. The Ext 2 which has remained undisputed goes on to show that plaintiff had purchased the suit property from the proforma-defendants for consideration. Accordingly good title, passed on from the proforma-defendants to the present plaintiff in respect of the suit land.

The issue stands answered in the affirmative. Accordingly I concur with the finding of the learned trial Court in respect of the present issue.

19. **Issue No. 2 :**

Issue No. 2 relates to the question of maintainability of the suit in law and facts.

Learned trial Court decided the issue in the negative in favour of the defendant holding that the plaintiff being a tenant in respect of the suit premises would be evictable only under due process of law under the provisions of Assam Urban Arrears Rent Control Act 1972 and the failure of the plaintiff to file the suit under the provision of the Act aforesaid, has rendered the suit for recovery of possession non-maintainable under law.

Again the case record of Title Suit No. 76/10, is visited. Defendant claims to be tenant in respect of the suit premises under the proforma-defendant No. 1. Defendant pleaded that he had taken the suit premises on rent from 6.6.1996 for a period of 5 years till 6.6.2001 and that after having taken the suit premises on rent he had started the business of books and magazines in the said premises. DW 1, reiterated the aforesaid pleas in his evidence-in-affidavit. In support of his plea, defendant as DW 1 has exhibited

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the house rent agreement being Ext A and his signature thereon as Ext A(1) to Ext A (4).

DW 2 in his evidence-in-affidavit stated that on 6.6.1996, he had executed a house rent agreement with the defendant for a period of 5 years on a monthly tenancy of Rs. 600/- and it was agreed upon that an amount of Rs. 25,000/- would be the advanced rent, which was made adjustable with the monthly rent, where from Rs. 300/- would be adjusted each month with monthly rent and the remaining Rs. 300/- would be paid in cash to him by the tenant. DW 2 exhibited Ext A and his signatures thereon as Ext A(5) to Ext A (8).

Perusal of the evidence-in-affidavit of DW 2 discloses that DW 2 had given two different signatures on his evidence-in-affidavit, out of which one signature resembles the signature in the sale deed while the others do not resemble the signature of the seller / proforma-defendants in Ext 2. DW 2 admitted the execution of Ext 2 however. Again the signature of seller / proforma-defendant, Debojit Das on Ext 2 do not resemble the purported signature of Debojit Das on Ext A.

As per Section 73 of the Evidence Act, if the signatures of Debojit Das appearing in Ext 2 and Ext A are compared, a variance is seen and a doubt arises herein in respect of Ext A, for Ext 2 is not under challenge herein.

Nevertheless, without solely basing my discussion on the above point of variance of signature, I propose to scrutinise the other materials on record to find out whether the defendant's plea of he being a tenant in respect of the suit premises stands probabalised or not.

Now perusal of Ext A which is the alleged deed of agreement discloses that it is an unregistered agreement purportedly executed between the one Debojit Das and Basanta Kr. Ray. Perusal of the recitals of Ext

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A discloses that it was executed by only one of the co-owner of the scheduled premises when admittedly there were other co-owners of the suit premises being the other executants of Ext 2. Further perusal of the scheduled property taken on rent vide Ext A discloses that the tenanted premises was a room measuring 20 ft in length, 9 ft in width along with a verandah measuring 5 ft and the said house was situated on the land covered by khatian No. 728 and dag No. 1259.

Now perusal of Ext 2 discloses that same is a sale deed in respect of land covered by patta No. 1051/157 and dag No. 1260/ 264 for measure of land being 2.4 lechas which is bounded by road on the south, Nabisa Khatun in the east, own land of the seller on the west, and north. Again Ext 3 which is the copy of order of mutation discloses that plaintiff's name is recorded in respect of land covered by patta No. 1051/157 and dag No. 1260/264, pursuant to purchase. Defendant failed to show that the land scheduled in Ext A is one and the same which has been purchased by the plaintiff vide Ext 2.

Further there is “no objection” from the other co-owners of the suit land at the time of letting out the same on rent. Again perusal of the recitals in Ext A at Clause (V) discloses that the lessee would pay the rent to the land lord against which receipt would be given by the land lord and at Clause (IV) of Ext A it was agreed that electric charges would be borne by the lessee/tenant. But defendant, had failed to submit any rent receipt or any electric charges payment receipts in the instant suit in respect of the suit-land.

At the risk of repetition, it is said that the suit room claimed to have been taken on rent from the proforma-defendant by the defendant, stood on a plot of land covered by khatian No. 728 and dag No. 1259, do not tally with the property scheduled in the suit or in Ext 2. Again it is forthcoming from the evidence on record that the defendant has been looked

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after by the plaintiff and his marriage expenses were also borne by the plaintiff. The defendant was not married at the time of commencement of the alleged tenancy. Admittedly the suit shop stood in the name of the plaintiff and the registration of the same also stood in the name of the plaintiff. The defendant would not have taken a room on rent himself and allowed the plaintiff to start his business therein. Had the tenancy been created by the defendant, he would have been set up his business in his own name, more so when he was admittedly unemployed, at the relevant point when the alleged tenancy was created. If the said shop was taken on rent, by the defendant and shop opened by him, he would have registered the shop in his name.

Defendant though had exhibited Ext B being the loan sanction copy to the tune Rs. 24,000/- (Rs. Twenty four thousand) but same do not indicate that the suit-shop stood in the defendant's name, Ext B not being proved by calling the official records, and also in the wake of defendant's own admission that the suit shop was registered in the plaintiff's name. The defendant's plea of he being a tenant under the proforma-defendant in respect of the suit premises and after him, on purchase of the suit land by the plaintiff, under the plaintiff, is not probabalised hence. Therefore, in the face of the above evidence, the holding of the learned trial Court in respect of the defendant being a tenant under the plaintiff requiring the plaintiff to file the suit for eviction of the tenant is uncalled for.

As discussed in issue No. 3 plaintiff's title over the suit land stood established. The presence of the defendant over the suit land is that of only a permissive possessor under the plaintiff who have out-stayed therein. The plaintiff maintaining a suit for declaration of his right title interest and for recovery of possession is proper and the suit is therefore maintainable in the

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present form. The finding of the learned trial Court in respect of the present issue cannot be sustained and is accordingly reversed.

The issue is answered in the affirmative in favour of the plaintiff.

20. **Issue No. 4, 5 and 6 :**

The three issues being inter related are addressed together for the sake of convenience.

Issue No. 4 relates to the question whether the defendant was liable to be evicted from the premises.

Issue No. 5 relates to the question whether the plaintiff is entitled to a declaration for recovery of khas possession of the suit land and issue No. 6 relates to the question as to what other relief or reliefs the plaintiff may be entitled to.

The learned trial Court also clubbed the three issues together for discussion and had arrived at a finding that the plaintiff was not entitled to reliefs in the suit.

But in view of the discussion made and decisions arrived at in Issue No. 1, 2, 3, I am constrained to hold that the finding of the learned trial Court in respect of issue No. 4, 5 and 6 can not be sustained and is liable to be reversed.

The defendant is an unauthorised occupant of the suit premises, his possession over the suit land not being founded on any basis. The plaintiff has good title over the suit land while the defendant has none. Accordingly plaintiff is entitled to a decree for declaration of his right, title, interest over the suit land and recover khas possession of the suit land.

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The issues are decided in favour of the plaintiff accordingly. The findings of the learned trial Court in respect of the aforesaid issues are reversed to the above effect.

In the light of the foregoing discussions, the point for determination stands answered in the affirmative in favour of the appellant.

21.

ORDER

In the light of the foregoing discussions, the appeal is allowed on contest with costs. The judgment dated 24.9.2015 and decree dated 9.10.2015 passed by the learned trial Court in Title Suit 76/10 is set aside and reversed.

The plaintiff's suit stands decreed contest with costs.

It is hereby decreed and declared that plaintiff has right, title, interest over the suit land .

It is further decreed that plaintiff is entitled to recover the khas possession of the suit land by evicting the defendant therefrom, alongwith costs of the suit.

Prepare a decree accordingly.

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Send down the case record of Title Suit No.76/2010 with a copy of this judgment to the learned Court below.

Given under my hand and the seal of this Court on this 26th day of April, 2017.

(M. C. Bordoloi)
CIVIL JUDGE,
BONGAIGAON.

Dictated & corrected by me,

(M.C. Bordoloi)
Civil Judge,
Bongaigaon.