

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.**

Saturday, the 7th day of January,2017.

Title Appeal No. 25 of 2014.

1. Md. Hazarat Ali,
S/O Late Abdur Rahman,
Residents of village Chakal Part – I.,
P.O. Chakla, P.S. Abhayapuri
Dist – Bongaigaon, Assam- 783392.

.....Appellant.

V E R S U S

1. Md. Faruqul Islam,
2. Md. Fakrul Islam,
3. Md. Faridul Islam,
4. Md. Abdul Farad Ahmed,
All sons of Late Abdul Gafaur,
Residents of Village Chakla Part- I,
P.O. Chakla, P.S. Abhayapuri,
5. Faridausi Khatun,
6. Sarifa Khatun,
7. Mariyam Khatun,
8. Farida Khatun,

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All are daughters of Late Abdul Gafur
Residents of Village Chakla Part- I,
P.O. Chakla, P.S. Abhayapuri,
Dist. Bongaigaon, Assam

.....Respondents.

AND

1. Abdul Rouf,
2. Fakuruddin Ali Ahmed,
3. Monowara Khatun,
4. Maziran Khatun,
All are sons and daughters of
Late Abdul Mannaf
Residents of Village Chakla Part- I,
P.O. Chakla, P.S. Abhayapuri,
Dist. Bongaigaon, Assam

.....Proforma Respondents.

The appeal coming for final hearing on (Give date or dates) 7.12.2016, 23.12.2016 in the presence of :-

Mr. R.N. Das Advocate for Appellants

Mr. D.C. Nath, Advocate for Respondents

None appeared for the Proforma Respondents.

And having stood for consideration on the 7th day of January, 2017 the Court delivered the following Judgment :-

T.A. 25/2014.

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

1. Challenge in this appeal is made to the judgment dated 30.9.2014 and decree dated. 29.10.2014 passed by the learned Munsiff, North

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Salmara, Abhayapuri in Title Suit no. 2/2006 whereby and whereunder the learned trial Court had partly decreed the plaintiff's suit without costs.

2. Being highly aggrieved by the aforesaid judgment, the Plaintiff in Title Suit No. 2/2006, has preferred the present appeal impugning the aforesaid judgment. It deserves mention herein that defendants in Title Suit No. 2/2006 have also assailed the judgment in Title Appeal No. 26/14.

3. Upon receipt of the memorandum of appeal, the same is admitting for hearing and case record of Title Suit No. 2/2006 was requisitioned from the learned trial trial Court and notice issued upon the respondent and proforma respondents. The respondent and proforma respondents entered appearance and contested the appeal. The case record of Title Suit no. 2/2006 received on requisition, is perused.

4. The facts leading to the instant appeal, is given briefly hereinunder:

Plaintiff's case

Hazarat Ali the plaintiff in Title Suit No. 2/06, one Abdul Gafur the predecessor-in-interest of the defendants and Abdul Mannaf predecessor-in-interest of the proforma-defendants were brothers and that on the death of their predecessor-in-interest Abdur Rahman, each of them were entitled to 20 bighas of land in the property of their predecessor-in-interest Abdur Rahman, but during the first settlement operation their ancestral property were allegedly wrongly recorded in the name of Abdul Mannaf only, to the exclusion of the other sharers under which circumstance, the plaintiff had to purchase his

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entitled share of land from Abdul Mannaf vide registered sale deed, against a consideration and accordingly Abdul Mannaf executed a sale deed in respect of the 18 bighas of land vide registered sale deed no. 2168 dated 19.4.1976 and since purchase the plaintiff had been possessing the said 18 bighas of land which had been mentioned in the Schedule A to the plaint, without any interruption from any quarter. It was the plaintiff's further case that Abdul Mannaf that is the predecessor-in-interest of the proforma defendants executed another registered sale deed being no. 2850 dated 15.7.1976 in favour of the defendant's predecessor-in-interest in respect of 13 bighas 3 lechas of land including 7 bighas of land already sold to the plaintiff and the said 7 bighas of land had been scheduled in the Schedule B to the plaint, and that the alleged subsequent sale deed would not confirm any right, title, interest in favour of the predecessor-in-interest of the defendants.

It was further averred that the fact of execution of the subsequent sale deed no. 2850 dated 15.7.1976 was learnt about by the plaintiff only in the year 2005, when the defendants on the strength of the said sale deed had mutated their names in the land records in respect of the Schedule B land and had attempted to dispossess the plaintiff from the Schedule B land on 22.11.2005, thereby compelling the plaintiff to institute the suit for declaration of his right, title, interest over the B schedule land, with a prayer for a decree for confirmation of plaintiff's possession over the suit land, a further declaration the sale deed no. 2850 dated 15.7.1976 was illegal and not binding upon the plaintiff, and that sale deed no. 2168 dated 19.4.1976 has priority, a decree for permanent injunction along with costs of the suit.

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5. **Defendant's Case :**

The defendants entered appearance and filed their written statement jointly. The defendants raised the plea that the suit was devoid a cause of action, barred by limitation under valued, bad for non-joinder of necessary parties etc. Besides the aforesaid pleas, the defendant averred that original owner Abdur Rahman besides the plaintiff, defendant's predecessor-in-interest and proforma-defendant's predecessor-in-interest left behind his two wives namely Jahirun Nessa and Samiran Bessa and two daughters namely Khaliman Nessa and Joygar Nessa for which the plaintiff would not be entitled to 20 bighas of land as claimed by him. The defendants admitting the joint ownership of the scheduled property averred that Abdul Mannaf would have no right to transfer the unpartitioned property of his, father for which the plaintiff could not acquire in right, title, interest over the suit land on the strength of registered sale deed no. 2168 dated 19.4.1976. The defendant disputing the Schedule B land as a part and parcel of Schedule A lands averred that the Schedule B land was the self-acquired property of Abdul Mannaf which have been rightfully transferred by Abdul Mannaf vide registered sale deed no. 2850 dated 15.7.1976 in favour of the defendant's predecessor-in-interest. Further the defendants, disputing the acquisition of knowledge of the plaintiff about the registered sale deed no. 2850 dated 15.7.1976 in the year 2005, averred that plaintiff had knowledge about the said sale deed and further denied the plaintiff's case of their forcible attempt of dispossession and claimed that it was the plaintiffs who had dispossessed them from the suit land. The defendants prayed for dismissal of the plaintiff suit with costs.

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6. Upon perusal of pleadings the learned trial Court framed the following issues for adjudication:

Issues:

- 1) Is there any cause of action for the Suit ?
- 2) Whether the plaintiff has the right, title, interest and possession over the suit land ?
- 3) Whether the sale deed no. 2850 dated 15.7.1976 is illegal, inoperative in law and not binding upon the plaintiff ?
- 4) Whether the sale deed no. 2168 dated 19.4.1976 executed in favour of the plaintiff's is genuine ?
- 5) To what relief/ reliefs the parties are entitled ?

7. Both sides adduced oral as well as documentary evidence. Having heard the learned counsels of both sides and having perused the case record, the learned trial Court passed the judgment dated 30.9.2014 which is impugned in the instant appeal. The plaintiffs in Title Suit No. 2/2006 has assailed the aforesaid judgment on the following grounds amongst others :

Grounds:

a) That the learned trial Court committed gross error and illegality in passing the impugned judgment and decree, failing to appreciate the evidence of record in its proper perspective.

d) That the learned trial court failed to appreciate the fact that the plaintiff have been in possession of the suit land since long without any interference, for which they are entitled to a declaration in respect of their right, title and interest in respect of the suit land.

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e) That the learned trial Court committed illegality by failing to consider the provisions of Section 110 of the Evidence Act.

f) That the impugned judgment is not sustainable in law and is liable to be set aside and the suit be decreed in full.

8. Heard the learned counsel for the appellant side. Also heard the learned counsel for the respondent side.

8.(i) Learned counsel for the appellant side submits that the impugned judgment is erroneous as the learned trial Court had only partly decreed the suit in favour of the plaintiff thereby causing much prejudice.

8. (ii) Learned counsel for the respondent during the course of hearing submits that they have also preferred appeal no. Title Appeal No. 26/14 for that the impugned judgment is not sustainable.

Learned counsels of both sides submits that if the lat mandal is examined it would aid the court in arriving at a correct decision. Learned Counsels further submits that matter may be remanded back to the learned trial Court for the decision afresh.

9. Heard.

10. Perused the case record.

11. The points for determination that has arisen in the instant appeal is as follows:

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Points for determination:

- 1) Whether the judgment dated 30.9.2014 passed by the learned trial Court in Title Suit No. 2/2006 is sustainable in law and facts or whether it warrants interference ?
- 2) Whether the case is required to be remitted back to the learned trial Court as prayed for ?

12. My decision on the aforesaid points for determination along with reasons is given hereinunder:

13. **Discussions, Decisions and Reasons therefor:**

I propose to address the two points for determinations together. To address the point which have surfaced in the instant appeal, it is necessary to peruse the respective pleaded cases of the parties in Title Suit No. 2/2006.

Perusal of the pleadings especially that of the defendants discloses that the defendants have raised the plea that the suit land that is the Schedule B land was the self-acquired property of Abdul Mannaf which their predecessor-in-interest had purchased and that since after purchase the defendants have been possessing the same by cultivating thereon. It was also pleaded that the land over which the plaintiff have staked claim that is the B schedule land is not the part and parcel of the A scheduled properties claim to be their purchased property. But perusal of the issues which have been framed for adjudication by the learned trial court discloses that no issue on the aforesaid

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points of controversy have been framed. Again Abdul Mannaf saleable right in respect of A schedule property is in question in the suit.

The aforesaid controversies are to be determined only then the real controversy between the parties could be put to rest. Hence, in the above circumstance the judgment of the learned trial Court passed without determining the real points in controversy is not properly arrived at and is therefore not sustainable. Accordingly I am of the measured opinion that the judgment dated 7.30.9.2014 passed by the learned trial court and decree dated 29.10.2014 is required to be interfered with for determination of the issues afresh including the additional issues which I propose to frame. Accordingly the additional issues are framed as hereinunder:

Additional Issue:

- 1) Whether the Schedule B land is the part and parcel of A schedule properties ?
- 2) Whether the schedule B land is the self-acquired property of Abdul Mannaf ?
- 3) Whether Abdul Mannaf had saleable right in respect of A schedule properties, right to execute sale deed no. 2168 dated 19.4.1976 ?

The learned trial Court shall dispose of the suit giving the parties opportunity to adduce evidence including the evidence of L/M, if the parties so desires in respect of the additional issues so framed. The learned trial court shall also appoint a Survey Knowing Commissioner if deems fit to aid itself in arriving at a decision in respect of the additional issues so framed. Considering that the case is an old pending one, learned trial Court shall endeavour to dispose of the suit within 4 (four) months from the date of receipt

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of the same. The points for determination stands answered accordingly in the affirmative.

14. **O R D E R**

In the light of the above discussions appeal stands allowed on contests without costs.

Judgment of the learned trial Court dated 30.9.2014 and decree dated 29.10.2014 passed in the Title Suit No. 2/2006 is set aside. Case is remanded back to the learned trial Court after framing additional issues.

The learned trial Court shall give fresh decisions on all the issues so framed including the additional issues, granting opportunity to the parties to adduce evidence if they desire to do so in respect of the additional issues so framed. Being a case of remand, decree is not required to be drawn up.

Considering that the case is an old pending one, learned trial Court shall endeavour to dispose of the suit within 4 (four) months from the date of receipt of the same.

Send back the case record to the learned trial Court alongwith the copy of the judgment.

Given under my hand and the seal of this Court on this 7th day of January, 2017.

(M. C. Bordoloi)
CIVIL JUDGE,

BONGAIGAON.

Dictated & corrected by me,

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