

Assam Schedule VII, Form No. 132.

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT.

District :- Bongaigaon.

IN THE COURT OF CIVIL JUDGE :::: BONGAIGAON.

**Present :- Smti M.C.Bordoloi,
Civil Judge,
Bongaigaon.**

Friday, the 7th day of April, 2017.

Title Suit No. 50 of 2015.

1. Sri Pramod Choudhury,
S/O Late Upendra Narayan Choudhury,
R/O Vill – B.O.C. Gate,
P.O Bongaigaon,
P.S. & Dist – Bongaigaon, (Assam)

Plaintiffs

V E R S U S

1. Smt Maya Devi Sutradhar,
W/O Late Bhabeswar Sutradhar,
R/O Vill – Salbari, North Bongaigaon,
P.O. & P.S – Bongaigaon.
Dist – Bongaigaon (Assam)
2. Sri Pushpeswar Sutradhar,
S/O Sri Kashi Ram Sutradhar,

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(2)

R/O Vill – Salbari, North Bongaigaon,

P.O. & P.S – Bongaigaon.

Dist – Bongaigaon, (Assam)

3.Smt Pranita Sutradhar,

D/O Late Bhabeswar Sutradhar,

R/O Vill – Salbari, North Bongaigaon,

P.O. & P.S – Bongaigaon.

Dist – Bongaigaon (Assam)

Defendants

This suit coming for final hearing on 28.3.2017.

(I) Given date or dates
in the presence of

Mr. S. Mazumdar

Advocate for plaintiff.

Mr. D. A. Hoque

Advocate for Defendants.

and having stood for consideration to this 7th day of
April, 2017 the Court delivered the following Judgment:

T.S.50/2015.

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

1. This is a suit for declaration and for recovery of khas
possession.

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2. The plaintiff's case as set out in the plaint is given as hereinunder :

Plaintiff's Case :

3. That plaintiff is the owner of a plot of land measuring 2 katha covered by dag No. 3 (old) and patta No. 83 (old) at village Salbari under Bongaigaon Revenue Circle and that plaintiff on 31.12.2008, on good faith allowed the defendant to reside on the said land for a period of 2 years on a condition that defendant shall vacate the said land when required to do so by the plaintiff. It is alleged that the defendant during the absence of the plaintiff raised construction over the suit land and continued to reside thereon.

It is the further case of the plaintiff that when he had required the vacation of the suit land, the defendant in presence of witnesses assured to deliver of vacant possession of the suit land within the month of May 2012, but instead of vacating the suit premises within the stipulated time, the defendants filed Title Suit No. 18/12, seeking the relief of specific performance of contract which suit was dismissed by the learned Court of Munsiff, Bongaigaon.

The plaintiff in the above circumstance had filed the instant suit seeking the relief of recovery of khas possession of the suit land by evicting the defendant therefrom alongwith costs of the suit.

Defendant's Case :

4. The defendants entered appearance in the case pursuant to summons and contested the suit by filing written statement.

In their written statement defendant raised the pleas of

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absence of cause of action, non-maintainability, non-joinder of necessary parties etc. Besides the aforesaid plea the defendant avers that the plaintiff on 3.2.1998 entered into an agreement for sale of the suit land for a consideration of Rs. 20,000/- (Rs. Twenty thousand) and that the plaintiff receiving the entire consideration amount had delivered the possession of the suit land to the defendant and since then he had been residing thereon by constructing the Assam type dwelling house. The defendant denying the plaintiff's case prays for dismissal of the suit.

5. Upon perusal of pleadings following issues were framed for adjudication vide order dated 23.8.2016

Issues:

- 1) Whether there is a cause of action for the suit ?***
- 2) Whether the suit is maintainable ?***
- 3) Whether the suit is bad for non-joinder of necessary parties ?***
- 4) Whether the plaintiff has right, title, interest over the suit-land ?***
- 5) Whether the plaintiff entered into an agreement for sale of the suit land with the husband of defendant No. 1 Bhabeswar Sutradhar on 3.2.1998 for a consideration of Rs. 20,000/- and whether the plaintiff had delivered possession of the suit land to the defendant receiving the total consideration money as claimed and whether the***

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defendants are in possession of the suit land since the said date of agreement ?

6) Whether the defendants are permissive occupiers under the plaintiff in respect of the suit land as alleged and whether the defendants have allegedly refused to deliver vacant possession of the suit land to the plaintiff when required to do so ?

7) Whether the plaintiff is entitled to a decree for recovery of khas possession of the suit land by evicting the defendants therefrom and by dismantling defendants' structures standing thereon ?

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

9) To what relief/ reliefs the plaintiff may be entitled to ?

6. The plaintiff in order to prove his case, adduced the evidence of 4 numbers of witnesses. The defendants on the other hand failed to cross-examine the plaintiff's witnesses and instead remained conspicuous by their absence. Cross-examination of the plaintiff witnesses therefore stood declined and the suit was directed to proceed exparte against the defendants vide order dated 18.2.2017.

7. Heard the arguments advanced by the learned counsel for the plaintiff side.

8. My decision on the issues so framed for adjudication alongwith reasons is given hereinunder :

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9. **Issue No. 1 :**

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

Plaintiff have instituted the present suit against the defendants alleging the infraction of his right to enjoy the suit land due to the alleged refusal of the defendants to vacate the suit land, over staying the license granted to them to stay on the suit land.

On the other hand defendant denying the plaintiff's case averred that they have come into possession of the suit land consequent to an agreement for sale, entered into between the plaintiff and their predecessor-in-interest and that delivery of possession of the suit land was given to the defendant's predecessor-in-interest by the plaintiff on receipt of a consideration of Rs. 20,000/- (Rs. Twenty thousand). The defendants denies being permissive occupiers in respect of the suit land.

The rival claims and contentions of the parties discloses that a triable question in respect of plaintiff's title over the suit land has arisen for consideration of the court requiring a decision on merits. Apparently conditions for maintaining a suit have been made out.

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

However whether the plaintiff succeeds in proving his 'cause' or not will be addressed in the length of the judgment.

10. **Issue No. 2 :**

Issue No. 2 relates to the question of maintainability of the suit.

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Defendant though has raised the plea of non-maintainability of the suit yer in his written statement had failed to aver on what grounds, the suit is rendered non-maintainable. Defendant failed to show that the existing laws of the land bars suit of the present kind.

The perusal of the plaint discloses that plaintiff has instituted the suit for declaration of his right, title, interest and for recovery of khas possession of the suit land on the ground of defendant being a permissive occupier under the plaintiff and the defendant's refusal to vacate the suit land when required to do so.

The Civil Court is the appropriate forum for seeking the aforesaid reliefs. Hence, in the above premises, I am constrained to hold that the plaintiff suit is maintainable in the form, it is presented in the Court and this Court has competence to try the suit.

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

11. **Issue No. 3 :**

Issue No. 3 relates to the question of the suit being rendered bad for non-joinder of necessary parties.

Defendants had raised the plea that all the pattadars of the total land covered by dag No. 3, 135 (new) patta No. 53 (old) 287 (new) of village Salbari are necessary parties to the suit as the suit land forms a part of the un-partitioned land.

Plaintiff has alleged that the defendant who was a permissive occupier under him has refused to vacate the suit land. On the other

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hand defendant admitting the plaintiff's ownership over the suit land claims to be in possession thereof on the basis of the agreement for sale only. The pattadar can maintain a suit against the alleged trespasser even if the land is unpartitioned and he can do so on behalf of the all other pattadars. The allegation is only against the defendant. Hence, in the above circumstance the presence of other pattadars are not necessary.

Accordingly the issue is decided in the negative in favour of the plaintiff.

12. ***Issue No. 4, 5, 6 and 7 :***

Issue Nos. 4, 5, 6 and 7 being inter related are addressed together for the sake of convenience and to avoid repetition in the discussions.

Issue No. 4 relates to question of presence of plaintiff's right, title, interest over the suit.

Issue No. 5 relates to the question whether the plaintiff entered into an agreement for sale of the suit land with the husband of defendant No. 1 on 3.2.1998 for consideration of Rs. 20,000/- (Rs. Twenty thousand) and whether plaintiff had delivered possession of the suit land to the defendant receiving the total consideration money as claimed and whether the defendants are in possession of the suit land since the date of agreement.

Issue No. 6 relates to the question whether the defendants are permissive occupiers under the plaintiff and whether the defendants have refused to deliver vacant possession of the suit land when required to do so.

And issue No. 7 relates to the question whether the plaintiff is entitled to recover khas possession of the suit by dismantling the structures standing thereon.

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It is the plaintiff's pleaded case that defendants are permissive occupiers under him in respect of the suit land and that the defendants who were allowed to stay on the suit land on humanitarian grounds had constructed a house on the suit land during the absence of the plaintiff from the suit land and had refused to vacate the suit land when required to do so by the plaintiff and instead had filed title suit No. 18/12 before the Court of learned Munsiff, Bongaigaon for specific performance of the alleged contract for sale.

Defendant on the other hand had averred that the plaintiff had entered into an agreement for sale with their predecessor-in-interest Bhabeswar Sutradhar on 3.2.1998 for a consideration of Rs. 20,000/- (Rs. Twenty thousand) and that on receipt of the said amount the plaintiff had delivered possession of the suit land.

Admittedly Title Suit No. 18/12 was filed by the present defendants for specific performance of alleged contract dated 3.2.1998, wherein the learned trial Court had refused the grant of the relief of specific performance of contract.

The records of Title Suit No. 18/12 were requisitioned from the learned trial Court on prayer of the plaintiff and perused.

Perusal of the judgment rendered in Title Suit No. 18/12 discloses that the learned Munsiff, Bongaigaon at issue No. 3 had arrived at a conclusion that there was no agreement for sale entered into between the plaintiff's therein or the present defendants and the present plaintiff in respect of the suit land on 3.2.1998 as claimed. The aforesaid finding has not been put to challenge in appeal nor the said finding has been revised in revisional jurisdiction.

Hence, the present issue No. 5 stands answered to the

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effect that there was no agreement concluded between the defendant's predecessor Bhabeswar Sutradhar and the plaintiff on 3.2.1998 and therefore the question of the plaintiff handing over possession of the same pursuant to an agreement does not arise.

Plaintiff to prove his case has adduced the evidence of 4 numbers of witnesses. PW 1 to PW 4 have reiterated the pleaded case of the plaintiff in their respective evidence in affidavits. The PWs testified to the effect that the defendants were permissive occupiers in respect of the suit and that the defendants have refused to vacate the suit land when required to do so. The above evidence of the PWs remained unchallenged and unimpeached.

The defendant in their written statement had admitted the ownership of the plaintiff over the suit land but has only alleged that the plaintiff had refused to execute the registered sale in respect of the suit land despite receiving the consideration amount. But as discussed above the learned Court of Munsiff Bongaigaon had held that there was no agreement for sale in respect of the suit land and defendants failed to show the basis of which they possess the suit land.

Now the admission of the defendant goes on to show that plaintiff has right, title, interest over the suit land. No registered sale deed was executed in favour of the defendant. There is also no other deed of conveyance executed by the plaintiff in favour of the defendant's predecessor. Transfer of Property Act 1882 do not recognise any other mode of conveyance except by way of a registered instrument. There is none on record in the instant case. Therefore no valid title passed on from the plaintiff to the defendant's predecessor or to the defendants. Defendants possession over the suit land is without any basis.

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Accordingly the firm evidence of the PWs goes on to show that the defendants have exceeded the term of license to occupy the suit land and that defendants possession over the suit land is not on the basis of any title. Defendants are evictable therefrom, thus.

The structure standing on the suit land are also liable to be dismantled. In view of the above discussions, issue No. 4, 6 and 7 stands answered in the affirmative in favour of the plaintiff and issue No. 5 stands answered in the negative, in favour of the plaintiff.

13. ***Issue No. 8 and 9 :***

Issue No. 8 and 9 relates to the question of entitlement of the plaintiff to reliefs in the suit.

In view of the discussions and decisions arrived at in issue No. 1 to 7, I am constrained to hold that the plaintiff is entitled to a decree for declaration of his right, title, interest over the suit land and for a further decree for recovery of khas possession of the suit by evicting the defendants from the suit land and by dismantling any structures of the defendants standing over the suit land.

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

14. ***O R D E R***

In the light of the foregoing discussions, the plaintiffs' suit stands decreed exparte with costs.

It is hereby decreed and declared that the plaintiff has

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right, title interest over the suit land and that the defendants are evictable from the suit land.

It is further decreed that plaintiff is entitled to recover khas possession of the suit land by evicting the defendants therefrom and by dismantling any structure of the defendants standing thereon, along with costs of the suit.

Prepare a decree accordingly.

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

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

Dictated & corrected by me,

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

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A P P E N D I X

Plaintiff's witnesses :

PW 1 - Sri Pramod choudhury.

PW 2 - Sri Debasish Sarkar.

PW 3 - Sri Bikash Laskar.

PW 4 - Sri Ram Bilash Singh.

Defendant's witnesses :

Nil.

Court witness

Nil.

Plaintiff's exhibit

Nil.

Defendant's exhibit

NIL

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