

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.**

Tuesday, the 18th day of April, 2017.

Title Suit No. 8 of 2012.

1. Agradoot Cultural Forum, Salbari,

BOC Gate, North Bongaigaon

Represented by its President,

P.O., P.S. & Dist - Bongaigaon,(Assam).

2. Sri Subrata Ghosh,

S/O Late Sudhir Ch. Ghosh,

President, Agradoot Cultural Forum, Salbari,

BOC Gate, North Bongaigaon

P.O., P.S. & Dist - Bongaigaon,(Assam).

3. Sri Sujit Kr. Ghosh,

S/O Late Mohima Ranjan Ghosh,

General Secretary, Agradoot Cultural Forum, Salbari,

BOC Gate, North Bongaigaon

P.O., P.S. & Dist - Bongaigaon,(Assam).

.....Plaintiffs

Contd.....

(2)

VERSUS

1. Sri Barun Kr. Saha,
S/O Sridam Saha,
Resident of Salbari, North Bongaigaon,
P.O., P.S. & Dist - Bongaigaon,(Assam)

..... Defendant

AND

On the death of Late Sadhana Biswas, her legal heirs, namely-

1. Sri Ahinava Biswas,
S/O Late Ashutosh Biswas,
R/O Gauripur Town, Ward No. 4
P.O & P.S – Gauripur,
Dist – Dhubri, Assam.
2. Smti Rukmini Biswas @ Sarkar
W/O Sri Amit Sarkar,
R/O Gauripur Town, Ward No. 4
P.O & P.S – Gauripur,
Dist – Dhubri, Assam.
3. Smti Nandini Biswas,
W/O Sri Manas Biswas,
R/O Agartala,
P.O & P.S Gauripur,
Dist – Dhubri, Assam.

..... Proforma-Defendants

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(3)

This suit coming for final hearing on 4.4.2017.

(I) Given date or dates
in the presence of

Mr. M. Rahman

Advocate for plaintiffs

Mr N.K. Ghosh

Advocate for defendant.

and having stood for consideration to this on the 18th day
of April, 2017 the Court delivered the following Judgment:

T.S.8/2012

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

1. This is a suit for declaration of right, title, interest, for
cancellation of sale deed and for setting aside a judgment and decree.

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

Plaintiff's Case :

3. The plaintiff No. 1 is a Cultural Forum under the name
and style 'Agradoot Cultural Forum' and plaintiff No. 2 and 3 are the President
and Secretary of the forum respectively. That plaintiff owns a plot of land
measuring 2 katha 10 lecha morefully described in the schedule to the plaint.

It is the plaintiff's case that the suit land originally was
owned and possessed by one Sadhana Biswas, the predecessor-in-interest of the

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proforma-defendants, who during her lifetime, through her constituted attorney caused the gift of the scheduled land to the plaintiff forum vide gift deed No. 954 of 2004 and the said gift was accepted by the then President of the forum namely Chandan Chaterjee. It was averred that the constituted attorney was empowered vide the deed of attorney no. 294 dated 29.11.2004 by the original owner for the said purpose amongst other.

It is the further case of the plaintiff that after the execution of the gift deed, the possession of the suit land had been taken over by the plaintiff and the suit land had been mutated in the name of the plaintiff forum and 'myadi patta' also had been secured. It is also the case of the plaintiff, that plaintiff had been paying land revenue in respect of the suit land regularly and had also obtained electric connection, telephone connection, in the house constructed over the suit land.

It is averred by the plaintiff that the defendant No. 1 Barun Kr. Saha filed title suit No. T.S. 63/1999 against Sadhana Biswas (since deceased) for specific performance of contract and for permanent injunction, which suit was decreed in favour of the present defendant vide judgment dated 6.12.2004 and that though the legal heirs of Sadhana Biswas had filed a Title Appeal being No. 1/09, but the same was dismissed and that the decree aforesaid was put through execution vide Title Execution Case No. 2/10, wherein the defendant with the help of police personnel caused the execution of the decree and secured possession of the suit land. It is alleged that the present defendant had not impleaded the present plaintiff in Title Suit No. 63/99 and have obtained the decree in Title Suit 63/99 fraudulently causing wrongful loss to the plaintiff for which the judgment and the decree passed in Title suit 63/99 is liable to be set aside. The plaintiff alleges that elements of fraud are evident

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on record in Title suit 63/99, for which no valid title could accrue in favour of the defendant and the registered sale deed No. 7/83 dated 5.8.2011 executed by the then Sheristadar of the Office of Civil Judge, Bongaigaon, is liable to be cancelled. Hence in the above circumstances, plaintiff has filed the instant suit for setting aside the judgment and decree passed in Title suit 63/99 along with a decree for declaration that the plaintiffs are owners of the suit land, a decree for recovery of possession of the suit land by evicting the defendants therefrom, permanent injunction and costs of the suit.

Defendant's Plea :

4. The defendant entered appearance and contested the suit by filing his written statement.

In his written statement the defendant raised the pleas of absence of cause of action for the suit, non-joinder of necessary parties, non-maintainability, improper valuation etc.. Besides the aforesaid pleas the defendant averred that the alleged gift of the suit land by the original owner and possessor of the suit land is void as the original owner had no right to cause the transfer of the scheduled property during pendency of Title Suit No. 63/99 as she was a party to the suit and she had been contesting the suit by adducing evidence and that any transfer or disposal made during the pendency of the said suit is hit by Section 52 of the Transfer of Property Act. The defendant further averred that the alleged gift deed executed by the attorney holder of Sadhana Biswas, not been accepted duly is void. The defendant admitting the execution of the decree with the assistance of police, averred that the plaintiff had allegedly prevented the bailliff to execute the decree which had been passed

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after hearing the parties states that he has been in possession of the suit land ever since the execution of decree in Title Suit no. 69/99, on the strength of purchase. The defendant prays for dismissal of the suit with exemplary costs.

The proforma defendants failed to contest the suit despite summons. Accordingly vide order dated 29.6.2013 and 22.12.2014, the suit was directed to proceed exparte against the proforma defendants Nos. 2(i) and 2(ii) and defendant Nos. 2(iii) and 2(iv) respectively.

5. Upon perusal of pleadings and upon hearing the learned counsels of both sides vide order dated 26.8.2015 the following issues were framed for adjudication by one of my learned predecessor-in-chair.

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 judgment dated 6.12.2008 passed in T.S. No. 63/1999 is fraudulent as alleged and liable to be set aside ?***
- 5) Whether the gift deed No. 1294/954 dated 3.12.2004 executed by Sadhana Biswas in favour of the plaintiff is valid ?***
- 6) Whether the plaintiffs have right, title, interest and possession over the suit land ?***
- 7) Whether the defendants are liable to be evicted from the suit land ?***

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

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

6. The plaintiff in order to prove its case adduced the evidence of 4 witnesses and also exhibited some documents. The defendants also adduced the evidence of 2 numbers of witnesses and also adduced documentary evidence. Both sides cross-examined either parties witnesses. It deserves mention herein that the case record of Title Execution No. 2/10 and Title Suit No. 63/99 had been requisitioned and had been tagged to the instant case record for perusal and proper adjudication of the dispute at hand.

Arguments :

7. Heard the arguments advanced by the learned counsels of both sides.

7(i) Learned counsel for the plaintiff submits that the judgment passed in Title Suit No. 63/99 has been obtained fraudulently by mis-representing facts for which the same is liable to be set aside. Learned counsel submits that the then plaintiff in Title Suit No. 63/99 had manipulated the alleged agreement for sale and had secured a decree in his favour in Title Suit 63/99. Learned counsel urges that the alleged forgery had also been proved through the report of the forensic expert in Title Suit No. 63/99 and despite the fact of availability of materials on record, the learned Court had decreed the suit in the plaintiff's favour, whereafter the registered sale deed was caused to be

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executed in favour of the plaintiff, through an Officer of the Court and the possession delivered in execution, for which the judgment and decree cannot be allowed to sustain. Learned counsel submits that the judgment being obtained fraudulently cannot be sustained. Learned counsel prays for setting aside the decree. Learned counsel relied in the case of **Prativa Deka and other Vs. Akhil Ch. Deka reported in 2014(5) GLJ259** to urge that the essential requisites for decreeing a suit for specific performance as laid down in the judgment aforementioned had not been proved by the plaintiff in Title Suit No. 63/99, yet the decree passed, for which it ought not to stand. Learned counsel prays that same may be set aside.

7(ii) Refuting the above submissions, learned counsel for the defendant side submits that the decree passed in Title Suit No. 63/99 had been passed on full contest after proper appreciation of the materials on record and no fraud as alleged had taken place. Learned counsel further submits that there is no requirement for the impleadment of the present plaintiff in Title Suit No. 63/99, as the alleged gift was made during pendency of Title Suit No. 63/99 and the fact of such gift was not communicated by the original owner who was a contesting defendant in the said suit. The original owner having transferred the suit property and the present plaintiff having allegedly received the gift during the pendency of the suit, have done so at their own peril, whereby the outcome of the suit, is to be faced by the transferor or for the matter subsequent transferee. Learned counsel submits that Section 52 of the Transfer of Property Act 1882 would find attraction in the present facts and for non-impleadment of the present plaintiff in Title Suit No. 63/99, the judgment passed therein cannot

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be set aside. Learned counsel relied on the following judgment to bulwark his case :

(1) of Uddar Gagan Properties Limited Vs. Sant Singh and others reported in (2016) 11 SCC 378,

(2)K.N. Aswathnarayana Setty (Dead) Through Lrs. & Ors. Vs. State of Karnataka & Ors. Reported in 2014 SAR (Civil) 5,

(3)Kirpal Kaur Vs. Jitender Pal Singh & Ors. Reported in 2015 SAR (Civil) 1025,

(4)Kedar Nath Lal and Another Vs. Ganesh Ram and Others reported in AIR 1970 SC 1717.

8. I have given my anxious consideration to the arguments forwarded by the learned counsels of both sides and also perused the case record carefully.

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

Discussions, Decisions and Reasons Therefor :

10. **Issue No. 1 :**

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

Perusal of the plaint discloses that the plaintiff claims the scheduled property as the land received in gift from the constituted attorney of the original owner. It is the plaintiff's pleaded case that the alleged sale deed executed through the Court's Officer in favour of the defendant pursuant to the

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decree in Title Suit No. 63/99, allegedly obtained by fraud has infringed the plaintiff's right to enjoy the suit land.

On the other hand, the defendant stakes over claim the suit property, by dint of purchase, in pursuance of a lawfully passed decree of the Court, passed on full contest in Title Suit No. 63/99. Defendant disputes the accrual of plaintiff's title over the suit land on the strength of gift, made during the pendency of Title Suit No. 63/99, same being rendered void, being hit by the doctrine of "lis pendens".

The rival claims and contentions of the parties discloses grounds for maintenance of a suit, thereby disclosing a cause of action for the suit.

However, whether the plaintiff succeeds in establishing his cause or not would be addressed in the length of the judgment.

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

11.

Issue No. 2 :

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

The defendant has raised the plea that the present suit being instituted by a forum, is in the nature of a representative suit and that prior permission is necessary for maintaining the suit of the present kind and that the failure of the plaintiff to seek necessary permission for institution of the suit, has rendered the suit non-maintainable. The defendant had also alleged that the plaintiff No. 2 and 3 having presented the plaint without authority has also rendered the suit non-maintainable.

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To address the issue of non-maintainability so raised, it will be worthwhile to peruse the plaint.

Perusal of the plaint discloses that plaintiff has filed the instant suit as a cultural forum. Infact, it has pleaded that it is a forum of persons of cultural interest, associated for the purpose of social and cultural programme and for the up-liftment of the locality. Apparently it is an association of people. Accordingly as per Order 1 Rule 8 of the Code of Civil Procedure such association of people is to maintain a representative suit and it cannot sue without obtaining leave of the Court. Further perusal of the plaint discloses that plaintiff has not sought leave to institute the suit in a representative capacity.

Again plaintiff Borun has not submitted any authorization of in favour of the plaintiff No. 2 and 3 to institute the suit on behalf of the said forum. The substratum on which the suit stands do not find footing thus. Order 1 Rule 8 of the Code of Civil Procedure is a mandatory provision and that non-conformity has rendered the suit non-maintainable.

The issue is decided in the negative against the plaintiff.

12. ***Issue No. 3 :***

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

It is the defendant's plea that the non-joinder of the Sub-Registrar concerned has rendered the suit bad.

Perusal of the plaint especially the relief portion of the plaint discloses that plaintiff had prayed for a declaration that the decree passed in Title Suit No. 63/99, was fraudulently obtained and that the same is required

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to be set aside and further declaration that the plaintiffs are owner of the suit land and the defendant is evictable therefrom.

The reliefs sought for, no-where discloses that plaintiff has sought for cancellation of any sale deed. Rather plaintiff has prayed for setting aside the decree in Title Suit No. 63/99, on the ground that it was fraudulently obtained. The presence of the Sub-Registrar concerned is not necessary in the suit, as because, if the decree itself is found to be fraudulently obtained, it would become 'nonest' in the eye of law and the sale deed executed in pursuance of the decree would be void ab-initio and lose its force. The non-joinder of the concerned Sub-Registrar in the suit is therefore is not fatal.

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

13.

Issue No. 4 :

Issue No. 4 relates to the question whether the judgment dated 6.12.2008 passed in Title Suit No. 63/99, is fraudulent as alleged and liable to be set aside.

It is the plaintiff's pleaded case that the present defendant Barun Kr. Saha had filed Title Suit No. 63/99, in the instant Court being against the original owner of the suit land being Sadhana Biswas (since deceased) for Specific Performance of Contract and for permanent injunction, claiming to have advanced an amount towards total fixed consideration being 2,25,000/- (Rs. Two lakhs twenty five thousand), wherein the original owner / defendant has alleged manipulation of the agreement for sale by way of addition and alteration. It is also pleaded that the alleged agreement for sale, with the questioned signatures were sent to the Forensic Science Laboratory Assam (FSL

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in short hereinafter), whereafter it was reported that forgery had infact, being committed but despite the presence of the report of FSL, the suit was decreed in favour of the present defendant, who was the plaintiff in Title Suit No. 63/99, and thereafter in pursuance of the decree a registered sale deed was executed by the Sheristadar of Bongaigaon Court in favour of the present defendant and the decretal premises handed over to the defendant.

It is alleged that the present plaintiff were not party to Title Suit No 63/99 and was ignorant about the passage of the decree in Title Suit No. 63/99 and despite the fact that the plaintiffs forum was in occupation of the suit land since 3.12.2004 on the strength of a gift deed No. 954 of 2004 executed by the constituted attorney of the original owner, the said suit was decreed against the possessors of the suit land / present plaintiff. Plaintiff alleging material concealment of facts by the present defendant (plaintiff in Title Suit No. 63/99), advocates for setting aside the decree.

Plaintiff / PW 1 reiterated his pleaded case in his evidence-in-affidavit.

In support of his case PW 1 exhibited Ext 1 being the registered sale deed. Ext 2 a land holding certificate. Ext 3 being the periodic khiraj patta, Ext 4 certificate in lieu of Jamabandi. Ext 5 and Ext 6 being Revenue Clearance receipts and Ext 7 being the power of attorney No. 294 dated 29.11.2004.

PW 1 in his cross-examination discloses that he was ignorant of the fact of subsistence any injunction order in respect of the suit land on 29.11.2004 as the original owner had not reported about the said injunction order to them. PW 1 also disclosed that they had not made any inquiry prior to the gift, in the matter of any subsisting dispute / case in respect

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of the suit land at the relevant point of time.

PW 1 further disclosed that he could learn about the decree only on 29.8.2011 when the bailiff of the Court had gone to execute the decree. PW 1 also disclosed that he had not prayed for cancellation of the agreement for sale deed dated 15.1.1999 in the instant case.

PW 2, PW 3 and PW 4 filed their respective evidence-in-affidavit supporting PW 1 in all material particulars. PW 2 in his cross-examination disclosed that he had not submitted any documents in respect of he being a Secretary of the plaintiff 'forum'. PW 3 and PW 4 in their respective cross-examination also revealed that they had not submitted any documents in respect of their membership of the Forum. All the Pws admitted that they had not inquired in respect of the pendency of any case prior to the gift of the suit land nor they had knowledge about the operation of any injunction order in respect of the suit land at the time of execution of the gift deed.

Now perusal of the documents submitted by the plaintiff side discloses that the Ext 1 is a registered deed of gift executed by the constituted attorney of Sadhana Biswas in favour of Agradoot Cultural Forum. The Ext 7 which is again a power of attorney discloses that one Sadhana Biswas had executed the same in favour of Sonmoy Ghosh, son of Sudhir Ch. Ghosh, the executant of Ext 1. Ext 7 is a certified copy of the registered power of attorney. Defendant has disputed Ext 7.

Plaintiff had failed to prove Ext 7 by bringing the official records from the Office of Sub-Registrar, Dhubri. However, Ext 1 which is a gift deed is not in dispute by the defendant side. The only point raised herein is that Ext 1 is hit by the doctrine of 'lis-pendens', same being executed during the pendency of Title Suit No. 63/99, wherein the original owner was a party.

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Now at this juncture the perusal of the Title Suit No. 63/99, is necessitated. Perusal of the record discloses that Sadhana Biswas was the defendant in Title Suit No. 63/99, and had entered appearance pursuant to summons and filed her written statement admitting the agreement for sale dated 15.1.1999, however alleging tempering of the agreement for sale and also forgery of her signature in the application for 'NOC (No objection certificate) from the Bongaigaon Development Authority. Further perusal of the case record discloses Court had vide order dated 25.11.2005 sent the questioned signatures for examination through the Forensic Science Laboratory, and the said FSL report was proved through the expert who have submitted the report. Case record further discloses that after perusal of the report, the Court passed judgment dated 6.12.2008 decreeing the suit for Specific Performance of the Contract.

It is an admitted fact that the aforesaid judgment was impugned in Title Appeal No. 1/09 wherein the Hon'ble Appellate Court had affirmed the judgment passed in Title Suit No. 63/99, vide judgment and order dated 17.8.2010. Admittedly there is no second appeal against the aforesaid judgment. Rather the instant suit has been filed to set aside the decree, which has been affirmed by the concurrent findings of facts by two Courts, including the First Appellate Court.

It is averred by the plaintiff that the alleged decree has been fraudulently obtained by concealing materials facts despite the fact of tempering of the agreement of sale dated 15.1.1999, which was confirmed by the forensic report.

Perusal of the evidence of the forensic report exhibited in Title Suit No. 63/99, discloses that the scientific expert was entrusted with the

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task of comparing the signatures of the defendant in Title Suit No. 63/99 that is the executant of the alleged agreement for sale with the purported signatures of the said defendant in the application form for the NOC, from the Bongaigaon Development Authority and the Scientific expert on analysing found that the authorship differed.

Perusal of the judgment passed in Title Suit No. 63/99, discloses that the then learned Civil Judge, discussing issue No. 5 had dealt with such variance of signatures in Ext 1 that is the alleged agreement for sale and the application for NOC, and had found that the defendant had admitted the execution of the agreement for sale which means that she admitted her signature in the said agreement. The learned Court found that the alleged interpolation there in respect of the consideration has been clarified by the number names and the defendant therein failed to show as to who had made such over writings, in the face of the admitted execution of alleged agreement for sale by the defendant. The refusal of the defendant therein to execute the registered sale deed requiring the plaintiff to take back the advanced money, has also been borne out of record. Again the variance in the signature of the defendant in Title Suit No. 63/99 in the alleged application requesting permission from the Bongaigaon Development Authority could not be attributed to the defendant through cogent evidence. All this led the Court to the inevitable conclusion of decreeing the suit.

The present plaintiff failed to lead any convincing evidence to negate the aforesaid finding of the Court in reference. Admittedly the present plaintiff was not a party in Title Suit 63/99. But it was the duty of the then defendant to inform the Court about any transfers being effected in order to enable the plaintiff to implead him. The said omission of the defendant

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then cannot be said to be a cancellation done by the then plaintiff of Title Suit No. 63/99.

Herein it will be relevant to understand the law of 'lis pendens'.

The doctrine of 'lis pendens' expressed in the maxim "*ut lite pendente nihil innovetur*" (during a litigation nothing new is to be introduced) has been statutorily incorporated in section 52 of the Transfer of Property Act, 1882. The defendant cannot by alienating property during pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendens lite is treated in the eye of law as a representative in interest of the judgment debtor and he will be bound by the decree passed against the judgment debtor though neither the defendant has chosen to bring the transferee on record by apprising his opponent and the court of the transfer made by him nor the transferee has chosen to come on record by taking recourse to, Order 22 Rule 10 of the Code of Civil Procedure. Any assignment creation or devolution of any interest during the pendency of any suit will be bound by the decree, even though such assignee was not a party to the suit, wherein the decree was passed. **In fact a lis pendens transferee from the defendants, though not arrayed as party in the suit, is still a 'person claiming'** under the defendant. Transfer or assignment *inter vivos* made by the judgment debtor will not estop the decree holder for executing against the transferee or assignee of the judgment debtor irrespective of the fact whether the assignment had taken place after passing of the decree or before passing of the decree with or without notice. The judgment relied on the defendant side also clarifies the above position of law.

Hence in view of the above proposition, the non-

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impleadment of the present plaintiff cannot be said to have rendered the decree fraudulent. Accordingly in the above circumstances, I am but to hold that the judgment so passed in Title Suit No. 63/99, cannot be said to be a fraudulent and it cannot be set aside.

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

14. **Issue No. 5 and 6 :**

Issue No. 5 relates to the question whether the gift deed No. 954 dated 3.12.2004 executed by Sadhana Biswas through her constituted attorney in favour of the plaintiff is valid **while** issue No. 6 relates to the question whether the plaintiff have right, title, interest and possession over the suit land.

The two issues being interrelated are addressed together for the sake of convenience to avoid repetition in the discussion and marshelling of evidence.

Gift deed No. 954, dated 3.12.2004 was executed by Sadhana Biswas's constituted attorney in favour of the plaintiff forum during pendency in Title Suit No. 63/99 is an admitted fact.

It is also not in dispute that Title Suit No. 63/99 was filed by the present defendant against Sadhana Biswas for specific performance of contract wherein Sadhana Biswas had entered appearance and contested the suit.

Apparently Sadhana Biswas had full knowledge about Title Suit No. 63/99, but nevertheless she had executed a power of attorney on 29.11.2004 in favour of one Sonmoy Ghosh, son of Sudhir Ch. Ghosh vide power of attorney No. 294/2004, and the said constituted attorney had executed

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the gift deed No. 954 of 2004 in favour of the plaintiff 'forum' on 3.12.2004. Title Suit No. 63/99 was disposed on 6.12.2008 and same was instituted on 30.7.1999. Apparently the power of attorney and the subsequent gift deed has been executed during the pendency of Title Suit No. 63/99. PW 1 has exhibited Ext 1 being the registered gift deed No. 954/2004 and Ext 7 being the power of attorney No. 294 dated 29.11.2004.

It is the defendant's plea that the plaintiff having knowledge of Title Suit No. 63/99, had executed the aforesaid gift deed and the power of attorney holder despite the operation of the order of injunction in respect of the suit land passed in Misc.(J) Case No. 24/99 vide order dated 25.7.2000.

Section 52 of the Transfer of Property Act 1882 finds relevance herein.

Any transfer effected by the party to the suit when the subject matter was sub-judice in the said suit, the transferor and transferee would be bound by the outcome of the suit during whose pendency the transfer was effected, as the transferee had purchased the subject-matter of the suit at his own peril. The subsequent transferee further becomes the representative in interest of the vendor from whom, he had acquired his alleged title to the subject-matter, in view of Section 52 of the Act aforesaid. (Refer to discussions in issue No. 4.)

In the present case, the defendant had received the suit land in gift through the constituted attorney of the original owner. The outcome of Title Suit No. 63/99, would further be binding on the plaintiff and the subsequent transferee. Non-impleadment of the present plaintiff in Title Suit No. 63/99, was uncalled for, as the present plaintiff was only a pendent-lite

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transferee and the said fact of transfer was not revealed by the original owner for which the impleadment of the present plaintiff could not have been effected in Title Suit No. 63/99. Though present plaintiff was not impleaded therein, yet he being a subsequent transferee would be bound by the decree. Accordingly I am constrained to hold that the gift deed No. 954/04, executed by the constituted attorney of Sadhana Biswas is a void one and plaintiff could not acquire right, title, interest over the suit land by dint of the same. Further admittedly the defendant have acquired possession of the suit land by dint of the decree passed in Title Suit No. 63/99, vide Title Execution No. 2/10 on 6.1.2012 and have been in lawful possession of the suit land ever since.

Case record of Title Execution No. 2/10 bears enough testimony to the fact of putting through execution the decree in Title Suit No. 63/99, and defendant acquiring possession of the suit land legally. Accordingly I am constrained to hold that the plaintiffs have no right, title, interest or possession over the suit land.

In view of the above discussions the issue No. 5 and 6 stands answered in the negative against the plaintiff.

15. ***Issue No. 7, 8 and 9 :***

Issue No. 7, 8 and 9 being inter-related are addressed together for the sake of convenience and brevity.

Issue No. 7 relates to the question whether the defendants are liable to be evicted from the suit land while issue No. 8 and 9 relates to the question of entitlement of the plaintiffs to reliefs in the suit.

In view of the decisions and discussions arrived at in

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issue No. 2, 3, 4, 5 and 6, I am but to hold that present defendant have come into possession of the suit land in pursuance of validly passed decree, passed in Title Suit No. 63/99 and the consequent execution of the registered sale deed, pursuant to the decree in reference. Plaintiff have failed to prove their subsisting title in respect of the suit land. Accordingly the possession of the defendant over the suit land is on the strength of a valid sale deed and he is not evictable therefrom. The plaintiffs are accordingly not entitled to a decree or any other reliefs in the suit.

The issues stands answered in the negative against the plaintiff.

16. **O R D E R :**

In the light of the foregoing discussions the plaintiff's suit is dismissed on contest with costs.

Prepare a decree accordingly.

Given under my hand and the seal of this Court on the 18th 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 - Subrata Ghosh.
- PW 2 - Sujit Ghosh.
- PW 3 - Subrata Debnath.
- PW 4 - Ashish Ranjan Mukharjee.

Defendant's witnesses :

- DW 1 - Baurm Kr. Saha.
- DW 2 - Dhruvadeep Saha.

Plaintiff's exhibit

- Ext 1 - Gift Deed No. 954 of 2004.
- Ext 1(1) to Ext 1(5) – Signature of Power of Attorney Holder.
- Ext 2 - Land Holding Certificate.
- Ext 3 - Periodic Khiraj Patta.
- Ext 4 - Jamabandi certificate.
- Ext 5 - Land Revenue Clearance Certificate.
- Ext 6 - Land Revenue Payment Receipt.
- Ext 7 - Power of Attorney.

Defendant's exhibit

- Ext A - Registered sale deed.

Ext B – Jamabandi.

Ext C – Land Holding Certificate.

Ext D, Ext E, Ext F and Ext G – Land Revenue Payment Receipt 4 Nos.

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Court Witness :

Nil.

Court Exhibit :

Nil.

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