

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Bongaigaon

IN THE COURT OF MUNSIFF, BONGAIGAON

Present: - Uttam Chetri

Monday, the 15th day of February, 2016

Title Suit No. 34/2013

Sri Tapan Kr. Singha

Son of Late Kameswar Singha, resident of Village: Barpara,
Bongaigaon, P.O: Bongaigaon-783380, District: Bongaigaon, Assam

..... **Plaintiff**

Versus

1. The State of Assam represented by the Secretary to the Government of Assam, Department of Revenues, Dispur, Guwahati-781006
2. The Deputy Commissioner and Collector, Bongaigaon, P.O: Bongaigaon, Assam-783380
3. The Settlement Officer, Goalpara and Bongaigaon, P.O: Goalpara, Assam
4. The Circle Officer, Bongaigaon Revenue Circle, Bongaigaon P.O: Bongaigaon, District: Bongaigaon, Assam-783380

.....**Defendants**

5. Sri Kamala Kanta Barua, Son of Late Golok Ch. Baruah, resident of Village: Chaprakata Nayapara, P.O.: Chaprakata,P.S: Bongaigaon, District: Bongaigaon, Assam

..... **Pro forma Defendant**

This suit coming on for final hearing on **20.01.16**, in the presence of

Advocate for the plaintiff: **Sri D.C. Nath**

Advocate for the defendants: **Sri R.N. Das**

and having stood for consideration to this **15th day of February, 2016**, the Court delivers the following judgment :-

J U D G M E N T

1. This is a suit for declaration of the plaintiff's right, title and interest over the suit land along with permanent injunction restraining the defendants, their officials and agents from disturbing the peaceful possession of the plaintiff over the suit land along with direction to the defendants to correct the record of rights in respect of the suit land in the name of the plaintiff.

PLAINTIFF'S PLEA

2. The fact of the case as pleaded by the plaintiff is that the plot of land measuring 10 (ten) bighas covered under Khatian No. 109, Dag No. 163/368 situated at village: Chaprakata Part I under Bongaigaon Revenue

Circle in the present Bongaigaon district was recorded in the name of Sri Prabhat Ch. Barua as Khatiandar vide order dated 06.02.1969 passed by the Circle Officer, Bongaigaon vide Memo No. 792 (B) dated 09.12.1968; that Sri Prabhat Ch. Baruah gifted the aforesaid plot of land to the plaintiff and, accordingly, the name of the plaintiff was corrected as pattadar in respect of the aforesaid plot of land; that the plaintiff has been possessing the aforesaid plot of land from the year 1970 by using a part thereof as fishery and remaining part as cultivable land; that Sri Prabhat Ch. Baruah who was the maternal uncle of the plaintiff died as bachelor in the year, 1997 leaving behind his brother Sri Kamala Kanta Baruah as his legal heir, and the later is arrayed as pro forma defendant in the present suit as he has no claim over the suit land, and admits the title of the plaintiff over the suit land; that the aforesaid plot of land subsequently became recorded under Periodic Patta No. 41/67, Dag No. 163/368 since converted to Dag No. 260 situated at village: Chaprakata Part I under Bongaigaon Revenue Circle in the district of Bongaigaon, Assam (more particularly described in the Schedule of the plaint and which will here-in-after be referred to as suit land); that the plaintiff defaulted in payment of land revenue in respect of the suit land for some years due to his personal difficulties; that on 03.01.2011 when the plaintiff went to the Office of Tahsildar, Bongaigaon Revenue Circle, Bongaigaon to pay land revenue in respect of the suit land, he found that the suit land has been converted to Government land by way of cancellation of the patta standing in his name; that the plaintiff on 20.03.2012 filed an application praying for issue of records of the suit land so corrected before the Deputy Commissioner, Bongaigaon and, accordingly, on 01.06.2012 he was provided with certified copy of the Citha in respect of the suit land; that on rigorous search and inspection of the revenue records in respect of the suit land, the plaintiff found that the Settlement officer, Bongaigaon vide order dated 28.11.1986 and 06.12.1986 passed in Misc Case No. 7/86 had cancelled the patta standing

in his name in respect of the suit land without issuing notice to him, and without affording any reasonable opportunity of hearing to him; that although the plaintiff made strenuous efforts to inspect the case records of Misc. Case No. 7/86, both at the office of the Settlement Officer, Bongaigaon at Goalpara and the Office of the Deputy Commissioner, Bongaigaon but the concerned officials informed him that the case records of Misc. Case No. 7/86 could not be traced out and, as such, the plaintiff is still in dark as to under what circumstances the periodic patta in respect of the suit land has been cancelled; that it is apparent from the certified copy of the citha that suit land was converted to sarkari khas land vide order dated 28.11.1986 passed by the Settlement Officer in Misc. Case No. 7/86 and correction was made to that effect on 13.07.1986 by the concerned Mandal and the supervising Kanango in the Citha Book in respect of the suit land; that it is also apparent from the certified copy of the Citha Book that the suit land was again converted to sarkari land vide order dated 06.12.1986 passed by the Settlement Officer in Misc. Case No. 7/86 and correction was made to that effect on 10.12.1986 by the concerned Mandal and the supervising Kanango in the Citha Book in respect of the suit land; that the cancellation of the patta of the suit land vide 2 (two) orders in the purported Misc Case No. 7/86, correction of records in pursuant thereto by the concerned Mandal and Kanungo in the Citha book 2 (two) times in 2 (two) separate dates and non-availability of case records of Misc Case No. 7/86 in any of the concerned Revenue Offices casts a serious doubt as to the genuineness of the aforesaid orders passed in Misc. Case No. 7/86 which the plaintiff believes to have been manipulated by the concerned Mandal and Kanungo at the instance of some persons with vested interests; that the name of the plaintiff was recorded in the Citha book in respect of the suit land from the year 1970 till 1986 i.e., until cancellation thereof; that the plaintiff has been possessing the suit land from the year 1970 till date i.e., for more than 30 years hostile to the title of the State of

Assam and, as such, the right, title and interest of the plaintiff has ripened over the suit land by way of adverse possession against the State of Assam. The plaintiff, therefore, prays for the following reliefs:

- a) Decreeing the suit declaring that the plaintiff has right, title, interest and possession over the suit land;
- b) Permanent injunction restraining the defendants, their officials and agents from disturbing the peaceful possession of the plaintiff over the suit land;
- c) Direction to the defendants to correct the records of rights in respect of the suit land in the name of the plaintiff;
- d) Cost of the suit, and;
- c) Any other relief/s that this Court may deem fit and proper.

DEFENDANTS' PLEA

3. The defendants contested the suit by filing their written statement. In their written statement, the defendants plead that there is no cause of action against them; that the suit is barred by limitation and, hence, the suit is liable to be dismissed.

4. The defendants after denying each and every allegations brought against them by the plaintiff, state inter alia that the suit is barred by limitation because although the suit land was converted to Govt. land by order dated 06.12.1986 passed in Misc Case No. 7/86 by the then ASO Bongaigaon, but the plaintiff filed this present suit on 06.11.2013 i.e., 26 years after the passing of the aforesaid order; that the plaintiff has filed the present suit by suppressing and misrepresenting the material facts because although the suit land has been specifically earmarked as 'Jalatan' (submerged in water) in the records of rights, yet the plaintiff has falsely

stated in his plaint that he has been in possession of the suit land; that the plaintiff has not been possessing the suit land actually and physically from the year 1970 till date adversely to the title of the State of Assam and, as such, there is no question of title in respect of the suit land accruing in favour of the plaintiff by hostile possession; that the plaintiff was aware of the order dated 06..12.1986 passed in Misc Case No. 7/86, and the aforesaid order was not passed behind the back of the plaintiff without affording any opportunity of hearing to him as alleged; that the suit land is Government land and the plaintiff has no right, title and interest over the suit land and, as such, he is not entitled to get permanent injunction as prayed for by him. The defendants, therefore, pray for dismissing the suit with costs.

PRO FORMA DEFENDANT'S PLEA

5. Admitting the contentions of the plaintiff, the pro forma defendant pleads that the plot of land measuring 10 (ten) bighas covered under Khatian No. 109, Dag No. 163/368 situated at village: Chaprakata Part I under Bongaigaon Revenue Circle in the present Bongaigaon district was recorded in the name of Sri Prabhat Ch. Barua as Khatiandar vide order dated 06.02.1969 passed by the Circle Officer, Bongaigaon vide Memo No. 792 (B) dated 09.12.1968; that Sri Prabhat Ch. Baruah gifted the aforesaid plot of land to the plaintiff and, accordingly, the name of the plaintiff was corrected as pattadar in respect of the aforesaid plot of land; that the plaintiff has been possessing the aforesaid plot of land from the year 1970 by using a part thereof as fishery and remaining part as cultivable land; that Sri Prabhat Ch. Baruah who was the maternal uncle of the plaintiff died as bachelor in the year, 1997 leaving behind his brother Sri Kamala Kanta Baruah i.e., pro forma defendant as his legal heir, and the later is arrayed as pro forma defendant in the present suit as he has no claim over the suit land, and admits the title of the plaintiff over the suit land; that the

aforesaid plot of land subsequently became recorded under Periodic Patta No. 41/67, Dag No. 163/368 since converted to Dag No. 260 situated at village: Chaprakata Part I under Bongaigaon Revenue Circle in the district of Bongaigaon, Assam (more particularly described in the Schedule of the plaint and which will here-in-after be referred to as suit land); that it has come to the knowledge of the pro forma defendant that the suit land has been converted to sarkari khas land by cancelling the periodic patta standing in the name of the plaintiff; that there is no reason for conversion of the suit land to Government land by way of cancellation of the patta standing in the name of the plaintiff as the plaintiff is still in possession of the suit land without any interference from any corner; that the suit land has not been settled by the Government with any person, and the possession of the plaintiff is not disturbed till date by the defendants; that the plaintiff has been possessing the suit land from the year 1970 till date i.e., for more than 30 years hostile to the title of the State of Assam and, as such, the right, title and interest of the plaintiff has ripened over the suit land by way of adverse possession against the State of Assam. The pro forma defendant, therefore, prays for decreeing the suit in favour of the plaintiff.

6. Be it stated herein that vide order dated 10.07.2014 passed in Misc (J) Case No. 36/14, the plaintiff was allowed to amend his plaint and, accordingly, the plaintiff filed his amended plaint on 19.07.14. After going through the pleadings of the parties, their documents on record and after hearing the submissions of the learned counsels appearing for the parties, the following issues were framed by my learned predecessor.

ISSUES

- 1.** Whether there is cause of action for the suit?
- 2.** Whether the suit is maintainable?

3. Whether the suit is barred by limitation?
4. Whether the suit is under-valued and improperly stamped?
5. Whether the plaintiff still actually and physically possesses the suit land since 1970 by using a part of the land as fishery and cultivating on the rest of it?
6. Whether the plaintiff was aware on 06.12.1986 that the suit land was converted to Government land by order passed in Misc. Case No. 7/1986 by the then ASO, Bongaigaon Revenue Circle?
7. Whether the Misc Case No. 7/1986 was disposed of without affording reasonable opportunity of hearing to the plaintiff?
8. Whether the plaintiff has right, title, interest and possession over the suit land?
9. Whether the plaintiff is entitled to the decree as prayed for?
10. To what other relief/reliefs the plaintiff is entitled to?

7. The plaintiff has adduced evidence of himself as PW1, Kamala Kanta Baruah as PW2 and Dhaneswar Sarania as PW3. The defendants, on the other hand, have not adduced any evidence.

DISCUSSION, DECISION AND THE REASONS THEREOF

8. After conclusion of the evidence stage, I have heard the arguments of ***Sri D.C Nath***, the learned counsel appearing for the plaintiff and ***Sri R.N. Das***, the learned counsel appearing for the defendants. The rival contentions have duly been considered and will be discussed at appropriate stage.

ISSUE NO.-1 Whether there is any cause of action for the suit?

9. The plaintiff has filed the present suit for declaration of his right, title and interest over the suit land, permanent injunction restraining the defendants from disturbing his peaceful possession over the suit land and for a direction to the defendant for correction of the record of rights in respect of the suit land in the name of the plaintiff which he alleges was converted from patta land to Government land vide dated 28.11.1986 and 06.12.1986 passed in Misc Case No. 7/86 behind his back without affording him any opportunity of hearing. The defendants, however, have denied the aforesaid allegations. Cause of action is a bundle of material fact which the plaintiff must allege and prove in order to succeed in his case. Thus from the perusal of the above pleaded facts it is seen that there is cause of action for institution of this suit. Issue No. 1 is, therefore, decided in affirmative in favour of the plaintiff.

10. DECISION: There is cause of action for the suit.

ISSUE NO. 2: Whether the suit is maintainable?

11. The defendants have stated in their written statement that the suit is not maintainable in law and facts. However, they have not specifically stated as to how the present suit is not maintainable. Maintainability of a civil suit depends upon the admitted position of the pleadings and not upon evidence. After perusal of the pleadings of both sides, I do not find any procedural defect in the form of the suit. The pleadings do not reveal any express bar in the maintainability of the instant suit by this court as per provision of section 9 of the Civil Procedure Code, 1908. As such, this issue is decided in affirmative in favour of the plaintiff.

11. DECISION: The suit is maintainable.

ISSUE NO. 3: Whether the suit is barred by limitation?

12. The learned counsel for the defendants during the course of the argument submits that the suit is barred by limitation as it has been filed on 06.11.2013 i.e., about 26 years after the order dated 06.12.1986 passed in Misc. Case No. 7/86 by ASO Bongaigaon Revenue Circle converting the suit land to Government land. On perusal of the case records it is seen that the plaintiff in his cross examination has admitted that **'he came to know that the suit land was converted to khas land in the year 1990'**. In spite of knowledge of the same, the plaintiff filed the present suit after a period of 23 years from the date of his knowledge regarding the conversion of the suit land to khas land. Thus the present suit having not been filed within the period of 12 years as mandated by Article 65 of the Limitation Act, 1963, the same is barred by limitation. As such, this issue is decided in affirmative in favour of the defendants.

13. DECISION: The suit is barred by limitation.

ISSUE NO. 4: Whether the suit is undervalued and improperly stamped?

14. The learned counsel for the defendants during the course of the arguments submits that the suit is undervalued and improperly stamped because the plaintiff has admitted in his cross examination that the valuation of the suit land would be Rs 7, 00,000/- (Rupees seven lakhs) per bigha although it has been shown to be less than 2, 00,000/- (Rupees two lakhs) in the plaint. According to the legal maxim **affirmati non neganti incumbit probatio**, the burden of proving the existence of a fact lies on

the person who claims or asserts its existence and not on the person who denies the same. In the present suit the defendants are claiming that the suit is undervalued and improperly stamped whereas the plaintiff is denying the same. As the defendants are affirming undervaluation and improper stamp value, it is incumbent upon the defendants to prove the same with the help of cogent evidence from the revenue officials. Admission of the plaintiff in respect of the valuation of the suit land would not support the defendants plea as the plaintiff being a layman is not expected to know the proper value of the land and the same could be evaluated properly only by the revenue officials. Issue no. 4 is, therefore, decided in negative in favour of the plaintiff.

15. DECISION: The suit is not under-valued and not improperly stamped.

ISSUE NO. 5: Whether the plaintiff is still actually and physically possessing the suit land since 1970 by using a part of the land as fishery and cultivating on the rest of it?

16. The plaintiff has pleaded that he has been in possession of the suit land from the year 1970 by using a part thereof as fishery and remaining part as cultivable land. The plaintiff, however, has not been able to substantiate his claim in respect of his possession of the suit land with the help of any independent witnesses. PW2 in his cross examination states that **'the suit land is submerged in water and no one is in possession of the suit land'**. PW3 in his cross examination states that **'the suit land is in possession of the plaintiff from the time he has become major but I don't know when the plaintiff became major. I cannot precisely say from when the suit land is in possession of the plaintiff'**. PW3 further states that **'the suit land was not in**

possession of the plaintiff in the year 1966 as he was minor and the suit land is submerged in water and the revenue records also show the suit land as submerged in water’. Thus although the plaintiff claims to be in actual and physical possession of the suit land since 1970 by using a part of the land as fishery and cultivating on the rest of it, he could not substantiate his claim with the help of any independent and cogent evidence. As such, Issue No. 5 is decided in negative in favour of the defendants.

17. DECISION: The plaintiff does not possess the suit land since 1970 by using a part of the land as fishery and cultivating on the rest of it.

ISSUE NO. 6 AND 7: Whether the plaintiff was aware on 06.12.1986 that the suit land was converted to Government land by order passed in Misc Case No. 7/1986 by the then ASO Bongaigaon Revenue Circle/Whether the Misc Case No. 7/1986 was disposed of without affording reasonable opportunity of hearing to the plaintiff?

18. The plaintiff pleads that the suit land was converted from patta to Government land by order passed in Misc Case No. 7/1986 by the then ASO Bongaigaon Revenue Circle without affording reasonable opportunity of hearing to the plaintiff. As the plaintiff is asserting the fact of conversion of the suit land to Government land by the revenue officials behind his back without affording any opportunity of hearing to him, it is incumbent upon the plaintiff to prove his allegations with the help of cogent evidence. The plaintiff has however, not substantiated his claim with the help of any documentary or oral evidence. Thus the plaintiff having not being able to substantiate his allegation regarding illegal conversion of the suit land from

patta to Government land with the help of any cogent evidence, it is highly probable that the plaintiff was aware of the order dated 06.01.1986 passed by the then ASO, Bongaigaon Revenue Circle in Misc Case No. 7/1986, and Misc Case No. 7/1986 was not disposed of without affording reasonable opportunity of hearing to the plaintiff.

19. DECISION: The plaintiff was aware on 06.12.1986 that the suit land was converted to Government land by order passed in Misc Case No. 7/1986 by the then ASO, Bongaigaon Revenue Circle, and the Misc Case No. 7/1986 was not disposed of without affording reasonable opportunity of hearing to the plaintiff.

ISSUE NO. 8: Whether the plaintiff has right, title, interest and possession over the suit land?

20. The plaintiff claims right, title and ownership over the suit land on the basis of an unregistered gift deed which he claims to have been executed by his uncle Late Prabhat Ch. Baruah conveying the suit land to him in the year 1970. The plaintiff also claims that the suit land measuring 10 (ten) bighas covered under Khatian No. 109, Dag No. 163/368 situated at village: Chaprakata Part I under Bongaigaon Revenue Circle in the present Bongaigaon district was recorded in the name of Sri Prabhat Ch. Barua as Khatiandar vide order dated 06.02.1969 passed by the Circle Officer, Bongaigaon vide Memo No. 792 (B) dated 09.12.1968 and it was subsequently gifted by Prabhat Ch. Barua to the plaintiff and, accordingly, the name of the plaintiff was corrected as pattadar in respect of the aforesaid plot of land and the plaintiff has been possessing the aforesaid plot of land from the year 1970 by using a part thereof as fishery and remaining part as cultivable land. However, in his cross examination the plaintiff admits that **'I don't know whether the owner of the suit land**

Prabhat Ch. Baruah gifted the suit land to me or not. I came to know in the year 1990 that the suit land was gifted to me in the year 1970. I was 3 years old in the year 1970. The suit land was not conveyed to me through any registered sale deed.'

21. Section 123 of the Transfer of Property reads as:

'123. Transfer how effected: For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.....'

22. Thus on perusal of Section 123 Transfer of Property Act it transpires that transfer by way of gift of any immovable property of the value of Rs 100 or more can be effected by a registered deed attested by at least 2 (two) witnesses. Unless any transfer by way of gift of any immovable property is made through registered deed duly executed by the donor and attested by at least 2 (two) witnesses, no legal title in respect of that immovable property passes to the donee, and the later cannot claim right, title and interest in that immovable property on the basis of an unregistered gift deed. In the present suit, the plaintiff claims right, title and interest over the suit land on the basis of an unregistered gift deed which he claims to have been executed by his uncle Late Prabhat Ch. Baruah conveying the suit land to him. Thus the gift deed vide which the plaintiff claims right, title and interest over the suit land not having being registered, no legal title passed to the plaintiff in respect of the suit land vide the aforesaid unregistered gift deed, and the plaintiff has no right whatsoever to claim right, title and interest in the suit land on the basis of an unregistered gift deed.

23. Apart from claiming right, title and interest over the suit land the plaintiff also claims that he is in possession of the suit land from the year 1970 till date i.e., for more than 30 years hostile to the title of the State of Assam and, as such, the right, title and interest of the plaintiff has ripened over the suit land by way of adverse possession against the State of Assam. However, in his cross examination the plaintiff admits that **'I don't know when I took possession of the suit land'**. Further the witnesses brought by the plaintiff to substantiate his claim in respect of his possession of the suit land have stated in their evidence that the suit land is submerged in water and that they do not know from when the suit land is in possession of the plaintiff. Thus the plaintiff not having been able to prove his possession in respect of the suit land with the help of independent and cogent evidence, it is highly probable that the plaintiff is not in possession of the suit land. As such, Issue no. 8 is decided in negative in favour of the defendants.

24. DECISION: The plaintiff does not have right, title, interest and possession over the suit land.

ISSUE NO. 9 AND 10: Whether the plaintiff is entitled to the decree as prayed for/To what other relief/reliefs the plaintiff is entitled to?

25. On discussion and decision on the aforesaid issues, it is seen that the plaintiff has neither been able to prove his right, title interest and possession over the suit land suit land nor his allegation that the suit land was converted to Government land by order passed in Misc Case No. 7/1986 by the then ASO, Bongaigaon Revenue Circle without affording

reasonable opportunity of hearing to the plaintiff. Moreover, the suit is also barred by limitation. As such, issue nos. 9 and 10 is decided in negative in favour of the defendants.

26. DECISION: The plaintiff is not entitled to the decree as prayed for.

ORDER

27. From the above discussions and decisions on issues, it is found that, the plaintiff has not succeeded in proving his case. Accordingly, in the light of the above findings, the suit is dismissed on contest with costs.

Prepare decree accordingly within fifteen days.

The operative part is pronounced in the open court.

This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this **15th day of February, 2016.**

(Uttam Chetri)
Munsiff, Bongaigaon

APPENDIX

A. Plaintiff's exhibits :

Exhibit 1-	Certified copy of the chitha in respect of the suit Land
Exhibit 2-	Certified copy of khasra
Exhibit 3-	Certified copy of application dated 20.03.12
Exhibit 4-	Certified copy of application dated 01.06.12

B. Defendant's Exhibits: None

C. Plaintiff's witnesses:

PW1:	Tapan Kr. Singha
PW2:	Kamala Kanta Baruah
PW3:	Dhaneswar Sarania

D. Defendant's witness: None.

(Uttam Chetri)
Munsiff, Bongaigaon