

Assam Schedule VII, Form No. 133

FORM NO. (J) 3

HEADING OF JUDGMENT IN ORIGINAL SUIT.

District :- Bongaigaon.

BEFORE THE CIVIL JUDGE, BONGAIGAON.

Present :- Sri R. Lal, AJS

Thursday the 7th day of June, 2018.

Title Suit No. 25 of 2012

Sri Mohan Brahma

Plaintiff.

VERSUS

Sri Purna Chandra Baruah & Others.

Defendants.

AND

Sri Nikhil Ranjan Aich & Others.

Proforma-defendants.

The suit coming for final hearing on (Give date or dates) 06/06/18 in the presence of :-

Ajeet Kr. Jain

Advocate for Plaintiff

Samir Kr. Sarkar

Advocate for the Defendants

Civil Judge,
Bongaigaon

And having stood for consideration on this 7th day of June, 2018 the Court delivered the following Judgment:-

T.S.25 of 2012
Mohan BrahmaVs- Purna Ch. Baruah & Ors..

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

1. This is a suit for declaration of right and for permanent injunction. The plaintiff has pleaded that he had purchased the suit property measuring 2 bighas 3 kathas 10 lechas by means of registered sale deed No. 790 dated 6/8/2011 from proforma-defendant Nos. 1 & 2.
2. Tracing the root of the property the plaintiffs has pleaded that the suit property originally belonged to Tuleswari Devi, (wife of defendant No. 1). The plaintiff has stated that Tuleswari Devi sold 3 katha 10 lechas to proforma defendant No.1. It is also pleaded that she had transferred by means of registered deed 4 bigha plot to one Birendra Ch. Roy. The plaint goes on to disclose that Birendra Ch. Roy sold the purchased land to three persons namely Madhusudan Aich, Sadhan Ch. Aich and Arun Ch. Aich and that these three persons transferred, by sale deed, the entire 4 bighas plot to one Satya Narayan Paul. The proforma-defendant No. 2 had purchased 2 bighas land from Satya Narayan Paul.
3. It is the pleaded case of the plaintiffs that after purchase, he took possession of the property and his name was recorded in the revenue records. The grievances of the petitioner is that the defendants have filed a mutation case against the mutation of the plaintiff and that the defendants are trying to grab the possession of the suit property.
4. It is in this backdrop that the plaintiff has prayed for declaration of his right and title. The plaintiff has also submitted that his possession over the property be




 Civil Judge,
 Bongaigaon

declared and a permanent injunction be granted to restrain the defendant from interfering with the possession of the plaintiff.

5. On the institution of the suit the defendants have filed written statement. Their first plea is that Satya Narayan Paul is a necessary party to the proceeding and non-impleadment should be viewed seriously. The defendants have canvassed that the sale permission was obtained for 3 bighas plot but the transfer was made only of 2 bigha 3 katha 10 lechas and it is their contention that the sale deed is therefore not valid. It has also been asserted that since the proforma-defendants did not have possession over the property no right was conveyed by the registered sale deed.



6. The case of the defendant is that Tuleswari Devi was the owner and possessor of a plot of land measuring 16 bigha 2 katha in dag No. 48, patta No. 3 (old) 15 (new) at village Barpathar. A portion of the land measuring a little more than 1 bigha was acquired by the Government in 1963. Thereafter Tuleswari Devi remained the title holder of 14 bighas 4 kathas 12 lechas. It has been pleaded that after the death of Tuleswari Devi in 2006, the defendants have become the owner of the property.

Civil Judge,
Bongaigaon

7. Another ground canvassed in the written statement is that the defendants have been in continuous possession of the suit property. The mutation in favour of the plaintiff, so pleads the defendants, is wrong and illegal. Situated thus, the defendants have prayed that the suit be dismissed with costs.

8. The Proforma-defendants No. 1 & 2 have filed separate written statements supporting the case of the plaintiff and stated that the plaintiff had purchased the property by registered sale deed. It was further pleaded that the Proforma-defendants were legally entitled to transfer 2 bighas 3 kathas 10 lechas to the plaintiff and after obtaining sale permission executed registered sale deed in his favour.

9. Based on rival pleadings this Court frame the following issues : (i) Whether there is cause of action for the suit ? (ii) Whether the suit is bad for non-joinder of necessary parties? (iii) Whether plaintiff acquired right, title, interest over the suit land by way of purchase vide registered sale deed No. 790 dated 6/8/2011? (iv) Whether Proforma-defendants had right to sale the suit land to plaintiff? (v) Whether plaintiff is entitled to get a decree as prayed for? (vi) To what relief if any parties are entitled?

10. DECISION AND THE REASONS THEREFOR : I have perused the record and heard the parties. It is always better, if issues are decided chronologically and I therefore begin by discussing the formal issues first.

Civil Judge,
Bongaigaon

11. Issue No. (i): It is a settled position of law that cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. In the instant case, the act of the defendants, as alleged, in dispossessing the plaintiff from his purchased land, has given him the cause for



instituting the suit. There can be no doubt therefore that the plaint discloses cause of action for the instant suit.

12. **Issue No (ii):** The defendants have pleaded that suit is bad for non-joinder of Satya Ranjan Paul. The question is whether this person is a necessary party or not. I have perused the record. The pleaded case is that Proforma defendant had purchased 2 bighas plot out of the 4 bighas land belonging to Satya Ranjan Paul in dag No. 48. The defendant has contended that as this person is a co-pattadar, he ought to have been made a party to the proceeding. The plaintiff has claimed right on the basis of a sale deed. His grievance is that the principal defendants have illegally dispossessed him. In suit of the present nature, it is not necessary to implead all pattadars. It is not that in the absence of Satya Ranjan Paul, the relief prayed for cannot be granted. The issue is thus decided in favour of the plaintiff.

13. **Issue No. (iii) & (iv):** These two issues are interconnected and hence is taken up together for consideration. The first question to be decided is whether plaintiff **purchased** 2 bighas 3 kathas 10 lechas land vide registered sale deed No. 790 dated 6/8/2011. Mohan Brahma (PW1) is the plaintiff and he has averred that he purchased the suit-property vide registered sale deed No. 790 dated 6/8/2011 from proforma-defendant No. 1 & 2 and he has exhibited the original registered sale deed as Exhibit 2. The sale deed has been marked and exhibited without objection and it reveals that Proforma defendants 1 & 2 had sold and transferred 2 bighas 3 Kathas 10 lechas land to the plaintiff.



Civil Judge,
Bongaigaon

14. The questions that now confronts this Court is whether plaintiff **acquired** right and title on the basis of the aforesaid sale deed.

15. Delivery of Possession: PW1 has maintained that he was handed possession of the suit property. However PW2 Utpal Mushahary and PW3 Rajesh Brahma during cross-examination, admitted that at present the plaintiff is not in possession of the property. They also conceded that they were not present when the Proforma-defendants handed over the possession to the plaintiff.

16. Mahendra Baruah & Rohen Baruah are two of the principal defendants and have been examined as DW1 and DW2. They remained steadfast to their pleadings that they have been in continuous and peaceful possession of the entire land in the suit dag since several decades. Dwarika Singha (DW3) supported DW1 & DW2 and deposed that the defendants are in possession of the entire land measuring 14B-4K-12L. What thus appears to me, applying the yardstick of preponderance of probability, is that plaintiff has not been able to prove delivery of possession in favour of the plaintiff.

17. The question that now confronts this Court is whether delivery of possession is a necessary precondition for a valid sale of immovable property.

18. A bare reading of Section 54 Transfer of Property Act makes it clear that in order to acquire a valid right title and interest over any immovable property valued Rs.




Civil Judge,
Bongaigaon

100/- or above by way of purchase it should be effected by a registered instrument by payment or promising to pay the consideration money. The Transfer of Property Act does not lay down any condition that in order to acquire title over a property purchased by executing registered sale deed, the delivery of possession is a condition precedent. Reliance is placed upon decision of Gauhati High Court in Manmatha Ranjan Trivedi Vs Gopal Krishna TE reported in **(2006) Supp GLT 718**.



19. In that view of the matter, the registered sale deed (Exhibit 2) conveys the right & title over the land mentioned in the schedule in favour of the plaintiff provided the seller had valid title. It is not relevant as to whether there was delivery of possession or not.

20. Title of the seller: PW1 testified that the suit land originally belonged to Tuleswari Devi (wife of defendant No.1) and that Tuleswari Devi sold 3 katha 10 lechas to proforma-defendant No. 1. This 3 kathas 10 lechas was purchased by the plaintiff by the registered sale deed.

21. Now, let me decide whether Proforma defendant No. 2 was title holder of 2 bighas of land or not. In this context, PW1 deposed that Tuleswari Devi sold 4 bighas land out of 14B-4K-12L to one Birendra Ch. Roy and that Birendra Ch. Roy sold the entire 4 bighas land to three persons namely Madhusudan Aich, Sadhan Ch. Aich and Arun Ch. Aich. It is in the evidence of PW1 that these three persons in turn sold the 4 bighas land to Satya Narayan Paul and Satya Narayan Paul sold 2 bighas land out of his 4 bighas to Proforma-defendant No. 2.


Civil Judge,
Bongaigaon

22. On this vital point, the defendant did not lead any convincing evidence. In-fact DW1 admitted in cross examination that he does not know as to how much land has been sold by his mother in dag No. 48. DW2 went one step further inasmuch as he stated that though the land belonged to his mother, his father had sold some portion of the land to dag no. 48 to one Bihari person.

23. It is in the above backdrop that the testimony of the Lat Mandal becomes crucial. Arun Kr. Singha (DW4) has testified that 3 katha 10 lechas was sold by the wife of the defendant No.1 to Nikhil Ranjan Aich (proforma-defendant 1) and he proved the transfer by exhibiting revenue records.

24. Moreover, DW4 has proved through the record maintained at the Circle Office that Satya Narayan Paul had purchased 4 bighas land out of which he later on sold 2 bighas to the Proforma-defendant. In other words, the revenue official has confirmed the plaintiff's case that pro-forma defendants had legal right over 2 bighas 3 kathas and 10 lechas of land. In that view of the matter, I have no doubt that plaintiff **acquired** valid right and title over the scheduled land on the basis of the registered sale deed.

25. At this juncture, I may point out that the Deputy Commissioner had granted land sale permission dated 14/6/11 which has been marked as Exhibit 1. The defendant has assailed the document contending that permission was granted to sell 3 bighas plot but the land transferred was only 2 Bighas 3 Kathas 10 lechas.




Civil Judge,
Bongaigaon

The anomaly so pointed out does not affect the validity of the registered sale deed for consideration. Anyway, the land sold was less than the area for which sale permission was granted and this irregularity cannot cast a cloud on the right of the plaintiff acquired against valuable consideration.

26. **Issue No. (v) & (vi) :** I declare that the plaintiffs have right and title over the suit property. In so far as prayer for permanent injunction is concerned, it has come out that the plaintiff is not in possession of the property. In that view of the matter, the relief of permanent injunction cannot be granted. The plaintiff did not make any prayer to amend the suit to incorporate the relief of recovery of possession. This Court, therefore, cannot grant relief of recovery of possession.



ORDER

The suit is partly decreed on contest with cost. I declare that the plaintiffs have right and title over the 2 bighas 3 kathas 10 lechas land in dag No. 48 as described in the schedule to the plaint. The plaintiffs are not in possession of the property. In that view of the matter, the relief of permanent injunction cannot be granted. Prepare decree accordingly.

Given under my hand and the seal of this Court on the 7th day of June, 2018.

(R. Lal)
Civil Judge,
Bongaigaon.

Civil Judge,
Bongaigaon

Dictated & corrected by me,

(R. Lal)
Civil Judge,
Bongaigaon

Civil Judge,
Bongaigaon

A P P E N D I XPlaintiff's witnesses :

- PW1 - Sri Mohan Brahma.
 PW2 - Sri Utpal Mushahary.
 PW3 - Sri Rajesh Brahma.

Plaintiff's exhibit


- Ext1 - Order cum permission for selling of the suit land.
 Ext 1(1) - Signature of A.D.C. (Revenue) Bongaigaon.
 Ext2 - Registered sale deed.
 Ext2(1) to Ext 2(8) - Signatures of Proforma-defendant No. 1.
 Ext2(9) to Ext 2(16) - Signatures of Proforma-defendant No. 2.
 Ext2(17) & Ext 2(18) - Signatures of Attesting witnesses.
 Ext(19) - Signature of deed writer.
 Ext2(23) to Ext2(28) - Signatures of Sub-Registrar, Bongaigaon.
 Ext3 - Mutation certificate.

Defendant's witnesses :

- DW1 - Sri Mahendra Barua.
 DW2 - Sri Rohen Baruah
 DW3 - Dwarika Singha.
 DW4 - Arun Kr. Singha.
 DW3 - Dwarika Singha

Defendant's exhibit

- ExtA - Periodic khiraji patta
 Ext B - Death certificate of Tuleswari Devi.
 ExtC - Revenue receipt for the 2013.
 ExtD - Revenue receipt for the 2011-12.



Civil Judge,
Bongaigaon

T.S.25 of 2012
 Mohan BrahmaVs- Purna Ch. Baruah & Ors..



A P P E N D I X

ExtE - Revenue receipt for the 2008-09.

ExtF - Revenue receipt for the 2007-08.

ExtG - Revenue receipt for the 1985-86.

ExtH - Draft jamabandi.


Court witness

Nil

Court Exhibit

Nil




(R. Lal)
Civil Judge,
Bongaigaon.
Civil Judge,
Bongaigaon