

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Bongaigaon

**IN THE ORIGINAL COURT OF THE MUNSIF BONGAIGAON**

**Present: - Syeda Farida Afzal Zinnat, AJS**

**Dated: - 12<sup>th</sup> of April 2013**

**MONEY SUIT 02 / 2010**

**Plaintiff:**

Smt. Bindeswari Barman  
W/O Late Khagendra Barman  
Village Dankinamari  
P.S & District Bongaigaon

Versus

**Defendants:**

1. Smt. Mineswari Barman
  - 1(a) Purna Bala Barman
  - 1(b) Chane Bala Barman
  - 1(c) Basanti Barman
  - 1(d) Renu Bala Barman
  - 1(e) Binay Barman

**Pro forma defendants:**

2. The State of Assam  
Represented by the Secretary  
Land & Revenue Department  
Govt. of Assam  
Dispur, Guwahati, Assam
3. The Deputy Commissioner, Bongaigaon
4. The Circle Officer, Bijni Revenue Circle

This suit/ case coming on for final hearing on 11<sup>th</sup> day of February 2013,  
in the presence of:-

Sri Samir Kumar Sarkar, Advocate for the plaintiff

Mr. H.Das, Advocate for the defendant

Mr. R. Das, Govt. Pleader for the pro forma defendant No. 1, 2 and 3

And having stood for consideration to this day, the court delivered the following judgment.

## JUDGEMENT

(This is a money suit for recovery of compensation with interest.)

1. Plaintiffs Case: Sanatan Barman (since deceased) was the owner and possessor of a plot of land measuring 5 bighas 12 lechas covered by dag No. 315 and Patta No. 45 situated at village Daukijhar under Bijni Revenue Circle. During his lifetime Sanatan Barman gifted this land jointly to the mother of the plaintiff Late Bimala Bala Barman and the defendant No.1 Late Mineswari Barman and accordingly their names were mutated in the record of rights on 3/9/1970.

The mother of the plaintiff occupied the land uninterruptedly and after her death the plaintiff enjoyed the land as the sole surviving heir of her mother.

The pro forma defendant No. 2 acquisitioned a plot of land measuring 1 bigha 2 katha 4 lecha from the above land for the construction of four lane National Highway and accordingly the pro forma defendant No. 2 issued a letter bearing No.B.L.A5/2003/PT-IX DT 4/9/08 to Sanatan Barman, Mineswari Barman and Bimala Bala Barman for receiving compensation.

The plaintiff claims that the defendant No. 1 managed to obtain the cheque and encashed it and usurped the entire amount without giving the plaintiff her share. The plaintiff served notice under section 80 of the Code of Civil Procedure on 15/1/2010 to the pro forma defendants for disbursement of the equal share of the compensation which was received by the pro forma defendants. On 24/1/2010 the plaintiff went to the defendant No. 1 and asked her to make payment of half the amount to her but she refused to do so and hence this suit for recovery of half the compensation amount.

2. The defendants contested the suit by filing written statement and took the pleas of lack of cause of action, non maintainability, improper valuation, limitation etc. it is claimed by the defendants that Late Sanatan Barman never gifted any land to the mother of the plaintiff or to the defendant No.1 and that the defendant No. 1 got the land in question from Late Sanatan Barman as one of his legal heirs. Further it is the pleaded case of the defendants that the mutation dated 3/9/1970 was done fraudulently, illegally and in collusion with the concerned staff of the pro forma defendant No. 3. The fact of the illegal mutation was not known by the defendant No. 1 and after her son attained majority the mutation was rectified on 5/9/1999.
3. It is further pleaded in the written statement that the plaintiff was never in possession of the suit land and that on 4/11/2008 the

plaintiff submitted an application to the Additional Deputy Commissioner, Bongaigaon, stating that she has no objection if the payment is made to the mother of the defendants and hence the suit is barred by law of estoppels. It is also the case of the defendants that as the matter in dispute relates to payment of compensation for the acquisition of land for construction of National Highway the dispute comes under the purview of National Highway Act and so this court has no jurisdiction to try the suit. Having pleaded as above the defendants prayed for dismissing the suit.

4. The pro forma defendants also contested the suit by filing written statement and contended that the suit is bad for non compliance of section 80 of the Code of Civil Procedure and that the suit is not properly valued. It is further pleaded that a total plot of land measuring 6 bighas 2 katha 16 lechas covered by dag No. 315 of periodic patta No.45 of village Daukijhar under Bijni Revenue Circle originally belonged to Sanatan Barman (since deceased) and a portion of land measuring 1 bigha 2 katha 4 lechas out of the aforesaid land was acquired by the Government for construction of National Highway in the year 1962 and 50 % of the compensation money against the land so acquired was paid by the government to Sanatan Barman at that time. After acquisition of the land measuring 1 bigha 2 katha 4 lecha as aforesaid Sanatan Barman gifted the remaining land measuring 5 bigha 12 lechas jointly to Bimala Bala Barman and his daughter Mineswari Barman in the year 1970 and since the disputed compensation relates to the land prior to the execution of the gift to Bimala Bala Barman and Mineswari Barman, as such Bimala Bala Barman and her legal heirs has no right to claim the compensation amount in respect of the land which did not belong to Bimala Bala Barman at the time of acquisition by government. It is further pleaded by the pro forma defendants that as Mineswari Barman is the legal heir of Sanatan Barman, the pro forma defendants rightly disbursed the remaining 50 % compensation to the defendant Mineswari Barman after proper enquiry and verification, that too on submission of no objection application by the plaintiff Bindeswari Barman.
5. Thus the pro forma defendants prayed for dismissing the suit against them.

1. Upon the pleadings of the parties my learned predecessor in office framed the following issues in this suit-

- 1) Whether there is cause of action?
- 2) Whether the suit is maintainable?
- 3) Whether the plaintiff is entitled to recover Rs. 1, 27,800.00 as 50 % share of compensation given by pro forma defendant?
- 4) Whether the plaintiff is entitled to get the decree as prayed for?
- 5) Is there any other relief to which the plaintiff is entitled?

2. Both sides exhibited documentary evidence and examined witnesses in favour of their case.
3. I have heard arguments of the learned counsels and also carefully perused the written arguments put forward by learned counsels of the plaintiff side. I have carefully examined the evidence and perused the documents. My decision on the above issues are as follows:-

**4. Discussion on evidence, decision and reasons thereof:**

5. Issue no. 1: Whether there is any cause of action for the suit?
6. Cause of action arises when a material fact is alleged by one party and the same is denied by the other party. 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. It consists of every fact which is necessary to be proved to entitle the plaintiff to a decree. Here the plaintiff has stated in the plaint that she is entitled to the compensation paid for the acquisition of the land by the Govt. The plaintiff has to prove the existence of facts to show that she is entitled to the half of the amount of compensation by adducing evidence. Hence there is cause of action. Accordingly this issue is decided in the affirmative.  
**There is cause of action.**
7. **Issue No.2:** Whether the suit is maintainable?
8. It is the plea of the defendants that this Court has no jurisdiction to try the suit as the suit relates to payment of compensation for the acquisition of land for construction of National Highway and the dispute comes under the purview of National Highway Act. I respectfully disagree to this plea. This is a suit for realisation of money from the defendants paid as compensation for acquisition of land by the Government. There is no dispute regarding the acquisition of land and the National Highways Authority has no business in the subject matter of the suit. Hence I firmly hold that this Court has jurisdiction to try the suit as this is a simple money suit. This issue is decided in the positive and in favour of the plaintiffs.
9. For the sake of convenience issues No. 3, 4 and 5 are taken up together for decision.
  - 1) Issue No.3: Whether the plaintiff is entitled to recover Rs. 1, 27,800.00 as 50 % share of compensation given by pro forma defendant?

- 2) Issue No. 4: Whether the plaintiff is entitled to get the decree as prayed for?
- 3) Issue No. 5: Is there any other relief to which the plaintiff is entitled?

10. The suit is for realisation of money from the defendants paid by the Govt. as compensation for acquisition of land. Plaintiff has submitted copy of Jamabandi to show that the name of mother Late Bimala Bala Barman has been mutated in the record of rights along with the name of Mineswari Barman in place of the original Pattadar Sanatan Barman in the year 1970.
11. Plaintiff and defendants adduced evidences of a number of witnesses but these witnesses are not aware of the actual status of the land which was donated by Sanatan Barman. Therefore their evidences were not of much help in deciding the real matter in controversy.
12. PW4, i.e. the Lat Mondol, Bijni Revenue Circle, who has been authorised by the Circle Officer, Bijni Revenue to depose in this behalf, also admitted that the land measuring 5 bigha 12 lecha covered by dag No. 315 of Patta No. 45, the original owner of which was Sanatan Barman had been mutated in the name of Mineswari Barman and Bimala Bala Barman vide order of the C.O, Bijni Revenue Circle dated 2/9/1970. He further clarified that from this 5 bigha 12 lecha land a plot of land measuring 1 bigha 2Katha 4 Lecha was acquisitioned by the Govt. for construction of National Highway in 1960-61. The remaining 50 % compensation was issued in the name of Mineswari Barman and Bimala Bala Barman.
13. The Lat Mondol, Bijni Revenue Circle deposed in this case again on behalf of the State of Assam, Deputy Commissioner, Bongaigaon and Circle Officer, Bijni Revenue Circle, i.e. the pro forma defendant No. 1, 2 and 3 and exhibited the chitha book as Ext. 2 and the relevant record pertaining to dag No. 315 as Ext 2 (1). Ext 2(2) is the relevant record of the land which has been separated from the 6Bigha 2 Katha 16 Lecha land belonging to Sanatan Barman. According to the pro forma defendant the land measuring 1 bigha 2 katha 4 lecha was acquisitioned by the pro forma defendant in the year 1960-61 for construction of national highway and accordingly the land measuring 1 bigha 2 katha 4 lecha was separated from the main dag and included in the dag No. 663 as Govt. land, the relevant entry pertaining to which has been exhibited by the pro forma defendant as Ext 2(3). According to Ext 2 Chitha Record Sanatan Barman donated the remaining land which was left after acquisition from the land measuring 6 bigha 2 katha 16 lecha to his daughter Mineswari Barman and Bimala Bala Barman, the relevant entry relating to which is exhibited as Ext 2(4). After the death of Bimala Bala Barman the names of Tarubala Barman and Binay Kumar Barman are mutated in place of Bimala Bala Barman as her legal heirs. {Ext

3(1) and 3(2)}. The pro forma defendant has been able to show without an iota of doubt that the land was in the name of Sanatan Barman at the time of acquisition and that Sanatan Barman donated the remaining land left out after the acquisition to the mother of the plaintiff and his daughter. Therefore it is seen that the plaintiff or her predecessor in interest is not legally entitled to the compensation for the acquisition of land from Sanatan Barman as the land which was acquisitioned by the pro forma defendant is not a part of the land in which the name of the predecessor in interest of the plaintiff Bimala Bala Barman has been mutated. Therefore the plaintiff is not entitled to the decree as prayed for. These three issues are decided in the negative.

#### Order

The suit is dismissed on contest with cost.

Prepare decree accordingly within 15 days.

Given under my hand and seal of this Court on this the 12<sup>th</sup> day of April 2013.

Syeda Farida Afzal Zinnat  
Munsiff, Bongaigaon

#### APPENDIX

Witness for the plaintiff:-

1. PW1 : Bindeswari Barman
2. PW2 : Kula Bala Barman
3. PW3: Santosh Barman
4. PW4: Haren Chandra Gayari, Lat Mondol, Bijni Revenue Circle

Witness for the defendant:

1. DW1: Binay Kumar Barman
2. DW2: Kesaram Barman
3. DW3: Purna Chandra Barman

Witnesses for the pro forma defendant:

1. Karen Chandra Gayari, Lat Mondol

4. Exhibits for the plaintiff:

Exhibit 1: Copy of Jamabandi of village Daukijhar

Exhibit 2: first page of Chitha Book of year 1960-61

Exhibit 2(1): relevant page of dag No. 315 patta No. 45

Exhibit 2(2): Relevant note of mutation

5. Exhibits for the defendant:

1. Exhibit 1: authority letter
2. Exhibit 1(1): Signature of Circle Officer Dhiman Choudhury

3. Exhibit 2: Chitha Book
4. Exhibit 2(1): Record of dag No. 315 pertaining to 6 bigha 2 katha 16 lecha land
5. Exhibit 2(2): Record of land separated from 6 bigha 2 katha 16 lecha land
6. Exhibit 2(3): Relevant entry pertaining to land measuring 1 bigha 2 katha 4 lecha separated from the main dag and included in the dag No. 663 as Govt. land
7. Exhibit 2(4): Relevant entry relating to the donation of land by Sanatan Barman.
8. Exhibit 3, 3(1), 3(2): New Chitha Book and entries of new chitha book.