

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 11th day of April, 2017.
Misc(J) Case No. 22 of 2014.**

1. Musstt. Momiran Nessa,
W/O Late Kalu Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.
2. Md. Nausad Ali Bhuyan,
S/O Late Kalu Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.
3. Md. Sahjahan Ali Bhuyan,
S/O Late Kalu Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.

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4. Md Ajahar Ali Bhuyan,
S/O Late Kalu Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.

6. Md. Mujafar Ali Bhuyan,
S/O Late Kalu Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.

Petitioners

VERSUS

1. Musstt. Saleha Bhuyan,
W/O Late Mahammad Ali Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.

2. Md. Samsul Alam Bhuyan,
S/O Late Mahammad Ali Bhuyan,
R/O vill- Dumuria Part- I,
P.O. Piradhara, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.

3. Md. Sahidul Islam Bhuyan,
S/O Late Mahammad Ali Bhuyan,

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R/O vill- Dumuria Part- I,

P.O. Piradhara, Ps. Abhayapuri,

Dist. Bongaigaon, Assam.

4. Md. Mustafa Bhuyan,

S/O Late Mahammad Ali Bhuyan,

R/O vill- Dumuria Part- I,

P.O. Piradhara, Ps. Abhayapuri,

Dist. Bongaigaon, Assam.

5. Md. Sahabul Islam Bhuyan,

S/O Late Mahammad Ali Bhuyan,

R/O vill- Dumuria Part- I,

P.O. Piradhara, Ps. Abhayapuri,

Dist. Bongaigaon, Assam.

6. Musstt. Momtaz Begum,

D/O Late Mahammad Ali Bhuyan,

W/O Md. Samesuddin Sheikh,

R/O vill- Dumuria Part- I,

P.O. Piradhara, Ps. Abhayapuri,

Dist. Bongaigaon, Assam.

7. Musstt. Mofiza Begum,

D/O Late Mahammad Ali Bhuyan,

W/O Md. Abdulla Sheikh,

R/O vill- Lengtisinga,

P.O. Lengtisinga, Ps. Abhayapuri,

Dist. Bongaigaon, Assam.

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8. Musstt. Mehirun Nessa,
D/O Late Mahammad Ali Bhuyan,
W/O Md. Ayub Ali,
R/O vill- Lengtisinga,
P.O. Lengtisinga, Ps. Abhayapuri,
Dist. Bongaigaon, Assam.

Opposite parties.

This suit coming for final hearing on 21.03.2017.

(I) Given date or dates
in the presence of

Mr D.C. Nath

Advocate for petitioners.

Mr Jahan Uddin

Advocate for Opposite parties.

and having stood for consideration to this Court on the
11th day of April, 2017 the Court delivered the following Judgment:

Misc(J) Case No. 22/2014.

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

1. Petitioners filed petition bearing No. 962/14 under Order 39 Rule 2 (A) CPC read with Section 151 CPC praying for taking penal action against the opposite parties for alleged violation of status-quo order dated 29.11.2011 passed in Misc(J) Case No. 23/10 arising out of T.S. 16/10, which

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petition has been registered as the present Misc(J) Case.

2. The petitioner instituted T.S. 16/10 for declaration of their right, title, interest, for cancellation of sale deed and for recovery of Khas possession and along with it had also preferred the aforementioned injunction petition for preservation of the suit property till disposal of the main suit.

It is the case of the petitioner that upon hearing the learned counsels of the parties in respect of the injunction petition, the learned Court vide order dated 29.11.2011, while allowing the petitioner's prayer had restrained the opposite parties from transferring the suit land and also restrained the opposite parties from changing the nature and feature of the suit land till disposal of the main suit.

It is averred that the opposite party as appellant had preferred Misc Appeal No. 1/02 impugning the aforesaid order but the Hon'ble Appellate Court while dismissing the Misc Appeal had upheld the order impugned. It is alleged by the petitioner that the opposite party despite knowing about the operation of the status-quo order had constructed a temporary house measuring 30 ft X 14 ft in violation of the order dated 29.11.2011 and had also filled up the floor area of the house with earth and also have been also taking measures to convert the suit land which was originally an agricultural land, to a residential land. Petitioner prays that the opposite parties are required to be stopped and the status-quo ante be restored and the opposite party's property be attached and sold in public auction and the opposite party may also be sent to civil prison.

3. Upon motion one of my learned predecessor-in-chair

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issued show-cause notice to the opposite parties to show-cause why penal action shall not be taken for violation of the order dated 29.11.2011, passed in Misc(J) Case No. 23/10.

4. The opposite party entered appearance pursuant to notice and resisted the petitioner's prayer on the following grounds amongst others. The opposite parties averred that the suit land is a home stead land and they have been possessing the same. The opposite party denying their attempt to convert the suit land into a residential plot of land, averred that they have not constructed any further house temporary or permanent in violation of the order aforesaid, rather they are occupying the suit land since the time of the purchase of the suit land by their predecessor-in-interest, by constructing dwelling houses thereon. The opposite party prays for dismissal of the petitioner's case.

5. The petitioners in order to prove their case adduced the evidence of 2 numbers of witnesses and also adduced documentary evidence. The opposite party also adduced evidence of one witness. Both side cross-examined either parties' witnesses.

6. Heard both sides.

7. Learned counsel for the petitioners submits that the opposite parties are liable to be punished for violation of the order dated 29.11.2011 and appropriate punishment be-meted out to the opposite parties.

On the other hand, learned counsel for the opposite party submits that the opposite parties are not guilty of violation of the order in reference and that they have been in possession of the suit land since after

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purchase by their predecessor-in-interest and the question of erection of new structure over the suit land does not arise.

8. Heard. Perused the case record.

9. The point for determination that has arisen in the instant case is :

Points for determination :

1) Whether the opposite parties violated order dated 29.11.2011 passed in Misc(J) Case No. 23/10 and whether they are liable to be punished for violation of the order in reference ?

10. My decision on the above point for determination along with reasons is given hereinunder :

Discussion, Decision, Reasons:

To address the point for determination so framed, it will be worthwhile to peruse the evidence available on record and I proceed to do so.

11. PW 1 Naushad Ali Bhayan, reiterated his pleaded case in his evidence-in-affidavit. PW 1 further added that the opposite party in the aftermath of the dismissal of the Misc. Appeal No. 1/02 whereby the order dated 29.11.2011, passed in Misc(J) Case No. 23/10, stood confirmed, preferred a civil revision petition vide CRP No. 310/15 impugning the order dated 31.3.2014 passed Misc Appeal No. 1/12 and that the said CRP was also dismissed vide order dated 19.11.2014. PW 1 stated that the opposite parties despite the operation of the order dated 29.11.2011 had started construction of a

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temporary house measuring 30 ft X 14 ft in violation of the order dated 29.11.2011 and have filled up the floor area of the house with earth, brought thereto, by means of tractors.

PW 1 in support of his case had exhibited Ext 1 being the certified copy of order dated 29.11.2011 passed in Misc(J) Case No. 23/10, Ext 2 being the certified copy of order dated 31.3.2011 passed in Misc Appeal No. 1/12 and Ext 3 being the certified copy of order dated 19.11.2011 passed in CRP No. 310/14.

When put to cross-examination PW 1 discloses that the opposite party Samsul Alam has a house on the suit land which have been standing thereon since 25 years and that there are paddy cultivation near the house of Samsul Alam and that the land over which Samsul Alam had constructed residential house measures 2 katha 10 lecha. PW 1 further reveals that Samsul Alam has 4 number of houses on the said land which have been standing thereon for about 20 / 24 years and that besides the aforesaid 4 number of houses there is no other 'chhapra' house on the suit land. PW 1 discloses that the opposite parties have taken away the house which they had erected, to some other place.

12. PW 2- Abdul Kader, also filed his affidavit supporting PW 1 in all material particulars.

When put to cross-examination PW 2 discloses that he is ignorant as to what is written in his evidence-in-affidavit and is also ignorent in respect of any injunction order.

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13. On the other hand DW 1 - Samsul Alam Bhuyan, in his evidence-in-affidavit averred that he has been possessing the suit land since 1959 and 1964 that is, after the purchase of the same by his predecessor-in-interest.

In his cross-examination DW 1 admitted the subsistence of the order of injunction pertaining to the suit land and remained firm in his evidence that they had not violated the order of injunction. DW 1 denied the defence suggestion that they had raised construction or had developed the suit land by filling earth therein.

14. This in nut shell is the evidence available on record.

15. Perused the case record.

16. It will be necessary herein, to peruse the provisions of Order 39 Rule 2 (A) CPC. Perusal of the provision aforesaid, discloses that in a case of disobedience of any injunction granted by the Court, the Court granting the injunction may order the property of the person guilty of such disobedience be attached and may order such persons to be detained in civil prison.

17. Reading the aforesaid provision brings to light that an application under Order 39 Rule 2 (A) of the Code of Civil Procedure is maintainable only when there is disobedience of any injunction granted or other order made under Rule 1 or Rule 2 of Order 39 or breach of any of the terms on which the injunction was granted or the order was made. The power exercised by Court under Order 39 Rule 2 (A) of the Code is punitive in nature akin to the power of punishment for civil contempt under the Contempt of Courts Act

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1971. The person who complains of disobedience or breach has to clearly make out a case beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under Order 39 Rule 2 (A), the Court cannot construe the order in regard to which disobedience / breach is alleged is creating an obligation to do something which is not mentioned in the order, on the basis of surmises, suspicions and inference. The power under Rule 2(A) should be exercised with great caution and responsibility [**Emphasis supplied : (Rameshwar Dayal Mangala @ Ramesh Chand Vs. Harish Chand and another reported in MANU/SC/0391/2009.)**]

18. Now perusal of the evidence available on record discloses that PW 1 has exhibited the certified copy of the order dated 29.11.2011 passed in Misc(J) Case No. 223/10. Perusal of the order discloses that the learned Court had passed the order aforesaid after full hearing of the parties. It was not an interim order. The opposite parties therefore have knowledge about the passage of the said order. Opposite party/ DW 1 had also admitted about the fact of subsistence of the order of injunction and his knowledge about the same. That the order of injunction was in operation is not in dispute. Again opposite party had also not pleaded about the fact of acquisition of knowledge of the same belatedly rather it is the opposite party's sole plea that have not violated any order of injunction.

19. It is therefore required to be seen whether the violation of order as alleged had taken place or not.

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20. Again visiting the evidence on record it is seen that PW 1 had in his cross-examination disclosed that the house on the suit land have been standing thereon for more than 25 years and that besides the 4 number of houses which were originally standing, there are none others. PW 1 though had revealed that the defendant / opposite parties had removed the temporary structure raised by them but admittedly he had no knowledge when such construction was raised. The petitioner had suggested the DW 1 that opposite party had removed the structure over the suit land receiving notice of the case.

That there are 4 nos. of houses on the suit land, which was there for more than 20 years is a fact admitted by the petitioner/ PW 1. Again the petitioner's very suggestion to the DW 1 that opposite party have removed structure after receipt of notice directed an admission in respect of the fact of absence of any new structure over the suit land. There is no evidence on record to show that there was infact a construction over the suit land after the passage of the order of injunction, nor there is any averment in respect of the date of alleged construction. At the risk of repetition it is said that petitioner has to prove beyond all reasonable doubt there was breach of the restraint order for inviting penal consequences.

21. But petitioner has failed to prove the fact of developing the suit property into a home stead land by filling earth by examining the witnesses who had been a witness to the event filling of earth over the suit land or by examing the persons who had seen the construction taking place over the suit land when the order of injunction was in operation. From the very admission of the PW 1 that the suit land houses four residential house for more than 20 – 25 years, negates its case of conversion of the suit land into a home

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stead land. Thus the admission of the PW 1 goes to show that the suit land had been used by the opposite party for residential purpose for over 20 years.

22. Again the PW 2's evidence discloses that he is ignorant about any status-quo order or about the violation of the alleged order.

Therefore PW 2's evidence would not further the petitioner's case in any manner. The breach through is alleged yet the evidence on record do not clearly indicate that the opposite parties have violated the order in reference. Accordingly, I am but to hold that the petitioners have failed to establish their case beyond all reasonable doubt.

23. The point for determination stands answered in the negative.

24. **O R D E R:**

In the light of the foregoing discussions, petitioner's case is dismissed on contest with costs.

Given under my hand and the seal of this Court on the 11th day of April, 2017.

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

Dictated & corrected by me,

(M.C.Bordoloi)
Civil Judge,
Bongaigaon