

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 19th day of December, 2017.

Misc (J) Case No. 66 of 2015.

1. Md Abdur RAzzaque,
S/O Late Haji Khabiruddin Ahmed,

2. Md. Abdur Rashid,
S/O Late Haji Khabiruddin Ahmed,

Both are the residents of
vill- Pub Tiamari, Part- I,
P.O. Gouipur,
Dist. Dhubri, Assam.

3. Musstt Ayesha Bewa,
W/O Late Abu Sayed,

4. Md. Arsad Hussain,

5. Md. Asad Hussain,

6. On the death of Md. Yunus Ali, his legal heirs-
6 (a) Mustt. Sayeda Maromi Bewa
6 (b) Md. Murtaza Ali Ahmed
6 (c) Md. Misbah Ahmed

Sl. No. 4 to 6 are sons of Late Abu Sayed and Grand sons of Late Haji Khabiruddin Ahmed,


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Sl. No. 3 to 6 are residents of Main Road, Ward No. - 5,
Near Assam Stores,
P.O. & Dist. Bongaigaon, Assam.

7. Musstt Naznin Khatun,
W/O Late Mazur Ali
D/O Late Abu Sayed,
Vill- Charjogipara,
P.O.- Gouripur, Dist- Dhubri (Assam),

8. Musstt Marium Khatun,
D/O Late Abu Sayed,

9. Musstt Farhana Khatun,
D/O Late Abu Sayed.

10. Musstt Sahfia Khatun,
D/O Late Abu Sayed,

11. Musstt Hanifa Khatun,
W/O Md Momin Hussain
D/O Late Abu Sayed.

Sl. No. - 7 to 11 are grand daughters of Late Haji Khabiruddin Ahmed,

Sl. No. 8 to 11 are residents of Beparipatty,
Ward No. - 4, P.O.- Gouripur,
Dist- Dhubri (Assam)

12. Md. Abdul Jabbar,
S/O Late Haji Khabiruddin Ahmed,
Main Road, Ward No. - 5
Near Assam Stores,
P.O. & Dist – Bongaigaon (Assam)

13. Musstt Muslima Sultana,
W/O Late Abdul Aziz,

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14. Md. Mahbubar Rahman,
S/O Late Abdul Aziz
both are residents of House No. - 5,
Above Reddy's Restaurant, 3rd cross,

Sl. No. 13 and 14 are daughter-in-law- and grandson of
Late Haji Khabiruddin Ahmed,

Presently resident of Kaggadapura Main Road,
C.V. Raman Nagar, Bangalore- 93 (Karnataka)

Sl. No. -13 and 14 are represented through their
Constituted Attorney Holders vide Regd Special Power of
Attorney vide no. 12 dt 13/02/12 Md. Abdur Raquib
S/O Md. Abdur Rashid, a resident of village- Pub Tiamari,
Part- I, P.O& P.S. - Gouripur, Dist- Dhubri (Assam)

Petitioners

VERSUS

1. Md. Abul Hashem,
S/O Late Abdus Salam
Grandson of Late Haji Khabiruddin Ahmed,
R/O – Main Road, Ward No. - 5,
Near Assam Stores, Bongaigaon Town
P.O, P.S. & Dist. Bongaigaon, Assam.

2. Md. Abul Kashem,
S/O Late Abdus Salam
Grandson of Late Haji Khabiruddin Ahmed,
R/O – Beparipatty Ward No. - 4, Gouripur,
P.O. - Gouripur, Dist. Dhubri, Assam.

Opposite parties



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This suit coming for final hearing on
07.12.2017.

(1) Given date or dates
in the presence of

Mr. Samir Kr. Sarkar Advocate for petitioners.

Mr. H. Das and B.Das Advocate for Opposite parties.

and having stood for consideration to this 19th
December, 2017 the Court delivered the following Judgment:

Misc (J) case No.
66/2015

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

1. Petitioners filed petition 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 order dated 30.6.2014 passed in Misc(J) Case No. 27/14, which petition have been registered as the present Misc(J) Case.

2. It is the petitioner's case that they have instituted Misc.(J) Case No. 27/14 in the instant Court praying for restraining the opposite party Nos. 3, 4 and 5 from inducting any new tenants in the suit land and also from

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restraining them to sale or erect any structure over the suit land or to renovate the existing construction over the suit land till disposal of the main suit.

3. It is averred that vide order dated 30.6.2014 an order of maintenance of status-quo was passed and the opposite parties had received notice in the said case pursuant to which they entered appearance and filed their written statement. It is averred that the schedule B land had a two storey R.C.C. structure standing on the suit land at the time of filing of the injunction application without any construction on the first floor and that the opposite party No. 1 with the opposite party No. 2 started raising construction on the said B schedule land on 1.11.2015 taking the advantage of the Civil Court vacation whereafter the petitioner No. 6 filed the complaint with the Bongaigaon Municipality for stopping the alleged construction. It is also averred that the Chairman, Bongaigaon Municipality sent a stop notice to the opposite party No.1 to stop the alleged illegal construction receiving which notice the opposite parties accelerated the construction by covering the same with tin and plastic sheets whereafter the petitioner No. 6 sent a pleader's notice to opposite party No.1 and the Bongaigaon Municipality but same did not bear fruit. The status quo order had been violated under which condition, petitioner has filed the instant case for passing necessary order to detain the opposite parties in Civil prison for violation of the

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order of injunction, and to take other appropriate action under law.

4. Opposite parties entered appearance pursuant to notice and filed their written objection. The opposite parties raised the plea of non-maintainability of the present proceedings. The opposite parties averred that upon receipt of the summons from the Court, they entered appearance and filed their written statement and that after acquiring the knowledge of the passage of the status quo order dated 30.06.2014, they obeyed the said order. The opposite parties further averred that the two-storeyed RCC building standing at B-scheduled land was constructed after securing permission of Bongaigaon development authority and the issuance of the no objection issued vide NOC no. BDA/BP/TW/5/2015/35/12/436 dtd 13.09.2012 and have constructed the building within 1 year from the date of securing permission, permission remaining valid only for 1 year. It is also averred that the opposite parties had raised construction out of their meagre income for which they could not complete the work of white washing, colouring, etc in the first floor. The opposite parties admitting the lodging of the complaint before the office of Bongaigaon Municipality and the issuance of stop work notice and the receipt of same on 10.09.2015 averred that no action was taken by the Bongaigaon development authority as the Authority was satisfied on being shown the relevant documents pertaining to permission etc. for raising

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5. construction over the suit-land. The opposite parties averred that the alleged construction was done before the passage of the status quo order. The opposite parties prays for dismissal of the petition with exemplary costs.

6. Upon perusal of the rival claims and contentions of the parties, point for determination which has arisen in the instant case is :

Point for determination

- i) ***Whether the opposite parties, violated the status quo order dated 30.06.2014 by raising construction over the suit-land even after notice of the said order, as alleged?***
- ii) ***Whether the opposite parties are liable to face penal action for the alleged violation of the order of status-quo dated 30.06.2014?***

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7. The petitioner in order to prove his case, adduced the evidence of 3 numbers of witnesses and also adduced documentary evidence.

8. The opposite parties declined to adduce any defendant's evidence. It deserves mention herein that

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petitioner No. 6 expired during pendency of proceeding and vide order dated 10.11.2017, his legal heirs were brought on record.

9. Heard the arguments forwarded by the learned counsels of both sides.

10. My decision on the above points for determination alongwith reasons is given hereinunder :

Discussion, decision and reasons therefor

11. I propose to address the two points for determination together and I further propose to peruse the evidence on record.

12. PW 1 - Abdul Jabbar deposed that he is the petitioner No.12 in the case and that he had vide an injunction petition prayed for restraining the opposite party No.3, 4 and 5 from inducting any new tenants in the suit-land and from selling or renovating the suit-premises and to further restrain the other opposite parties from erecting any new structure over the suit-land. PW 1 further averred that vide order dated 30.06.2014 parties were directed to maintain status quo in respect of the suit-land until further orders and that the opposite parties had received notice of the injunction case and accordingly appeared in the case. PW 1 further stated that on the schedule-B land at a time filing of injunction, there

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was no construction on the first floor and that the opposite parties No. 1 and 2 started construction thereon after closure of Court during Civil vacation on 1.11.2015 in violation of the alleged status quo order. PW 1 in support of his plea exhibited Ext-1 being the certified copy of order in Misc (J) 27/14 and photos being Ext – 2 (1) to 2 (23).

13. In his cross-examination PW 1 disclosed that vide order dated 30.6.2014, Order of status quo was passed in Misc (J) 27/2014 and that during the passage of such order the opposite parties's learned counsels or the opposite parties themselves were not present before the Court. PW 1 disclosed his ignorance as to when the opposite parties had received notice of the passage of the status quo order. PW 1 also admitted in his cross-examination that he had mentioned in his evidence in affidavit at that there was two-storeyed RCC building in the suit-land on the suit house. PW 1 however denied the suggestion of the defendant side that the constructed over the suit-land was raised prior to filing of the suit. PW 1 also admitted that he had not filed any memory card or negative in respect of the photographs being Ext -2 (1) to (23). PW 1 also admitted that RCC 1st floor don't have any plaster.

14. PW 2 support PW 1 in all material particulars. PW 2 in his cross-examination, disclosed that after the instant case, defendant/opposite parties has not inducted

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any tenant in the suit-property nor they had made preparation for selling the suit-land. PW 2 also admitted that the house standing on the suit-land has not being white washed and that the 1st floor don't have doors, window or colour. PW 2 also disclosed his ignorance as to when opposite parties were in receipt of the notice of status quo order. PW 2 admitted that ground floor of the Schedule premises was constructed prior to the institution of the suit.

15. PW 3 - the Chairman of Bongaigaon municipality in his evidence on oath deposed that he had on receipt of a compliant, issued a 'stop work' notice to the opposite parties on 03.11.2015 without visiting the site and the said notice was received at 4:00 PM on the same day by the opposite parties. PW 3 identified the stop-work notice as Ext-5. PW 3 clarified that he sent a team to visit the site which team submitted its report to the effect that the opposite parties had stopped construction over the suit-land. In his cross-examination, PW 3 identified the physical verification report of the site as Ext-A and also identified the signature of Mridul Narayan Dev and signature of Ashwini Choudhury as Ext - A1 and A2 respectively.

16. Perusal of the aforesaid evidence discloses that petitioners have exhibited Ext-1 being the certified copy of order in Misc (J) 27/14. Perusal of the same discloses that one of my learned predecessor-in-chair directed

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the parties to maintain status quo in respect of the nature and feature of suit-land until further orders while issuing show-cause notices upon the opposite parties. Further perusal of the Ext-1 discloses that there is an endorsement therein to effect that notice was issued on 24.07.2014.

17. Petitioner failed to prove when the notice on the opposite parties had been served. Both PW 1 and PW 3 showed their ignorance as to when the opposite parties had acquired knowledge of the status quo.

18. Now minute perusal of the Ext-1 discloses that through my learned predecessor-in-chair had passed the order of status quo but the said order dated 30.06.2014 in Misc (J) 27/14 do not disclose as to what was the position/status of suit-land at the time of passing said order. Infact there is no disclosure about the existence of any report on record in respect of the present status of the suit-land at the relevant time. Petitioner also failed to prove the existence of any such report on record at the relevant date.

19. Again petitioners though had submitted Ext -2 (1) to (23) to prove the fact of raising construction after passage of the status quo order but petitioners have failed to prove the same by examining the photographer or by proving the contents thereof in accordance with the provisions of Section 65A of the Evidence Act.

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20. In fact no certificate as required under Section 65 B of the "Evidence Act" has been submitted. Without fulfilling the mandate of Section 65 B of the Evidence act, Ext - 2(1) to (23) cannot be admitted into evidence and in absence of the same, petitioner's case could not go any further.

21. PW 3 had proved the 'stop-work notice' and the physical verification report being Ext-5 and Ext-A respectively but Ext-A do not disclose as to what was the date on which the said construction work was undertaken. Ext-A is indicative of the fact that no work was in progress then.

22. Accordingly, in the above circumstances, I am constrained to hold that petitioners have failed to prove that the opposite parties had violated the status quo order dated 30.06.2014 and is liable to face penal action.

23. The points for determination stands answered in the negative against the petitioner.

24. O R D E R

In the light of foregoing discussion, Misc(J) dismissed on contest with costs.

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Given under my hand and the seal of this Court
on the 19th day of December, 2017.

M.C. Bordoloi
19/12/17
Civil Judge,
Bongaigaon

M.C. Bordoloi
(M.C. Bordoloi) 19/12/17
CIVIL JUDGE,
Bongaigaon **Civil Judge**
Bongaigaon

Dictated & corrected by me,

M.C. Bordoloi
(M.C. Bordoloi) 19/12/17
CIVIL JUDGE,
Bongaigaon **Civil Judge**
Bongaigaon



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A P P E N D I X

Plaintiff's witnesses :

1. PW 1 – Md. Abdul Jabbar
2. PW 2 – Md. Arshad Hussain
3. PW 3 – Sri Dipu Choudhury

Defendant's witnesses :

Nil

Plaintiff's exhibit

1. Ext 1 – the certified copy of order in Misc (J) 27/14
2. Ext 2 (1) to (23) – photographs
3. Ext A – Physical verification report
4. Ext A (1) to (2) – signatures on physical verification report
5. Ext 25 – stop work notice
6. Ext 24 – letter dated 02.11.2015

Defendant's exhibit

Nil

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Bongaigaon

M.C. Bordoloi
(M.C. Bordoloi) 19/12/17
CIVIL JUDGE,
Bongaigaon **Civil Judge,**
Bongaigaon

