

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 19<sup>th</sup> day of August, 2017.**

**Money Suit No. 5 of 2014.**

1. Sri Biswanath Sureka  
S/o Late Mangtaram Sureka  
R/o Paglasthan, North Bongaigaon,  
P.O. & Dist - Bongaigaon,(Assam).

.....Plaintiff.

Versus

1. Sri Swapan Kumar Saha  
S/o Late Ganga Pada Saha  
R/o G.N.B. Road, North Bongaigaon,  
P.O. & Dist – Bongaigaon,(Assam).  
Carrying Business at :  
Paglasthan, North Bongaigaon  
P.O. & Dist – Bongaigaon,(Assam).

..... Defendant.

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1. Sri Santosh Sureka.
2. Sri Satya Narayan Sureka.
3. Sri Bimal Sureka.
4. Smt. Suman Mitna

All are sons and daughter of Late Mangturam Sureka.

All are residents of North Bongaigaon, Ward No.- 10

P.O., P.S. & Dist – Bongaigaon,(Assam).

.....Proforma Defendants.

The suit coming for final hearing on 19.4.2017,  
11.5.2017, 19.7.2017.

(I) Given date or dates

in the presence of

Mr. Samir Sarkar

Advocate for plaintiff

Mr. Pulak Sarma

Advocate for Defendant

and having stood for consideration to this on the 19<sup>th</sup> day  
of August, 2017 the Court delivered the following Judgment:

**Money Suit 5/2014.**

**JUDGMENT :::**

1. This is a suit for damages.

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2. The plaintiff's case as set out in the plaint is given briefly hereinunder :

3. That the plaintiff had let out an Assam Type shop house measuring 17.5 ft in length and 8 ft in breadth, standing on a plot of land measuring 4 bigha 1katha 7 lecha covered by dag No. 319/1783 and patta No. 604 situated at Paglasthan under Bongaigaon Revenue Circle, jointly owned by father with his brothers, to the defendant on a monthly tenancy of Rs. 800/- with effect from 1.8.1989, vide a tenancy agreement, for a period of 3 years, period of tenancy ending on 31.7.1992, on being empowered by his father through a General Power of Attorney and that the plaintiff had also received an advance amount of Rs. 5000/- from the defendant, which was made adjustable @ Rs. 200 per month along with monthly rent. That subsequently on partition, the suit premises fell into the share of the plaintiff's father. It is the plaintiff's further case that he had filed Title Suit No. 42/93 for eviction and recovery of Rs. 21,000/- (Rs. Twenty one thousand) from the defendant and his partners and that during the pendency of the said suit, the defendant without the plaintiff's knowledge caused extension of the tenanted premises. It is further pleaded that Title Suit 42/93 had been decreed, against which an appeal vide Title Appeal 16/01 had been preferred and the said appeal was allowed reversing the judgment of the learned trial Court whereupon the present plaintiff preferred a Civil revision, wherein the Hon'ble Revisional Court while setting aside the judgment of the learned Appellate Court had remanded the same to the first Appellate Court for fresh decision and the learned Appellate Court after hearing both sides, affirmed the judgment and decree of the learned trial Court, against which a further revision had been preferred by the defendant, but the said revision application was dismissed.

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It is also pleaded that plaintiff thereafter had filed a execution case vide Title Execution No. 6/13 for putting through execution the decree in Title Suit No. 42/93. Accordingly the possession of the tenanted premises was delivered to the present plaintiff. The plaintiff avers that he has two sons and due to lack of space, for the alleged unauthorised extension work made by the defendant, the plaintiff could not utilise the space for facilitating his son's business and thereby had to sustain huge financial loss.

It is further averred that even after completion of his son's studies the plaintiff could not settle his youngest son and had to wait for vacation of the decreetal premises and accordingly sustained loss which is estimated at Rs. 300/- per day with effect from 1.1.1993 to 31.12.2004 and @ Rs.500/- per day, for the period between 1.1.2005 to 7.12.2013 which is estimated at Rs. 28,36,500/- (Rs. Twenty eight lakhs thirty six thousand five hundred). Hence in the above circumstances plaintiff has filed the suit for recovery of damages / compensation for business loss to the tune of Rs. 28,36,500/- (Rs. Twenty eight lakhs thirty six thousand five hundred), along with interest @ 9% per annum from the date of decree till recovery of the decreetal amount alongwith costs of the suit. .

4. The defendant entered appearance and filed his written statement. In his written statement the defendant raised the pleas of absence of cause of action, non-joinder of necessary party, bar of limitation etc. The defendant denying the plaintiff's case of alleged unauthorised extension of the suit premises averred that the repair of the tenanted premises was done pursuant to the order of the learned Munsiff Bongaigaon in Misc(J) Case No. 5/99 and that the plaintiff had not required the payment of rent for the alleged extended

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portion in Title Suit No. 42/93 and the raising of claim of compensation for the said portion is a time barred claim. The defendant prays for dismissal of the suit.

5. Upon perusal of pleadings, vide order dated 10.4.2015, the following issues have been framed for adjudication.

**I S S U E S**

**(i) Whether there is a cause of action for the suit ?**

**(ii) Whether the suit is maintainable ?**

**(iii) Whether the suit is barred by limitation ?**

**(iv) Whether the suit is bad for non-joinder of necessary parties?**

**(v) Whether the plaintiff is entitled to recover compensation to the tune of Rs. 28,36,500/- with effect from 1.1.1993 to 7.12.2013 towards business loss, from the defendant ?**

**(vi) Whether the plaintiff is entitled to claim interest @ 9% per annum on the amount claimed, from the defendant ?**

**(vii) To what other reliefs the plaintiff may be entitled ?**

6. Plaintiff examined one witness and also exhibited the case record of Title Suit No. 42/93, which was requisitioned from the Court of learned Munsiff, Bongaigaon on prayer. Defendant side also examined two witnesses. Both sides cross-examined each others witnesses.

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7. Heard the arguments put forth by the learned counsels of both sides. I have given my anxious consideration to the arguments and counter-arguments forwarded.

It deserves mention herein that the records of Title Suit No. 42/93 and Title Execution No. 6/2013 received on requisition from the concerned Court, is perused carefully.

8. My decision on the above issues so framed along with reasons is given hereinunder:

**Discussion, Decisions and Reasons therefor:**

9. **Issue No. 1 :**

Issue No. 1 relates to the question of presence of cause of action for the suit.

Plaintiff have instituted the present suit for recovering compensation from the defendant against probable business loss estimated at Rs. 28,36,500/- ( Rs. Twenty eight lakhs thirty six thousand five hundred only). It is the petitioner's case that the defendant during the course of tenancy had extended the tenanted premises, thereby utilising space measuring 3 ft in length and 17 ft in width 9 ft in length and 11 ft in breadth and had failed to pay rent for the extended portion and had also utilized the space over which the extended construction was raised, whereby the plaintiff being a businessman sustained loss and also could not make arrangement for facilitating the business of his younger son, for the refusal of the defendant to vacate the tenanted premises.

It is alleged that an amount of Rs. 300/- on an average per day would have been earned by the plaintiff, which would have subsequently increased to Rs. 500/- per day on an average, in the event of his establishing a business in the tenanted premises.

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The defendant, on the other hand, denied having extended the original tenanted premises and averred that only certain repairs were effected in the shop as per the order dated 14.3.2000 passed in Misc(J) Case No. 5/1999. The defendant disputes the plaintiff's estimation of probable income per day as an imaginary one.

The rival claims of the parties disclose that a substantial issue as to whether the plaintiff is entitled to recover compensation from the defendant or not or whether the alleged extension at the behest of the defendant took place in the tenanted premises or not has arisen for consideration of the Court requiring a decision being on merits. Accordingly a cause of action for the suit is disclosed.

The issue is decided in the affirmative in favour of the plaintiff.

10.

**Issue No. 3 :**

Issue No. 3 relates to the question of bar of limitation. Defendant in their written statement had raised the plea that the suit was one barred by limitation as the plaintiff at the time of filing of the suit for eviction of the defendant from the suit premises and at the time of filing of the subsequent Title Execution Case No. 6/13 had failed to claim any compensation against the use of either vacant space, or the alleged portion extended beyond the tenanted premises or for loss of any probable income from the defendant. It is further alleged that the Hon'ble Gauhati High Court vide order dated 28.10.2013 had set aside the decree for recovery of arrear rent in respect of the tenanted premises from the defendant which order had not been challenged in any High

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Court and therefore the said order having attained finality, the plaintiff suit for compensation filed on 10.3.2014 is time barred and liable to be dismissed.

Plaintiff, on the other hand avers that Title Suit No. 42/93 was decreed on 5.9.2001 against which an appeal had been preferred being Title Suit No. 16/01 whereby and whereunder the Learned Appellate Court had set aside the judgment and decree of the learned trial Court whereupon the plaintiff preferred a Civil revision petition being numbered 127/02 which was allowed by the Hon'ble Gauhati High Court remanding the matter to the learned Appellate Court for decision afresh, which appeal renumbered as Title Appeal No. 2/11 was disposed of by the learned Appellate Court affirming the judgment of the learned trial Court consequent to which a further Civil revision petition being numbered 369/12 was preferred which was dismissed and the decree for eviction maintained. Plaintiff avers that after the execution of the decree, the instant suit for damages has been filed seeking damages on account of the business loss, till the date of execution of decree, as the same has been a continuous process. Plaintiff therefore maintains that the suit is brought well, within the period of limitation.

Perused the pleadings of the parties and also perused the case record of Title Suit No. 42/93. The instant case being one for compensation, will be governed by Article 113 of the Limitation Act, which provides for period of 3 years for maintaining a suit, limitation to run from the date when the right to suit accrues. In the instant case, plaintiff had sought for recovery of rent of the alleged extended portion of the tenanted premises and also for compensation for business loss for non-vacation of the tenanted premises by the defendant.



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Perusal of the case record of Title Suit No. 42/93 discloses that plaintiff had averred in his plaint about the alleged extension but had failed to pray for the relief of recovery of rent against the use of the extended portion by the tenant / defendant. Minute perusal of the aforesaid plaint discloses that factum of alleged extension of the tenanted premises was incorporated therein by way of amendment dated 11.4.2000. Apparently the cause of action arose, then whereby the amendment of the plaint seeking the incorporation of the alleged alteration of the tenanted premises unlawfully, was preferred. But the plaintiff omitted to seek the relief for recovery of rent against use of the alleged extended premises. Therefore the relief for recovery of the rent against the alleged portion is a time barred one.

Again plaintiff had sought for compensation against the business loss from 1.1.1993 to 7.12.2013. That is plaintiff has sought for compensation of business loss which he allegedly sustained during the period of 1.1.1993 to 7.12.1993. Plaintiff has claimed that for the non-vacation of the tenanted premises by the defendant, he has sustained loss in earning for which he is to be compensated. The instant suit is filed in the year 2014. The claim of the plaintiff for compensation, for the inaction of the defendant, to vacate the suit land, has been brought within time. The second relief is accordingly within time.

Plaintiff's part claim is time-barred. The issue is decided accordingly to the above effect.

11.

**Issue No 4 :**

Issue No. 4 relates to the question of the suit being rendered bad for non-joinder of necessary parties.

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Defendant in his written statement has raised the plea that the suit was bad for non-joinder of necessary parties. Defendant failed to aver as to for whose non-joinder the suit is rendered bad. This issue is also not pressed during the course of arguments. Accordingly, I am constrained to hold that suit is not bad for non-joinder of necessary parties.

The issue is decided in the negative in favour of the plaintiff.

12. **Issue No 5 and 6 :**

Issue Nos. 5 and 6 being interrelated are addressed together for the sake of convenience and to avoid repetition in discussions and marshalling of evidence.

**Issue No. 5** relates to the question whether the plaintiff is entitled to recover compensation to the tune of Rs. 28,36,500/- ( Rs. Twenty eight lakhs thirty six thousand five hundred only) with effect from 1.1.1993 to 7.12.2013 towards business loss from the defendant.

While **Issue No. 6** relates to the question whether the plaintiff is entitled to claim interest @ of 9% per annum on the amount claimed from the defendant.

It is the plaintiff's case that he intended to establish his permanent business in the plot of land wherein the defendant ran his business by extension and because of the non-vacation of the said plot of land by the defendant since 1993, plaintiff had sustained huge financial loss. It is the further case of the plaintiff that he has two sons and that his eldest son had established his hardware business in an adjacent shop but the plaintiff could not

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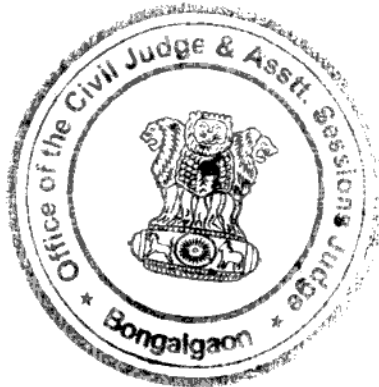
cause the establishment of his younger son, even after completion of his studies for the defendant's refusal to vacate the decretal land. Plaintiff avers that an amount of Rs. 300/- per day would have been earned with effect from 1.1.1993 in the event of extension of a hardware shop in the portion of land where the alleged extended portion of the tenanted premises stood and the said income would have in due course, enhanced to Rs. 500/- per day on an average with effect from 1.1.2005 due to price rise till the day of defendant's eviction i.e. on 7.12.2013. The plaintiff averred that he was deprived from utilising the area where the extended tenanted premises stood and therefore, he is to be compensated by the defendant.

Plaintiff filed his evidence-in-affidavit reiterating his pleaded case and in support of his case exhibited the record of Title Suit No. 42/1993 as Ext 1.

In his cross-examination PW 1 disclosed that his elder son has a electric shop while his younger son has a hardware store presently and that in the year 1993 his younger son Sumit Sureka was aged 9 or 10 years. PW1 also disclosed that after recovery of possession of the decretal tenanted premises he had not established any shop therein till date and the same has been used as a store room / 'godown'. PW1 admitted that he had not submitted any 'godown' tax receipt in the instant case nor he had submitted any profit or loss account maintained by his sons, in their respective shops in the present case.

PW1 further admitted not having submitted his sons income tax, sales tax, IT returns file in the instant case. To a query of the defendants, PW 1 disclosed that he had not specifically shown in a statement, as to on what basis he had sought compensation @ Rs. 300/- per day with effect from 1.1.1993 to 1.12.2014 and @ 500/- per day from 1.1.2005 to 7.12.2013.

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The issues are decided accordingly in the negative against the plaintiff.

13.

**Issue No 2 :**

Issue No 2 relates to the question of maintainability of the present suit.

Plaintiff has claimed compensation against the defendant for the failure of the defendant to vacate the decreetal premises pursuant to the decree passed in Title Suit No. 42/93 and also for the non-payment of rent for the alleged extended portion of the tenanted premises during the period of tenancy and also for business loss on account of the defendants utilization of the tenanted premises and the consequent failure of the plaintiff to utilize the space of the tenanted premises which loss has been quantified at Rs.28,36,500/- (Rs. Twenty eight lakhs thirty six thousand five hundred only).

It is the plaintiff's pleaded case that tenanted premises was let out on rent to the defendants and that the defendant failed to vacate the same on being asked to do so, compelling him to file Title Suit No. 42/93, which was decreed vide judgment and order dated 5.9.2001.

Plaintiff further averred that Title Appeal No. 16/2001 was preferred against the judgment in Title Suit No. 42/93 by the defendant side which appeal was allowed compelling the plaintiff to prefer a revision application being CRP No. 127/02 and that the Hon'ble Gauhati High Court in the said CRP while setting aside the judgment of the learned Appellate Court had remanded the matter for decision afresh and accordingly the appeal received on remand, numbered as Title Appeal No. 2/11 was dismissed, upholding the decree of the learned trial Court against which another Civil

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revision petition No. 369/12 was preferred whereby and whereunder the Hon'ble Gauhati High Court had dismissed the Civil revision application upholding the decision of the learned Appellate Court with modification.

Plaintiff submitted his evidence-in-affidavit reiterating his pleaded case and in support thereof exhibited Ext 1 i.e. the case record of Title Suit No. 42/93.

Perusal of the case record of Title Suit No. 42/93 discloses that the order of the Hon'ble Gauhati High Court passed in CRP No. 369/12 communicated vide memo No. HC/X1X/3621-3622/CRP dated 30.10.2013 was received in the said record. Perusal of the aforesaid order discloses that the Hon'ble Gauhati High Court had disposed the revision petition maintaining the decree for eviction of the revision petitioner from the suit premises while denying the relief of recovery for arrear rent for the tenanted premises up to the date of decree.

Further perusal of the judgment of the learned trial Court in Title Suit No. 42/93 discloses that the learned trial Court had concluded in issue No. 6 that the defendant had made alterations and extension in the tenanted premises. The defendant presently claims that the alterations in the tenanted premises was done pursuant to order in Misc(J) case No. 5/99.

Perusal of the record Misc(J) Case No. 5/99 received on requisition, discloses that the learned Munsiff had directed the repairing of the tenanted premises pursuant to a petition U/S 7 of the Assam Urban Areas Rent Control Act 1972. However, there was order on record allowing alteration and extensions of the tenanted premises.

Further perusal of the Title Suit No. 42/93 discloses that the plaintiff had brought out by way of amendment, the fact of alleged raising of

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construction / extension in the tenanted premises during pendency of the suit but there was no prayer for determination of rent of the alleged extended portion of the tenanted premises nor for recovery of additional rent in respect of the extended portion. Further the Hon'ble Gauhati High Court had rejected the petitioners prayer even for arrear rent. Accordingly in the above premises the present suit for the rent of the extended portion of the tenanted premises would be hit by the provisions of Order 2 Rule 2 of the Code of Civil Procedure. The plaintiff in Title Suit No. 42/93 had omitted to seek the aforesaid relief of rent for the alleged extension in Title Suit No. 42/93 and further claim of rent had also been rejected by the Hon'ble Gauhati High Court under which circumstances plaintiff is precluded from seeking rent of the extended portion of the tenanted premises in the instant suit. It is a settled position of law that a tenant for his stay in the tenanted premises would be liable to pay only rent for the same and is not liable to pay any compensation for use the tenanted premises. At the risk of repetition, it can be said that, plaintiff having failed to seek rent for the alleged extended portion, he is precluded from seeking further rent in the present case.

Again as discussed in issue No. 5 and 6 the plaintiff failed to substantiate his claim for compensation against business loss estimated as Rs.28,36,500/- (Rs. Twenty eight lakhs thirty six thousand five hundred only) under which circumstances he cannot be compensated in the instant suit, on that count as well. The plaintiff suit is not maintainable accordingly.

The issue is decided against the plaintiff in the negative.

14.

**Issue No 7 :**

In view of the discussions and decision arrived at in issue

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Nos. 2, 5 and 6, I am constrained to hold that plaintiff is not entitled to any reliefs in the instant suit.

The issue is decided in the negative against the plaintiff.

**ORDER**

15. In the light of the foregoing discussion, the plaintiff's suit is dismissed on contest with costs.

Prepare a decree accordingly.

Send back the records of Title Suit 42/93 and Title Execution No. 6/2013 from where requisitioned, in due course.

Given under my hand and seal of this Court on the 19<sup>th</sup> day of August, 2017.

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19/8/17  
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*Bordoloi* 19/8/17  
(Smti .M.C.Bordoloi)  
Civil Judge  
Bongaigaon  
Civil Judge,  
Bongaigaon

Dictated and corrected by me

*Bordoloi* 19/8/17  
(Smti .M.C.Bordoloi)  
Civil Judge  
Bongaigaon.  
Civil Judge,  
Bongaigaon



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APPENDIX

Plaintiff's witness:

PW1 – Biswanath Sureka.

Plaintiff's exhibits:

Ext 1 - Record of T.S. 42/93.

Defendant's witness:

DW 1 – Swapan Kr. Saha.

Dw 2 – Dilip Kr. Roy.

Defendant's exhibits:

Nil

Court witness:

Nil

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*Civil Judge,*  
*Bongaigaon*

*Bordoloi*  
*19/8/17*  
(Smti M.C.Bordoloi)  
Civil Judge  
Bongaigaon **Civil Judge,**  
**Bongaigaon**

