

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.**

Wednesday, the 6th day of December, 2017.

Title Suit No. 31 of 2012.

1. Sri Yogendra Choudhury.
S/O Late Prabhu Choudhury @ Singh,
2. Sri Rama Shankar Choudhury,
S/O Late Prabhu Choudhury @ Singh,
Both are permanent resident of
Village -Belaur,
P.O. Belaur, P.S. Udwant Nagar,
Dist – Bhojpur (Bihar).
Present Address -
C/O M/S Sharma Stores,
Main Road, Bongaigaon,
P.O. & P.S Bongaigaon,
Dist – Bongaigaon. (Assam).

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Plaintiffs

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VERSUS

1. Surendra Choudhury,
S/O Late Rameswar Choudhury,
R/O Village – Belaur,
P.O. Belaur, P.S. Udwant Nagar,
Dist – Bhojpur (Bihar).
 2. Sri Dinesh Choudhury,
S/O Late Rameswar Choudhury,
 3. Smti Krishna Devi,
W/O Late Umesh Choudhury,
 4. Sri Rajendra Choudhury,
S/O Late Hajari Prasad Choudhury @ Singh,
 5. Sri Sudarshan Choudhury,
S/O Late Daroga Choudhury,
 6. Sri Bimal Kumar Choudhury,
S/O Late Daroga Choudhury,
 7. Sri Manoj Kumar Choudhury,
S/O Late Daroga Choudhury,
 8. Sri Ravi Shankar Choudhury,
S/O Late Daroga Choudhury,
 9. Sri Pankaj Kumar,
S/O Late Daroga Choudhury,
- The defendants named at Sl. No. 2 to 9 are
Residents of Village – Belaur,
P.O. Belaur, P.S. Udwant Nagar,
Dist – Bhojpur (Bihar).

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Defendants
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A N D

1. Smt. Damayanti Devi,
W/O Late Ramendra Choudhury
Residents of Village – Belaur,
P.O. Belaur, P.S. Udwant Nagar,

Dist – Bhojpur (Bihar).

2. Smti Raj Kumari Devi,
D/O Late Babanji Pathak,
W/O Shashi Bhushan Pathak,

3. Sri Raghvendra Pathak,
S/O Shashi Bhusain Pathak

4. Sri Dharendra Pathak,
S/O Shashi Bhusain Pathak

5. Sri Amrit Kr. Pathak
S/O Shashi Bhusain Pathak

6. Sri Bibek Kr. Pathak,
S/O Shashi Bhusain Pathak

The proforma-defendant No. 2 to 6

All are the residents of

A.O.C Road, Near Hariram Maheswari L.P. School,
Bongaigaon town,

P.O. & P.S. Bongaigaon.

Dist Bongaigaon.

Proforma Defendant No. 7 (Added vide order dated 26.11.2013)

7. Shashi Bhusan Pathak,

A.O.C. Road,

Near Hariram Maheswari L.P. School,

Bongaigaon town,

P.O & P.S Bongaigaon,

District Bongaigaon, Assam.

Proforma Defendants added vide order dated 21.1.2016

8. Smt. Rita Devi

D/O Late Ramendra choudhury,

9. Smt. Gita Devi,

D/O Late Ramendra choudhury,

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10. Smt. Anita Devi,
D/O Late Ramendra choudhury,
11. Smt. Sunita Devi,
D/O Late Ramendra choudhury,
12. Smt. Mamta Devi,
D/O Late Ramendra choudhury,
13. Smt. Rekha Devi @ Guri Devi,
D/O Late Ramendra choudhury,
14. Smt. Runi Devi
D/O Late Ramendra choudhury,
15. Smt. Padma Devi @ chema Devi,
D/O Late Ramendra choudhury,
16. Smt. Minki Devi @ Miki Devi,
D/O Late Ramendra choudhury,
17. Smt. Soni Devi @ Soni kumari,
D/O Late Ramendra choudhury,
All are residents of
Vill Belaur (Paschim Patti),
P.O. Belaur,
P.S. Unwantnagar,
Dist Bhojpur, Bihar, Pin 802206.
18. Smt. Siyabati Devi,
W/O late Rameswar Choudhury
19. Smt. Shakuntala Devi,
D/O late Rameswar Choudhury
20. Smt. Manju Devi,
D/O late Rameswar Choudhury
21. Smt. Maya Devi,
D/O late Rameswar Choudhury
22. Sri Chandan Choudhury,
S/O late Umesh Choudhury
23. Smt. Priya Devi,
D/O late Umesh Choudhury
24. Smt. Puja Kumari,
D/O late Umesh Choudhury
All are residents of
Vill Belaur (Paschim Patti),
P.O. Belaur,
P.S. Unwantnagar,

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Dist Bhojpur, Bihar, Pin 802206.

25. Smt. Trilok Tarni Devi @ Tunna Choudhury
W/O Late Daroga Choudhury

26. Smt. Shail Kumari Devi
D/O Late Daroga Choudhury

27. Smt. Meena Devi,
D/O Late Daroga Choudhury

28. Smt. Pinki Devi
D/O Late Daroga Choudhury

All are residents of
vill Maharaja Hat, Arrah,
P.O. Nawada Arrah,
Dist Bhojpur, Bihar,
Pin 802301.

29. Smt. Suraj Kumari Devi,
D/O Late Ganesh Choudhury,
R/O vill Belaur (paschim patti)
P.O. Belaur,

P.S. Unwantnagar,
Dist Bhojpur, Bihar

30. Smt. Kamini Kumari
D/O Sri Rama Shankar Choudhury,
R/O Mission Road Pakri, Arrah
Near Gas Agency, Pakri (Choudhury Niwas)
P.O. Nawada Arrah,

Dist. Bhojpur,
Bihar, Pin 802301.

31. Smt. Raj Kumari Devi,
W/O Professor N. K. Singh
D/O Late Ram Lakhan Choudhury,
R/O Hari Jee Hata, Arrah,

P.O. Nawada Arrah,
Dist Bhojpur, Bihar,

32. Professor Champa Devi,
W/O Sri Rajeswar Tiwari,
D/O Late Ram Lakhan Choudhury,

R/O Hari Jee Hata, Arrah,
P.O. Nawada Arrah,
Dist Bhojpur, Bihar,

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33. Smt. Arati Devi,
W/O Sri Sushil Tiwari,
D/O Late Ram Lakhan choudhury,
C/O Professor N.K. Singh
P.O. Nawada Arrah,
Dist Bhojpur, Bihar,

Proforma defendants

This suit coming for final hearing on 8.9.2015.

(I) Given date or dates
in the presence of

Mr. K. Raza

Advocate for plaintiffs

Mr. D. S. Hoque

Advocate for Defendants

Mr. Samir Kr. Sarkar,

Advocate for the proforma defendants.

and having stood for consideration to this Court on the
6th day of December, 2017 the Court delivered the following Judgment:

T.S.31/2012.

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

1. This is a suit for declaration of shares, confirmation of possession and for partition.
2. The plaintiff's case as unfolded in the plaint is given hereinunder :
3. That the plaintiff and the defendants are members of

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Hindu undivided family their common ancestor being Rasdhari Choudhury. Both the plaintiffs, defendants and proforma defendant No. 1 owned and possessed immovable property in the State of Bihar and Assam being the A, B and C schedule properties.

It is the plaintiff's case that one Rasdhari Choudhury had two sons namely Bijadhar Choudhury and Nawjadik Choudhury both since deceased. That said Bijadhar Choudhury had three sons namely Hajari Prasad Choudhury @ Singh, Ganesh Choudhury and Daroga Choudhury. Ganesh Choudhury died issueless, Daroga Choudhury was secured by defendant Nos. 5 to 9 and Hajori Prasad left behind Ram Lakhan Choudhury and Rajendra Choudhury to inherit their respective shares.

That Nawjadik Choudhury had two sons namely Prabhu Choudhury and Raj Dayal Choudhury both are since deceased and after the death of Prabhu Choudhury 25% of his share in the suit property was inherited by his three sons namely Yogendra Choudhury, Rama Shankar Choudhury and Ramendra Choudhury (since deceased) and on the death of Ramendra Choudhury his share was inherited by the Damayanti Choudhury being the proforma-defendant No. 1.

That B scheduled properties being the part and parcel of land measuring 1 bigha 2 katha 8 lecha which was purchased by Raj Dayal Choudhury and one Babanji Pathak jointly was amicably partitioned whereby land measuring 3 katha 14 lecha had fallen into the share of each of the original owners but the revenue records are still in the name of Raj Dayal Choudhury and Babanji Pathak.

That Raj Dayal Choudhury had one son namely Rameswar Choudhury who on his death was survived by his three sons namely

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Surendra Choudhury, Dinesh Choudhury and Umesh Choudhury (since deceased) and the share of Umesh Choudhury was inherited by defendant No. 3. It is averred that the parties to the suit are already in possession of their respective shares but the revenue records have still being continuing in the names of their predecessor-in-interest. It is averred that there was a registered deed of partition executed amongst Ganesh Choudhury, Daroga Choudhury, Ram, Lakhan Coudhury, Rajendra Choudhury, Raj Dayal Choudhury, Rameswar Choudhury, Suredra Prasad Choudhury, Umesh Prasad Choudhury, Prabhu Choudhury , Ramedra Choudhury, Yogendra Prasad Choudhury, and Rama Shankar Choudhury and that as per terms and conditions of the registered deed of partition No. 8043 of 1958 dated 30.8.1958, the partition of the properties situated in Bihar as well as in Bongaigaon (Assam) were partially affected by the predecessors-in-interest of the plaintiffs and the defendants (including proforma-defendant No.1) as they took their respective possessions and also got their names mutated in concerned revenue records in respect of the properties situated in Belaur (Bihar) as per their shares specified in the said registered deed of partition. On the other hand, the properties situated in Bongaigaon (Assam) i.e. the suit properties (Schedule – A, B & C properties) were only demarcated and possessions over their respective shares was taken by the predecessors-in-interest of both plaintiffs and the defendants (including the proforma-defendant No. 1) as per their respective shares mentioned in the registered deed of partition, but the revenue records remained intact and till today the revenue records in respect of the suit properties are standing recorded in the names of the predecessors-in-interest of the plaintiffs without mutation of the names of the plaintiffs and the defendants/proforma-defendant No. 1 in the concerned revenue records maintained by the Circle Officer, Bongaigaon. Be it

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mentioned numbers on the basis of their respective possession in the suit properties and also collecting rents from the tenants occupying the tenanted premises in their respective shares of suit properties.

It is alleged that partition in respect of the suit properties are not yet fully effected and in the names of the defendant, proforma-defendant No. 1 and plaintiffs and their names have not been mutated as per their respective and proportionate share in the scheduled properties. It is alleged that when the plaintiffs approached the defendants for procuring the signatures on the applications for filing the same before the concerned office for the purpose of mutating lands records in respect of their shares of land, the defendants refused and have been trying to disturb the peaceful possession of the plaintiff by erecting structures touching the plaintiff's land. Hence, in the above circumstances, plaintiff have been compelled to institute the suit for declaration of their right, title, interest and possession over their share in the suit property, for appointment of a Commissioner of effecting partition and for necessary direction to the concerned revenue authority for correcting the records in the name of the plaintiff and the proforma-defendant No. 1 and for issuance of separate patta consequent to partition alongwith costs of the suit.

The defendant No. 1, 2 and 3 filed their written statement raising the pleas of absence of cause of action, non-joinder of necessary parties, improper valuation, non-maintainability, bar of limitation, lack of jurisdiction etc. The defendants, besides the aforesaid pleas admitted the original ownership of the suit properties by Rasdhari Choudhury and his successors being Bijadhar Choudhury and Nawjadik Choudhury. The defendants also admitted the plaintiff's case of inheriting the properties of Rasdhari Choudhury by his sons and the respective share of Bijadhar Choudhury being inherited by his legal

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heirs. The defendants, raised the plea that the daughters of Ganesh Choudhury, and Daroga Choudhury being Saila Choudhury were necessary parties in the suit land are entitled to share alongwith the other successors of Daroga Choudhury. Defendant also averred that the daughters of the Ram Lakhan Choudhury, and the sons of Nawjadek Choudhury, sons of Prabhu Choudhury, daughters of Rama Sankar Choudhury have not been arrayed wife and son of Rameswar Choudhury, Children of Umesh Chudhury, children of Ramendra Choudhury, Children of Ram Lakhan Choudhury and also 2 son's by named Sri Birendra Ray and Sri Krishna Ray and daughter by named Smt. Anita Devi Smt. Sunita Devi Smt. Mamta Devi Smt. Guri Devi. The defendants averes that defendant Nos. 4, 5, 6, 7, 8 & 9 are not entitled to the 50% share of the suit properties.

The defendant admitting the purchase of the schedule B properties by deceased Raj Dayal Choudhury and Babanji Pathak denied the plaintiffs, defendants and proforma-defendant's share therein same being not part of the ancestral properties. The defendants averred that they are agreeable to partition of the scheduled properties excluding the schedule B lands. The defendants denied the plaintiff's case of they approaching the defendants for partition of the land and

Corrected to here for correction of the revenue records and avers that the partition deed No. 8043 of 1958 had been acted upon. The defendant prays for dismissal of the plaintiff's suit with costs.

4. The defendant No. 4 and 6 filed their joint written statement claiming themselves to the co-owners in respect of the suit land. The defendants admitting the contentions of the plaint made in para 1 to 21 denied

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that they are not willing to give effect to the partition deed No. 8043 of 1958 dated 30.8.1958. The defendants averred that it is due to the non-cooperation of the other defendants, the legal partition could not be effected causing much hardship to them as well. The defendants prays for decreeing the suit.

5. The proforma-defendant Nos. 3 to 6 prays for dismissal of the suit with costs. The proforma-defendants averred that plot of land measuring 1 bigha 2 katha 8 lecha was partitioned equally between the Babanji Pathak and Raj Dayal Choudhury in the year 1954 whereby, land measuring 4 katha 2 lecha fell in the share of Babanji Pathak and land measuring 3 katha 6 lecha fell into the share of Raj Dayal Choudhury and that either of them have been enjoying the same since thereafter by erecting 'pucca' boundary wall. It is averred that the land of Babanji Pathak had been gifted to the proforma-defendants by executing a registered gift deed No. 758 dated 12.11.1999 and that the proforma-defendants have been enjoying the possession thereof since after the gift.

Defendant No. 5, defendant No. 9 and proforma-defendant No. 1 filed their written statement supporting the plaintiff's case and prayed for decreeing the plaintiff's suit.

6. Defendant Nos. 3, 5 and 7 failed to contest the suit whereby the suit was directed to proceed exparte against the said defendants vide various orders of the Court.

The Proforma-defendant No. 11 to 33 were added during the course of trial as the plea of non-joinder of necessary parties i.e. the legal heir of all the successors of Rasdhari Choudhury was raised. However,

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proforma-defendant No. 11 to 33 failed to enter appearance of contest the suit by filing their written statements. Accordingly suit proceeded ex parte against the said defendants.

7. Upon perusal of pleadings the following issues had been framed for adjudication :

Issues:

1. Whether there is a cause of action for the suit ?
2. Whether the suit is maintainable ?
3. Whether the suit is barred by limitation ?
4. Whether the plaintiffs have joint right, title, interest over the suit land alongwith the defendants and proforma defendant No. 1 ?
5. Whether the plaintiff is entitled to a share in the suit land and to what extent ?
6. Whether the registered partition deed no. 8043 of 1958 dated 30.8.1958 is binding on the plaintiffs, defendant and proforma-defendant no. 1 ?
- 7) Whether the plaintiff is entitled to a decree for partition of the suit land ?
- 8) To what other relief/reliefs the plaintiff may be entitled to ?

8. The plaintiff side in order to prove its case examined 1 witness and exhibited some documents. Defendant side cross-examined thePW1 but declined to adduce any defence evidence.

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

10. My decision on the issues so framed alongwith reason is given hereinunder :

Discussion, Decision and reasons therefor

11. **Issue no. 1 :**

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

Perusal of the plaint discloses that plaintiff had prayed for declaration of shares and for partition of the suit property alleging encroachment and the refusal by the defendants to partition the suit land and to correct the land records. The defendant, on the other hand, denied the plaintiff's case.

The rival claims and contentions discloses that grounds for maintaining a suit for partition .

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

12. **Issue No. 2 :**

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

The defendant though had raised the plea of non-maintainability had failed to show as to why the suit is rendered non-maintainable. A suit for partition is maintainable in the Civil Court and the Civil Court is the appropriate forum for granting the said relief. Accordingly, I am constrained to hold that the suit is maintainable.

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

13.

Issue No. 3 :

Issue No. 3 relates to the question of a bar of limitation.

Defendant raised the plea that the suit of the plaintiff is barred by limitation on the ground that the plaintiff is seeking partition as have been done vide registered partition deed in the year 1958.

The plaintiff's case is that the defendant Nos. 1, 2, 3, 5 to 9 have been threatening to dispose of their properties without effecting the legal partition done vide the partition deed of 1958.

Plaintiff / PW1 in his evidence-in-affidavit averred that though the partition deed has been registered yet the same has not been given effect to and the revenue records are still lying in the name of the predecessor-in-interest of the plaintiffs without mutation of the names of the plaintiff and proforma-defendant No. 1 in the concerned revenue records. Plaintiff in support of their case exhibited Ext 3 to Ext 7 being the certified copies of 'jamabandi' of the suit land among other exhibit.

Perusal of the same discloses that the scheduled properties are still in the name of the predecessor-in-interest of the plaintiff as alleged. The defendant have not disputed that the record correction has not been effected as per partition plaintiff have alleged refusal by the defendants to make partition of the scheduled land. Defendant has not rebutted the said fact. The cause of action apparently arose from the time of alleged refusal that is on 12.6.2012.

Article 113 of the Limitation Act 1963 would find

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attraction herein. The plaintiff has brought about the suit for declaration within time therefore.

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

14.

Issue No. 4 :

Issue no. 4 relates to the question whether the plaintiffs have joint right, title, interest over the suit land along with the defendant and proforma-defendant No. 1.

The suit lands admittedly are the original property of Rasdhari Choudhury. That the plaintiffs and the defendants and the proforma-defendant No. 1 are the successors-in-interest of the original owner through their predecessor is not in dispute. The plaintiff no. 1 and 2 are the sons of Prabhu Choudhury being the son of Nawjadik Choudhury and the grand-son of Rasdhari Choudhury and proforma-defendant No. 1 being the grand-daughter-in-law of the original owner.

The defendants in their written statement also had admitted for giving effect to the partition deed of 1952. They have admitted the shares of the plaintiff and the defendant in the scheduled properties. Further the Ext 1 which is the registered partition deed also discloses that plaintiff through their predecessor-in-interest Prabhu Choudhury have share in the suit land.

Defendant Nos. 1, 2 and 3 have denied the title of the plaintiffs in the B scheduled lands on the grounds that same is not the ancestral property. Rather it is the self-acquired property of the grand-father of defendant Nos. 1, 2 and 3 Raj Dayal Choudhury and Proforma-defendant Nos. 2 to 6 and that the same had been partitioned among the legal heirs of Raj Dayal

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Choudhury and Babanji Pathak. The defendants admitted that plaintiffs have share in the scheduled properties except the B scheduled land.

Now perusal of the Ext 3 discloses that the scheduled B land is standing in the name of Raj Dayal Choudhury and Babanji Pathak. Defendant have claimed the schedule B lands to be the self acquired property of Raj Dayal Choudhury and that it was not within the purview of partition. But defendant failed to show that the said property is the self-acquired property of Raj Dayal Choudhury alongwith Babanji Pathak and that it was not a part and parcel of their ancestral property.

Plaintiffs are claiming their share through Prabhu Choudhury who is the brother of Raj Dayal Choudhury. That the purchased land of Raj Dayal Choudhury and Babanji Pathak has been amicably partitioned has come to the fore, but that Raj Dayal Choudhury's legal heirs have exclusive right thereto could not be proved by cogent. Accordingly, in the absence of any rebuttal evidence the plaintiffs would be entitled to share the properties mentioned in the schedule to the plaint.

Again Ext 1 also indicate that Raj Dayal Choudhury had brought about the schedule B lands within the purview of partition deed no. 8043 dated 1958. Accordingly, in the above circumstances, I am but to hold that plaintiff, defendants and proforma-defendants have joint title and share in the scheduled properties.

The issue is decided in favour of the plaintiff.

15.

Issue No. 6 :

Issue No. 6 relates to the question whether the registered deed of partition is binding on the plaintiff, defendants and proforma-defendant.

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Proforma-defendant No. 1 is admittedly the wife of Ramendra Choudhury who is the son of Prabhu Choudhury and brother of the plaintiffs. She will also have share in the ratio of 1/3rd share in the suit property.

The issues are decided in the affirmative in favour of the plaintiff.

17.

O R D E R

In the light of the fore-going discussions, plaintiff suit is decreed on contest without costs.

It is hereby decreed and declared that plaintiff alongwith defendants, proforma-defendants have right, title, interest over the suit land.

It is hereby declared that plaintiff, defendants and proforma-defendant No.1 are each entitled to 1/4th share jointly in the property mentioned in Schedule A(I), B(I) and C(I) to the plaint.

It is also decreed and declared that plaintiff is entitled to partition of the suit properties as per the shares declared hereinabove and to secure separate patta in respect of their shares received on partition. It is further decreed that plaintiff would be entitled to permanent injunction restraining the defendants from disturbing the plaintiff's possession over their share, in the suit properties secured on partition.

Parties to bear their own costs.

Prepare a preliminary decree accordingly.

District Collector Bongaigaon, is to make partition of the suit land as per metes and bounds on the basis of the shares declared hereinbefore as per provisions of Section 54 of the Code of Civil Procedure, confirm possession and to correct the land records accordingly and to submit

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compliance report for drawing up final decree.

Issue precept accordingly.

Given under my hand and the seal of this Court on the 6th

day of December, 2017.

M.C. Bordoloi
6/12/17
Civil Judge,
Bongaigaon

M.C. Bordoloi
(M.C.Bordoloi) 6/12/17
CIVIL JUDGE,
Bongaigaon. **Civil Judge,**
Bongaigaon

Dictated & corrected by me,

M.C. Bordoloi
(M.C.Bordoloi) 6/12/17
Civil Judge,
Bongaigaon **Civil Judge,**
Bongaigaon



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A P P E N D I X

Plaintiff's witnesses :

PW 1 - Sri Yogendra Choudhury.

Plaintiff's exhibit

- Ext 1 - Certified copy of registered partition deed No. 8043 of 1958.
Ext 2 – Translated copy of registered partition deed No. 8043 of 1958.
Ext 2(1) to Ext 2(32) – Signatures of Gupteshwar Dubey.
Ext 3 to Ext 7 - Certified copies of jamabandi.
Ext 8 - Certified copy of chitha
Ext 9 and Ext 13 - Land holding certificates.
Ext 14 to Ext 17 – Revenue payment receipts.
Ext 18 to Ext 22 – Trace maps.
Ext 23 to Ext 34 – Municipality holding tax receipts.
Ext 35 to Ext 44 – Revenue receipts pertaining to properties of plaintiffs at Bihar.
Ext 45 – Document certifying demise of Late Hajari Choudhury, Ganesh Choudhury, Daroga Choudhury, Ram Lakhan Choudhury, Prabhu Choudhury, Raj Dayal Choudhury, Rameswar Choudhury, Ramendra Choudhury and Umesh Choudhury dated 26.4.2012.
Ext 46 – Copy of ejahar dated 5.6.2012.
Ext 46(1) – Signature of Bimal Kr. Choudhury.
Ext 47 – Affidavit dated 6.5.2012.
Ext 47(1) – Signature of Bimal Kr. Choudhury.

Defendant's witnesses :

Nil.



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Defendant's exhibit

Nil.

Court witness

Nil

M.C. Bordoloi
6/12/17
(M.C. Bordoloi)
Civil Judge,
Bongaigaon. Civil Judge,
Bongaigaon

