

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**

**Monday, the 15<sup>th</sup> day of December, 2017.**

**Title Suit No. 68 of 2016.**

Sri Janmeswar Roy,  
S/O- Late Tahsil Roy  
R/O Village- majgaon, Part-I,  
P.O. Chokapara,  
P.S. & District- Bongaigaon, Assam

Plaintiff

  
15/12/17  
**Civil Judge,  
Bongaigaon**

VERSUS

Smt. Champabati Ray,  
W/O Late Shib Charan Ray,  
C/O Sri Dhiren Ray,  
Resident of Village- Tulungia,  
P.S.- Abhayapuri,  
District- Bongaigaon, Assam

Defendants



Contd.....

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This suit coming for final hearing on  
15.11.2017.

(1) Given date or dates  
in the presence of

Mr. H.P.Karmakar

Advocate for plaintiff

None

Advocate for the Defendant

and having stood for consideration to this 15<sup>th</sup>  
December, 2017 the Court delivered the following Judgment:

T.S.68/2016

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

1. This is a suit for declaration of right,  
title, interest and for permanent injunction.

2. The plaintiff's case, as set out in  
the plaint is given herein under in brief:

That one Gandhela Ray owned and  
possessed a plot of land measuring 3B-4K-13L at village  
Mazgaon Part-I under Bongaigaon Revenue Circle covered by  
Patta No. 24/199 (Old), 107 (New) and Dag No. 110/125(Old),  
142 (New) and that on his death, his three sons Kuhiram Ray,  
Tahsil Ray and Sashimohan Ray inherited the same. It is the  
plaintiff's case that Tahsil Ray sold his share of land to one  
Shibcharan Ray and that on the death of said purchaser, the  
defendant being his widow become the owner of the said plot

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of land and accordingly she mutated the land records in respect of her purchased land in her name. It is the further case of the plaintiff that he owns land measuring 1B- 4K, out of the aforesaid plot of land measuring 3B-4K-13L, more specifically described in the schedule to the plaint, by dint of gift from his uncle Sashimohan Ray, who died on 20.10.2008, leaving no legal heirs to inherit his properties. It is also the plaintiff's case that Sashimohan Ray used to reside with the plaintiff till his death and out of love and affection he handed over the suit land to the plaintiff and plaintiff mutated the land records in his name and periodic Khiraj Patta was also issued in his name alongwith co-pattadars in respect of the suit land. It is alleged that the plaintiff having secured the possession of the suit-land have been cultivating thereon but 30.11.2016, when plaintiff went to suit-land, the defendant and her men restrained the plaintiff from cultivating thereon and threatened the plaintiff not to enter the suit-land and instead had been trying to alienate the suit-land. Hence, the plaintiff has been compelled to institute the suit for declaration of his right, title, interest over the suit-land, decree for permanent injunction alongwith costs of the suit.

  
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3. The defendant failed to enter appearance despite receipt of summons and accordingly vide order dated 03.02.2017, the suit proceeded ex-parte against the defendant.

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4. The plaintiff in order to prove his case adduced the evidence of one witness and exhibited some documents.

5. Heard the Learned counsel for the plaintiff. Perused the case record.

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

**Point for determination**

***i) Whether the plaintiff has right, title, interest over the suit land?***

***ii) Whether the plaintiff is entitled to the decree as prayed for ?***

7. My decision on the above point for determination alongwith reasons is given hereinunder :

**Discussion, decision and reasons therefor**

8. The evidence on record is perused to address the point for determination so framed above.

9. PW 1- the plaintiff, Jamneswar Ray filed his evidence in affidavit reiterating his pleaded case. In support

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of his case, PW 1 submitted Ext-1 being the Jamabandi, Ext- 2 and Ext- 3 and Ext -4 being the land holding certificates and Ext-5 being a land revenue payment receipt.

10. Perusal of the Plaintiff's documents disclosed that the plaintiff had exhibited land holding certificates being Ext- 2 to 4 but they have not been proved. Further Ext- 2 to 4 are not documents pertaining to plaintiff's title over the suit-land under the Assam land and Revenue Regulation 1886. The said documents at best could show that the land in question has been by the plaintiff alongwith other pattadars. Now coming to Ext-1, it is seen that it is a certified copy of Jamabandi. "Jamabandi" also is not a documents of title. It is only a fiscal arrangement to facilitate the collection of revenue. Perusal of the Ext-1 discloses name of the pattadars in respect of land covered by 199 (old), 107 (new) of dag no. 110, 125 in respect of 3B-4K-13L of land. Ext-1 prima-facie proves possession of the pattadars. It nowhere discloses plaintiffs exclusive title in respect of the suit-land. Again, it is the plaintiff's pleaded case that he had received the suit-land in the gift from the original owner. The Transfer of Property Act 1882 lays down the ingredients of a valid gift U/S 122 and 123. Plaintiff failed to any document pertaining to his alleged gift and even failed to show the owner had made the gift

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voluntarily his favour in presence of witnesses. Mere statement that a gift has been made without fulfilling the essential conditions of a valid gift under law, would not suffice.

11. It is a fact that the case has proceeded exparte against the defendant. But it is the bounden duty of the plaintiff to prove his case. He cannot bank on the weakness of the defendant's case nor can the plaintiff take advantage of the absence of the defendant to secure the result of the 'lis' in his favour without proving the same by cogent evidence. Plaintiff in the instant case failed to show that he has title over the suit-land.

12. Accordingly, I am constrained to hold the plaintiff has failed to prove his case. The point for determination stands answered in the negative.

13. ORDER

In the light of foregoing discussion, Plaintiff's suit is dismissed exparte with cost.

Prepare a decree accordingly.

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Given under my hand and the seal of this Court on the 15<sup>th</sup> day of December, 2017.

*M.C. Bordoloi*  
15/12/17  
Civil Judge,  
Bongaigaon

*M.C. Bordoloi*  
( M.C. Bordoloi ) 15/12/17  
CIVIL JUDGE,  
Bongaigaon **Civil Judge**  
**Bongaigaon**

Dictated & corrected by me,

*M.C. Bordoloi*  
15/12/17  
( M.C. Bordoloi )  
CIVIL JUDGE, **Civil Judge,**  
Bongaigaon **Bongaigaon**



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A P P E N D I X

Plaintiff's witnesses :

1. PW 1 – Sri Janmeswar Ray

Defendant's witnesses :

Nil

Plaintiff's exhibit

1. Ext 1 – certified copy of jamabandi.
2. Ext 2 – land holding certificate.
3. Ext 3 - land holding certificate.
4. Ext 4 – land holding certificate
5. Ext 5 – land revenue paying receipt

*M.C.*  
15/12/17  
**Civil Judge,**  
Bongaigaon

Defendant's exhibit

Nil



*M.C. Bordoloi*  
( M.C. Bordoloi ) 15/12/17  
CIVIL JUDGE,  
Bongaigaon **Civil Judge,**  
Bongaigaon