

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Bongaigaon

IN THE ORIGINAL COURT OF THE MUNSIF BONGAIGAON

Present: - Syeda Farida Afzal Zinnat, AJS

Dated: - 19th day of December 2014

TITLE SUIT: - 15 / 2011

Radheshyam Bhati.....Plaintiff

Versus

Golak Brahma and Others.....Defendants

This suit/ case coming on for final hearing on 20th day of November 2014, in the presence of:

Sri G Sharma, Sri K. Chakravarty Advocate for the plaintiff

Sri D.J.Mukherjee, Advocate for the defendants

And having stood for consideration to this day, the court delivered the following judgment.

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Syeda Farida Afzal Zinnat
Munsiff, Bongaigaon

JUDGEMENT

This is a suit for declaration of right, title and interest and recovery of khas possession.

The plaintiff's case:

1. Plaintiff is the owner of a plot of land measuring 1 katha 14 lecha covered by dag No. Sabek 362(old) 69(new) and periodic patta No. 63(old) 98(new) of Bongaigaon Town Part IV with an Assam type house standing thereon. This land is described in schedule A. Plaintiff purchased this land from Madhab Behari Harlalka on 21/8/1997 through registered sale deed. This schedule A originally belonged to Parimal Sarkar under whom the plaintiff was a tenant from 1/1/1981 in respect of the schedule A land. The original owner Parimal Sarkar sold the land to Madhab Behari Harlalka who in turn had to sell the land to the plaintiff because he never vacated the premises.
2. Plaintiff is also in possession of a plot of Government land contiguous to schedule A land which is 65 feet in length and 30 feet in width. This land is described in schedule B.
3. Except the southern side, the schedule A land is covered by boundary fencing. The defendants removed the southern bamboo fencing during the last part of year 2000 in the absence of the plaintiff for construction of boundary wall encroaching 1 ½ feet ×20 feet land and further in March, 2001 the defendants encroached 1 ½ feet ×40 feet and also dug a drain laying the foundation for the boundary wall. Thereafter, the plaintiff brought a suit being T.S 10/2001 in the Court of Civil Judge, Bongaigaon, in which the Hon'ble Civil Judge granted temporary injunction in favour of the plaintiff but the said suit was dismissed for default on 22/9/2003.
4. It is the case of the plaintiff that during the pendency of the suit the defendants agreed not to encroach the land of the plaintiff and

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the wall which was constructed over an area of 20 feet got destroyed naturally and so the plaintiff did not take steps in the suit.

5. On the first week of February, 2011, the defendants again encroached the land of the plaintiff to the southern side of schedule A and schedule B. The plaintiff immediately lodged a complaint to the Bongaigaon Development Authority and thereafter the construction work was stopped. On 26/2/2011 the defendant No. 1 threatened the plaintiff of causing injury to his family if he opposed the construction of the boundary wall. Hence this case for declaration of right, title and interest over schedule A and B land, for recovery of khas possession of encroached land by evicting the defendants and permanent injunction in respect of schedule A and B land.

Defendant's case:

6. The defendants contested the suit and raised the pleas of non maintainability, lack of cause of action, bar of limitation among others. The defendants pleaded that the present suit is not maintainable in terms of principle of res judicata and order IX rule 9 CPC.
7. That, the suit is bad for non joinder of necessary parties as relief has been claimed in respect of Government land without impleading the Government and the Department of Railways and also without impleading the co-pattadars. Further, the plea of mis joinder is also raised by the defendants as according to the defendants Khargeswar Brahma, Sachin Brahma, Debraj Brahma and Munna Ram Brahma are not related to the dispute.
8. It is also pleaded that there is no description of the encroached land in the plaint and as such the plaint is liable to be dismissed as per provisions of Order VII rule 11 of the Code of Civil Procedure.
9. It is also stated in the written statement that in T.S 10/2001, in which relief was claimed over lesser area of land, the plaintiff

valued his suit at Rs. 26,100/- and paid ad-valorem fee but after a lapse of ten years the plaintiff valued his suit over the same area of land including another plot at Rs. 1000/-. That, the present valuation of the suit land is not less than Rs.1, 50,000/- and the suit is undervalued and proper court-fee has not been paid.

10. Upon the pleadings of the parties the following issues were framed after hearing both sides:

- 1) Whether there is cause of action for the suit?
- 2) Whether the suit is bad for non joinder of necessary parties?
- 3) Whether the plaint is liable to be dismissed in view of the provisions of Order VII rule 11 for want of proper description of the suit land?
- 4) Whether the suit is properly valued and proper Court fee has been paid?
- 5) Whether the plaintiff has right, title and interest over the suit land?
- 6) Whether the plaintiff is entitled to the decree as prayed for?
- 7) To what other relief the plaintiff is entitled?

11. Besides exhibiting documents the plaintiff and the defendant have adduced oral evidences in support of their pleadings.

12. Heard arguments of the learned counsel for the plaintiff and the defendant. I have also gone through the written arguments submitted by the learned counsels of both sides. My findings on the issues are narrated below.

Discussion on evidence, decision and reasons thereof:

Issue No. 2: Whether the suit is bad for non-joinder of necessary parties?

13. The plaintiff has claimed right, title and interest over the schedule B land which is Government land. But the plaintiff has not made the Government of India a party in this suit. The matter cannot be decided in the absence of the Govt. Of India. Hence this suit is clearly bad for non-joinder of necessary parties.

Issue No. 3: Whether the plaint is liable to be dismissed in view of the provisions of Order VII rule 11 for want of proper description of the suit land?

14. The plaintiff has described the schedule A and schedule B land in the plaint. According to the plaintiff the defendants have encroached land to the southern boundary of schedule A and B and has provided the description of this encroached land in the body of the plaint. Rule 3 of order 7 CPC provides that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. The plaint contains sufficient description of the schedule A and B land as well as the encroached land. Hence, this issue is decided in the negative.

Issue No. 4: Whether the suit is properly valued and proper Court fee has been paid?

15. The defendants have exhibited the Case record of T.S 10/2001 as Exhibit A. The plaint of T.S 10/2001 i.e. Exhibit A (1) shows that the plaintiff had valued the suit land at Rs. 26,000/-

and accordingly paid Court-fee thereon. But in the instant suit in which relief is claimed not only over the schedule A land, which the plaintiff valued at Rs. 26,000/- in 2001, but also over schedule B land, the plaintiff has valued the suit land at Rs. 1000/- only. There needs no further discussion to hold that the plaintiff has not valued the suit properly. This issue is decided accordingly.

Issue No. 5: whether the plaintiff has right, title and interest over the suit land?

16. The plaintiff has exhibited registered sale deed executed between him and Madhab Bihari Harlalka which goes to show that the plaintiff has purchased the schedule A land from Madhab Bihari Harlalka. Therefore plaintiff has right, title and interest over the schedule A land.

However, the schedule B land is Government land and as already discussed above no relief can be granted in respect of Govt. Land without hearing the Govt. Hence, plaintiff is not entitled to any relief in respect of the schedule B land.

Further, plaintiff has claimed the relief of eviction of the defendants from the encroached portion from both the schedule A and B land which is not practicable in so far as the plaintiff has no right, title and interest over the schedule B land.

Issue no. 1: Whether there is any cause of action for the suit?

17. It is an admitted position that T.S 10/2001 was brought against the present defendant No.1 claiming similar reliefs. T.S 10/2001 was dismissed for default. Order IX rule 9 precludes the plaintiff from bringing a fresh suit in respect of the same cause of action where a suit is wholly or partly dismissed under rule 8, i.e. when the defendant appears and the plaintiff does not appear

when the suit is called on for hearing. The plaintiff did not apply for an order to set the dismissal aside. Hence the plaintiff cannot bring a fresh suit on the same cause of action. But the plaintiff has claimed that on the first week of February 2011 the defendants encroached the schedule A and B land for the construction of boundary wall and on 16/2/2011 the defendant No.1 threatened the plaintiff not to obstruct the construction of the wall. Defendants have denied the contention of the plaintiff that they encroached any land. Plaintiff could not adduce any evidence in support of his plea that the defendants encroached his land. Hence, the plaintiff failed to show that there is a fresh cause of action. Thus, this issue is decided in the negative and against the plaintiff.

Issue No. 6 and 7:

From the discussions on all the issues it is seen that the plaintiff has right, title and interest only over the schedule A land. The schedule B land, being a plot of Govt. Land, the plaintiff has no right, title and interest over the same. The suit land is not valued properly and proper court fee has not been paid. The plaintiff has failed to inplead the Govt. And the plaintiff has failed to show any cause of action. Hence the plaintiff is not entitled to the reliefs as claimed for.

Order

The suit is dismissed on contest with cost. Prepare decree accordingly within 15 days.

Given under my hand and seal of this Court on this the 19th day of December 2014.

Typed by me

Syeda Farida Afzal Zinnat
Munsiff, Bongaigaon

Syeda Farida Afzal Zinnat
Munsiff, Bongaigaon.

APPENDIX

Witness for the plaintiff:-

PW1: Radheshyam Bhati

Witness for the defendant: -

DW1: Golak Brahma

Exhibits:

Plaintiff's exhibit:

1. Ext 1: Sale deed dated 28/1/1997
2. Exhibit 1(1) to 1(8): Signatures of Digendra Kumar Dey and Madhab Behari Harlalka
3. Exhibit 1(9) to 1(10): Signature of Sanjay Kumar Bhati
4. Exhibit 1(11): Signature of Sushil Kumar Talukdar
5. Exhibit 1(12): Signature of A.K. Nath
6. Exhibit 2: Periodic Khiraj Patta No. 98 of dag No. 69
7. Exhibit 3 and 4: Revenue paying receipts
8. Exhibit 5: Certified copy of injunction order passed in Misc 11/2001 in T.S 10/2001
9. Exhibit 6: Complaint lodged before the BDA against construction of boundary wall by defendant.
10. Exhibit 6(1): Signature of plaintiff
11. Exhibit 6(2): Signature of the employee of BDA

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12. Exhibit 7: money receipt issued by BDA
13. Exhibit 8: Tenancy agreement dated 1/1/1981 executed between the plaintiff and Parimal Sarkar
14. Exhibit 8(1), 8(2), 8(3), and 8(4): Signatures of Plaintiff, Parimal Sarkar, Late Prema Lal Prajapat and Chitra Singh respectively.
15. Exhibit 9: rent agreement dated 1/1/1986
16. Exhibit 9(1) and 9 (2): Signature of plaintiff
17. Exhibit 9(3) and 9(4): Signature of Parimal Sarkar
18. Exhibit 9(5), 9(6): signatures of witnesses

Defendant's Exhibit:

1. Exhibit A: Registered Sale dated 3/7/2010
2. Exhibit B: Site Plan of Bongaigaon Development Authority
3. Exhibit C: Permission of land sale
4. Ext D: Filled up Form of BDA
5. Exhibit E: Land Sale Permission of ADC(R)