

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: - 6th of September 2014

TITLE SUIT 18 / 2012

1. Smt. Maya Devi Sutradhar
2. Sri Pushpeswar Sutradhar
3. Smt. Pranita Sutradhar.....Plaintiff /Petitioner

Versus

1. Sri Pramod Chandra Choudhury.....Defendant

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

Sri N.K.Ghosh, Advocate for the Plaintiffs

Sri K. Raza, Advocate for the Defendant

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

JUDGEMENT

This is a suit for Specific Performance of Contract and Permanent Injunction.

1. The case of the Plaintiff in brief is that the defendant entered into an agreement for sale with the husband of the plaintiff no.1 Bhabeswar Sutradhar (now deceased) on 03.02.1998 in respect of the suit land measuring 2 katha covered by dag No. 3 (old) and patta No. 83 (old) at village Salbari under Bongaigaon Revenue Circle of which the plaintiff is the absolute owner and possessor and had taken Rs. 16,900/- (Rupees Sixteen Thousand Nine Hundred) only as advance money out of the total fixed consideration of Rs. 20,000/-(Rupees Twenty Thousand) only and on the same day the defendant had delivered peaceful possession of the suit land to Bhabeswar Sutradhar. Accordingly after taking peaceful possession of the suit land Bhabeswar Sutradhar started construction of his residential house over the suit land on that very day i.e. on 03.02.1998. During the middle part of the year 1999 the construction of one Assam Type R.C.C house was complete and the plaintiffs started to reside on the suit land since then. On 25.04.2009 Bhabeswar Sutradhar passed away leaving behind his wife Smt. Maya Devi Sutradhar, his son Sri Pushpeswar Sutradhar and his daughter Smt. Pranita Sutradhar. It is the case of the plaintiffs that as per the terms and conditions of the agreement, it was mutually agreed upon by the parties to the agreement that the remaining balance of Rs. 3100/-(Rupees Three Thousand One Hundred) only shall be paid to the defendant at the time of execution of the formal registered sale deed in favour of Bhabeswar Sutradhar. Although the defendant took the remaining money from him but he did not execute the registered

sale deed in favour of Bhabeswar Sutradhar. The plaintiffs submitted that during the lifetime of Bhabeswar Sutradhar, on several occasions they approached the defendant to complete the sale transaction but the defendant wilfully avoided the execution of the sale deed. After the death of Bhabeswar Sutradhar on 25.04.2009 the plaintiffs approached the defendant and requested him to execute the sale deed many times but the defendant denied, rather threatened the plaintiffs to vacate the suit land within a period of three months i.e. within 31.03.2012 and said that he would forcefully evict the plaintiffs from the suit land. Finally on 08.5.2012 the plaintiffs considering all other aspects and also considering the good relation with the defendant approached the defendant and requested him to execute the sale deed but the defendant flatly refused. The plaintiffs further submitted that they have come to know from some reliable source that the defendant is trying to sell out the suit land at a higher consideration with a view to defrauding and depriving the plaintiffs from getting the sale deed executed. So finding no other alternative the plaintiffs are now compelled to file this present suit. Hence this case.

2. The defendant filed written statement contending, inter alia, that there is no cause of action to file the suit, that the suit is not maintainable in its present form, that the suit is barred by limitation, that the suit is undervalued. The defendant pleaded that the plaintiffs have prayed for a decree of specific performance of contract on the basis of deed of agreement for sale alleged to be executed between the defendant and the husband of the plaintiff No. 1 namely Late Bhabeswar Sutradhar during his lifetime but plaintiffs have failed to explain what prevented Bhabeswar Sutradhar to get the alleged deed of agreement for sale dated 3/2/1998 enforced against or performed by the defendant during his life time for eleven years up to his death on 25/4/009 as

mentioned in the plaint and that the suit is liable to be dismissed on this count alone.

3. The defendants pleaded that the suit land is valued at more than eight lakhs but the plaintiffs have valued the suit land at Rs. 20,000/- only to avoid the ad valorem Court fee.
4. The defendant further pleaded that he is not the owner of the suit land as mentioned in the schedule of the plaint rather the suit land is a land measuring 40 feet in length stretching from North to South by 30 feet in breadth stretching from East to West along with bamboo fenced and C.G.I Sheet roofed residential structures standing thereon, covered by patta No. 53 (old)/287 (new), Dag No. 135 situated in village Salbari under Bongaigaon Revenue Circle which is bounded to the North by Village Road, to the South and West by land of O.P Maheswari and private road to the East which is mentioned in schedule X of the written Statement.
5. Defendant also pleaded that he never entered into any agreement for sale with the husband of the plaintiff and that the alleged deed of agreement for Sale is not an Agreement for Sale which has been fabricated for the purpose of the suit.
6. Defendant pleaded that on 31/12/2008 he allowed the plaintiff No. 1 to reside over the schedule X property as permissive possessor only on humanitarian ground for two years only. That, it was agreed upon by the plaintiff No. 1 that the schedule X property shall be vacated as and when required by the defendant. That, the residential structure mentioned in schedule X was constructed by the defendant more than ten years ago. That, on 27th December, 2011, the defendant asked the plaintiff No. 1 to vacate the schedule X property within first week of January, 2012 but the plaintiff No. 1 sought three months time on different pretexts. That, on completion of three months time the defendant again asked the plaintiff No. 1 to vacate the schedule X property in

presence of some neighbours and the plaintiff No. 1 promised to vacate the schedule X land within the month of May 2012 but instead of vacating as promised she filed this suit on frivolous ground due to malafide intention. Thus the defendant prayed for dismissal of the suit.

7. Upon the pleadings of the parties my learned predecessor in office framed the following issues in this suit-

- 1) Whether the suit is barred by limitation?
- 2) Whether the suit is properly valued and proper court fees have been paid?
- 3) Whether the defendant entered into an agreement for transfer of the suit land in favour of Bhabeswar Sutradhar on 3.2.1998 at an agreed sale price of Rs. 20,000/- and received Rs. 16,900/- as Earnest money?
- 4) Whether the plaintiffs are entitled to the decree as prayed for?

8. After going through the case record I am of the considered opinion that an additional issue is required to be framed and decided which is very much essential for the purpose of just decision. Hence the following additional issue is framed:

Additional Issue: whether the suit land has been properly described by the plaintiffs?

9. Plaintiff side adduced the evidence of two witnesses and exhibited the following documents:

- i. Exhibit 1: Agreement for sale dated 3.2.1998
- ii. Exhibit 1(1) to Exhibit 1(4): Signatures of the defendant
- iii. Exhibit 1(5): Signature of witness Sanjay Das.

10. Defendant side examined the Lot Mondol, Bongaigaon Revenue Circle as DW1 and exhibited the following documents:

- i. Exhibit A: Authority letter
 - ii. Exhibit A(1): Signature of Circle Officer
 - iii. Exhibit B: Chitha of Salbari village (compared with original)
 - iv. Exhibit B(1): relevant page containing records of land standing in the name of defendant Pramod Choudhury and others which is covered under dag No. 135 (new)/3(old)
 - v. Exhibit C: Jamabandi of village Salbagan
 - vi. Exhibit C (1): concerned page of Exhibit C.
11. I have heard arguments of the learned counsels. I have carefully examined the evidence and perused the documents. My decision on the above issues are as follows:-

Discussion on evidence, decision and reasons thereof:

Decision on Issue No. 2:

12. The defendants pleaded that the suit land is valued at more than eight lakhs but the plaintiffs have valued the suit land at Rs. 20,000/- only to avoid the ad valorem Court fee. The defendant did not adduce any evidence in support of his claim. But during cross examination PW1 stated that the present market value of the suit land is between Rs. 12,00,000/- to Rs. 15,00,000/- but she has valued the suit land at Rs. 20,000/- only. On the admission of the plaintiff No.1 it is held that the suit is not properly valued. Hence this issue is decided in the affirmative.

Decision on Issue No. 3:

13. In order to decide this issue let us have a look into the evidence of the plaintiff's witnesses and the documentary evidence

adduced by the plaintiffs. PW1 in her cross examination stated that the sale of the suit land was completed on 24/10/1998 and on the same date the defendant handed over possession of the suit land to her husband. That, Sanjay Das put his signature as witness in the agreement for sale. She again admitted that she has mentioned in the plaint that the agreement for sale was executed on 3/2/1998 between her husband and the defendant. PW1 admitted in her cross examination that no agreement for sale was executed on 3/2/1998 but under the signature of the executants the date is shown to be 3/2/1998. Further the PW1 stated in her cross examination that the stamp paper used in exhibit 1 was brought to her house by Pramod Choudhury. But later on she again admitted that her husband Bhabeswar Sutradhar bought the stamp paper on 20/10/1998.

14. PW2 Sanjay Das admitted during his cross examination that on the date of execution of the alleged sale deed he was twelve (12) years old. Even the PW2 stated in his cross examination that there was no agreement for sale on 3/2/1998 and that he signed the agreement on 24/10/1998 but there is no date under his signature

15. It appears that the plaintiffs have shown two dates as the date of execution of the agreement for sale. From a careful scrutiny of Exhibit 1 it becomes clear that indeed there are three dates in the body of Exhibit 1. It is seen that in exhibit 1 it is written that on 24/11/1998 the amount of Rs. 20,000/- was received. Further it is also seen that an amount of Rs. 700/- and Rs. 100/- are shown to have been received thus making the total amount to be Rs. 37,700/-. It is also seen from the body of exhibit 1 that indeed the stamp paper was bought on 20/10/1998 by Bhabeswar Sutradhar. Therefore the claim of the plaintiff side that an agreement for sale for the suit land was executed by the defendant on 3/2/1998 is baseless, false and frivolous.

16. In a suit for specific performance of contract the burden of proof lies on the plaintiff. Where execution of a document in question is denied, the party relying on that document must prove its execution. Further the PW1 and PW2 could not inspire confidence in their evidence regarding the time and place of tendering the balance amount. The plaintiff has failed to prove the execution of Ext 1 and the payment of the consideration amount. Although the plaintiff side argued that the defendants have received the advance amount of Rs. 20,000/- vide Ext 1, the said argument will not help because the execution of the deed is denied by the defendants and the plaintiff has failed to prove the execution of the agreement by any cogent evidence. Hence I arrive at the decision that there was no agreement for sale on 3/2/1998 as claimed by the plaintiffs in the plaint.

Decision on Issue No. 1:

17. This suit is for specific performance of contract and the plaintiffs have claimed the relief on the basis of the alleged agreement for sale dated 3/2/1998. From the discussion on issue No. 3 made above it is seen that no agreement for sale was entered on 3/2/1998. Therefore, the cause of action shown by the plaintiff has become redundant as the very basis of the suit is defective. Hence, this issue is decided accordingly in the affirmative and against the plaintiffs.

Decision on additional Issue:

18. Plaintiffs have filed the suit in respect of the suit land measuring 2 katha covered by dag No. 3 (old) and patta No. 83 (old) at village Salbari under Bongaigaon Revenue Circle and claimed that the defendant is the owner of the suit land. The defendant claimed that he is not the owner of the suit land as mentioned in the schedule of the plaint rather the suit land is a land measuring 40 feet in length

stretching from North to South by 30 feet in breadth stretching from East to West along with bamboo fenced and C.G.I Sheet roofed residential structures standing thereon, covered by patta No. 53 (old)/287 (new), Dag No. 135 situated in village Salbari under Bongaigaon Revenue Circle which is bounded to the North by Village Road, to the South and West by land of O.P Maheswari and private road to the East which is mentioned in schedule X of the written Statement. The defendant examined the Lot Mondol, Bongaigaon Revenue Circle as DW1. The Lot Mondol exhibited the chitha of village Salbari under Bongaigaon Revenue Circle (Exhibit B). Exhibit B(1) is the relevant page containing record of land standing in the name of defendant Pramod Choudhury and others which is covered under dag No. 135 (new)/3(old). The Lot Mondol stated that in dag No. 3(old) Patta No. 83(old) there is no land in the name of Pramod Choudhury. During cross examination the Lot Mondol clarified that there is no dag No. 3 in patta No. 83. Hence from the evidence of the Lot Mondol and the Jamabandi and chitha of village Salbagan it is clear that there is no land as described by the plaintiffs in the plaint. This issue is decided accordingly.

Discussion on Issue No. 4:

19. From the discussions made hereinabove it is seen that the plaintiff failed to prove the execution of the agreement of sale. Not only this, the suit land is not properly described in the plaint. As such the defendants are not liable to execute the sale deed in favour of the plaintiff. Therefore the plaintiff is not entitled to the relief as prayed for in the plaint.

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 6th day of September 2014.

Syeda Farida Afzal Zinnat
Munsiff, Bongaigaon

APPENDIX

Witness for the plaintiff:-

1. PW1 : Maya Devi Sutradhar
2. PW2 : Sanjay Das

Witness for the defendant: -

1. DW1: Ashish Kumar Roy, Lot Mondol, Bongaigaon Revenue Circle

Plaintiffs' exhibits:

- i. Exhibit 1: Agreement for sale dated 3.2.1998
- ii. Exhibit 1(1) to Exhibit 1(4): Signatures of the defendant
- iii. Exhibit 1(5): Signature of witness Sanjay Das.

Defendant's exhibits:

- i. Exhibit A: Authority letter
- ii. Exhibit A(1): Signature of Circle Officer
- iii. Exhibit B: Chitha of Salbari village (compared with original)

- iv. Exhibit B(1): relevant page containing records of land standing in the name of defendant Pramod Choudhury and others which is covered under dag No. 135 (new)/3(old)
- v. Exhibit C: Jamabandi of village Salbagan
- vi. Exhibit C (1): concerned page of Exhibit C.