

HIGH COURT FORM NO. J (2)**HEADING OF JUDGMENT IN ORIGINAL SUIT**

District : Baksa

IN THE COURT OF MUNSIFF, BAKSA, MUSHALPUR

PRESENT : - Smt. Dikshya Rani Dutta LL.M, AJS.

Munsiff , Baksa, Mushalpur

On this 11th March, 2022

Title Suit No- 16 of 2019

1. Sri Haricharan Das
2. Sri Nitya Nanda Das

Both are S/o Lt. Lakhan Das

Resident of Village-Machua,

Mouza- Howly ,Dist.:Barpeta, Assam.

.....Plaintiffs

Versus.

1. Sri Biswajit Das
2. Sri Pranjal Kumar Das
3. Kishore Kumar Das
4. Mrinal Jyoti Das

All are sons of Lt. Bhaben Das

All are resident of

Village: Amtola, Mouza: Gobardhana,

District: Barpeta, Assam

..... Principal Defendants

1. Sri Guru Charan Das

S/o Late Lakhan Das

Village: Machua, Mouza Howly

Barpeta, Assam

2. Smti Bharati Das

D/o Late Lakhan Das

Village: Machua, Mouza Howly

Barpeta, Assam

3. Smti Saraswati Das

D/o Lakhan das

Village: Howly Town, Mouza Ghilajari

Barpeta , Assam

4. Smti Chitra Das

D/o Late Lakhan Das

Village: Machua, Mouza Howly

Barpeta, Assam

5. Smti Amala Das

D/o Late Lakhan Das

Village: Machua, Mouza Howly

Barpeta, Assam

6. Arati Das

W/o Late Lakhan Das

Village: Machua, Mouza Howly

7. Smti Bandana Nath

D/o Late Lakhan Das

Village: Howly Gaon, Mouza Howly

Barpeta, Assam

.....**Profroma Defendants**

This suit/case coming on for final hearing onin presence of :

Julhas Uddin, Advocate for the Defendants

And having stood for consideration to this day, the Court delivered the following Judgment:-

JUDGMENT

This is a suit for specific performance of sale agreement by the plaintiff. However, the suit of the plaintiff was dismissed for default and the counter claim has proceeded.

Plaintiff's Case in brief :

1. Plaintiff's case, in brief, is that that on 22.2.1988 the father of the plaintiffs namely Late Lakhan Das entered into a sale agreement with the father of the defendants namely Late Bhabendra Das for purchase of the Suit properties described in Schedule A and B of the plaint. Late Bhabendra Das received an amount of Rs. 3000/- as consideration and the possession of the said suit properties were delivered to the purchaser Lakhan Das on the same day. At the time entering into the agreement the suit properties were annual patta land and vide the sale agreement it was agreed between the parties that the seller would execute a registered a sale deed in respect of the suit properties after converting said suit land into periodic patta land. Since then the purchaser Lakhan Das and after his death his legal heirs i.e. the plaintiffs and proforma defendants and his wife have been continuously enjoying the possession of the said land. After the death of their father the plaintiffs

approached several times the legal heirs of the seller Late Bhaben Das i.e. the defendants to execute and register a sale deed in favour of the plaintiffs in terms of the agreement of sale dated 22.2.88. But the defendants did not pay heed to the request of the plaintiffs. That on 10.5.2015 the defendants asked the plaintiffs to vacate the suit land and informed that suit land in Schedule A has been converted to periodic Patta from annual patta and also informed the plaintiffs that soon the Schedule B land also will be converted into periodic patta. The plaintiffs requested the defendants to execute and register a sale deed in respect of the suit land but the defendants asked the plaintiffs to vacate the suit land. As the defendants were trying to evict the plaintiffs from the suit land, the plaintiffs have filed this instant suit for a decree of specific performance of the sale agreement and execution of registered sale deed in respect Schedule A and Schedule B land in favour of the plaintiffs.

Written Statement/ Counter claim of the Defendants

2. The defendants have filed their written statement cum counter claim denying all averments made in the plaint and in the counter claim the defendants stated that defendant's father namely Late Bhaben Das was the original owner of the suit properties under annual patta mentioned in Schedule X and Y of the Counter claim. The father of the defendants was in peaceful possession of the suit properties till his death. After his death the suit properties

were inherited by his wife and his sons i.e, the defendants being the legal heirs and their names have been mutated in respect of the Schedule X land whereas the suit property in Schedule Y still stood in the name of Late Bhaben Das. Subsequently vide order dated 08.12.2014, the suit land in Schedule X was converted into periodic Patta and mutated in the names of the defendants and their mother. That the defendants used to cultivate in the suit land on contract basis through adhiars and contract laborers. For last 8-9 years the defendants have been cultivating in the suit properties through one Sahar Ali. But on 10.5.2015 the plaintiffs illegally occupied the suit properties and dispossessed the defendants therefrom. When the defendants requested the plaintiffs to vacate the suit properties, the plaintiffs refused to vacate the same and the plaintiffs have filed the instant title suit against defendant on basis of a false claim of specific performance of a sale agreement in respect of the suit properties. Hence, the counter claimant has filed the instant written statement cum counter claim praying for a decree for dismissal of the suit filed by the plaintiff and for declaration of right, title, interest over the suit land mentioned in Schedule X and Y described in the counter claim and a decree for recovery of khas possession by evicting the plaintiffs ,also for permanent injunction.

Written statement by the plaintiff:

3. The plaintiffs filed the written statement against the counter claim filed by the defendants wherein the plaintiffs

denied all the averments made by the defendants in the counter claim and stated that there is no cause of action for the counter claim; prayer is made to dismiss the counter claim with cost.

4. The suit of the plaintiffs was dismissed for default and the defendants in the present suit set up a counter claim. Counter-claim preferred by the defendant in a suit is in the nature of a cross-suit. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded. In the instant case, as counter-claim remains alive for adjudication, this Court proceeds to examine the claim of the counter claimant in absence of the plaintiffs.
5. Issues were framed by the learned predecessor in office in this suit. As the suit of the plaintiff was dismissed and the counter claim has been preceded ex parte, thus issue wise discussion is not a requisite. After scrutinizing the available pleadings and documents, the following points for determination are framed to facilitate a convenient discussion and to arrive at a conclusive decision in the counter claim.
6. **Points for determination :-**
 - a) Whether the defendants/counter claimants are entitled to right, title and interest over the suit land described in Schedule X and Y of the Counter Claim?
 - b) Whether the defendants/counter claimants are entitled to recover of khas possession of the suit land

described in Schedule X and Y of the Counter Claim by evicting the plaintiffs?

c) To what other relief (s) the Defendants/counter claims are entitled?

7. During trial, plaintiff side adduced evidence of three witnesses by filing evidence in affidavit. Plaintiff side adduced evidence of Sri Haricharan Das as P.W.1, Mayezuddin as P.W. 2, Hazrat Ali as P.W.3. Counter claimant/defendant side adduced evidence in support of their case and filed the evidence on affidavit of Mrina Jyoti Das the counter claimant himself as DW-1., Amjad Ali as D.W.2, Nazim Ali as D.W.3, Sahar Ali as D.W.4 ,Abdul Rouf as D.W. 5, Lat Mandal ,Village Gobindapur, Barnagar Revenue Circle as D.W. 6 and Lat Mandal, Village Machua, Barnagar revenue circle as D.W. 7. Both sides have exhibited some documents.
8. I have heard the oral arguments of the Learned Counsel for the counter claimant and gone through the case record. I have given my concerned consideration to the submission of the learned counsel.

DISCUSSION, DECISION AND REASONS FOR THE DECISION-

Point for determination 1, 2 & 3

9. In a civil case, the plaintiff has the burden of proving the facts and claims asserted in the suit. Likewise, if the defendant, sets up a counterclaim, the defendant will have the initial burden of proving that claim. The counter

claimant/defendant has to establish his case on "preponderance of probability".

10. A reading of the counter claim goes to show that the defendants/counter claimants are seeking a declaration of their right, title and interest over the suit land mentioned in Schedule X and Y of the counter claim which they claim to have inherited from their father Late Bhaben Das. The case set out by the defendants in the counter claim has been categorically denied by the plaintiffs in their written statement to the counter claim. After adducing evidence of three witnesses by way of affidavit, the plaintiff side stopped appearing. Hence, the suit of plaintiff was dismissed and the counter claim has been proceeded ex parte.

11. In order to prove the title of the defendants/counter claimants over the suit land described in Schedule X, the counter claimant had exhibited and marked the certified copy of Chitha in respect of land measuring 3 bigha 1 katha 8 lessa covered by dag No.223 situated in Perodic patta No. 206 situated at Village : Machua, Mouza : Howly, Barpeta as Exhibit 1 wherein the name of the father of the defendants namely Bhaben Das was recorded as the pattadar. Exhibit 2 is the certified copy of chitha in respect suit land mentioned in Schedule Y shows in the name of father of the defendants/counter claimants namely Bhaben Das as Pattadar.

12. It appears that initially the said plot of land was Annual Patta land. Exhibit-1, the certified copy of draft Chita

shows inclusion of the names of the defendants in respect of the suit land in Schedule X. On the death of the Bhaben Das vide order dated 12.8.2010 the names his sons i.e. the defendants namely Biswajit Das, Pranjali Kr. Das, Kishor Kr. Das and his wife namely Bhanumati Das were mutated over the said land in Schedule X. Further, it transpires from the Exhibit 1 that vide order dated 8.05.2015 the said suit land was converted into periodic Patta bearing No. New K.P. Patta no. 206 on paying premium and the same has been mutated in the names of the defendants and their mother.

13. D.W.6 i.e. Lat Mandal of Gobindapur village, Barnagar revenue Circle Circle and D.W.7 i.e. Lat Mandal of Machua village, Barnagar revenue Circle Circle have been examined by the defendants/counter claimants. D.W. 6 and D.W. 7 have compared the Exhibit 1 and 2 i.e. the certified copy of chitha in respect of Schedule X and Y respectively with the original Chitha Book and deposed that the entries in the Exhibit 1 and 2 have corroborated with the entries in the original documents. Hence, certified copies of Chitha in respect of suit properties in Schedule X and Y were proved by the official witnesses.

14. It is settled proposition of law that until and unless the names are entered in the jamabandi, mere entry of name in the draft chitha will not be of any conclusive value hence, no title can be declared on the basis of such document. This is so because the data entered in the draft chitha is open to alteration/correction by the revenue authorities before finally preparing the record of rights.

There is no evidence on record to show that the plaintiffs have made any attempt to challenge the orders of Chitha mutation in respect of Schedule X land before the appropriate forum. Chitha mutation order was never challenged by the plaintiffs. The plaintiffs have not been able to show by leading any evidence, that such entries were illegal or fraudulent. There is presumption of correctness of the entries made in the record of rights. Such being the position the presumption of truth attached certified copy of chitha in Exhibit 1 remains unchallenged in the absence of any rebuttal evidence. The defendants/counter claimants have successfully proved that they have right, title and interest over the Schedule 'X' land.

15.A reference to the case law **Ajgarh Ali vs Abdul Siddique** [1999(1) GLT642] becomes imperative while deciding on defendant/counter claimant's right, title, interest over the Suit land described in Schedule Y which is annual patta land. It has been observed in paragraph 7 of Ajgarh Ali's case as

"(7) On the basis of these decisions of the division Bench and the Single Bench, it is found that the right of an annual patta holder cannot be affected without issuing non-renewal notice and when a valid annual patta exists/stands, no further settlement can be made in favour of another person on the simple ground that no land is available for settlement as the settlement has already been made in favour of a person and he is continuing in possession. In order to make a valid settlement in favour of

another person during the subsistence of an annual patta, first the annual patta must be cancelled by issuing nonrenewal notice and thereafter only a settlement can be made in favour of a person. If during the subsistence of a patta, a person is dispossessed from the land by a third party claiming that he has been settled with the Hand by Govt. the plaintiff can file a suit for declaration and recovery of possession and in such an event, Section 154 (1) (a) of the Regulation of 1886 shall not be a bar for the civil court to try the suit. The civil court shall have the power to try such a suit otherwise it will lead to a chaotic condition. A person may get possession and make a chitha mutation either through collusion or in any other manner and he will go on enjoying the benefit of such a wrongful action and in such an eventuality the civil court cannot fold its hands saying that it has no jurisdiction with regard to the matter. That cannot be the object of a civil court."

16. By keeping the law in mind and in the above context, if the case of the defendants/counter claimants is look into, it appears that Suit land in Schedule Y is annual patta land. Exhibit 2 is the certified copy of chitha in respect suit land mentioned in Schedule Y shows in the name of father of the defendants/counter claimants namely Bhaben Das as Pattadar. The plaintiffs in the present case has not led a single document to prove that, the annual patta in the name of the father of the defendants/counter claimants have been cancelled and the notice of non-renewal of the same has been given.

The annual patta issued in the name of the father of the defendant/counter claimant deemed to subsist in law and the right of the original patta holder on his death, devolves on his heirs. Therefore the defendants/counter claimants being the legal heirs of Late Bhaben Das have right to be in possession of the Annual Patta land which is of course inheritable and transferable right continue still cancellation of the Annual Patta by the revenue authorities. Defendants /counter claimants being the legal heirs of the original pattadar namely Bhaben Das have right, title , interest over the suit land in Schedule Y.

17. The claim of the plaintiffs is for specific performance of the sale agreement dated 22.2.1988 with respect to the suit land described in Schedule X and Y. On 22.2.1988 the father of the plaintiffs namely Late Lakhan Das entered into a sale agreement with the father of the defendants namely Late Bhabendra Das for purchase of the Suit properties (Schedule X and Y). The said sale agreement has been marked as Exhibit 3 by the plaintiff as P.W. 1.
18. P.W. 2 viz. Mahezuddin who was a witness to the sale agreement dated 22.2.1988 though in his evidence in affidavit deposed that he was present at the time of execution of the sale agreement but his statement ought not to have been accepted as he was not put to cross examination .Hence veracity of his statement could not be tested. So, the sale agreement dated

22.2.1988 has not been proved.

19.As such, it can be safely held that the counter claimants/defendants have successfully proved that they have right, title and interest over the Schedule 'Y' land so long the revenue authorities do not cancel the Annual Patta standing in the name of the his father.

20.Hence the counter claimants/defendants have been able to prove their right, title over suit properties in Schedule X and Y of the counter claim by preponderance of probability by adducing documentary evidence.

21.The evidence adduced by the counter claimants/defendants side in respect of dispossession of the defendants from the suit properties by the plaintiffs has remained unchallenged/unrebutted as the counter claim proceeded ex parte. Hence, counter claimants/defendants are further entitled to recover khas possession of the suit land by evicting the plaintiffs from the suit land described in Schedule X and Y. Further, the plaintiffs are permanently restrained from disturbing the peaceful possession of the suit land by the counter claimants/defendants described in the Schedule X and Y of the counter claim.

22.Accordingly all the three points for determination are decided in affirmative and in favour of the counter claimants/defendants.

ORDER

The counter-claim is decreed on contest .

It is hereby decreed that the counter claimants/defendants have their right, title over suit land in Schedule X and Y. Further, counter claimants/defendants are entitled to recover khas possession of the suit land described in Schedule X and Y by evicting the plaintiffs therefrom and the plaintiffs are permanently restrained from disturbing the peaceful possession of the suit land by the counter claimants/defendants.

Prepare decree accordingly.

Given under my hand and the seal of this Court on this the 11th day of March, 2022 , at Baksa.

Dikshya Rani Dutta
Munsiff, Baksa

Typed and corrected by me
Dikshya Rani Dutta
Munsiff, Baksa

APPENDIX

A. PLAINTIFFS' WITNESSES

1. Sri Haricharan Das as P.W1,
2. Mayezuddin P.W2,
- 3.. Hazrat Ali PW3,

B. PLAINTIFFS' EXHIBITS

1. Exhibit--3 – Agreement dated 22.2.1988

C. DEFENDANT/COUNTER CLAIMANTS' WITNESSES

1. Sri Mrina Jyoti Das as D.W1,
2. Amjad Ali as D.W.2,
3. Nazim Ali as D.W.3,
4. Sahar Ali as D.W. 4,
5. Abdul rouf as D.W.5,
6. Lat Mandal ,Village Gobindapur, Barnagar Revenue Circle as D.W. 6 and
7. Lat Mandal, Village Machua, Barnagar revenue circle as D.W. 7.

B. DEFENDANTS' EXHIBITS

1. Exhibit 1: Certified copy of Chitha in K.P. Patta No. 206
2. Exhibit 2: Certified copy of Chitha in annual dag No 327
3. Exhibit 3: Certified copy of Trace Map in K.P. Patta No. 2063
4. Exhibit 4: Certified copy of Trace Map in annual dag No 327