



Assam Schedule VII, Form No 132

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/ CASE

District: Baksa, BTAD, Assam

In the Original Court of the Munsiff, Baksa, BTAD, Assam

Present: JAGAT DAS, A.J.S.

Thursday, the 13th day of December, 2018

Title suit no-65/18(new) arising out of Title Suit no-52/16 (old)

1. Abdul Samad

S/O- Late Jabed Ali.

Vill.- Monmajar Pather,

Mouza- Gobardhana, P.S.- Gobardhana,

Dist.- Baksa, B.T.A.D. (Assam).....**Plaintiff**

Vs-

1. Akabbar Ali

S/O- Late Jabed Ali

2. Mohammad Ali

S/O- Late Jabed Ali

Both are R/O Vill- Monmajar Pather,

Mouza- Gobardhana, P.S.- Gobardhana,

Dist.- Baksa, B.T.A.D. (Assam).....**Main Defendants.**

1. Jahidul Islam

S/O- Late Fayzur Rahman

Vill- Jaklibil Pather,

Mouza- Gobardhana, P.S.- Gobardhana,

Dist. - Baksa, B.T.A.D. (Assam).....**Proforma Defendants.**

This suit/case coming on for final hearing on 28/11/2018 in the presence of, Ld. Advocate D.Talukdar for the Plaintiff and F. Haque for the Defendants.

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And having stood for consideration to this day the Court delivered the following judgment:

JUDGMENT

1. This is a suit filed by the plaintiff for declaration of his right, title and interest, recovery of khas possession and for permanent injunction in respect of the suit land described in the schedules of the plaint.

2. Plaintiff's case :

The case of the plaintiff in brief, as reflected in the plaint, is that the schedule 'A' land of the plaint i.e. an area of land measuring 1B-2K-10L covered by Dag no. 47 under periodic Kheraj Patta no. 164 of village Bonmajjar Pather, Mouza-Gobardhana, P.S. Gobardhana, Dist.- Baksa, BTAD, Assam surrounded by North-Samiran Nessa & others, South- 6 feet broad bye lane, East- PWD road, West- Seller's own land originally stood in the name of one Jahidul Islam. In the year 1982, said Jahidul Islam was in need of money and sold out the schedule 'B' land of the plaint i.e. a plot of land measuring 1B-1K-5L by means of an ordinary deed dated 15-05-2011 for a consideration of Rs. 8,750/- to the plaintiff within specific boundaries like North-Samiran Nessa & Others, South – 6 feet broad bye lane, East- PWD road, West – Seller's own land. The plaintiff took possession of the aforesaid plot of land, constructed houses and planted many types of trees over the land and started living with his family members without any interruption.

The plaintiff has solely the right, title and interest over schedule 'C' & 'D' land within 'B' Schedule land of the plaint. That on 26-06-2013 defendants illegally occupied the schedule 'C' land which is the front floor of the north side of 'B' schedule land and on 28-03-2014 and 30-03-2015 the defendants forcibly entered into the 'B' Schedule land and illegally occupied the 'D' schedule land within 'B' schedule land and created residing house and blocked the floor of the plaintiff and also blocked the footpath and forcefully possessed the land against the interest of the plaintiff. The plaintiff has right, title, interest over the 'B' schedule land. The defendants illegally trespassed over the schedule 'C' and 'D' land. In spite of repeated requests, the defendants denied to vacate the schedule 'C' & 'D' land of the plaint. The plaintiff also recently requested the defendants to vacate the suit land and in this regard village Mel was called various times to compromise the suit matter, but defendants did not

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compromise the same. Hence, the plaintiff has filed the suit for declaration, recovery of khas possession and for permanent injunction in respect of the schedules land of the plaintiff.

3. On receipt of summons, the defendants appeared and contested the suit by filing their written statement. Defendant no. 1 & 2 filed their written statement jointly whereas the Proforma defendant no. 1 has filed his written statement separately.

4. Case of the Defendant no. 1 & 2 :

The defendants filed their written statement jointly denying the case of the plaintiff. The defendants in their written statement took the usual pleas such as there is no cause of action for the suit, the suit is barred by law of limitation, suit is not maintainable in its present form and the suit is bad for non-joinder of necessary parties etc. The defendants further stated that the suit land belonged to Jahidul Islam, the Proforma defendant. In the early part of the year 1981, the Proforma defendant fell in necessity of money and proposed to sell part schedule 'A' land 1B-1K-5L i.e. schedule 'B' land and the father of the defendant came forward to purchase. On 08-02-1981 the Proforma defendant took the entire consideration (Rs. 7000/-) in cash from the father of the defendants and executed an agreement for sale in favor of the father of the defendants and handed over the possession of the land. The Proforma defendant promised the father of the defendants that he would execute registered deed of sale in favor of the father of the defendants after getting necessary permission. That prior to purchase the schedule 'B' land, Javed Ali, the father of the plaintiff and the defendants had been residing along with his family members on a separate plot of land of nearby village belonging to Mukshed Ali as a permissive possessor. After purchasing the schedule 'B' land their father shifted his residential houses in the suit land and since then he had been residing in the suit land and after his death the plaintiff, the defendants and their other brothers have been residing in the suit land. Javed Ali had seven sons namely, Aman Ali, Abdus Samd, Eyakub Ali, Mohammad Ali, Ekabbar Ali, Hasmot Ali and Hanif Ali and two daughters namely, Jamiron Nessa and Jamela Khatun. That Aman Ali, Iyakub Ali and Hasmot Ali shifted their residences over separate plot of lands. Plaintiff Abdus Samad, defendants Md. Ali and Akabbar Ali and their brother Hanif Ali have been residing in the suit land on their respective houses. During the life time of Javed Ali, he always remained ready and

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willing to bear the expenses for registration of sale deed, but the Proforma defendant did not execute the registered deed. After execution of the agreements for sale, the Proforma defendant put his signature upon some blank papers and handed over those papers to the plaintiff to do the needful for the process of execution of registered deed. The defendants further prayed for dismissal of the plaintiff suit.

5. Case of the Proforma Defendant :

The Proforma defendant also filed his written statement denying the case of the plaintiff and supporting the case of the defendants. The Proforma defendant in his written statement took the usual pleas such as there is no cause of action for the suit, the suit is barred by law of limitation, suit is not maintainable in its present form and the suit is bad for non-joinder of necessary parties etc. **The Proforma defendant stated exactly the same version as stated by the principal defendants.** The Proforma defendant further prays for dismissal of the plaintiff's suit.

6. Issues:

Upon the basis of pleadings of the either parties, the following issues were framed for determination:

1. Whether there is cause of action for the suit?
2. Whether the suit is barred by law of limitation?
3. Whether the plaintiff has got right, title, interest over the suit land?
4. Whether the plaintiff is entitled to relief as prayed for?
5. To what others relief the parties are entitled to?

7. During the course of trial, the plaintiff side has examined five nos. of plaintiff witnesses and exhibited no document. The defendant side examined three nos. of witnesses and exhibited some document.

8. Heard the oral argument advanced by the Id. counsel of either side in support of their respective cases. Also gone through the written argument submitted by the either side Id. counsel.

9. Discussions, Decision and Reasons thereof:

Issue No 1:

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The expression "cause of action" has acquired judicially settled meaning. The Honble Apex court in **Sonic Surgical v. National Insurance Co. Ltd. (2010) 1 SCC 135**, it is held that the expression 'cause of action' means that bundle of facts which give rise to a right or liability.

In this case, the plaintiff claimed that the plaintiff purchased the schedule 'B' land of the plaintiff from one Jahidul Islam by means of an ordinary deed dated 15-05-2011. The plaintiff has sole right, title and interest over the 'B' schedule land of the plaintiff. The defendants illegally trespassed over the schedule 'C' and 'D' land within 'B' schedule land of the plaintiff. In spite of repeated requests, the defendants denied to vacate the Schedule 'C' & 'D' land of the plaintiff. On the other hand, defendants denied the aforesaid claims of the plaintiffs.

So, it is evident that there exist allegations and counter allegations between the parties which demands proper adjudication by this court. As there exist dispute between the parties, hence there is cause of action for the suit.

Hence this issue is decided in affirmative.

Issue no-2

This suit is filed by the plaintiff for declaration, recovery of khas possession and for permanent injunction. The defendants in their written statement it is averred that the suit of the plaintiff is barred by law of limitation.

As per article 58 of the Limitation Act, 1963 the limitation period for obtain any other declaration is three years and it starts from the date when the right to sue first accrues.

In this case the plaintiff averred that the cause of action arose firstly on 26/6/2013 and this suit was filed on 11-3-2016. Hence, it is crystal clear that the plaintiff has filed this suit well within the period of limitation.

Hence this issue is decided in affirmative and in favor of the plaintiff.

Issue no-3:

The plaintiff in his plaint it is pleaded that the suit land described in schedule "B" of the plaint was purchased by him from one Jahidul Islam by means of an ordinary deed dated 15-05-2011.

In order to prove his claims, plaintiff didn't bring on record any documentary evidence. The plaintiff side has adduced oral evidence of five plaintiff witnesses.

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Section 91 of the Indian Evidence Act states that- *Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.*

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Bare perusal of the section 91 of Indian Evidence Act shows that in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible.

It is pleaded by the plaintiff that he purchased the suit land from one Jahidul Islam through an ordinary deed dated 15-5-2011. The said alleged deed is the best evidence in the given case of the plaintiff. The plaintiff could have very well brought on record the said ordinary deed, but the plaintiff refrained himself from bringing on record the said deed for the reasons best known to him. The oral evidence of the plaintiff witnesses are of no help so far as the claim of the plaintiff is concerned that he purchased the suit land through an ordinary deed. Documentary evidence prevails over oral evidence. If the plaintiff had brought on record the alleged deed, the matter would have been crystal clear.

It is settled position of law that any immovable property of which value is Rupees one hundred or more than one hundred, registration is compulsory.

It is alleged by the plaintiff that he purchased the suit land for a consideration of Rs 8750/- . It is obvious that the value of the immovable property (suit land) of the plaintiff is more than Rupees one hundred. So as per the aforementioned

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settled position of law the registration of the suit property is must. But the plaintiff couldn't register the same.

The plaintiff as Pw-1 during his cross examination it is deposed that he was not at home when the suit land was purchased. His father gave the value (money) of suit land to Jahidul and thereafter his father constructed house over the suit land.

The PW-1 further deposed that the suit land was purchased by his father.

The plaintiff (Pw-1) in his plaint as well as in his evidence on affidavit it is clearly stated that he purchased the suit land from one Jahidul Islam by means of an ordinary deed dated 15-5-2011. So it is evident that the plaintiff has stated two different versions in two different stages of the suit regarding purchasing of the suit land. The version of the plaintiff is found to be unworthy of credit and lacks confidence.

On the other hand, the defendants' side claimed that on 08-02-1981 the original owner of the suit land Jahidul Islam handed over possession of the suit land on receipt of consideration money of Rs 7000/- (Rs. Seven Thousand) after execution of an agreement for sale in favor of the father of the defendants. Defendant side brought on record said agreement for sale and exhibited the same as Ext-B. Defendant side has also brought on record the certified copy of suit patta jamabandi (Ext-A). Ext-A shows that suit patta land belongs to Proforma defendant Jahidul Islam. **It is admitted position in this case that the suit land belongs to Proforma defendant Jahidul Islam. Proforma defendant Jahidul Islam submitted his written statement in this case supporting the case of the defendants.**

In view of above discussions and observations, it is seen that the plaintiff has failed to prove his claims by adducing cogent, reliable and convincing evidence. The preponderance of probability leans in favor of the defendants.

Hence this issue is decided in negative and against the plaintiff.

Issue no-4

From the decisions of the foregoing issues, it is found that the plaintiff is not entitled to get the relief as prayed for.

Hence this issue is decided in negative.

Issue no-5:

As per order

10. Order

In the result, the plaintiff's suit is dismissed on contest with cost.

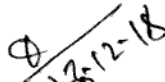
Let a decree be drawn up accordingly within 15 days.

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Accordingly this case is disposed off.

11. Given under my hand and seal of this Court on this 13th day of December, 2018 at Mushalpur, Baksa.


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Appendix

Plaintiff witness:

1. Abdus Samad (PW-1)
2. Morium Khatun (Pw-2)
3. Afsar Ali(Pw-4)
4. Azimuddin (Pw-5)
5. Abdul Kalam (Pw-6)

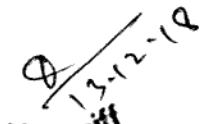
Defendants witness:

1. Akabbar Ali
2. Jahidul Islam
3. Muksed Ali

Plaintiff Exhibits: Nil

Defendants Exhibits:

1. Ext-A is the certified copy of Jamabandi of K.P. Patta no-164.
2. Ext-B is the agreement dated 8/2/1981
3. Ext-C is the Electricity Bill


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