

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

DISTRICT : **KAMRUP.**

IN THE COURT OF CIVIL JUDGE NO. 3, KAMRUP, GUWAHATI.

PRESENT : Sri S.K. Poddar, AJS,
Civil Judge No. 3, Kamrup, Guwahati.

Monday, the 6th day of August, 2012.

TITLE SUIT NO. 260/2008

Smti Sephali Mondal Plaintiff.

-VS-

Shri Subal Dutta & Ors Defendants.

This suit coming on for final hearing on **17/07/12** in the presence of :-

Mr. P. K. Deka Advocate for the plaintiff.

None appeared for defendants

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

J U D G M E N T

This is a suit for rectification of sale deed, cancellation of Sale Deed No. 3345/08 dated 27/02/08, recovery of possession and permanent injunction.

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1. Plaintiff's case, in brief, is that, defendant No. 1 is the absolute owner of a plot of land measuring 1 Bigha covered by Dag No. 855 of K.P. Patta No. 69 of Village Fatasil under Beltola Mouza which was purchased by him vide registered Sale Deed No. 2836/91 dated 16/5/91. Thereafter on 23/11/05, the defendant No. 1 entered into an unregistered agreement with the plaintiff for sale of a plot of land measuring 1 Katha 10 Lechas out of the aforesaid 1 Bigha of land at a total consideration of Rs. 2,40,000/-. On the date of agreement, the plaintiff paid an amount of Rs. 50,000/- to the defendant No. 1 as advance and as per the terms and conditions of the agreement, the balance consideration amount was to be paid by the plaintiff to the defendant No. 1 within 90 days of obtaining necessary sale permission from the concerned authorities. After obtaining the necessary permission from the concerned authorities, the defendant No. 1 executed the registered Sale Deed in favour of the plaintiff bearing No. 11681/06 dated 30/10/06 and handed over vacant possession of the suit land to the plaintiff. After taking possession, the plaintiff erected boundary bamboo fencing in the four sides of the suit land. After registration of the sale deed, it came to the notice of the plaintiff that the K.P. Patta No. 69 of the suit land has been wrongly written as K.P. Patta No. 79. As such, the plaintiff requested the defendant No. 1 to rectify the said error by executing a registered Rectification Deed. Accordingly, the defendant No. 1 agreed to execute the said Deed, but thereafter he failed and neglected to come forward to execute the said Deed. Thereafter on 10/4/08, when the plaintiff visited the suit land, she found that construction of a concrete boundary wall around the suit land was started by the defendant No. 2 by removing the bamboo fencing erected by the plaintiff. The plaintiff immediately met the defendant No. 1 and enquired about the matter and came to know that as she has purchased land measuring 1 Katha 10 Lechas covered by K.P. Patta No. 79, as such, she cannot claim ownership right over the land covered by K.P. Patta No. 69 which has been sold out to the defendant No. 2. It is also pleaded that the defendant No. 1 sold 2 Kathas of land to the proforma defendant No. 3 vide registered Sale Deed No. 11680/06 dated 30/10/06 and the same error also crept in the sale deed executed in favour of proforma defendant No. 3. Thereafter, finding no alternative, the plaintiff and proforma defendant No. 3 jointly issued a notice upon the defendant No. 1 through their advocate demanding him to rectify the

errors crept in the registered

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Sale Deed Nos. 11680/06 and 11681/06 dated 30/10/08 by executing a Deed of Rectification within 7 days of receipt of the said notice. But the defendant No. 1 inspite of receipt of the said notice, did not come forward to execute Rectification Deed in favour of the plaintiff and the proforma defendant No. 3. According to the plaintiff, the Sale Deed No. 3345/08 dated 27/2/08 executed by the defendant No.1 in favour of defendant No. 2 has clouded her right, title and interest over the suit land. Hence, the suit for declaration that the plaintiff has right, title and interest over the schedule land, for rectification of the sale deed executed by the defendant No. 1, cancellation of the Sale Deed No. 3345/08 dated 27/2/08 executed by the defendant No. 1 in favour of defendant No. 2 as void, ab-initio, recovery of possession and permanent injunction.

2. On receipt of the plaint, summons was issued to the defendant side. The suit was contested by defendant No. 2 only by filing their written statement. The suit proceeded exparte against defendant No. 1 and proforma defendant No. 3 as they failed to appear and contest the suit after receipt of summons.

3. The defendant No. 2 has contested the suit by filing written statement. Apart from the usual plea of no cause of action for the suit; that the suit is bad for mis-joinder of defendant No. 2 that the suit is undervalued and under stamped, the defendant No. 2 has denied the allegation of the plaint. It is further pleaded that she purchased the suit land from defendant No. 1 through his attorney Shri Rabi Baro vide Sale Deed No. 3345/08 dated 27/2/08 at a total consideration of Rs. 2,00,000/-. After purchase, she developed the land by filling earth and constructing RCC boundary wall. She also got her name mutated and a new patta being No. 300/1686 of old patta No. 69 and new dag No. 4333/6124 of old dag no. 855 for land measuring 4.01 Are was issued in her favour. There is difference not only in respect of Patta No. of the land purchased by the plaintiff with the land purchased by the answering defendant but there is also difference in respect of boundary of the suit land. In view of above pleadings, the defendant No. 2 prayed to dismiss the suit with costs.

4. On the above pleadings, my Ld. Predecessor-in-office has framed the following issues :-

1. Whether there is cause of action for the suit?

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2. Whether the defendant No. 1 is liable to execute a registered Deed of Rectification in favour of the plaintiff thereby rectifying the errors crept into the registered Deed of Sale bearing No. 11681/06 dated 30/10/06?
3. Whether the registered Deed of Sale No. 3345/08 dated 27/2/08 is void-ab-initio and liable to be cancelled?
4. Whether the registered Deed of Sale No. 3345/08 dated 27/2/08 confers any right, title and interest on the defendant No. 2 with respect to the suit land?
5. Whether the plaintiff has right, title and interest over the suit land?
6. Whether the plaintiff is entitled to the reliefs as prayed for?

5. During trial, plaintiff side examined 3(three) witnesses, whereas defendant No. 2 has examined none. Plaintiff side proved some documents in support of his pleadings. It may be noted here that after filling of written statement, the defendant No. 2 did not contested the suit by cross-examining the witness of the plaintiff or by adducing evidence in support of written statement.

6. I have heard arguments of Ld. Advocates for plaintiff sides alone and gone through the evidence and documents. Ld. Advocate for the plaintiff has also submitted written arguments in support of his oral arguments.

DECISION AND REASONS THEREOF :-

7. **Issue No. 1:-** This issue relates to cause of action for the suit. Plaintiff has filed the suit for getting the patta number rectified in his registered Sale Deed No. 11681/06 by which he has purchased 1 Katha 10 Lechas of land of Dag No. 855 on payment of consideration and for recovery of possession. It is the case of the plaintiff that though in the Deed of Agreement of sale was executed for sale of the land of Patta No. 69/Dag No. 855, but in the Sale Deed, a mistake was committed by showing the patta No. 79 in place of patta No. 69 but the dag number was shown correctly. She also pleaded and proved that she approached the defendant No. 1 for several times for getting the Deed of Rectification executed but failed to do so due to the negligence of the defendant No. 1. It is also alleged that after sometime, i.e. in the year 2008, the defendant No. 1 again sold the suit land in favour of the defendant No. 2 by executing registered Sale Deed No. 3345/08 and said defendant No. 2 has forcibly taken possession over the suit land. The defendant No. 2 has denied

the said fact stating that she has rightly*Contd. on P/5*
purchased 1 Katha 10 Lechas of land on payment of valuable consideration and got delivery of possession after purchase. The defendant No. 1 did not contest the suit. The above facts show that inspite of making several attempts, the plaintiff failed to get the deed rectified by calling the defendant No. 1 to perform his part of the contract and as such, she has to approach this Court. The above facts clearly show that the plaintiff has sufficient cause of action for the suit.

8. **Issue No. 2:-** This issue relates to liability of the defendant No. 1 to execute the Deed of Rectification in favour of the plaintiff for correcting the mistake of patta number. During evidence, plaintiff has examined himself as PW 1 and two other witnesses namely Shri Digbijoy Mondal as PW 2 and Shri Sukumar Roy as PW 3. The evidence of PW 1, 2 and 3 remains un-rebutted and un-challenged. Plaintiff has also proved several documents in support of pleadings of his plaint. Ext-1 is the copy of Sale Deed by which the defendant No. 1 had purchased 1 Bigha of land relating to Patta No. 69 of Dag No. 855 from one Babul Boro and Badul Boro. Vide Ext-2, the defendant No. 1 has entered into agreement for sale of a plot of land measuring 1 Katha 10 Lechas in favour of the plaintiff wherein Schedule of the land was shown relating to land of Dag No. 855 of patta No. 69 of village Fatasil under Beltola Mouza. In pursuance of said agreement for sale, the defendant No. 1 has executed the registered Sale Deed in favour of the plaintiff. Vide Ext-4, the defendant No. 1 has executed a registered Sale Deed in favour of the plaintiff and the schedule of the said land shows selling of 1 Katha 10 Lechas of land standing over Dag No. 855 of K.P. Patta No. 79 of revenue village Fatasil, within the Mouza Beltola in the district of Kamrup, Assam. The boundaries of the Ext-4 are similar to the boundaries of the Ext-2, the agreement for sale, only difference is mentioning of patta number 79 in place of 69. In the agreement for sale, the patta number was mentioned as 69 and whereas in the Sale Deed, the patta number was shown as 79. Vide Ext-6, i.e. the Sale Deed executed in favour of proforma defendant No. 3 namely Shri Sukumar Roy similar mistake was committed. From the revenue records, i.e. permission to sale vide Ext-3 was granted in respect of transfer of land covered by Dag No. 855 relating to patta No. 69 of revenue village Fatasil under Beltola Mouza. Vide Ext-7, the plaintiff has made demand for getting the said mistake corrected. It is well settled that for transfer of land

and identification of the land,Contd. on P/6

it is the dag number and/or the boundaries are of vital importance. Patta number normally has no importance for identity of the land. In the present case in hand, by proving the Ext-1 i.e. purchase deed of the defendant No. 1 by which he has purchased land measuring 1 Bigha from Babul Boro and Badul Boro shows that he has obtained title for a plot of land covered by Patta No. 69 and Dag No. 855. So, he has the right to transfer the land of Patta No. 69 and Dag No. 855. For the said transfer, he has also entered into an agreement for selling 1 Katha 10 Lechas of land in favour of the plaintiff and it can safely be presumed that he should execute the deed for the said land only. The permission for sale was granted also in favour of the land belonging to said Patta No. 69 and Dag No. 855. All the above documents clearly show that on the date of execution of the sale deed, defendant No. 1 had the intention to sell and transfer the land relating to Patta No. 69 and Dag No. 855 for which he is the owner. Though the Sale Deed contains the patta No. 79, yet it should have been for correct patta number 69. In my considered opinion, this is nothing but a curable mistake which the defendant No. 1 should have done by executing a Deed of Rectification. Section 32 of Specific Relief Act empowers the executing party to rectify a deed and mistakes thereupon. From the documents proved by the plaintiff and from the un-rebutted evidence, I am of the opinion that defendant No. 1 was the owner of land belonging to Patta No. 69 and Dag No. 855 and he put the Patta No. 79 in Ext-4 Sale Deed is nothing but a mistake on the part of the defendant No. 1 and he is liable to correct the same by way of rectification deed. In view of above, plaintiff is entitled for getting the rectification in the sale Deed No. 11681/06 by getting the patta number corrected from 79 to 69. This issue is answered accordingly.

9. **Issue Nos. 3 and 4 :-** These issues are taken up together as they are inter-linked. Issue No. 3 relates to validity of Sale Deed No. 3345/08 and Issue No. 4 relates to conferring right, title and interest in favour of the defendant No. 2. From the record, it appears that the defendant No. 1 has purchased 1 Bigha of land vide Ext-1. Out of this, by executing Sale Deed No. 11681/06 Ext-4, he has transferred 1 Katha 10 Lechas of land to the plaintiff and by executing Sale Deed No. 11680/06, he has transferred 2 Kathas of land to proforma defendant No. 3. After executing the above two sales, it appears that the defendant No. 1 remained the owner of another plot of land measuring 1 Katha 10 Lechas.

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There is no evidence that except the above two sale deeds and also by making a sale in deed in favour of defendant No. 2, the defendant No. 1 has entered into any agreement for sale or even executed any sale deed in favour of any other party. By the Deed No. 3345/08, Ext-5, it appears that after selling the land to the plaintiff and proforma defendant No. 3, the defendant No. 1 remained the owner for 1 Katha 10 Lechas of land and as such, he has every right to sell the said remaining land to defendant No. 2. Defendant No. 2 has not purchased any excess land than the land belongs to the defendant No. 1. There might have some clash on the boundary but the fact remains that the land of the defendant No. 1 has not yet been formally partitioned after sale to the plaintiff, defendant No. 2 and proforma defendant No. 3. As such, it cannot be said that only for clashing of boundaries, the sale deed of defendant No. 2 is illegal or void and liable to be cancelled. The above aspect can be rectified by way of partition of the land originally belongs to the defendant No. 1. As there is no excess sale on the part of defendant No. 1, I am of the opinion that the registered Sale Deed of defendant No. 2 is neither void nor liable to be cancelled and she has also acquired right, title and interest over her purchased land with the plaintiff and proforma defendant No. 3. Both the issues are answered accordingly.

10. **Issue No. 5 :-** In view of my decision of issue Nos. 2, 3 and 4, it is clear that plaintiff has actually purchased the land belonging to Dag No. 855 of Patta No. 69. The mistake of the patta number in the sale deed is of minimum effect and same can be rectified. The said mistake did not any way curtail the right of the plaintiff or even put any stigma on the title of the defendant No. 2 over her purchased land. There is no challenge from the defendant No. 1, the vendor regarding the sale deeds in favour of the plaintiff, proforma defendant No. 3 and defendant No. 2. Plaintiff has lawfully purchased the land and this shows right, title and interest over the suit land purchased by her subject to the fact that she may be in need of obtaining formal partition to get exact possession of her purchased land if failed to get back possession amicably.

11. **Issue No. 6:-** In view of my discussions of the issue Nos. 2, 3, 4 and 5, plaintiff is entitled for partial reliefs so far rectification of the sale deed and for declaration of her right, title and interest is only concerned. Plaintiff is not entitled to get the reliefs for declaration that the sale deed of the defendant No. 2 is void and illegal. Plaintiff is also entitled for cost of the suit from the

defendant No. 1 for

.....Contd. on P/8

bringing her into litigation which could have been avoided. In the result, the plaintiff's suit is partially decreed on contest against the defendant No. 2 and exparte against defendant No. 1 and 3 with the reliefs granted here-in-below.

ORDER

12. Plaintiffs suit is partially decreed on contest against the defendant No. 2 and exparte against defendant No. 1 and proforma defendant No. 3 with the following reliefs :-

- a) Plaintiff is entitled for getting a Rectification Deed of Sale Deed No. 11681/06 dated 30/10/06 by way of rectification of the patta number of the schedule land from '79' to '69' only from defendant No. 1.
- b) Plaintiff has right, title and interest over the suit land measuring 1 katha 10 Lechas covered by Dag No. 855 of Patta No. 69 of revenue village Fatasil under Beltola Mouza.
- c) In the event of failure of the defendant to execute the deed of rectification, plaintiff may get the same through court by obtaining a precept for rectification of the patta number in the Sale Deed No. 11681/06 dated 30/10/06.
- d) Plaintiff is entitled for recovery of vacant possession of his purchased land after partition of the suit patta and if required by evicting the defendant No. 1 and/or his men and agents by demolishing constructions if any.
- e) Plaintiff is entitled for cost of the suit from the defendant No. 1.

13. Prepare the decree accordingly within 15 days from today.

Given under my hand and seal of this Court on this the 6th day of August, 2012.

Civil Judge No. 3,
Kamrup, Guwahati.

Dictated and corrected by me,

Civil Judge No. 3,
Kamrup, Guwahati.