

Assam Schedule VII, Form No. 133

Form No. (J) 3
HEADING OF JUDGMENT IN APPEAL

District: KAMRUP.

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

Present:- Sri S. K. Poddar, A.J.S.
Civil Judge No. 3, Kamrup, Guwahati.

Monday, the 13th Day of August, 2012.

Title Appeal No. 31/2011

Md. Jyazuddin Ahmed Appellant/Defendant
-Versus-
Udayan Santi Niketan & anr Respondents/plaintiffs.

This appeal coming on for final hearing on **16.07.2012** in the presence of –

Mr. B. Sarma Advocate/Pleader for Appellant.

Mr. U. Bhuyan Advocate/Pleader for Respondents.

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

J U D G M E N T

1. This appeal u/s 96 read with Order 41 Rule 1 CPC has been preferred by the defendant both on facts and law against the judgment and decree dated 22/12/2010 passed by learned Munsiff No. 3, Kamrup, Guwahati in Title Suit No. 148/2000.

2. On receipt of the appeal memo, notices were issued to the plaintiffs/respondents and case record of Title Suit No. 148/2000 was called for. Respondent appeared through his engaged Advocate and contested the appeal.

.....Contd ..at P/2

3. I have heard learned advocate for both the sides, gone through the appeal memo and the case record of Title Suit No. 148/2000.

4. The facts leading to the appeal, in brief, are that the plaintiff No. 1 is an Assamese medium school and plaintiff No. 2 is the Director of the plaintiff No. 1. The plaintiffs purchased the suit land from the proforma defendant vide registered Sale Deed No. 6625/96 dated 18/12/96 and took delivery of possession on the same date. Thereafter on 12/12/97, the police of Baihata PS came to the suit land and asked the school authority not to construct any structure over the suit land because the land was attached. On enquiry, the plaintiff came to know that the defendant filed a proceeding U/s 145 Cr.P.C. before the Ld. Executive Magistrate, Kamrup, Guwahati in respect of the suit land which is registered as Case No. 322^M/1996 and an order of attachment was passed in the said case on 23/8/96. The defendant has also filed an objection in the office of SDC, Kamalpur Revenue Circle against the mutation of the name of the vendor of the plaintiff in respect of the suit land, but the said objection was rejected. vide order dated 22/06/2000, Ld. Executive Magistrate declared possession of the disputed land in favour of the defendant until evicted by any other competent Court. On the strength of the said order, the defendant has entered into possession of the suit land and trying to start permanent construction. It is also pleaded that the plaintiff being the bona-fide purchaser, has right, title and interest over the suit land and that the defendant is a trespasser over the suit land. Hence, the plaintiff filed this suit praying for declaration of plaintiff's right, title and interest over the suit land, recovery of khas possession and permanent injunction.

5. The defendant No. 1 appeared and contested the suit by filing written statement stating inter-alia that Jandeb Choudhury, Ramesh Choudhury, Kanak Choudhury, Tarani Choudhury and Satish Choudhury were the owned a plot of land measuring 2 Bighas 2 Kathas 18 Lechas. Out of the said land, Jadeb Choudhury sold 1 Bigha 9 Lechas of land to the defendant by registered Sale Deed dated 16/10/84. Thereafter Purandar Choudhury entered in to an agreement for sell of the remaining 1 Bigha 2 Kathas 9 Lechas of land to the defendant. The plaintiff tried to forcibly occupy the said 1 Bigha 1 Katha 9 Lechas of land for which the defendant filed Case No. 322^M/96 U/s 145 of Cr.P.C.

and vide order dated 22/6/2000, the Ld. Executive Magistrate declared the possession of the suit land in favour of the defendant.Contd ..at P/3

The defendant is in actual physical possession of the said 2 Bighas 2 Kathas 19 Lechas of land for last 20 years. Hence, the defendant prayed to dismiss the suit with cost.

6. After hearing both sides, the Ld. Court below framed the following issues :-

1. Whether there is any cause of action for the suit ?
2. Whether the suit is bad for non-joinder of necessary parties ?
3. Whether the suit is barred by limitation ?
4. Whether the plaintiff has right, title and interest over the suit land ?
5. Whether the plaintiff is entitled to get possession over the suit land ?
6. Whether the plaintiff is entitled to any relief/reliefs as prayed for ?
7. Whether the suit is maintainable ?

7. During trial, plaintiff side examined four witnesses and the defendant examined two witnesses. After going through the evidence and hearing arguments of both sides, Ld. Trial Court was pleased to decree the suit of the plaintiff as prayed for by declaring his right, title and interest over the suit land and also for recovery of possession with cost. Against the judgment and decree, the defendant has preferred the instant appeal on the following amongst other grounds :-

- a) That the Ld. Trial Court has failed to appreciate the evidence on record in proper perspective and arrived at an erroneous finding;
- b) That Ld. Trial Court has not considered the fact that the plaintiff being an Association of persons is not authorised to file the suit in its own name;
- c) That plaintiff has failed to prove the fact that his vendor have no saleable right;
- d) That Ld. Trial Court has not considered the fact that the suit patta contains names of about 28 persons and they have not been joined as parties;
- e) That Ld. Trial Court has failed to consider the facts and pleadings that defendant is possessing the land since 1984 and his possession as such becomes adverse;
- f) That the judgment is perverse.

8. During appeal hearing, Ld. Advocate for the appellant has reiterated the grounds raised in the appeal memo.Contd ..at P/4

On the other hand, Ld. Advocate for the respondent/plaintiff has submitted that the decree passed is just and proper and needs no interference.

9. **POINT FOR DETERMINATION :-**

i) *Whether the judgment and decree passed by Ld. Trial Court is just and proper or needs interferences?*

10. On going through the record, it appears that the trial Court has framed 7 issues and let me take up the issues serially.

11. **Issue No. 1:-** This issue relates to cause of action for the suit. In the instant suit, the plaintiff has filed the suit for declaration of their right, title, interest and recovery of possession on the strength of their purchase from the proforma defendant. It is also stated in the plaint that proforma defendant Shri Baikuntha Deka has purchased the suit land from one of the pattadars namely Shri Satish Choudhury. The defendant has challenged the right to sale by said Satish Choudhury and claimed his possession over the land since long. He also pleaded that he has purchased 1 Bigha 9 Lechas of land out of total land measuring 2B 2K 9Ls on 16/10/84 from another pattadar Jandeb Choudhury and also acquired the possession over the entire property measuring 2B-2K 9Ls. For the remaining part except purchase, he has made an agreement for sale with one Shri Purandar Choudhury. It is also in the pleading that for the above suit land, there was a proceeding U/s 145 Cr.P.C. being Case No. 322M/06. All the above pleadings shows that there is a dispute regarding title and possession over the suit land. For settlement of the above dispute, Civil Court is the best forum and plaintiff has chosen the same for getting his right declared. Accordingly, I hold that the plaintiff has cause of action to institute the suit. I concur with the findings of learned trial court.

12. **Issue No. 2 :-** This issue relates to non-joinder of necessary parties. Plaintiff has instituted the suit against the defendant Iyazuddin Ahmed as unauthorised occupant by filing one Misc Case U/s 145 Cr.P.C. On the other hand, defendant in his WS pleaded that in the suit patta, the land was recorded in the name of 28 pattadars, but said persons have not been made parties in the suit. On going through the pleadings, it appears that the plaintiff has claimed to have purchased the land from one Baikuntha Deka who has purchased the land from Shri satish Choudhury. After purchase, said Baikuntha Deka got mutation

over the purchased land measuring 1B-1K-9Ls and took delivery of possession. Against the above land there was a proceeding U/s 145 Cr.P.C. ..Contd ..at P/5 Plaintiff has purchased the said suit land measuring 1B-1K-9Ls from said Baikuntha Deka and got his names mutated. So, presently for the purpose of this suit, there is no pleading that the original pattadars are in possession of the land. It is the also the defendant's case that he is in possession of the entire land. As such, from the record, as pleaded and proved by the parties, it is clear that the other pattadars of the suit land have neither in possession nor have existing title over the suit land after selling the same to the defendant Iyazuddin Ahmed by one Jandeb Choudhury and to Shri Baikuntha Deka by Shri Jaideb Choudhury. As such, for the purpose of determination of right, title and interest and for recovery of possession, plaintiff has rightly made the defendant Iyazuddin Ahmed as defendant and Shri Baikuntha Deka from whom he purchased the land. The entire relief is claimed against Iyazuddin Ahmed who is claiming possession and also disputing the title of the plaintiff. The said pattadars of the suit patta are not necessary parties and Ld. Trial Court has rightly held that effective decree can be passed with the present set of parties. I concur with the findings of learned trial court.

13. **Issue No. 3 :-** This issue relates to limitation. Plaintiff has pleaded that after purchase of the suit land, when they have taken over the possession of the suit land, police personnel of the local PS has restrained them from entering into the possession on the ground that the suit land was attached in connection with Misc Case No. 322M/96 U/s 145 Cr.P.C. Moreover, plaintiff has filed the suit for declaration of right, title, interest and for recovery of possession. As such, the suit shall be governed U/s 65 of the Limitation Act i.e. suit based on title and for recovery of possession and not under Article 113 of Limitation Act, as argued by Ld. Advocate for the appellant. Plaintiff has purchased the suit land in the year 1995 and filed the suit on 27/7/2000 i.e. within 5 years of purchase. As such, plaintiff's suit is well within time.

14. The other aspect as argued by learned advocate for appellant/defendant is that the defendant is in possession of the suit land since 1984 and as such he has acquired the status of title holder by dint of adverse possession. Defendant has claimed that since his purchase in the year 1984 he has also made an agreement for sale for the remaining land of 1B-2K-9Ls but during evidence he has not given a single piece of paper showing any agreement

of sale in his favour for the said 1B 2K 9Ls of land. In the WS, the defendant has never claimed of possessing the remaining land other thanContd ..at P/6 his purchased land by way of any adverse possession against the true owners. In the evidence also, the DW 1 has admitted that he has purchased 1B 0K 9Ls only and also admitted that in the purchase deed of Shri Baikuntha Deka and of the plaintiff, there was mention that on the east of the said land, defendant Iyazuddin has his landed property. It is also in the admission of the defendant that the boundary of the suit land did not tally with his purchased land. If at all, it is believed that the defendant is in possession of the land since 1984, then also he is debarred from claiming the land under adverse possession as it is his pleading that he got the possession on the strength of agreement for sale and thus his status of possession will a possession of permissive occupier and not more than that. Upon taking the plea of getting possession on the strength of agreement for sale, defendant is debarred from taking of adverse possession. In evidence defendant admitted that he possesses the suit land merely being a neighbour of his purchased land. Law does not recognised any such possession. More so no specific plea of adverse possession was taken by the defendant in written statement and also failed to prove the same by giving cogent evidence. In view of absence of any specific plea of adverse possession, Ld. Trial Court has rightly did not consider the same. This issue is answered in negative and in favour of the plaintiff.

15. **Issue Nos. 4 & 5 :-** Both the issues are inter-related and hence taken up together. Plaintiff has claimed his right, title and interest on the strength of purchase from Baikuntha Deka vide registered Sale Deed Ext-2. On going through the Ext-2, it appears that on 18/12/96, Shri Baikuntha Deka sold 1B 1K 9Ls of land i.e. the suit land to the plaintiff No. 1 by executing the registered Sale Deed No. 6625/96 on receipt of consideration of Rs. 25,000/-. In the said Sale Deed, defendant Iyazuddin Ahmed has been shown on the east of the land. From Ext-3 i.e. the copy of Chitha Book, it appears that on the strength of purchase, name of Baikuntha Deka was mutated in the said revenue records for the land measuring 1B 1K 9Ls and as per records, Baikuntha Deka has purchased the land vide Deed No. 2667 dated 22/5/95. After the name of Baikuntha Deka, name of plaintiff No. 1 has been mutated for the same quantity of land. From the Chitha, it appears that there was 2B 2K 18Ls of land in the suit dag No. 1082 out of which defendant No. 1 got his name mutated for 1B 9Ls of

land being purchased from one Jandeb Choudhury, the original pattadar. So, prima facie it appears that the plaintiff has purchasedContd ..at P/7 the land from a person having his mutation in the suit patta. Out of the total land measuring 2B 2K 9Ls, the defendant as admitted in his WS that he has purchased only 1B 0K 9Ls only and the plaintiff has purchased 1B 1K 9Ls and the rest 1 Katha of land still remaining in the name of the owners possession. Against the pleadings of the plaintiff, the defendant has claimed that since his purchase in the year 1994 he has also made an agreement for sale for the remaining land of 1B 1K 9Ls but during evidence he has not given a single piece of paper showing any agreement of sale in his favour for the said 1B 1K 9Ls of land. In the WS, the defendant has never claimed of possessing the remaining land than his purchased land by way of any adverse possession but while deciding the issue of limitation, i.e. issue No. 2, I have already held that the defendant has failed to prove the fact of adverse possession. As such the title of the vendor of the plaintiff has not extinguished by operation of law. In the purchase deed of the defendant, there was no mention of any schedule, but the Ext-Ka only shows of transfer of 1B 9Ls of land only. As the plaintiffs have lawfully purchased the land, they have acquired right, title and interest over the purchased land of 1B 1K 9Ls. The defendant has no reason to resist such purchase only on the ground that he is in possession that too illegally. More so, mere filing of a proceeding U/s 145 Cr.P.C. does not give any right to the defendant to continue in his possession without any title. Once the title is transferred in favour of the plaintiff, they are also entitled for enjoying the property by getting possession by evicting the illegal occupier. In the present case in hand, by proving the sale deed, the plaintiff has proved acquiring of title over the suit land measuring 1B 1K 9Ls. And as such, defendant is an illegal occupier of the said portion of land, the plaintiff is entitled for recovery of khas possession. Ld. Trial Court while deciding the above two issues though not gone in depth, but came to a right conclusion by holding that plaintiff has acquired right, title and interest over the suit land and also entitled for recovery of khas possession. I find no reason to interfere with the findings of the Ld. Trial Court on the above two issues.

16. **Issue No. 7 :-** This issue relates to maintainability of the suit. Defendant has challenged the maintainability of the suit on the ground that the plaintiff No. 1 being an Association of persons, is not entitled to file any suit in

his own name without impleading the local people or the body of managing committee of the school.Contd ..at P/8

It is also argued that there was no resolution to allow the plaintiff No. 2 to file the suit. Ld. Advocate for the appellant/defendant has also argued that plaintiff No. 2 was not the authorised person. I am not impressed by the argument. On going through the sale deed, it appears that the land was purchased in the name of the plaintiff No. 2 being the President of the said School. Moreover, it is a suit for declaration of title in the name of the plaintiff No. 1 and also eviction of the defendant who is an illegal occupier of the land. While deciding issue Nos. 4 and 5, I have already held that defendant is occupying the suit land unauthorisedly and as such for eviction of an unauthorized person, anyone having some interest in the property can move a Court and in this case, the plaintiff No. 2 being the Director of the plaintiff No. 1 has filed the suit in the name of the plaintiff No. 1 and there is no irregularity as claimed by the Ld. Advocate for the appellant. Filing of the plaint by plaintiff No. 2 representing the plaintiff No. 1 has not caused any prejudice to the interest of the defendant. As such, I hold that the suit is maintainable in its present form. I concur with the findings of trial court.

17. **Issue No. 6 :-** In view of my decision of Issue Nos. 1 to 5 and 7, I hold that the plaintiff is entitled to get the relief as prayed for. Ld. Trial Court has rightly granted the reliefs by declaring the right, title and interest of the plaintiff over the suit land and also for recovery of khas possession by evicting the defendant from the suit land. Ld. Trial Court has rightly granted the permanent injunction.

18. In the result, I hold that the appeal is devoid of merit. There is no necessity of any interference form the appellate court. The judgment passed by the Ld. Trial Court is hereby affirmed and upheld.

ORDER

19. The appeal is dismissed on contest with cost. The judgment and decree passed by Ld. Trial Court on 22/12/2010 in Title Suit No. 148/2000 is hereby affirmed and upheld.

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

21. Send down the case record of T.S. No. 148/2000 to learned Munsiff No. 3, Kamrup, Guwahati with a copy of this judgment.

Given under my hand and seal of this court on this 13th day of August, 2012.

CIVIL JUDGE NO. 3,
KAMRUP, GUWAHATI.