

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

Tuesday, the 21st day of August, 2012.

TITLE SUIT NO. 122/2004

Shri Dibakar Bhattacharjee & ors.Plaintiffs.

-Vs-

1. On the death of Balendraram Phukan, his legal heirs, namely,
 - 1.i) Smti Chitra Devi Phukan, (wife),
 - 1.ii) Shri Jitendra Ram Phukan, (son),
 - 1.iii) Rini (daughter),
 - 1.iv) Bhanti (daughter),
2. On the death of Shri Nripendra Ram Phukan, his legal heirs, namely,
 - 2(i) Dr. Gautam Phukan,
 - 2(ii) Shri Pintu Phukan,
 - 2(iii) Shri Tinku Phukan,
3. Dr. Hamenram Phukan Defendants.

This suit coming on for final hearing on **27/07/12** in the presence of :-

Mr. Mr. I. Rasul Advocate for the plaintiff.
none for defendant Nos. 1 to 3.

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 declaration of right, title, interest, recovery of possession valued at Rs. 5,00,000/- and for permanent injunction.

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1. Plaintiff's case, in brief, is that all the four plaintiffs had individually purchased one plot of land each contiguous to each other measuring 2 Bighas in total, covered by Dag No. 117 under K.P. Patta No. 143 with specific boundaries, more particularly described in the schedule of the plaint by executing four different registered Sale Deeds being No. 3227/97, 3228/97, 3229/97 and 3230/97 all dated 17/6/97 from its original owners. After taking possession of their respective plots, the plaintiffs developed the same by filling earth and planting valuable trees. The plaintiffs covered the purchased 2 Bigha of land by making a single plot with common boundary wall all around. They also engaged a chowkidar and caretaker to take care of the suit land in absence of the plaintiffs. In the last survey and settlement operation, the name of the plaintiff Nos. 1, 3 and 4 were included in new patta No. 432 in place of old patta No. 143 and new dag No. 304 in place of old dag No. 117 and the name of the plaintiff No. 2 has been included in new patta No. 1027 in place of old patta no. 143 and new dag no. 304 in place of old dag No. 117. It is also pleaded that Smti Giribala Devi (since deceased), wife of Late Hareswar Goswami purchased land measuring 168 Bighas 1 Katha 14 Lechas covered by K.P. Patta No. 72 containing various dags including Dag No. 105 of village Betkuchi, Mouza Beltola vide three registered Sale Deeds bearing No. 1860/46 dated 14/9/46, 835/45 dated 20/4/45 and 1031/45 from Shri Hirenram Phukan and Shri Birenram Phukan. The name of said Giribala Devi was mutated in respect of the aforesaid land. Late Giribala Devi continued her possession by cultivating the land through rayats. Thereafter, vide order dated 20/1/49 as passed in perfect partition Case No. 66/47-48, said Giribala Devi was issued a separate patta No. 205 in respect of the aforesaid land. Dag No. 105 contains land measuring 7B-1K-18Ls. During settlement operation of 1957, Patta No. 205 was converted into patta No. 118 which was again changed to patta No. 143 during final settlement. In the re-settlement operation of 1957-64, Dag No. 105 was split up into two dags viz. 117 and 118. The plaintiffs purchased their respective plots of land in Dag No. 117 of Patta No. 143 from the heirs of Late Giribala Devi. It is further pleaded that on 25/2/04, the defendants trespassed into the suit land along with some other hired persons and demolished the boundary walls and also uprooted the valuable

trees. The defendants also demolished the structures standing thereon. Thereafter the defendants have covered *..... Contd. at P/3* the entire suit land with high tarza fencing and kept some bad elements and hired persons on the suit land. The plaintiff No. 4, who is looking after the property for other plaintiffs has objected to the said acts of the defendants but he was threatened by the defendants with dire consequences. After dispossessing the plaintiffs, the defendants have made arrangement for construction of permanent houses on the suit land. The aforesaid action of the defendants have clouded right, title and interest of the plaintiffs and hence the plaintiffs have come up with the suit with the prayers of declaration of right, title, interest, recovery of possession and injunction.

2. Defendant Nos. 1 to 3 contested the suit by filing their written statement. The defendant Nos. 1 to 3 in their WS apart from taking the regular pleas that suit is not maintainable, there is no cause of action for the suit, the suit is bad for non-joinder of necessary parties, the suit is false, vague, vexatious, frivolous and cannot stand to the scrutiny of law etc. They have denied that in the instant suit, the common question of law and facts are involved and the reliefs sought for in the instant suit arise out of same acts or transactions. Disputing the genuineness of the sale deeds executed in favour of the plaintiffs, the answering defendants further stated that the plaintiffs have not purchased the suit land from the real owners and as such, the transactions are not valid in the eye of law and on the basis of such transaction, the plaintiffs can not get any valid right, title and interest over the same. It is also pleaded that recording of the names of the plaintiffs during the current settlement operation has no legal validity and sanction and the same has been made by the revenue authorities in collusion with the plaintiffs. The defendants claimed that they are the lawful owners of the suit land and their right cannot be assailed by the plaintiffs. The further case of the defendants is that they are the co-owners of the suit land with equal share along with Smti Giribala Devi. The defendants have absolute right, title, interest and possession over the suit land and the sale transaction entered into by the plaintiffs with the so-called vendors of the plaintiffs are collusive and sham transactions. As such the sale deeds cannot have any binding effect on the defendants. With the above pleadings, the defendants prayed for dismissal of the suit with cost.

3. On the above pleadings, my Ld. Predecessor-in-office has framed

the following issues :-

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1. Whether the suit is maintainable in law and facts?
2. Whether the suit is bad for non-joinder of necessary party?
3. Whether there is cause of action for the suit?
4. Whether the plaintiff has purchased the suit land as claimed?
5. Whether the defendants dispossessed the plaintiffs?
6. Whether the plaintiffs right to relief arise out of the same act and transaction or series of act or transactions which exists in the plaintiffs jointly or common?
7. Whether the plaintiffs have right, title and interest over the suit land?
8. Whether the plaintiffs are entitled to get the decree as prayed?

4. During trial, plaintiff side filed evidence-on-affidavit of six witnesses. Out of them PW 1 & 4 were duly cross-examined by the defendant side. Thereafter the defendants remained absent from the proceeding and hence the evidence of PW 2, 3, 5 and 6 are remained without cross-examination. Defendant side also did not adduce any evidence in support of their case. Plaintiff side also proved several documents.

5. I have heard oral arguments of Ld. Advocate for the plaintiff side only. The defendants side remained absent during argument. The plaintiff side also filed written arguments in support of their case.

DECISION AND REASONS THEREOF :-

6. Issue No. 2 :- This issue relates to non-joinder of necessary parties. While filing the WS, the defendants at paragraph 2 has taken the simple plea that the suit is bad for non-joinder of necessary parties and as such, same is liable to be dismissed forthwith. They have not given any details as to who are the parties necessary should have joined in the suit. During cross-examination of the pw 1 and 4, defendant side have suggested some names of the parties particularly the names of the sisters of the vendors of plaintiff side. However, on going through the plaint, it appears that plaintiffs' case is for eviction of defendant on the allegation of forcible dispossession by them and for recovery of possession of their purchased land from the defendants. So, in this suit, the persons who have occupied the land are only the necessary parties to the suit. The decree of declaration of right, title and interest if any will be a decree in

personem and the right of the other legal heirs of Giribala Devi, if any shall remain intact. As such, I am of the opinion that *Co5td. at P/5* the other legal heirs of the vendors are not necessary parties to the suit for determination of the limited question of entitlement of recovery of possession. This issue is answered in negative and against the defendants.

7. **Issue No. 3 :-** This issue relates to cause of action for the suit. From the pleadings it appeared that plaintiffs have purchased the land from the Lr of Giribala Devi and after purchase, they have taken over possession and got their name mutated in records of right. It is alleged in the plaint that on 25/2/04 the defendants forcibly dispossessed the plaintiffs from the suit land. As such plaintiffs have filed the suit for declaration of their right, title, interest and recovery of possession. The defendants in their WS have taken the plea that the vendors of the plaintiff have no right to sell the land as the suit land is joint property of the defendants and mother of the vendors of plaintiff. As the suit land was not partitioned, the sale is illegal. From the above facts, which are also proved during evidence by the plaintiff side, it appears that the plaintiffs have got cause of action to file the suit for recovery of their possession from the defendants by getting their title declared. Accordingly, I hold that there is cause of action for the suit.

8. **Issue No. 4:-** This issue relates to whether the plaintiffs have purchased the suit land. In their plaint, the plaintiffs have claimed that they have purchased the suit land on 17/6/97 by executing four registered sale deeds i.e. Sale Deed Nos. 3227/07, 3228/07, 3229/07 and 3230/07 and proved the said sale while adducing evidence vide Exts-2 to 5. Defendants in their WS did not challenge regarding execution of the sale deeds as made by the plaintiffs but they simply challenged that the vendors of the plaintiffs have no right to sell the suit land. So, virtually, the purchase of the plaintiffs is not under challenge, rather the legality of the said purchase has been challenged by the defendant side. By proving Exts-2, 3, 4 and 5 i.e. certified copies of sale deeds, Exts-16, 17 and 19, the original sale deeds, plaintiffs have proved that they have purchased the land from one Osman Ali, the power of attorney holder of the legal heirs of Giribala Devi by for a total plot of land measuring 2 Bighas by above four sale deeds. This issue is answered accordingly.

9. **Issue No. 7 :-** This issue relates to plaintiffs' right, title and interest over the suit land and is the crux issue of the suit. Defendants have challenged

that as the vendors of the plaintiffs have no right to transfer plaintiffs have not acquired any right, title and interest over the suit land. *..... Contd. at P/6*

For that purpose, let me go through the history of the suit land as narrated in the plaint and proved by the plaintiffs. It is the case of the plaintiffs that the suit land originally belonged to Shri Balenram Phukan and Shri Nripen Ram Phukan, both sons of Late Tarun Ram Phukan. By executing three sale deeds, they sold total land measuring 168 Bighas 1 Katha 14 Lechas to Giribal Devi in the year 1945 and 1946 vide registered sale deed Nos. 835/45, 1031/45 and 1860/46 and delivered possession. Upon sale of aforesaid land, the purchaser Giribala Devi got her name mutated in the revenue records. All the above sales were in respect of various dags under Patta No. 72. Thereafter a perfect partition case was initiated vide No. 66/47-48 and pursuant to order in that case as evident from vide Ext-7, a separate patta vide No. 205 was created in the name of Smti Giribala Devi, wife of Hareswar Goswami for the land measuring 168 B-1K-14Ls. The patta was separated by curving out the land sold by predecessors of the defendants from the original patta No. 72. Said patta was created as per the order dated 16/8/51. Plaintiffs have proved the copy of above patta as Ext-7. Plaintiffs have also proved the original sale deed executed by Shri Biren Ram Phukan and Shri Hiren Ram Phukan in favour of Smti Giribala Devi vide Ext-20. It may be noted here that, present suit land originally covered by Dag No. 105 consisting 7B-1K-18Ls of land. From the revenue records vide Ext-7, it appears that said 7B-1K-18Ls of land is a part and parcel of Patta No. 205 which was given in the name of Giribala Devi. Without concerning with the other dags, I would like to concentrate on the above dag only. From the above fact, it is clear that by creating separate dag and patta in the year 1951, Giribala Devi became the absolute owner of the land covered by Dag No. 105 measuring 7B-1K-18Ls. Now plaintiffs case is that on the death of Giribala Devi, her sons inherited the said property and after selling various plots of land through their attorney, in the year 1997 they transferred the suit land measuring 2 Bighas to the plaintiffs. It is also the case of the plaintiffs that during the survey and settlement operation of 1957-64, the land of Dag No. 105 was converted to Dag No. 117 and 118. Dag No. 117 covers a plot of land measuring 3B-2K-11Ls and Dag No. 118 covers land measuring 4B-3K-17Ls. The patta No. 205 was converted to patta No. 118 and then to 143. The plaintiffs have purchased 2 Bighas of land from Dag No. 117 only and from

the legal heirs of Giribala Devi.

..... Contd. at P/7

10. It is the argument of the plaintiff side that though Exts-9 and 10 contains the names of defendant Nos. 1 and 2 as pattadars but in fact, it is Giribala Devi who was the absolute owner of the entire land of the dag no. 117 and 118 particularly in pursuance of perfect partition case. So, mere remaining their names in the patta now the defendants have taken undue advantage and got the plaintiffs dispossessed from the suit land. The above facts as narrated by me has been duly proved by the plaintiffs witnesses by proving relevant documents. It may be noted here that defendants have cross-examined only two witnesses out of six witnesses of plaintiff side. Defendants also remained absent and did not file any evidence in support of their WS regarding the illegality of the sale as claimed by them.

11. From the available facts particularly the note in the Jamabandi regarding perfect partition case number, which was not denied by the defendant in their written statement, shows that a separate patta was created for the plot of land measuring 168Bs odd which includes the original dag of the suit patta i.e. 105 and the same remains unchallenged for last 50/60 years. As such, it can safely be presumed that by said perfect partition case, Giribala Devi became the absolute owner of the land covered by Dag No. 105 apart from other land. Subsequently, her legal heirs executed the sale deeds for the 2 Bighas of land in favour of the four plaintiffs and delivered possession in the year 1997. They remained in possession upto 2004 by constructing boundary etc. Thereafter they got dispossessed by the defendants at the instance of defendant No. 3. Defendant side in their WS at one point of time stated that vendors of Giribala Devi has no title to transfer but while disclosing the real facts, stated that Giribala Devi and the defendant Nos. 1 and 2 are the joint owners of the suit patta land. Exts-9 and 10 show the names of defendant Nos. 1 and 2 as co-pattadars but those are only draft pattas. Defendants have failed to prove that they are joint owners of the land.

12. During oral arguments, learned advocate for plaintiff pointed out that even for argument sake, if it presumed that the defendants are the joint owners with Giribala Devi, then also it discloses that there is 7Bs-1K-18Ls of land and out of this plaintiffs have purchased only 2 Bighas of land. So, even taking one third share, it appears that Giribala Devi is owner for more than

2Bighas of land by any means. So, selling land by the legal heirs of Giribala Devi no way makes the sale illegal and invalid. *..... Contd. at P/8*

From the totality of facts as proved by plaintiff side and in view of my above discussion, I hold that the plaintiffs have acquired valid right, title and interest on the strength of purchase from the LR of Giribala Devi. As stated earlier, the defendants have not challenged the legality of the execution of the sale deed and even did not challenge proving of C/copy. Accordingly, I hold that plaintiffs have acquired right, title and interest over the suit land purchased by them.

13. **Issue No. 5 :-** This issue relates to dispossession of the plaintiffs by the defendants. The plaintiffs in their pleadings and evidence clearly stated that in the year 1997 they got delivery of possession and by constructing boundary walls etc. they have possessed the land. But on 25/2/04, the defendants with the help of some hired persons got them dispossessed and put bamboo tarza fencing over the suit land. During cross-examination of PW 1 and PW 4, this fact remains unshaken. The defendants did not cross-examine PWs. 2, 3, 5 and 6 and as such, their evidence so far forcible dispossession is concerned remained intact. The defendants though submitted their written statement denying the averments of the plaint, but failed to substantiate their pleadings by adducing any evidence. From Exts-12, 13, 14 and 15, it appears that during the settlement operation, the plaintiffs were found in possession and revenue authority have granted certificate confirming their possession. The aforesaid exhibits further discloses that patta could not be given due to non-completion of the settlement operation. The above facts clearly shows that plaintiffs were in possession of the suit land till the date of dispossession by the defendants. This issue is answered accordingly in affirmative and in favour of the plaintiffs.

14. **Issue No. 6 :-** This issue relates to right of the plaintiffs to file the suit jointly. It is a fact that each plaintiff has purchased the land independently from the legal heirs of Giribala Devi by executing separate registered sale deed. It is in the pleadings that all the four plots of land are contiguous and have been covered by a common boundary by making four plots into one compact plot. It is also in the pleadings that the defendants have dispossessed the plaintiffs by taking forcible possession of all the four plots on a single date. The said act of the defendants gave a common cause of action to the plaintiff. It is in the evidence that they have purchased the land on the same date and possessed

the land contiguously by making four plots into one. As such, there is no bar in maintaining the suit. *..... Contd. at P/9*

Ld. Advocate for the plaintiffs in his submission stated that this cannot be a ground for rejection of the plaint and in this connection, he relied upon a reported case of AIR 1981 Orissa 216.

15. Order 1, Rule 1 of the Civil P. C. provides that all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions, is alleged to exist, whether jointly, severally or in the alternative where, if such persons brought separate suits, any common question of law or fact would arise.

16. Hon'ble Orissa High Court in the reported case of Tima Mali and Ors. vs. Kartika Meher and Ors. [AIR 1981 Orissa 216] as relied by the plaintiff side, held that

"6. It would thus appear that the concensus view is that each case depends on its own facts. If the relief claimed by different plaintiffs is against one person relating to the one cause committed by the defendant is challenged and all the plaintiffs are aggrieved by such action of the defendant, they can file one suit and such a suit will not be bit by multifariousness."

17. In the case in hand, as discussed earlier, the plaintiffs have purchased the land on same date and were dispossessed on the same day by same defendants. As such the suit cannot be termed as not maintainable. From the facts as narrated above, I hold that plaintiffs have rightly filed the suit in a compact manner for a joint cause of action and their rights have accrued for relief out of one and same transaction. This issue is answered in affirmative and in favour of the plaintiffs.

18. **Issue No. 1:-** This issue relates to maintainability of the suit. Defendants have taken up the above plea mainly on the ground that there is no common cause of action for the plaintiffs. But as discussed in Issue No. 6, I am of the opinion that there is no bar in maintainability of the suit for jointly filing the same as because they have possessed the land in a compact boundary and they got dispossessed on the same day by the same set of defendants. There is no necessity of any individual suit by each plaintiff for getting the reliefs. The suit is maintainable both in law and facts. This issue is answered accordingly.

19. **Issue No. 8:-** From my discussion on issue No. 1 to 7, it is clear that plaintiffs are entitled for the decree of declaration of their right, title and

interest, for recovery of possession and also for permanent injunction against the defendants to protect the suit property *Contd. at P/10*
after recovery of the same from further disturbance by the defendants or any other persons claiming through them. This issue is answered accordingly. Plaintiffs are also entitled for the costs of the suit to be recovered from the defendants.

20. In the result, plaintiffs' suit deserves to be decreed, which I do accordingly.

ORDER

21. Plaintiffs suit is decreed on contest with cost with the following reliefs :-

- a) Plaintiffs' have right, title and interest over the suit land as purchased by them.
- b) Plaintiff's are entitled for recovery of khas possession by evicting the defendants, their men, agents or any other person claiming through them and if required by removing the structures standing over the suit land.
- c) For permanent injunction against the defendants and their men, agents etc. from disturbing the possession of the plaintiffs after recovery of khas possession in due process of law.
- d) Cost of the suit.

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

23. Judgment is pronounced in open court.

Given under my hand and seal of this Court on this 21st day of August, 2012.

Civil Judge No. 3,
Kamrup, Guwahati.

Dictated and corrected by me

Civil Judge No. 3,
Kamrup, Guwahati.