

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT.

IN THE COURT OF MUNSIF NO. 3 AT GUWAHATI.

DISTRICT-KAMRUP

Title Suit Case No. 435/2008

Present:

Naguib Ahmed. A.J.S
M.Sc (Agriculture), LL.B
Munsiff No.3, Kamrup,
Guwahati.

9th day of August, 2012

- 1) **Sri. Satish Ch. Sarma**
S.O: Late Umakanta Sarma
R.O: Bhetapara,
P.O: Beltola,
P.S: Baistha,
Guwahati
P.I.N: 781028
District: Kamrup (M), Assam.....: Plaintiff(s).

-Versus-

- 1) **Sri. Dilip Kr. Das**
S.O: Late Manik Ch. Das
R.O: Satgaon, Kochpara,
P.O: Udayan Vihar,
P.S: Satgaon,
Guwahati
P.I.N: 781027
District: Kamrup (M), Assam.....: Defendant(s)

This suit coming on for final hearing on 07.07.2012 in the presence of:-

1. **Sri T. Sarma** : **Advocate for the plaintiff(s).**

And

2. **None** : **Advocate for the defendant(s).**

and having stood for consideration to this day, the court delivered

the following Judgment.

JUDGEMENT

(A suit for recovery of possession and permanent injunction)

1. **Plaintiff's case:** The plaintiff was in search of a plot of land and accordingly purchased a plot of land from one Kanu Talukdar at a consideration of Rs. 1, 25,000/- (One Lakh Twenty Five Thousand) only. The plaintiff came to know on inquiry that one Ram Nath Khaklari was the recorded pattadars of the suit-land. The suit land was a ceiling surplus land as per records maintained by the office of the Deputy Commissioner, Kamrup. A Deed of Sale (unregistered) was executed by the occupier Kanu Talukdar in favour of the plaintiff on 09.02.1994. The plaintiff thus stepped into the possession of the suit land on 09.02.1994. Thereafter the plaintiff allowed a Bengali family to stay on the plot of land free of rent. The said family continued in possession for about 3 years. In between a complaint was received from a local Mahila Samittee, Hastinapur requesting the plaintiff to take necessary actions against the said family. The said family then left the suit premises. On 19.10.2008 the defendant with the help of some unruly youths trespassed into the suit land. They drove out the subsequent care-taker of the suit-land. A written F.I.R was accordingly lodged before the O/C Dispur P.S on 20.10.2008. The defendant then proceeded with some construction works in the suit-land. Thereafter a proceeding was initiated U/S 144 of Cr.P.C vide case no. 290/08. An order was passed by Id. SDJM Kamrup (M) restraining the plaintiff/ 2nd party from entering the suit-land. The plaintiff was admittedly disposed from the suit-land on 19.10.2008. Of late the plaintiff received a special power of attorney being executed by Sri. Siba Nath Khaklari in favour of Sri. Bhuban Nath. On the basis of the said special Power of Attorney Sri. Bhuban Nath has sold 1 Katha 5 Lechas of land in favour of the dependant by an unregistered deed vide Deed No. 6289. The Deed dated 06.02.1989 is an agreement for sale only and not a sale-deed. The defendant is a habitual land grabber and many cases are pending against him.

2. Thereafter summons were issued and the defendant contested the suit by filling the written statement (W.S).
3. **Plaintiff's prayer:** The plaintiff under the circumstances of the case prayed for:
 - I) A decree of recovery of possession thereby removing the defendant, his men and materials, the employee, laborers etc and deliver the same to the plaintiff thereby restraining the possession with the plaintiff again.
 - II) To grant perpetual injunction.
 - III) Cost of the suit.
 - IV) Any other relief or reliefs to which the plaintiff is entitled under law and equity.
4. **Defendant's version:** The defendant filed written statement and specifically denied the claims of the plaintiff. Late Ram Nath Khaklari being the absolute owner and pattadars of the suit land along with other land of Patta No.- 90, no one except him have any right to transfer the suit-land to any other person including the plaintiff. The defendant further states the letter of the Mahila Samity does not disclose that the plaintiff was ever in possession of the suit-land as has been claimed by the plaintiff. It was also specifically denied that there were any tenants under the plaintiff over the suit land. The other documents submitted by the defendant are all fabricated. Although the plaintiff by the aforesaid fabricated documents tried to establish his possession over the suit land but the documents are totally silent to that effect. In fact the plaintiff came to the suit-land on 20.10,2008 along with some unscrupulous persons and threatened the defendant and his men to vacate the suit-land. The defendant was accordingly compelled to initiate the proceeding U/S 144 Cr.P.C. The defendant further states that, he is the absolute owner and title holder of the suit land as the same having been transferred by the original owner to him, by way of registered sale-deed. The said suit land is in possession of the defendant since and prior to 1989 as stated above and hence has every right to enjoy his property. The answering defendant also states that Sri. Bhuban Nath the attorney holder of the original owner of the suit land Sri. Siba Nath Khaklari entered into an agreement for sale of the suit land with the defendant on 06.02.1989 as the defendant was

already in possession of the suit land in question. A registered sale deed was accordingly executed in favour of the defendant on 24.10.2008 vide Deed No. 13216/ 08. Hence the defendant under the circumstances of the case prayed for dismissing the suit and also prayed for compensatory cost Under Section 35(A) of the C.P.C.

5. **Issues:** Upon perusal of the pleadings and other materials on record the following issues were framed.

1. Whether the suit is maintainable in law as well as in facts?
2. Whether the suit is property valued and proper court fee has been paid?
3. Whether the suit-land is ceiling surplus land or Patta land?
4. Whether the plaintiff purchased the suit land from Kanu Talukdar?
5. Whether the defendant disposed the plaintiff from the suit-land?
6. Whether the plaintiff is entitled to get the decrees as prayed for?
7. To what other relief is the plaintiff entitled?

6. **Witnesses:** In the instant suit the plaintiff examined three witnesses. The defendant filed evidence of 2 witnesses but DW-1 was partly cross-examined and DW-2's cross-examination was dispensed with.

7. **Discussions, Decisions and Reasons thereof:** I have also heard arguments advanced by the ld. counsel of the plaintiff. The defendant did not advance arguments in the case.

8. **Issue No. 3, 4 and 5:** In view of the facts and circumstances of the case these issues appears to be the most vital ones. For the convenience of discussion and for better appreciation of evidence, the 3 issues are taken together.

9. **PW-1 Satish Chandra Sarma** deposed in his cross examination that he knew Kanu Talukdar but for the last 12-14 years but he has not met him. Kanu Talukdar is the owner of the suit-land although he has not given any documents in support of his claim.

Exhibit-1 : Is the unregistered sale-deed.

Exhibit-2 : Is the resolution of "Pragati Mahila Samitee

Hastinapur”.

Exhibit-3 : Is the public resolution of “Hastinapur Unnayan Samitee”.

Exhibit-4 : Is the money receipt of a local religious cum cultural organization.

Exhibit-5 : Is the copy of order U/S 144 Cr.P.C.

Exhibit-1 is the unregistered sale-deed. The originals of Exhibit-1 contain the Dag No. and Patta No. He knows Inamul Rasol and Binapani Baishya as his neighbor but they are not witnesses of the plaintiff. On 09.02.1994 he took possession of the suit-land however the same is not mentioned in the Exhibit-1. He denied the suggestion that as Kanu Talukdar was not in the possession of the suit-land he has not been made him a witness. He had two tenants named Irfan Ali and Khagen Das but none are witnesses to the plaintiff’s suit. He did not have any written tenancy agreement with the two tenants. The Exhibit-3 is the public resolution of “Hastinapur Unnayan Samitee”. The then president and secretary are not made witnesses to the plaintiff’s case. Exhibit-2 is the resolution of “Pragati Mahila Samitee Hastinapur”. However no one from the organization has been made a witness by the plaintiff. He denied the suggestion that the two documents are forged. Exhibit-4 is the money receipt of a local religious cum cultural organization. In Exhibit-3 and Exhibit-4 his address is mentioned as Bhetapara. He has not given the evidence of the Bengali family who resided in the suit-land. He denied the suggestion that since 1989, the suit-land was in possession of the defendant. Exhibit-5 is the copy of order U/S 144 Cr.P.C. He also deposed that he has not produced any documents to prove his possession over the suit land for over 12 years.

PW-2 Mahat Chandra Talukdar in his cross-examination amongst others deposed that the plaintiff did not stay in the suit-land. He was informed by the plaintiff that he kept some other person in the suit-land as care-taker, but he does not know whom the plaintiff kept in the suit-land as care-taker. He heard from the plaintiff only that the plaintiff was dispossessed from the suit-land by the defendant. He did not know where and how much land was in possession of Kanu Talukdar. As per Exhibit-1 the suit-land is in

Nayanpur, Ganeshguri. Amongst others Rajat Das was present when the plaintiff was given in possession of the suit-land.

PW-3 Ratna Devi deposed in her cross-examination that she does not know Kanu Talukdar. At the time of taking over the possession of the suit-land she was not present at the relevant place. The plaintiff is residing in his residence at Bhetapara since prior to his purchasing the suit-land. On being stated by the plaintiff she came to know that the suit-land is myadi land.

10. Defendant **Dilip Kumar Das** deposed himself as **DW-1**. In his evidence in chief, he mostly reiterated the story stated in his written statement.

Exhibit-A : Is the draft Jamabandi of Dag No. 1150(O)/ 2490 (N) of K.P Patta No. 90(O)/ 778(N) of village Japorigog under Beltola Mouza.

Exhibit-B : Trace Map.

Exhibit-C : Is the special power of attorney vide Deed No. 1739(A), dated 07.09.1983.

Exhibit-D : Agreement dated 06.02.1989.

Exhibit-E : Sale Deed No. 13210/08 dated 24.10.2008.

Exhibit-J : Tenancy agreement dated 03.05.2000.

However the cross-examination of the DW-1 was dispensed with after he was partially cross-examined. Thereafter the cross-examination of DW-2 Abdur Rahmat was expunged.

11. Stitching all the evidence it seems that the plaintiff claimed to have purchased the land from one Kanu Talukdar. He kept a family in the suit land as a caretaker. Thereafter his houses were given on rent to one Irfan Ali and Khagen Das. The president and secretary of some local organizations as claimed, has in-fact communicated with the plaintiff at different points of time. However none of these people were examined to substantiate the claims of the plaintiff. Under such circumstances non-examination of these close witnesses in-fact draw adverse presumption against the plaintiff *Under Section 114(g) of The Indian Evidence Act 1872.*

12. Moreover in Exhibit-3 and Exhibit-4, the address is of Bhetapara which is quite different from the address of the suit-land which is at Japorigog and the address at the Exhibit-1 which is mentioned as Nayanpur.
13. It has also been deposed by PW-2 and PW-3 that the plaintiff did not stay in the suit-land.
14. It has also been deposed by the plaintiff/ PW-1 that the original of Exhibit-1 contained the Dag No. and Patta No. However the compared copy of the said exhibit does not contain the said Dag and Patta numbers. The said exhibit is an unregistered deed.
15. A combined reading of all the aforesaid evidence reveals that the plaintiff has failed to lead cogent and substantive evidence to prove the case of the plaintiff. The plaintiff's documents do not establish the claim of the plaintiff that he was in possession of the suit land. The evidence on record also falls short of establishing the fact that the plaintiff was in possession of the suit-land. Although the defendant witnesses were not cross-examined yet the evidence of the plaintiff fell short of proving their claim to lead to a conclusion in favour of the plaintiff. The defendant couldn't lead cogent evidence either, but the plaintiff cannot rest the defendant's weakness to prove their claims.
16. In light of all, the plaintiff failed to prove that, he purchased the suit-land from Kanu Talukdar. In fact no evidence could prove the fact that the suit land was purchased from Kanu Talukdar. It is also not established that the suit-land was in possession of the plaintiff. Hence the question of the defendant dispossessing the plaintiff need not be discussed in the present circumstances of the case. In the said pretext the evidence could not establish that the suit-land was either ceiling surplus land or Patta land.

Accordingly these issues are decided and go against the plaintiff.

17. ***Issue No. 1 and 2:*** These issues can be taken up together for better appreciations. On perusal of the pleadings and on appreciating the evidence on record it is evident that the suit is maintainable. The pleadings further reveals that the suit is properly valued and proper court fee has been paid.

Accordingly the issues are decided.

18. **Issue No. 6 and 7:** In view of the discussions made above and decisions arrived at the previous issues it appears that the plaintiff is not entitled to get the decree as prayed for and subsequently is also not entitled to any other reliefs.

In absence of any cogent evidence these two issues are decided against the plaintiff.

19. **ORDER**

In the conclusion, the suit is dismissed on contest without cost.

Prepare decree accordingly.

The case is disposed of on contest.

Given under my hand and seal of this court on **9th day of August 2012.**

Naguib Ahmed
Munsiff No.-3, Kamrup,
Guwahati.

APPENDIX

Plaintiff's Witnesses

1. PW-1: Satish Chandra Sarma
Exhibit-1 : Is the unregistered sale-deed.
Exhibit-2 : Is the resolution of "Pragati Mahila Samitee Hastinapur".
Exhibit-3 : Is the public resolution of "Hastinapur Unnayan Samitee".
Exhibit-4 : Is the money receipt of a local religious cum cultural organization.
Exhibit-5 : Is the copy of order U/S 144 Cr.P.C.
2. PW-2: Mahat Chandra Talukdar
3. PW-3: Ratna Devi

Defendant's Witnesses

1. DW-1: Dilip Kumar Das

- Exhibit-A : Is the draft Jamabandi of Dag No. 1150(O)/ 2490 (N) of K.P Patta No. 90(O)/ 778(N) of village Japorigog under Beltola Mouza.
- Exhibit-B : Trace Map.
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