

**HIGH COURT FORM NO. (J) 2.**

**HEADING OF JUDGMENT IN ORIGINAL SUIT.**

**IN THE COURT OF MUNSIFF NO. 3 AT GUWAHATI.**

**DISTRICT-KAMRUP**

**Title Suit Case No. 474/2009**

**Present:**

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

***14<sup>th</sup> day of August, 2012***

- 1) **Smt. Sumitra Das**  
**W.O: Late Jogen Das**
  - 2) **Sri Devajit Das**
  - 3) **Sri Biswajit Das**
  - 4) **Sri Ram Das**
  - 5) **Sri Lakhan das**  
**(2 to 5) are sons of late Jogen Das**
- All are**  
**R.O: Kukurmara,**  
**P.O: Kukurmara,**  
**P.S: Chaygaon,**  
**Guwahati**  
**District: Kamrup , Assam.....: Plaintiff(s).**

**-Versus-**

- 1) **Sri. Nagen Das**  
**S.O: Late Dandi Ram Das**
- 2) **Smt Anima Das**  
**W/O Nagen Das**
- 3) **Babul Das**
- 4) **Budha Ram Das**
- 5) **Madhab Das**
- 6) **Khagen Das**
- 7) **Mina Das**
- 8) **Babul Das**
- 9) **Renu Das**

10) Amulya Das

11) Dasu Das

All are,

**R.O: Kukurmara,**

**P.O: Kukurmara,**

**P.S: Chaygaon,**

**Guwahati**

**District: Kamrup ,Assam.....: Defendant(s)**

**This suit coming on for final hearing on 16.07.2012 in the presence of:-**

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

**And**

2. **S Bhattacharee** : **Advocate for the defendant(s).**

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

### **JUDGEMENT**

*(A suit for Declaration and permanent injunction)*

1. **Plaintiff's case:** That the plaintiffs and defendants are the successors of Dandi Ram Das, since deceased. Dandi Ram Das had 5 (Five) sons:

I. Jogen Das (Since deceased/ husband of Plaintiff No.1)

II. Nagen Das (Defendant No.1)

III. Khagen Das (Defendant No.6)

IV. Babul Das (Defendant No.8)

V. Mangal Das (Since deceased)

Defendant No.s 2, 3, 4 and 5 are the wife and sons of Defendant No.1.

Defendant No.7 is the wife of defendant No.6.

Defendant No.s 9 and 10 are the wife and son respectively of Defendant No.8.

Defendant No. 11 is the second wife of Late Dandi Ram Das.

2. Late Dandi Ram Das had landed properties measuring 1 Bighas 14 Lechas at revenue village Kukurmara as described in the Schedule. The land falls in Keraj Periodic Patta No. 108 (New) and dag No. 77. On the death of

Dandi Ram, there was a mutation case vide case no. 5/1987-88. The Id. circle Officer, Chaygaon Revenue Circle granted mutation of 2 Kathas of land in favour of Jogen Das, the husband / father of the Plaintiffs, 1 Katha 14 Lechas of land in favour of Nagen Das, Khagen Das, Babul Das and Mangal Das and rest of 1 Katha of land in favour of Smt. Ulupi Das, the unmarried sister of Late Dandi Ram Das.

Accordingly revenue records were corrected as aforesaid. Thereafter both the parties enjoyed their respective shares vide order of mutation dated 15.11.1988. A village *Mel* was subsequently held on 03.11.2002 under the aegis of “*Kukurmara Gaon Unnayan Samity*” wherein it was agreed upon by Jogen Das to spare a area of 6 ½ feet breadth from his share of land to pave way for a path for other heirs of Late Dandi Ram Das. The 2 (Two) Kathas of Plaintiffs’ land is the present suit-land. The share of the defendants’ land is much better than the plaintiffs’ share which is a low-lying land. Plaintiff No. 2 Debojit Das in consultation with other plaintiff applied for financial benefit under the “*Indira Awash Yojana*” and accordingly the Champak Nagar Gaon Panchayat after physical verification provided financial grant of Rs. 38, 500/. The plaintiffs have been paying land revenue for entire plot of land measuring 1 Bigha 14 Lechas. The name Jogen Das has been mutated in the record of rights in the year 1988 itself and since then the same has never been challenged.

That the Defendant No. 2, 7, 9 and 11 often disturbs the plaintiff as regards the said share of Jogen Das. Much of disturbances have been caused by the defendants in a combined way.

3. **Plaintiff’s prayer:** Under the aforesaid premises the plaintiff prayed for:
  - I) A decree of right title and interest over the suit-land.
  - II) A decree of permanent injunction.
  - III) Cost of the suit.
  - IV) Any other relief or reliefs.
4. **Defendant’s version:** The defendants contested the case and filed their written statement.

The defendants submitted that the suit has been filed with ulterior motive to harass the defendants only. The defendants further submitted that the mutation was done without giving notice to the defendants. Moreover the name of the Defendant No.11 is not included in the said mutation. The plaintiffs are not at all the lawful owners of the suit-land. The plaintiffs have forcefully occupied the defendants' portion of land as there is no proper boundary in respect of the suit-land. Defendant No.3 after discussion with other defendants initiated a case U/S 145/ 146 Cr.P.C against the plaintiffs vide case no. 5/ 2009. As the plaintiffs are not in possession of the suit-land they are not entitled for a decree of permanent injunction. Under the premises the defendants prayed for dismissing the present suit.

5. **Issues:** Upon perusal of the rival pleadings the following issues have been framed.

1. Whether the plaintiffs have right, title and interest over the suit-land?
2. Whether the plaintiffs are entitled to get the decree of permanent injunction as prayed for in the plaint?
3. Whether the plaintiffs are entitled to get the reliefs as prayed for in the plaint?
4. To what reliefs are the plaintiff entitled?

6. **Witnesses:**

The plaintiffs have examined 3 (Three) witnesses and the defendants examined 7 (Seven) witnesses in support of their case.

However the evidence of DW-3 G Das was later-on expunged.

7. **Discussions, Decisions and Reasons thereof:**

I have also heard arguments advanced by both the sides at length.

8. **Issue No. 1 and 2:** Under the present circumstances of the case, these two issues appear to be the most vital ones. For better appreciation and discussion, both these issues are taken together.

9. **PW-1 Debojit Das** amongst others deposed in his cross examination that the suit-land was originally of his grandfather and from whom his father inherited. The suit-land was partitioned between his father and his paternal

uncles. After the partition his father had a share of 2 Kathas. 1 Katha 14 Lechas was partitioned amongst the 4 paternal uncles. There are some boundary posts between the two shares of land.

**PW-2 Sridhar Das** amongst others deposed in his cross-examination that he is the president of the village Defence Party, Kukurmara. From Exhibit-(1) he stated that Jogen Das and defendants' name have been mutated in the said exhibit. He denied the suggestion that the plaintiff has blocked any road.

**PW-3 Arun Chandra Das** amongst other deposed that the suit-land has been partitioned amongst both the plaintiffs and defendants.

Let me now appreciate the defendants' evidence.

**DW-1 Babul Das** amongst others deposed that Late Dandi Ram Das is their father who married twice in his lifetime. The first wife is the mother of the Plaintiff No.2. The second wife is Dasubala Das who is his mother. He denied the suggestion that his mother was an illegal wife. After the death of his father, he along with his 4 (Four) brothers namely Jogen Das, Nagen Das, Khagen Das, and Mongal Das applied for mutation of their father's land. Some 7 (Seven) years ago he came to know that 1 Katha 14 Lechas of land has been mutated in the name of the 4 brothers including himself. He deposed from Exhibit-1 that 2 Kathas of land has been mutated in the name of his brother Jogen Das and 1 Katha 14 Lechas of land has been mutated in the name of the other 4 (Four) brothers. There is a road for their entry and exit which is of 6 ½ feet broad. A village *Mel* was held which discussed about the breadth of the said road. The defendants raised complain before the village *Mel* as regards the construction of house by the plaintiff. A decision was taken in the said *Mel* to initiate legal action against the plaintiff. As stated in his evidence in chief, it is not true that the plaintiff has prepared to block the aforesaid road, of entry and exit. He further stated that the plaintiffs are entitled to get their share from their father's property.

**DW-2 Nagen Das** amongst others deposed that Jogen Das was staying in the suit-land for more than 63 years. His father died leaving 1 Bigha 14 Lechas of land. As per the partition Jogen Das had his share of 2 Kathas of land and the rest of the 4 (Four) sons including himself had their share of land amounting to 1 Katha 14 Lechas. His unmarried sister Ulupi

Das got a share of 1 Katha of land. He knows that the suit-land consists of 2 Kathas of land. The suit-land is in possession of the plaintiff. He further deposed that a village *Mel* took place under the aegis of “*Kukurmara Gaon Unnayan Samity*” in which the land of 1 Bigha 14 Lechas was partitioned amongst both the parties. A 6 ½ feet broad road was fixed by the said Mel on the eastern side of the suit-land. The plaintiffs raised a construction over the suit-land after they availed a government benefit for the same. He also deposed that if the plaintiff constructs any house they will take legal recourse.

**DW-4 Anima Das** amongst others deposed that the plaintiff inherited 2 Kathas of land and they have constructed a house there-on availing government benefits. A village *Mel* was held to decide the matter of breadth of the road.

**DW-5 Tiluram Das** amongst others deposed that he is the foster son of Ulupi Das and he has got a share of 1 Katha from the aforesaid land and the same has been mutated in his name. The road on the eastern side of the suit-land is about 10 feet broad. The plaintiffs’ house is about 20-30 feet away from the road. A fight in-fact took place between both the sides over the issue of construction of the house by the plaintiffs. The plaintiffs and defendants are living separately for the last 60 years.

**DW-6 Mina Das** deposed that out of 1 Bigha 14 Lechas of land belonging to Dandi Ram, the plaintiffs inherited 2 Kathas of land. The plaintiffs have already constructed their residence over the suit-land. A road is there in the eastern side of the suit-land. The said house was constructed by availing a government benefit of Rs. 25,000/- (Twenty Five Thousands) only. Although the house was constructed, the plaintiffs have not yet got the chance to live there-in.

The documents exhibited by the plaintiff shows that the land was mutated in the name of Plaintiff No.2’s father Jogen Das. Exhibit-1(1) shows that Jogen Das as a pattadar of the suit-land. Exhibit-2, 2(1), 2(3) are the revenue paying receipts in the name of Jogen Das. Exhibit-‘Ka’ is the Jamabandi Copy of Kukurmara Gaon. Exhibit- ‘Kha’ is revenue paying receipts of Late Dandi Ram Das.

Stitching everything on record including the documents exhibited by either sides it reveals that the suit-land consists of 2 Kathas of land and is inherited by Jogen Das the father/ husband of the plaintiffs. The evidences of the defendants have also corroborated the aforesaid claim of the plaintiffs. All the evidences are corroborative in nature. The plaintiff has raised a construction on suit-land leaving a road on the eastern side. The plaintiffs have inherited their share of 2 Kathas of land. The plaintiffs have been residing in the suit-land for more than 60 years. As stated by the witnesses no blockage of the road on the eastern side of the suit-land have been created by the plaintiffs. The plaintiffs have been able to prove their case.

Accordingly these two issues are decided and go in-favour of the plaintiffs.

10. **Issue No. 3 and 4:**

In view of the present circumstances of the case, both the issues are taken up for discussion together. However with regards to the discussions made in the previous issues and the decisions arrived there-in, no further relief or reliefs are warranted in the present circumstances of the case.

Accordingly the issues are decided.

## **ORDER**

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

The plaintiffs are entitled to right, title and interest over the suit-land and permanent injunction is granted as prayed for, over the suit-land only.

Prepare decree accordingly.

Given under my hand and seal of this court on *14<sup>th</sup> day of August 2012.*

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

## **APPENDIX**

### **Plaintiff's Witnesses**

1. PW-1: Debojit Das

Exhibit-1(1) : Jogen Das as a pattadar of the suit-land.

Exhibit-2 : The revenue paying receipts in the name of

- Jogen Das.
- Exhibit-2(1) : The revenue paying receipts in the name of Jogen Das.
- Exhibit-2(3) : The revenue paying receipts in the name of Jogen Das.
2. PW-2: Sridhar Das
  3. PW-3: Arun Chandra Das

**Defendant's Witnesses**

1. DW-1: Babul Das  
Exhibit-Ka : Jamabandi Copy of Kukurmara Gaon  
Exhibit-Kha : Revenue paying receipts of Late Dandi Ram Das.
2. DW-2: Nagen Das
3. DW-4: Anima Das
4. DW-5: Tiluram Das
5. DW-6: Mina Das

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