

**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. 263/2011**

**Present:**

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

***3<sup>rd</sup> day of August, 2012***

**1) Smt Nijara Deka  
W.O: Dr. Munin Deka**

**2) Ujjala Das  
W.O: Late Dhiraj Das**

**3(1) Nabanita Deka**

**3(2) Anusmita Deka**

**3(3) Lipsita Deka**

**3(4) Miss Ankita Deka**

**4) Ellora Deka  
D/O Late Rajani Kanta Deka**

**5(1) Bobbeta Deka.....: Plaintiff(s).**

**-Versus-**

**1) Kalpana Haarika  
W.O: Unknown  
R.O: Gopinath Nagar,**

**Rajani Kanta Path, Kalapahar**

**Guwahati.**

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

**This suit coming on for final hearing on 25.07.2012 in the presence of:-**

1. **Sri. K Bhatta, J 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 ejectment and realization of arrear rent)*

1. ***Plaintiff's case:*** The plaintiff through the plaint stated inter-alia that they are the heirs of Late Rajani Kanta Deka of Gopinath Nagar, Guwahati-16. The Plaintiff No.1 although married is looking after the landed property. Late Rajani Kanta Deka had around 5 bighas of land in Dag no1 Patta no 1 of Kahilipara N.K. Green Wood Grant under Mouza Beltola District-Kamrup Assam. After the death of Rajani Kanta Deka the Plaintiff No.1 to 5 are jointly possessing and holding the land and houses left by him. They have left out an Assam Type House and had let out a part of the said house to the defendant. The said house has been more specifically described in the schedule of the plaint. In the year 1998 the said part of the house had been let out to the defendant at a monthly rent of Rs. 2500 (Two Thousand Five Hundred) only. The defendant paid house rent regularly. There was written agreement at the time of the commencement of the tenancy but the said written agreement has been lost by the plaintiffs at the time of the death function of the wife of Plaintiff No.3 in the year 2008. The defendant has stopped payment of the rent of the tenanted premises from August 2009. Since then the defendant have not

paid any rent to the plaintiffs. Thereafter the plaintiffs sent a legal notice to the defendant for the arrear rents on 09.03.2010 and the same was received by the defendant on 13.03.2010. The plaintiffs are paying all municipal tax of the holding no-219 as well as the land revenue of the concerned land of suit.

2. Thus the defendant has become a defaulter and hence is liable to be ejected under the law.

3. Accordingly the plaintiffs prayed for the followings:-

- i) Ejectment of the defendant from the suit premises by removing the defendant with all his men and materials there from.
- II) Decree for permanent injunction.
- III) Recovery and delivery of possession of the suit premises to the plaintiffs.
- IV) Realization of all the defaulted rent since August 2009 till date of decree.
- v) Cost of the suit.

4. Accordingly summons were issued to the defendant which were properly served vide order dated 27.01.2012. The defendant however did not contest the suit and the suit proceeded ex-parte. Later on Plaintiff No.3 and Plaintiff No.5 were substituted by their legal heirs vide order dated 12.03.2012.

5. The plaintiffs submitted evidence of 2 (two) witnesses in support of their case.

6. The Plaintiff No.1 examined herself as PW-1 and reiterated the plaint story.

The following documents were exhibited by the PW-1.

- |                  |   |                                   |
|------------------|---|-----------------------------------|
| <b>Exhibit-1</b> | : | Letter of authority.              |
| <b>Exhibit-2</b> | : | Legal notice dated 09-03-10       |
| <b>Exhibit-3</b> | : | Land document of plaintiffs.      |
| <b>Exhibit-4</b> | : | Municipal documents of the house. |

7. The plaintiffs also submitted evidence of PW-2 of Smt Ellora Deka who is the Plaintiff No.4 and deposed that she has no clash of interest with the other plaintiffs as regards the suit.

8. I have also heard arguments advanced by the ld. counsel for the plaintiffs.

There is no discrepancy in the evidence adduced by PW-1 and PW-2.

Reliance has also been made to *Lahoty Brothers Ltd.-Vrs- Kalidas Ghosh reported in 2006 (3) GLT 534* whereby it was held that the bonafide requirement of the landlord includes the requirement of the family which also includes requirement of suit premises. The defendants did not contest the suit and hence the suit proceeded ex-parte. Ex-parte trial does not mean automatic trial in favour of the plaintiff. However in the instant case there are no reasons to disbelieve the pleadings of the plaintiff along with evidence of PW-1 and PW-2. The documents exhibited by the plaintiff are duly proved. The suit is filed within time. After going through all the evidence on record the court finds that the plaintiffs have been able to prove its case.

9. **ORDER**

The suit is decreed ex-parte with cost.

The plaintiff is entitled to evict the defendant from the suit premises and to recover the vacant possession of the same.

The plaintiff is entitled to arrear rent as prayed for.

Prepare decree accordingly.

Given under my hand and seal of this court on *3<sup>rd</sup> day of August*

*2012.*

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

## **APPENDIX**

### **Plaintiff's Witnesses**

PW- 1: Smt Nijara Deka.

Exhibit-1 : Letter of authority.

Exhibit-2 : Legal notice dated 09.03.2010  
Exhibit-3 : Land document of plaintiffs.  
Exhibit-4 : Municipal documents of the house.

PW-2: Smt Ellora Deka.

**Defendant's Witnesses**

None

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