

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. 311/2006

Present:

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

18th day of August, 2012

1. **Ms. Mamoni Devi**
D.O: Late Kalbar Nath
R.O: Garpandu, Kumarpara
P.S: Jalukbari,
Guwahati
P.I.N: 781012
District: Kamrup (M), Assam
2. **Sri. Mani Nath**
D.O: Late Kalbar Nath
R.O: Garpandu, Kumarpara
P.S: Jalukbari,
Guwahati
P.I.N: 781012
District: Kamrup (M), Assam.....: Plaintiff(s).

-Versus-

1. **Sri. Dilip Kalita**
Sr. Engineer
2. **Sri. Kaushik Sen Laskar**
Sr. Engineer
3. **Sri. Prafulla Kalita**
RPF
4. **Sri. Hiren Gogoi**
Officer –in-charge Pandu

5. **Sri. J. Goswami**
Sr. Engineer

6. **Sri. B.C Das**
RPF

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

7. **Union of India**

8. **State of Assam**

9. **State of Assam**

10. **Deputy Commissioner Kamrup (M)**

11. **Superintendent of Police Kamrup (M)**

12. **Officer-In-Charge of Jalukbari Police Station**

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

This suit coming on for final hearing on 19.07.2012 in the presence of:-

1. **Self** : **Advocate for the plaintiff(s).**

And

2. **Sri. K.C Sarma** : **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:** The plaintiffs have been possessing 10 Bighas of vacant *Sarkari* land situated at Gar-Pandu as has been described in the Schedule of the plaint. Originally the said land was purchased by the father of the plaintiffs Late Kalbar Nath and his brother Late Madhu Nath jointly on 30.06.1977 from one Bhim Bahadur Gurung by executing a sale deed with residential houses existing there-on. Out of the 10 Bighas of land 9 Bighas always remain water logged and in the remaining 1 Bigha the plaintiffs have their dwelling houses. The principal defendants are serving in the RPF. On

08.02.2003 the principal defendants removed the fencing of the suit-land and threatened, that the plaintiffs would be evicted as the same is the property of the Railway. The plaintiffs claim that the suit-land is on a *Khas Sarkari* land belonging to the Government of Assam. The plaintiffs have paid GMC taxes for holding No. 1355 under Ward No.6. The cause of action arose on 08.02.2003 when the principal defendants pulled out the roadside fencing of the suit-land.

2. Later-on vide order dated 30.09.2011 in Misc(J) 428/ 11 the court allowed the plaintiffs to file amended plaint by impleading Union of India represented by General Manager N.F Railways, The state of Assam represented by Chief Secretary to the Govt. of Assam, The state of Assam represented by the Secretary to the Govt., Assam Revenue (S) Department, Dispur as co-defendants

Although the amendment of the plaint was allowed to the extent of impleading the aforesaid co-defendants yet the amended plaint made different prayers and also brought in some new facts to the plaint. In such circumstances the original prayer of the plaintiffs need to be considered.

3. **Plaintiff's prayer:** The plaintiff prayed for:
- I) A decree for declaring the possessory right of the plaintiffs to the suit-land.
 - II) Permanent injunction.
 - III) To issue precept to the Circle Officer.
 - IV) Cost of the suit.
 - V) To grant other relief or reliefs as the plaintiffs are entitled to.
4. **Defendant's version:** Although the defendant did not filed any additional written statement (W.S), the earlier W.S states that notice upon the defendants are not served Under Section 80 C.P.C which is a mandatory provision. The defendants further states that the disputed land belongs to the railway and is in the possession of the railway and hence specifically denies that the same was under the possession of the plaintiff. In the entire area there is no other land belonging to anybody except the railway. In-fact the entire land is free from any structure. The engineering staff has resisted preparation for unauthorized construction by the plaintiffs on the suit-land.

The defendants then prayed for dismissal of the suit.

5. **Issues:**

Upon perusal of the pleadings the issues were subsequently framed on 1.04.2011. The following issues were framed accordingly.

1. Whether the suit is maintainable in the absence of notice Under Section 80 C.P.C?
2. Whether the suit is bad for non-joinder of the Union of India and the state of Assam?
3. Whether the plaintiffs are in possession of the suit-land? If Yes whether the plaintiff could continue with possession to the exclusion of the principal defendants?
4. Whether the plaintiffs are entitled to the reliefs as prayed for?
5. To what relief/ reliefs, if any, the parties are entitled to?

6. **Witnesses:**

The plaintiffs and defendants examined one witnesses each.

7. **Proceedings of the suit:** The issues in the instant suit were framed on 13.04.2011 only after it was observed by this court that the original issues framed, went missing from the case-record. The issues were subsequently reframed on 13.04.2011. Moreover subsequently vide order dated 30.09.2011 in Misc (J) No. 428/ 11 new parties were impleaded.

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

The plaintiff herself advanced the arguments on her behalf. The defendants' argument was advanced by their ld. counsel. I have also heard arguments advanced by both the sides at length.

9. **Issue No. 1:** From perusal of the case record and other materials on record it reveals that no notices U/S 80 C.P.C were served upon the defendants as required by the provisions of law. Accordingly the plaintiff did not complied with the mandatory provision before filling a suit against public establishment nor was there any prayer in the plaint U/S 80(2) of the C.P.C.

Hence non-compliance of the said provision is bad in law. Issue is accordingly decided against the plaintiff.

10. **Issue No. 2:** The issues as a whole were re-framed on 13.04.2011 and subsequently vide order dated 30.09.2011 in Misc.(J) case 428/11 new parties were impleaded and accordingly amended plaint was filed impleading the Union of India and the State of Assam as parties to the suit.

Hence under the present circumstances of the case this issue is accordingly decided.

11. **Issue No. 3:** The plaintiffs have deposed that they were in possession of 10 Bighas of vacant *Sarkari* Land as has been described in the Schedule to the plaint. Originally the land was purchased by the father of the plaintiffs and later on, the same was inherited by the plaintiffs. However the defendants claim the said land to be the property of the railway and are in the possession of the railway. However the plaintiffs have not exhibited any relevant documents as regards their claim that the suit-land was in the exclusive possession of the plaintiffs. The plaintiff Mamoni Devi has deposed that the suit-land was purchased from one Bhim Bahadur Gurung but no relevant sale deed has been exhibited. Although Photostat copies of many documents have been annexed but none of them are the originals, and are not accordingly exhibited. And thus the same does not carry any evidentiary value to prove the claims of the plaintiffs. Although the defendants have also not exhibited any documents but the plaintiffs cannot rely upon the weakness of the defendants to prove their case. ***“Plaintiffs have to prove his case and cannot take advantage of weakness in defendant’s case as held in Punjab Urban Planning & Development Authority -Vs- Shiv Saraswati Iron & Steel Re-Rolling Mills, (1998) 4 SCC 539”***. Hence in the instant case it couldn’t be decided whether the plaintiffs are in possession of the suit-land. Moreover the plaintiff did not adduce evidence of any other witnesses to prove their claim in the instant suit.

Accordingly this issue is decided and goes against the plaintiffs.

12. **Issue No. 4 and 5:**

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

Accordingly the issues are decided.

13.

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 *18th day of August*
2012.

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

APPENDIX

Plaintiff's Witnesses

1. PW-1: Mamoni Devi

Exhibit : None.

Defendant's Witnesses

1. DW-1: Dilip Kalita

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