

MONEY SUIT NO:07 OF 2012
PLAINTIFF: SHRI AMBUNATH SHARMA
DEFENDANTS: SMTI MITALI DEVI & ORS

Form no. (J) 2

Heading of judgment in original suit/ case

In the original court of the Civil Judge, Dhubri

Present: Yusuf Azaz

Thursday, the 5th Day of January, 2017

MONEY SUIT NO: 07/ 2012

1) SHRI AMBUNATH SHARMA

Plaintiffs

versus

1) SMTI MITALI DEVI
2) SMTI JAYA DEVI
3) SHRI KANAK CH SHARMA
4) SHRI PRAFULLA SHARMA

Defendant/s

1) SHRI NIPON SHARMA
2) SMTI DEBJANI SHARMA

Proforma Defendant

This suit/ case coming on for final hearing on 23/ 11/2016 in the presence of –

SHRI M.K PATHAK, Advocate for the plaintiff; and

SHRI K.M HUSSAIN, Advocate for the defendants,

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

JUDGMENT

1. The plaintiff has instituted this suit against the defendants praying for the

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compensation due to his malicious prosecution.

2. The brief facts leading to this case, as is revealed from the plaint, is that:
3. The plaintiff, Shri Ambunath Sharma had instituted this suit against his daughter in law, Smti Mitali Devi and her parents and relative. The plaintiff had alleged that the defendant no:1, Smti Mitali Devi was married to his son namely, Shri Nipon Sharma (proforma defendant no:1) on 10/3/2010 as per Hindu rites and customs and thereafter the defendant no:1 came to reside at Gauripur alongwith her husband and the plaintiff. According to the plaintiff, after a few days of her marriage, the defendant no:1 returned back to her parental home on 17/7/2011 with a promise to return back soon, but she did not return back. The defendant no:2 and 3 (parents of defendant no:1) thereafter came to the house of the plaintiff on 25/9/2011 and started to quarrel and used slang words against him. Later on again on 18/12/2011 the defendant no:1 alongwith the defendant no:3 and the defendant no:4 came to the house of the plaintiff accompanied by police armed with a search warrant issued by the Court and entered the house of the plaintiff and took various articles belonging to the defendant no:1 and she also took some articles belonging to the plaintiff. The plaintiff pleaded that except him, the other members of his family were not present at his house on that day. The plaintiff further alleged that the defendant no:1 had used derogatory words against him that day. The plaintiff had alleged that later on he came to know that the defendant no:1 had instituted a false complaint case against the plaintiff and his family members before the Court of the Judicial Magistrate 1st Class, Nalbari being C.R case no: 2064/ 2011 under section 406/ 403/ 34 IPC. The plaintiff has alleged that the defendant no:1 had maliciously instituted this false case. According to the plaintiff, he

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had appeared before the Court of the Judicial Magistrate 1st Class, Nalbari in pursuance to the summons received by him and the Court of the Judicial Magistrate 1st Class, Nalbari had dismissed the said case vide his order dated 16/3/2012 as the complainant failed to make out any case. The plaintiff had alleged that the defendant no:1 had instituted the case against him without any reasonable cause for the reason of which he suffered wrongful loss and was also harassed mentally and physically; hence this suit praying for compensation to the tune of Rs.5,00,000/- for his malicious prosecution.

4. The defendant no:1 to 3 filed their joint written statement stating therein that the suit is not maintainable. The defendants contended that this Court does not have the territorial jurisdiction to try the suit because the cause of action, if any, arose within the jurisdiction of the Court at Nalbari as the complaint case was lodged at Nalbari and the defendants also reside at Nalbari. The abovenamed defendants further pleaded that the plaintiffs' son, i.e the husband of the defendant no:1 used to physically and mentally torture the defendant no:1 after marriage and demanded dowry of Rs.1,00,000/- and upon failure to meet the aforesaid demand of dowry, the proforma defendant no:1 had on 17/7/2011, on being influenced by the plaintiff and the proforma defendant no:2 drove the defendant no:1 out of their house. The defendants further pleaded that they never used any slang words or derogatory language against the plaintiff. The defendants, however, admitted that the defendant no:1 lodged the criminal case against the plaintiff and the proforma defendants and also admitted that search warrant was issued and the police recovered her belongings from the house of the plaintiff. The defendants contended that the defendant no:1 had lodged the complaint upon reasonable ground and that she had no

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malicious intentions; hence prayed for dismissal of the suit.

5. The defendant no:4 filed his written statement stating therein that the suit is not maintainable. The abovenamed defendant further contended that he never visited the house of the plaintiff as such there is no question of his using any derogatory language against the plaintiff. The defendant no:4 further contended that he never conspired or instigated the defendant no:1 to institute any complaint against the plaintiff; hence prayed for dismissal of the suit.
6. The proforma defendant no:1 and 2 filed their joint written statement admitted the pleadings of the plaint.
7. Upon the pleadings of the parties, the following issues were framed in this suit-

(1) Whether the suit is maintainable?

(2) Whether the plaint discloses a cause of action?

(3) Whether principal defendants had defamed the plaintiff?

(4) Whether the principal defendants had maliciously prosecuted the plaintiff?

(5) Whether the plaintiff is entitled to recover Rs.5,00,000/- as damages from the principal defendants?

(6) Whether the plaintiff is entitled to the reliefs as prayed for?

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(7) To what relief/ reliefs, if any, the parties are entitled?

8. I have heard the arguments put forwarded by both the parties. The plaintiff side adduced evidence in support of his case, but the defendants did not adduce any evidence.
9. Let me discuss the evidence on record and try to arrive at a definite finding as regards the issues framed.

DISCUSSION, DECISION, AND REASONS FOR THE DECISION

ISSUE NO.1 & 2:

10. The learned counsel for the defendants had contended that the plaintiff does not have any cause of action for this suit and that this suit is not maintainable because the plaintiff had instituted this suit for malicious prosecution; whereas the plaintiff was not at all "prosecuted". The learned counsel for the defendants had contended that the defendant no:1 instituted a criminal complaint against the plaintiff and his family members and in that complaint the plaintiff was summoned as an accused but the Court of the Judicial Magistrate 1st Class, Nalbari did not prosecute the plaintiff (accused) as no charges were framed against him but he (plaintiff) was merely discharged under section 245 CrPC. The learned counsel for the defendants had contended that "discharge" of the plaintiff would not amount to "acquittal" and moreover no "charge" was framed against the accused and no trial proceeded which had ended in acquittal of the plaintiff; hence this suit for damages due to "malicious prosecution" is not maintainable because the plaintiff is not at all "prosecuted".
11. The learned counsel for the plaintiff had contended that the defendant no:1

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had admittedly instituted a criminal complaint and the plaintiff was summoned as accused in that case as such it ought to be held that the plaintiff was "prosecuted".

12. In my considered opinion the contentions raised by the defendants is not sustainable because the word "prosecuted" cannot be understood in the strict sense it is applied under the Code of Criminal Procedure, 1973. Even though the word "prosecution" is not defined under the Code of Criminal Procedure, 1973, the aforesaid word is used in a very narrow sense under the Criminal law; whereas the word "malicious prosecution" used in the instant case is of a very wide connotation and it would mean the abuse of the process of Court with the malicious intention of harass the accused and not merely "prosecution" which ends in acquittal after full blown trial.
13. The Hon'ble Privy Council had the occasion to deal with such a case in **Mohamed Amin Vs Jogendra Kumar Bannerjee [Indian Appeals Vol:LXXIV Page 193]**. The facts of the case of Mohamed Amin (supra) is that the defendant therein instituted a complaint before the Judicial Magistrate against the plaintiff and the Judicial Magistrate took cognizance of the case and forwarded the complaint under section 202 CrPC for inquiry, which inquiry was later on done by the learned Magistrate himself in the presence of the accused after giving notice of the inquiry to the accused and thereafter the learned Magistrate concluded the inquiry and dismissed the complaint upon arriving at the conclusion that no case of cheating or any other offence is made out against the accused. The said accused as plaintiff thereafter instituted a case for damages due to malicious prosecution. It was held in the said case by the lower Courts that the plaintiff/ accused was not "prosecuted" because no charge was framed and

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no trial took place. The Hon'ble Privy Council however held after discussing the principles relating to malicious prosecution that the facts of the case warrant an action for malicious prosecution. The relevant observations made by the Hon'ble Privy Council is reproduced below for ready reference:

The action for damages for malicious prosecution is part of the common law of England, administered by the High Court at Calcutta under its letters patent. The foundation of the action lies in abuse of the process of the court by wrongfully setting the law in motion, and it is designed to discourage the perversion of the machinery of justice for an improper purpose. The plaintiff must prove that the proceedings instituted against him were malicious, without reasonable and probable cause, that they terminated in his favour (if that be possible), and that he has suffered damage. As long ago as 1698 it was held by Holt C.J. in Savile v. Roberts⁴⁰ that damages might be claimed in an action under three heads, (1.) damage to the person, (2.) damage to property, and (3.) damage to reputation, and that rule has prevailed ever since. That the word "prosecution" in the title of the action is not used in the technical sense which it bears in criminal law is shown by the fact that the action lies for the malicious prosecution of certain classes of civil proceedings, for instance, falsely and maliciously presenting a petition in bankruptcy or a petition to wind up a company (Quartz Hill Consolidated Gold Mining Co. v. Eyre⁴¹.) The reason why the action does not lie for falsely and maliciously prosecuting an ordinary civil action is, as explained by Bowen L.J. in the last mentioned case, that such a case does not necessarily

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and naturally involve damage to the party sued. A civil action which is false will be dismissed at the hearing. The defendant's reputation will be cleared of any imputations made against him, and he will be indemnified against his expenses by the award of costs against his opponent. The law does not award damages for mental anxiety, or for extra costs incurred beyond those imposed on the unsuccessful party. But a criminal charge involving scandal to reputation or the possible loss of life or liberty to the party charged does necessarily and naturally involve damage, and in such a case damage to reputation will be presumed.

From this consideration of the nature of an action for damages for malicious prosecution emerges the answer to the problem before the Board. To found an action for damages for malicious prosecution based on criminal proceedings the test is not whether the criminal proceedings have reached a stage at which they may be correctly described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results. Their Lordships are not prepared to go as far as some of the courts in India in saying that the mere presentation of a false complaint which first seeks to set the criminal law in motion will per se found an action for damages for malicious prosecution. If the magistrate dismisses the complaint as disclosing no offence with which he can deal, it may well be that there has been nothing but an unsuccessful attempt to set the criminal law in motion, and no damage to the plaintiff results. But in this case the magistrate took cognizance of the complaint, examined the complainant on oath, held an inquiry in open court under s. 202 which the plaintiff

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attended, and at which, as the learned judge has found, he incurred costs in defending himself. The plaint alleged the institution of criminal proceedings of a character necessarily involving damage to reputation and gave particulars of special damage alleged to have been suffered by the plaintiff. Their Lordships think that the action was well founded, and on the findings at the trial the plaintiff is entitled to judgment.

14. It is seen from the above that the real test is not whether the criminal proceeding has reached a stage which may be correctly designated as "prosecution", but the real test is as to whether the proceeding had reached to such a stage that damage to the plaintiff results. Keeping the above law in mind when we revert back to the facts of this case it is seen that the plaintiff was admittedly issued summons in this case and he had appeared before the Court at Nalbari in pursuance to the said summons and had defended himself and took part in the proceeding and evidence of the complainant (defendant no:1) was recorded before charge and she was also cross examined by the plaintiff herein as accused in that case which is revealed from the order of the learned Magistrate passed on 16/3/2012 (exhibit 2). The learned Magistrate thereafter discharged the plaintiff and dismissed the complaint. In view of the above it has to be held that the plaintiff was "prosecuted" within the meaning of "malicious prosecution" as used in Civil suits for damages and hence it is held that this suit for damages for malicious prosecution is maintainable and the plaint discloses cause of action.

15. The learned counsel for the defendants had further contended that this Court does not have the territorial jurisdiction to try the suit as the cause of

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action arose within the jurisdiction of the Court at Nalbari because it was the Court at Nalbari which had prosecuted the accused and moreover the defendants permanently resides at Nalbari.

16. The learned counsel for the plaintiff had contended that this Court had the jurisdiction to try the suit because the plaintiff resides at Gauripur within the jurisdiction of this Court and the summons was served upon the accused (plaintiff) at Gauripur and search warrant was issued and the house of the plaintiff was searched and articles were seized from the house of the plaintiff and further derogatory words were used against the plaintiff at Gauripur and the reputation of the plaintiff was harmed at Gauripur.
17. The suit of such a nature for damages for wrong done to a person is governed by section 19 of the CPC and it provides that such a suit for damages could be instituted where the wrong was done or where the defendant resides at the option of the plaintiff. In the instant case at hand it is an admitted fact that the criminal proceeding was instituted at Nalbari but the house of the plaintiff is situated at Gauripur and admittedly the search warrant was issued and the house of the plaintiff at Gauripur was searched and summons upon the plaintiff was also served at Gauripur and the damage to the reputation of the plaintiff was allegedly done at Gauripur; as such it is seen that some portion of the wrong was done at Gauripur, i.e within the jurisdiction of this Court; hence it is held that this Court has the jurisdiction to try the suit. In fact the in the case of **Khanchand Pokdardas Vs Harumal Varma [1965 CrLJ 75]** the Hon'ble Bombay High Court in a similar case had held that the jurisdiction of the Court where the summons upon the accused was served would have the jurisdiction to try the suit for damages due to malicious prosecution. In the case of

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Khanchand (supra), the criminal proceeding was initiated at the Court at Bombay but the summons was served upon the accused at Poona and the accused as plaintiff had instituted the suit for damages due to malicious prosecution at the Court at Poona. The relevant observations made by the Hon'ble Bombay High Court is reproduced below for ready reference:

It is, therefore clear that the court within the local limits of whose jurisdiction that part of the wrong was done will have jurisdiction to entertain the suit for malicious prosecution. In my view therefore, the learned trial Judge was right in taking the view that the summons in the Criminal case having been served upon the plaintiff at Poona, he had jurisdiction to entertain the suit under Section 19 of the Civil Procedure Code. I may indicate that the Mysore High Court has also taken a similar view in Golakdas Vs Baldevdas, AIR 1961 Mys 188.

18. In view of the above discussions it is held that this Court has the territorial jurisdiction to try the suit.
19. In view of the above discussions it is held that the suit is maintainable and that the plaint discloses a cause of action.
20. DECISION: The issue no:1 and 2 are answered in the affirmative and in favour of the plaintiff.

ISSUE NO.3,4 & 5:

21. All the above referred three issues are taken together for discussion as they are intricately connected to each other and decision in one issue would

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affect the other issues.

22. The plaintiff had alleged that he had been maliciously prosecuted by the defendant no:1 and that he had been discharged from the said proceeding vide order dated 16/3/2012 (exhibit 2) and as such he had instituted this suit for damages due to malicious prosecution.
23. The plaintiff (PW1) had examined himself in support of his case and he had produced the certified copy of the complaint which was lodged against him by the defendant no:1 and the same is marked as exhibit 1. The perusal of the complaint (exhibit 1) reveals that the defendant no:1 had stated therein that she had married the son of the plaintiff and after her marriage she went to the house of the plaintiff to reside but her husband (proforma defendant no:1) tortured her physically and mentally and drove her out of his house. Thereafter her parents went to the house of the plaintiff, but they were rebuked. The complainant (defendant no:1) further maintained that at the time of her marriage several Stridhan articles were given to her and she fears that the accused persons, i.e the plaintiff and the proforma defendants would sell those articles and misappropriate the same and criminal breach of trust. It is further revealed that a case under section 403/406/ 34 IPC was registered against the plaintiff and the proforma defendants and thereafter the Court took cognizance and search warrant was issued so as to search and seize the articles given to the defendant no:1 in her marriage and accordingly the police went to the house of the plaintiff and seized those articles after preparing a list of the same.
24. It is seen from the above that it is an admitted fact that the defendant no:1 had lodged the complaint alleging criminal breach of trust as she feared that her articles might be misappropriated and sold by the plaintiff and the

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proforma defendants. It is also an admitted fact that the articles belonging to the plaintiff and as mentioned in the complaint petition were found at the house of the plaintiff when the said house was searched and the said articles were seized by the police. The plaintiff (PW1) had specifically admitted in his examination in chief that the defendant no:1 came alongwith police armed with a search warrant and **took all her belongings** and some other things which belonged to the plaintiff. The words underlined by me for emphasis is very important in the facts and circumstances of this case because the plaintiff had admitted that the belongings of the defendants no:1 were at this house and the police had seized those "belongings of the defendant no:1"; as such it is seen that the contents of the complaint does not appear to be unfounded or outright false or malicious. The complainant (defendant no:1) had alleged that her belongings are at the house of the plaintiff and in fact admittedly those belongings were found at the house of the plaintiff; as such it cannot be said that the complaint or allegations against the plaintiff were unfounded or that the defendant no:1 had no reasonable and probable ground for lodging the criminal proceeding.

25. If no articles belonging to the defendant no:1 was at the house of the plaintiff and the defendant no:1 would have falsely alleged the same then it could have been said that the defendant no:1 had lodged the case without reasonable ground or for that matter "maliciously", but in the instant case at hand, it is an admitted fact that there was some dispute between the parties herein and admittedly the "belongings" of the defendant no:1 were at the house of the plaintiff; hence it cannot be said that the defendant no:1 had malicious intentions in lodging the criminal proceeding or that the allegations were unfounded.

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26. The plaintiff (PW1) had further deposed that some of his belongings were also taken by the defendant no:1 but the plaintiff did not specify as to what were those 'things' belonging to him and he had admittedly never applied before the Court of the Judicial Magistrate 1st Class, Nalbari which had seized those articles to give him back his "things" as such I do not find any substance in such an allegation and the evidence of the plaintiff in this regard cannot be relied upon and believed in the absence of detailed particulars.
27. The plaintiff (PW1) further deposed that the defendant no:1 had "misbehaved" and "defamed" him, but the plaintiff had failed to state as to how he was "misbehaved" or what words were used against him or as to how he was "defamed". Institution of a criminal proceeding per se cannot be termed as "defamatory", unless it can be shown that the reputation of the plaintiff was lowered in the estimation of the persons who had known him because of some false allegations or imputations made against him. In the instant case at hand, the plaintiff had merely stated that he was "defamed" but he failed to state as to how and why and in whose estimation he was "defamed" and what were the false allegations or imputations which lowered his reputation or assassinated his character.
28. The plaintiff had further examined one Shri Dilip Kumar Ray (PW2) but he also did not state as to how and why the plaintiff was defamed. He (PW2) merely stated in his examination in chief that the plaintiff was a retired teacher and member of Assam Sahitya Sabha and one day the defendant no:1 came with police and a Mini truck and **took all her belongings** by loading the same in the truck and an altercation took place and she misbehaved with the plaintiff. It is seen that the PW2, Shri Dilip Kumar Ray

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had also failed to depose anything as regards the lowering of the reputation of the plaintiff in his estimation and in fact did not state that the plaintiff was "defamed". Mere altercation cannot be a ground to conclude that the plaintiff was "defamed" because the PW2 had failed to state what was the nature of altercation and who was at fault for the altercation taking place and what words were used by the defendant no:1 during the altercation and whether the said words were per se "defamatory" or not; hence it is held that the plaintiff had failed to prove that he was "defamed".

29. Even otherwise, the perusal of the order of dismissal dated 16/3/2012 (Exhibit 2) reveals that the learned Magistrate had observed in his order that the complainant (defendant no:1) is not willing to proceed against the accused persons as she received back her "stridhan" articles. The learned Magistrate had stated in the above order as:

.....Besides, the statements show that no case is made out against the accused persons as alleged as the complainant clearly states that she has received all the stridhan and has no claim against the accused persons."

30. It is seen from the above that the learned Magistrate did not dismiss the complaint by holding that the allegations were false and baseless, but he dismissed the complaint as the complainant had received her stridhan articles and she had no further claim against the accused persons, which shows that the intention of the complainant was not at all malicious because if her intentions were really "malicious" then she would not have stated that she does not have any claim against the accused persons but would have prosecuted the accused persons further. Moreover, the fact that the stridhan articles belonging to the defendant no:1 were admittedly found at

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the house of the plaintiff leads me to conclude that the proceeding initiated against the accused cannot be said to be "malicious" because the defendant no:1 had reasonable ground for initiating the proceeding.

31. It is also a settled position of law that mere initiation of criminal proceeding and getting acquitted from the said proceeding cannot give rise to a cause of action for damages due to "malicious prosecution" unless it can be shown be leading cogent evidence that the said proceeding was "malicious", i.e instituted with the sole motive to harass the accused without any reasonable ground. The Hon'ble Gauhati High Court had in the case of **Syed Alauddin Mia Vs Sarungbam Ibobi Singh [1989 (2) GLJ 31]** discussed the law relating to malicious prosecution and held that in a suit for malicious prosecution the plaintiff must prove the ingredients stated below:

(i) the prosecution by the defendant of a criminal charge against the plaintiff in a competent court;

(ii) the proceeding terminated in acquittal of the plaintiff;

(iii) there was an absence of reasonable and probable cause for proceeding;

(iv) the defendant instituted or carried on such proceeding maliciously;

(v) the plaintiff has suffered damages.

32. It is evident from the above that not only the plaintiff has to show that he was prosecuted and acquitted, but he has to further show that the prosecution was malicious, i.e without any reasonable and probable cause, which in other words means that it has to been false and with malicious

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intention. Mere lodging of a criminal prosecution and mere acquittal of the plaintiff does not give rise to a cause of action for a suit claiming compensation for malicious prosecution, but the most important ingredient constituting the cause of action for a suit claiming compensation for malicious prosecution is the "absence of reasonable and probable cause for lodging the criminal case". In the instant case at hand, it is established that there was a reasonable and probable cause for initiating the prosecution; hence merely because the plaintiff/ appellant was discharged/ acquitted, the same would not give rise to cause of action for this suit; and consequently it is held that the plaintiff has failed to show he was maliciously prosecuted.

33. In view of the above discussions it is held that all the plaintiff has failed to prove that he was maliciously prosecuted and it is further held that the plaintiff was not defamed as such it is held that the plaintiff is not entitled to any compensation for damages due to malicious prosecution or otherwise and consequently the issue no:3,4 and 5 are answered accordingly.

34. DECISION: The issue no:3,4 and 5 are answered in the negative and against the plaintiff.

ISSUE NO:6:

35. In view of the discussions made above and the decisions reached in the foregoing issues, more particularly the issue no:3,4 and 5 it is held that the plaintiff is not entitled to any relief in this suit.

ORDER

36. In view of the above discussions and the decisions reached in the foregoing issues the suit of the plaintiffs is dismissed on contest with cost. It is held

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that the plaintiff is not entitled to any reliefs.

37. The suit is dismissed on contest with cost.

38. Prepare decree accordingly.

Given under my hand and seal of this court on this the 5th day of January, 2017
at Dhubri.

Yusuf Azaz,
Civil Judge, Dhubri.

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

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APPENDIX

PLAINTIFF'S WITNESSES :

- 1) SHRI AMBUNATH SHARMA
- 2) SHRI DILIP KUAMR ROY

DEFENDANT'S WITNESSES:-

NONE

PLAINTIFF'S EXHIBITS :-

- 1) EXT. 1- CERTIFIED COPY OF COMPLAINT PETITION
- 2) EXT. 2- CERTIFIED COPY OF ORDER DATED 16/3/2012
- 3) EXT. 3- ADVOCATE'S NOTICE
- 4) EXT. 4- REPLY TO ADVOCATE'S NOTICE BY MITALI DEVI DATED 3/10/2012

DEFENDANT'S EXHIBITS :

NONE

Yusuf Azaz,
Civil Judge, Dhubri.

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