

TITLE SUIT NO:13 OF 2014
PLAINTIFF: SHRI MUSHA ALI
DEFENDANT: SMTI PARVATI DEVI @ DEVYA & ANR

Form no. (J) 2

Heading of judgment in original suit/ case

In the original court of the Civil Judge, Dhubri

Present: Yusuf Azaz

Tuesday, the 17th day of January, 2017

TITLE SUIT NO:13/ 2014

1) SHRI MUSHA ALI
S/O MD AMJAD ALI
R/O- VILLAGE- HAKAMA PART II, P.S- BILASIPARA
DISTRICT- DHUBRI, ASSAM

Plaintiffs

versus

1) SMTI PARVATI DEVI @ DEVYA
W/O LT TITA MAHAN ROY
R/O VILLAGE- WARD NO:9, BILASIPARA
DISTRICT- DHUBRI, ASSAM

Defendant/s

1) THE STATE OF ASSAM

This suit/ case coming on for final hearing on 28/11/2016 in the presence of –

SHRI C.B.A MOLLAH, Advocate for the plaintiff; and

NONE for the defendant,

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

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

JUDGMENT

1. The plaintiff has instituted this suit against the principal defendant praying for specific performance of the contract for sale of the suit land.
2. The brief facts leading to this case, as is revealed from the plaint, is that:
3. The plaintiff, Shri Musha Ali had instituted this suit against the defendant, Smti Parvati Devi @ Deyva stating therein that the defendant is the owner having the right, title and interest over two plots of land measuring about 1 Bigha 3 Kathas 19 Lessas in two separate Pattas and Dags (hereinafter referred to as the suit land and more particularly described in the schedule of the plaint). The plaintiff had alleged that he had entered into an agreement with the defendant to purchase the suit land for a total sale consideration of Rs.21,00,000/- and out of the aforesaid consideration he had paid Rs.8,00,000/- to the defendant as advance and it was agreed that the balance sale consideration would be paid after obtaining land sale permission at the time of registration of formal sale deed. The plaintiff had pleaded that they had entered into a written agreement of sale on 24/6/2013. According to the plaintiff, he also obtained the land sale permission, and after obtaining the same he approached the defendant to receive the balance sale consideration and to execute the registered sale deed, but the defendant refused; hence this suit praying for the specific performance of the aforesaid contract for sale.
4. The summons was served upon the defendants but they remained absent as such the suit proceeded ex-parte against them.

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5. The plaintiffs adduced evidence in support of his case, however, the defendant did not adduce evidence.
6. Considering the fact that there is no written statement in this suit, I have framed the following point for determination-

(1) Whether the plaintiff and the defendant entered into an agreement to sell the suit land? If yes, whether the plaintiff paid Rs.8,00,000/- as advance sale consideration out of the total amount of Rs.21,00,000/-?

(2) Whether the plaintiff was/is ready and willing to perform his part of the contract?

(3) Whether the plaintiff is entitled to the decree as prayed for?

7. I have heard the arguments put forwarded by the plaintiffs.
8. Let me discuss the evidence on record and try to arrive at a definite finding as regards the point for determination in the suit.

DISCUSSION, DECISION, AND REASONS FOR THE DECISION

POINT FOR DETERMINATION NO:1,2 and 3:

9. All the points for determination are taken together for discussions as they are intricately connected to each other.
10. The plaintiff had pleaded that he had entered into an agreement to purchase the suit land from the defendant and had paid Rs.8,00,000/- as

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advance towards the total sale consideration of Rs.21,00,000/-. The plaintiff (PW1) had deposed in support of his case and had produced the agreement of sale which is marked as exhibit 1. There is nothing on record to doubt or disbelieve the deposition of the plaintiff. The bare perusal of the exhibit 1 reveals that the plaintiff and the defendant entered into an agreement and it was agreed that the defendant would sell the suit land to the plaintiff for total sale consideration of Rs.21,00,000/- and out of the aforesaid amount the defendant received Rs.8,00,000/- as advance and she acknowledged the receipt of the same vide the exhibit 1.

11. It is, therefore, held that the plaintiff and the defendant entered into an agreement to purchase the suit land for total sale consideration of Rs.21,00,000/- and out of the aforesaid amount he (plaintiff) had paid Rs.8,00,000/- to the defendant.

12. The plaintiff (PW1) had specifically deposed that he is ready and willing to pay the remaining amount of Rs.13,00,000/-, and had in fact requested the defendant to receive the same and execute the formal sale deed as per the exhibit 1, but the defendant refused; hence it is held that the plaintiff was and is ready and willing to perform his part of the contract, but the defendant failed and neglected to perform her part of the contract.

13. In view of the above discussions it is held that the plaintiff is entitled to a decree for specific performance of the contract and the defendant is liable to execute a formal registered sale deed in terms of the exhibit 1 upon receipt of Rs.13,00,000/-.

14. In view of the above discussions the points for determination no:1,2 and 3 are answered in the affirmative and in favour of the plaintiff.

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ORDER

15. In view of the above discussions and the decisions reached in the foregoing point for determinations, the suit of the plaintiff is decreed ex-parte with cost. It is hereby decreed and directed that the plaintiff do pay to the defendant the balance sale consideration of Rs.13,00,000/- (thirteen lakh) within three months from today and upon receipt of the same, the defendant is directed to execute a formal registered sale deed in this regard and thereafter to deliver the possession of the suit land to the plaintiff and is permanently restrained thereafter from interfering with the possession of the plaintiff.

16. The suit is decreed ex-parte with cost.

17. Prepare decree accordingly.

Given under my hand and seal of this court on this the 17th 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) PW1- SHRI MUSHA ALI
- 2) PW2- SHRI HARUN RASHID
- 3) PW3- SHRI SOBUR ALI
- 4) PW4- SHRI RAJU SK

DEFENDANT'S WITNESSES:-

NONE

PLAINTIFF'S EXHIBITS :-

- Ext.1- CERTIFIED COPY OF AGREEMENT OF SALE
- Ext.2- POLICE REPORT
- Ext.3- ACKNOWLEDGEMENT CARD
- Ext.4- POSTAL RECEIPT
- Ext.5- PLEADERS' NOTICE
- Ext.6- REPLY OF PLEADER'S NOTICE
- Ext.7- AFFIDAVIT

DEFENDANT'S EXHIBITS :-

None.

Yusuf Azaz,
Civil Judge, Dhubri

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.