

TITLE SUIT NO:16 OF 2010  
PLAINTIFF: SMTI SIDDIKA KHATUN & ANR  
DEFENDANTS: SHRI SAIDUL ISLAM & ORS

**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 10<sup>th</sup> Day of January, 2017

TITLE SUIT NO: 16/ 2010

- 1) SMTI SIDDIKA KHATUN
- 2) SHI ABDUL MANNAN

Plaintiffs

*versus*

**GROUP A DEFENDANTS:**

- 1) SHRI SAIDUL ISLAM
- 2) SHRI SIPAR ISLAM
- 3) SHRI SAIFUL ISLAM
- 4) SHRI NAIFUL ISLAM
- 5) SHRI RUPALI KHATUN
- 6) SMTI RUMI KHATUN
- 7) SMTI ELI KHATUN
- 8) SMTI SONALI KHATUN

**GROUP B DEFENDANTS:**

- 9) SHRI ABU SAMA
- ~~10) SHRI NATUN SK (NAME STRUCK OFF)~~
- 11) SHRI HAJRAT ALI
- 12) SHRI SUKUR ALI
- 13) SHRI MAHESH ALI
- 14) SHRI NOOR ISLAM
- ~~15) SHRI RAFIQU L SK (NAME STRUCK OFF)~~
- ~~16) SHRI SAYFAR ALI (NAME STRUCK OFF)~~

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

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**GROUP C DEFENDANTS:**

- 17) SHRI NOOR ISLAM
- 18) SMTI ROSE MONDAL
- 19) SHRI LUTFAR RAHMAN
- 20) SHRI NASHIRUL ISLAM
- 21) SHRI NABIUL ISLAM MONDAL @ NIPON
- 22) SHRI SAHABUDDIN MONDAL
- 23) SHRI YUSUF MONDAL
- 24) SHRI ABU MUSTAFA MONDAL
- 25) SHRI MUKUL MONDAL
- 26) SHRI EDU MONDAL
- 27) SHRI ABDUL AUWAL

**GROUP D DEFENDANTS:**

- ~~28) SHRI BADSA ALOM (NAME STRUCK OFF)~~
- ~~29) SHRI SOPIAR ISLAM (NAME STRUCK OFF)~~
- 30) SHRI ASHRAB ALI
- ~~31) SHRI AFSAR ALI (NAME STRUCK OFF)~~
- ~~32) SHRI BAKTAR ALI (NAME STRUCK OFF)~~
- ~~33) SHRI ALIMUDDIN (NAME STRUCK OFF)~~
- ~~34) SHRI JAMIR ALI (NAME STRUCK OFF)~~
- ~~35) SHRI ABDUL SAMAD (NAME STRUCK OFF)~~
- ~~36) SHRI RAMJAN ALI (NAME STRUCK OFF)~~

Defendant/s

- 37) THE STATE OF ASSAM
- 38) THE SETTLEMENT OFFICER, DHUBRI
- 39) THE ASSISTANT SETTLEMENT OFFICER, MANKACHAR
- 40) THE SUB. DIVISIONAL OFFICER, SOUTH SALMARA

This suit/ case coming on for final hearing on 30/11/2016 in the presence of –

SHRI S. HUSSAIN, Advocate for the plaintiff; and

SHRI A. LATIF, Advocate for the defendants,

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

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### **JUDGMENT**

1. The plaintiffs have instituted this suit against the defendants praying for partition of the schedule A land and for recovery of their separate share and correction of land records as well as cancellation of sale deed no:288/ 2010 and other reliefs.
2. The brief facts leading to this case, as is revealed from the plaint, is that:
3. The plaintiffs had instituted this suit stating therein that the plaintiff no:1, Smti Siddika Khatun and her sister namely, Maleya Khatun were the joint owners of a plot of land measuring about 25 Bighas 1 Katha covered by Khatian no:418 of Dag no: 934 situated at village- Sadullabari (more particularly described in the schedule A of the plaint). According to the plaintiffs, the plaintiff no:1, Smti Siddika Khatun and Maleya Khatun (Saleka Khatun) amicably partitioned the schedule A land in equal shares since a long time ago and possessed their respective plots of land. Thus the plaintiff no:1 received share of land measuring 12 Bighas 3 Kathas on the Eastern portion of the schedule A land and the sister of the plaintiff no:1 namely, Smti Maleya Khatun received her share of 12 Bighas 3 Kathas in the Western portion of the schedule A land. Thereafter Maleya Khatun died about 20 years ago leaving behind the defendant no:1 to 8 as her legal heirs and successors and amongst them the defendant no:1 to 4 alongwith the plaintiff no:1 got their names recorded in the revenue records in respect of the entire schedule A land. The plaintiffs have pleaded that the defendant no:1 to 8 (Group A defendants) are trying to sell the land which fell in the share of the plaintiff no:1 (more particularly described in the schedule B of the plaint) and the defendants of Group B have started to construct houses over the schedule B land by dispossessing the plaintiffs; hence this suit

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praying for the partition of the suit land because according to the plaintiffs, the suit land is not legally partitioned and for recovery of possession of the schedule B land by evicting the defendants. The plaintiff no:2 is the power of attorney holder of the plaintiff no:1 in respect of the suit land.

4. The suit was later on amended and the plaintiffs pleaded by way of amendment that the defendant no:1 to 4 in collusion with the defendant no:40 sold a portion of the suit land vide registered sale deed no: 228/ 2010 to the defendant no:17; as such prayed for cancellation of the said sale deed.
5. It would further be pertinent to mention herein that the names of the defendant no: 10, 15, 16, 28, 29, 31, 32, 33, 34, 35 and 36 were struck off upon the prayer of the plaintiffs as because according to the plaintiffs the abovenamed defendants had left the suit land and vacated the same; hence the plaintiffs do not want to claim any reliefs against them.
6. The defendant no:1 to 8 and 17 filed their joint written statement stating therein that the suit is not maintainable and that the same is bad for non joinder of necessary parties. The abovenamed defendants admitted that the plaintiff no:1 and Maleya Khatun jointly owned the land of schedule A and also admitted that the suit land was partitioned, but according to the defendants, the plaintiff no:1 had already sold her share in the schedule B land to the defendant no:9 to 16 about 30 years ago and delivered the possession of the same to the defendant no:9 to 16; hence the plaintiffs do not have any right, title or interest over the suit land. The abovenamed defendants pleaded that they are not in possession of the schedule B land, but it is the defendant no:9 to 16 who are in possession of the suit land. The abovenamed defendants further pleaded that the defendant no:1 to 4

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had sold the land to the defendant no:17 vide sale deed no:288/ 2010 and the aforesaid land fell in their share, i.e the land of the western portion of the schedule A land; hence prayed for dismissal of the suit.

7. The suit proceeded ex-parte against the remaining defendants.
8. Upon the pleadings of the parties, the following issues were framed in this suit-

***(1) Whether the suit is maintainable?***

***(2) Whether the suit is barred by limitation?***

***(3) Whether the suit is bad for non joinder of necessary parties?***

***(4) Whether the schedule A land was initially owned jointly by the plaintiff no:1 and Lt Maleya Khatun (since deceased), i.e the predecessor in interest of the defendant no:1 to 8 (Group A defendant)?***

***(5) Whether the schedule A land was amicably partitioned between the plaintiff no:1 and Lt Maleya Khatun during her lifetime in equal shares of 12 Bighas 3 Kathas each? If yes, whether the land of the eastern portion of the schedule A, i.e the schedule B land fell in the share of the plaintiff no:1 and she was in possession of the same until allegedly dispossessed by the defendants?***

***(6) Whether the defendants had illegally dispossessed the plaintiff no:1 from the schedule B land in November, 2009?***

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***(7) Whether the sale deed no:288 dated 5/5/2010 is liable to be cancelled and declared as null, void and inoperative in law?***

***(8) Whether the plaintiff is entitled to the reliefs, as prayed for?***

***(9) To what other relief/ reliefs, if any, the parties are entitled to?***

9. I have heard the arguments put forwarded by both the parties. Both the parties have adduced evidence in support of their respective case.
10. 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 & 3:**

11. The defendants had contended that the suit is not maintainable but they had failed to specifically plead or show as to why the suit is not maintainable and further the perusal of record does not disclose as to why the suit is not maintainable as such it is held that the suit is maintainable.
12. The defendants had further contended that the suit is bad for non joinder of necessary parties, but the defendants had failed to enumerate as to who are those persons and why they are necessary parties; as such it is held that the suit is not bad for non joinder of any other persons.
13. In view of the above discussions it is held that the suit is maintainable and it

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is not bad for non joinder of any other persons.

14. DECISION: The issue no:1 and 3 are answered in favour of the plaintiffs.

**ISSUE NO.4,5 and 6:**

15. All the above referred issues are taken together for discussion as they are intricately connected to each other and decision in one issue would affect the other issues.
16. The plaintiffs have alleged that land measuring about 25 Bighas 1 Kathas (Schedule A) land was jointly owned by the plaintiff no:1 and her sister, Smti Maleya Khatun (since deceased and predecessor of the defendant no:1 to 8) and they further pleaded that the schedule A land was partitioned amongst themselves and after partition the schedule B land measuring about 12 Bighas 3 Kathas on the Eastern portion of the schedule A land fell in the share of the plaintiff no:1 and similarly the remaining 12 Bighas 3 Kathas on the Western portion of the schedule A land fell in the share of Maleya Khatun and since then they started to possess their respective plots of land.
17. The perusal of the written statement filed by the defendant no:1 to 8 and 17 reveals that they have specifically admitted the above fact and they had admitted that the schedule B land fell in the share of the plaintiff no:1 and the remaining western portion of the schedule A land fell in the share of Maleya Khatun. It is seen from the above that there is absolutely no dispute in respect of the above factum regarding the ownership of schedule A land and also in respect of the partition of the above land. It is seen from the above that it is an admitted fact that the plaintiff no:1 had the right, title

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and interest over the schedule B land after partition of the schedule A land amicably between the co-owners.

18. The plaintiffs had, however, pleaded that the defendant no:9 to 16 (Group B) in collusion with the defendants of Group A (defendant no:1 to 8) and the Group C and Group D defendants had illegally trespassed into and constructed their houses over the schedule B land, i.e the land which fell in the share of the plaintiff no:1 in the last week of November, 2009. The defendant no:1 to 8 and 17 had also admitted in their written statement that the defendant no:9 to 16 (Group B) are in possession of the schedule B land, but according to the said defendants, the plaintiff no:1 had sold the schedule B land to the above named defendant no:9 to 16. It is seen from the above that the defendants had admitted that the defendant no:9 to 16 are in possession of the schedule B land, but according to them the defendant no:9 to 16 had purchased the same about 30 years ago.

19. In this regard I would like to point out that the defendant no:9, 11, 12, 13, and 14 did not appear and contest the suit and the same proceeded ex-parte against them. It would further be pertinent to mention herein that the names of the defendant no:10, 15 and 16 were struck off upon the prayer of the plaintiff because according to the plaintiffs they left the suit land and premise and hence the plaintiffs had no claim against them. It is, therefore, seen that the defendant no:9,11,12,13 and 14 against whom the plaintiffs alleged that they are in forcibly possession of the suit land did not dispute the same and did not file any written statement denying the allegations made by the plaintiffs and also did not raise any separate defence in their favour; as such it is deemed that the abovenamed defendants had admitted the above factum of forcibly dispossession.

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20. Moreover, the defendant no:1 to 8 and 17 have pleaded in their written statement that the defendant no:9 to 16 had purchased the schedule B land, but the above named defendants did not produce any sale deed and also did not adduce any evidence in this regard; as such it is held that the defendants had failed to prove that the defendant no:9,11,12,13, and 14 had purchased the schedule B land from the plaintiff no:1.
21. The plaintiffs have also produced the certified copy of the suit Khatian no:418 (exhibit 1) which shows that the said Khatian comprised of land measuring about 25 Bighas 1 Kathas and the plaintiff no:1 and Maleya Khatun were the recorded raiyots in respect of the above land which specifically proves that the plaintiff no:1 and Maleya Khatun were the joint owners in respect of the schedule A land.
22. Further, the defendants had examined the defendant, Shri Saidul Islam (DW2) in support of their case and he had specifically admitted in his evidence that land measuring about 25 Bighas fell in the share of the plaintiff no:1 and his mother, Maleya Khatun (written as Saleha in cross examination) and they partitioned the same and accordingly the land measuring 12 Bighas 3 Kathas towards the western side of the aforesaid land fell in the share of his mother, Maleya Khatun and the remaining land measuring about 12 Bighas 3 Kathas towards the Eastern side (Schedule B) fell in the share of the plaintiff no:1. The DW2 further went on to depose that they have no claim over the land which fell in the share of the plaintiff no:1, i.e the schedule B land. The DW2 further deposed that as per his knowledge the plaintiff no:1 sold the schedule B land but he could not state the names of the purchasers and also could not state about the sale deeds; as such it is held that the evidence of the DW2 regarding the alleged sell of

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the schedule B land by the plaintiff no:1 cannot be relied upon and believed in the absence of any cogent evidence in this regard.

23. In fact the defendant no:17, Shri Nur Islam Mandal (DW1) had also admitted in his evidence that the schedule B land fell in the share of the plaintiff no:1 and that they have no claim over the schedule B land. The DW2 further deposed that as per his knowledge the plaintiff no:1 sold the schedule B land but he could not state the names of the purchasers and also could not state about the sale deeds; as such it is held that the evidence of the DW2 regarding the alleged sell of the schedule B land by the plaintiff no:1 cannot be relied upon and believed in the absence of any cogent evidence in this regard.

24. The plaintiff no:2, Shri Abdul Mannan (PW1) had specifically deposed that the defendants dispossessed the plaintiff no:1 from the schedule B land sometime during November, 2009. The PW1 was cross examined but nothing material could be elicited from their cross examination so as to doubt or disbelieve him. In fact the plaintiffs' other witnesses namely, Shri Abdul Rashid (PW2), and Shri Chand Miah Mollah (PW3) had also specifically stated that the defendants had dispossessed the plaintiff no:1 from the suit land sometime during November, 2009. The abovenamed witnesses were cross examined but nothing material could be elicited from their cross examination so as to doubt or disbelieve them.

25. In view of the above discussions it is held that the schedule A land was originally the joint property of the plaintiff no:1 and Maleya Khatun and thereafter the schedule A land was amicably partitioned and accordingly the schedule B land fell in the share of the plaintiff no:1, but the defendants had dispossessed the plaintiff no:1 from the schedule B land sometime

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during November, 2009 and constructed their houses thereon; as such the issue no:4,5 and 6 are answered in the affirmative and in favour of the plaintiffs.

26. DECISION: The issue no:4,5 and 6 are answered in favour of the plaintiffs.

**ISSUE NO:7:**

27. The plaintiffs have pleaded that the defendant no:1 to 4 have executed a sale deed in respect of the Eastern portion of the suit land measuring 12 Bighas 3 Kathas in favour of the defendant no:17 vide sale deed no:288 dated 5/5/2010; as such to cancel the above sale deed.

28. The plaintiffs have produced the certified copy of the aforesaid sale deed and the same is marked as exhibit 6. There is absolutely no dispute as regards the execution of the aforesaid sale deed. In fact the defendants have admitted that the defendant no:1 to 4 had executed the sale deed in favour of the defendant no:17. The defendant no:17 (DW1) had examined himself and he had specifically stated in his cross examination that he had purchased 12 Bighas 3 Kathas out of the schedule A land from the defendant no:1 to 4. He (DW1) had further admitted that he had purchased the share of Saleha (Maleka Khatun) out of the schedule A land. The DW1 further admitted that he has no claim over the schedule B land belonging to the plaintiff and that he does not claim the schedule B land which fell in the share of the plaintiff no:1. It is seen from the above that the exhibit 6 was executed by the defendant no:1 to 4 in respect of their share in the schedule A land, i.e the remaining land after exclusion of the schedule B land; as such I do not think that the sale deed (Exhibit 6) is liable to be cancelled or declared as null and void because the defendant no:1 to 4 had

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right to transfer the same and they had transferred the same in favour of the defendant no:17.

29. In view of the above discussions it is held that the sale deed no:288/ 2010 is not liable to be declared as null and void; as such the issue no:7 is answered in the negative and against the plaintiffs.

30. DECISION: The issue no:7 is answered in the negative and against the plaintiffs.

**ISSUE NO:2:**

31. The defendants had contended that the suit is barred by limitation, but it is evident from the discussions made above that the plaintiff no:1 was dispossessed from the schedule B land sometime during the year November, 2009 and this suit is instituted in the year 2010 as such this suit is instituted within the prescribed period of limitation.

32. DECISION: The suit is not barred by limitation as such the issue no:2 is answered in the negative and in favour of the plaintiffs.

**ISSUE NO:8 and 9:**

33. In view of the discussions made above and the decisions reached in the foregoing issues, more particularly the issue no:4,5 and 6, wherein it is held that the schedule A land is already partitioned and the schedule B land fell in the share of the plaintiff no:1, it is held that the plaintiffs are not entitled to any partition of the schedule A land, because the same is already partitioned, however, the plaintiff no:1 is entitled to the declaration of her right, title and interest over the schedule B land. It is further held that the

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defendants had dispossessed the plaintiff no:1 from the schedule B land as such they are liable to be evicted from the schedule B land.

ORDER

34. In view of the above discussions and the decisions reached in the foregoing issues the suit of the plaintiffs is decreed. It is hereby declared that the plaintiff no:1 has the right, title and interest over the schedule B land. It is further held that the defendants are liable to be evicted from the schedule B land by demolishing the structures standing thereon as such the defendants are directed to hand over the khas possession of the schedule B land to the plaintiff no:1 within a period of three months from today or else the plaintiff no:1 shall be at liberty to get the decree executed. The period of three months is allowed to the defendants so that they could search for alternate accommodation during this period.

35. The suit is decreed on contest with cost as against the defendant no:1 to 8 and 17; whereas the suit is decreed ex-parte as against the remaining defendants, except the defendant no:10, 15, 16, 28, 29, 31, 32, 33, 34, 35 and 36 whose names are already struck off.

36. Prepare decree accordingly.

Given under my hand and seal of this court on this the 10<sup>th</sup> day of January, 2017 at Dhubri.

Yusuf Azaz,  
Civil Judge, Dhubri.

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

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**APPENDIX**

**PLAINTIFF'S WITNESSES :**

- 1) SHRI ABDUL MANNAN
- 2) SHRI ABDUL RASHID
- 3) SHRI CHAND MIAH MOLLAH
- 4) SHRI RAHIMUDDIN AHMED
- 5) SHRI KISHORE KUMAR TAMULI

**DEFENDANT'S WITNESSES:-**

- 1) SHRI NUR ISLAM MONDAL
- 2) SHRI SAIDUL ISLAM

**PLAINTIFF'S EXHIBITS :-**

- 1) EXT. 1- CERTIFIED COPY OF KHATIAN NO:418
- 2) EXT. 2- POWER OF ATTORNEY
- 3) EXT. 3- MEDICAL CERTIFICATE OF PLAINTIFF NO:1
- 4) EXT. 4- COPY OF OBJECTION PETITION
- 5) EXT. 5- COPY OF LAND SALE PERMISSION
- 6) EXT. 6- CERTIFIED COPY OF SALE DEED NO:288/ 2010
- 7) EXT. 7- COPY OF REVENUE RECEIPT
- 8) EXT. 8- VOLUMN BOOK ENTRIES OF SALE DEED NO:288/ 2010

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**DEFENDANT'S EXHIBITS :**

NONE

Yusuf Azaz,  
Civil Judge, Dhubri.

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