

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & 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 4<sup>th</sup> Day of January, 2017

TITLE SUIT NO: 24/ 2011

1) SHRI MOHIRUDDIN SK

**2) LEGAL HEIRS OF LT AKHTAR UDDIN AHMED**

- 2a) SHRI ABDUL ROUF SK
- 2b) SHRI SK MOHAMMAD ABDULLAH
- 2c) SHRI HABIBAR RAHMAN
- 2d) SHRI HIFZUR RAHMAN
- 2e) SHRI UNAIDUR RAHMAN
- 2f) SHRI MIZANUR RAHMAN
- 2g) SMTI ARFUMAND BHANU
- 2h) SMTI RABIA KHATUN BEWA

Plaintiffs

*versus*

- 1) SHRI HEKMAT ALI
- 2) SHRI MOYAZ MASTER
- 3) SHRI ABDUL KHALEQUE
- 4) SHRI JAN MOHAMMAD
- 5) SHRI AFSAR ALI
- 6) SHRI MOINAL HOQUE

Defendant/s

1) SHRI MOKBUL HOSSAIN

.....Proforma Defendant

This suit/ case coming on for final hearing on 29/11/2016 in the presence of –

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
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SHRI A.K FAZLUL HOQUE, Advocate for the plaintiff; and

SHRI N.A SK, Advocate for the defendants,

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

### **JUDGMENT**

1. The plaintiffs have instituted this suit against the defendants praying for the declaration of their right, title and interest over the suit land and for recovery of khas possession of the suit land by evicting the defendants.
2. The brief facts leading to this case, as is revealed from the plaint, is that:
3. The plaintiffs have pleaded that the predecessor of the plaintiff no:2(a) to 2(h) namely, Aftab Uddin Ahmed @ Akhtaruddin (since deceased) purchased a plot of land measuring about 16 Bighas from one Tahar Ali vide registered sale deed no: 1737 dated 13/2/1962 and started to possess the same. Later on his name was recorded in the revenue records in respect of the aforesaid land but it was found that only land measuring 15 Bighas 4 Kathas 12 Lessas was found in his possession hence the aforesaid 15 Bighas 4 Kathas 12 Lessas of land under Dag no:235 of Khatian no:14 situated at village- Nayar alga Part I came to be recorded in the name of Aftab Uddin Ahmed. Later on Aftab uddin Ahmed sold a plot of land measuring about 3 Bighas out of the aforesaid total land to the plaintiff no:1, Shri Mohiruddin Sk vide registered sale deed no:3691 dated 21/4/1980 and delivered the possession of the same to him. Similarly Aftab Uddin Ahmed sold another 3 Bighas of land out of the aforesaid total land to the proforma defendant, Shri Mokbul Hussain and delivered possession of the land to him and thus

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TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

Aftab Uddin Ahmed was left with land measuring only 9 Bighas 4 Kathas 12 Lessas. The plaintiff no:1, Shri Mohiruddin Sk is the brother of Aftab Uddin Ahmed and as such the plaintiff no:1 and Aftab Uddin Ahmed jointly owned and possessed land measuring about 12 Bighas 4 Kathas 12 Lessas. Thereafter during the settlement operation, a Kutcha patta no:3(old)/32(new) was issued in respect of the above referred total land measuring 15 Bighas 4 Kathas 12 Lessas in the name of the Aftab Uddin Ahmed, the plaintiff no:1 and the proforma defendant and this plot of land is more particularly described in the schedule A of the plaint. The 12 Bighas 4 Kathas 12 Lessas of land owned by the plaintiff no:1 and Aftab Uddin Ahmed is more particularly described in the schedule B of the plaint. The plaintiffs have stated that after the death of Aftab Uddin Ahmed, the 9 Bighas 4 Kathas 12 Lessas of land owned by him devolved upon the plaintiff no:2(a) to 2(h). Similarly the 3 Bighas of land owned by the proforma defendant is more particularly described in the schedule C of the plaint.

4. The plaintiffs pleaded that the plaintiff no:1 used to reside at a distance of about 15 Kms away from the aforesaid land and similarly the plaintiff no:2(a) to 2(h) used to stay about 40 Kms away from the suit land as such the defendants taking advantage of the absence of the plaintiffs from the suit land had dispossessed the plaintiffs from the schedule B land on 28/10/2006 and inspite of several requests made by the plaintiffs, they refused to vacate the same; hence this suit praying for their eviction and for declaration of the right, title and interest of the plaintiffs over the suit land.
5. The principal defendants filed their written statement cum counter claim stating therein that the suit is not maintainable. The defendants admitted

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

that the suit land originally belonged to Aftab Uddin Ahmed and thereafter the plaintiff no:1 purchased 3 Bighas of land. The defendants admitted that the suit land belonged to the plaintiffs. The defendants however pleaded that about 18 years ago the plaintiffs sold land measuring  $4 \frac{3}{4}$  Bighas to the defendant no:1 and 2/ counter claimant no:1 and 2 for consideration of Rs. 27,000/- and delivered possession of the same to him. Thereafter again after about  $\frac{2}{3}$  years of this sale, the plaintiffs again sold land measuring 8 Bighas to the defendant no:3 to 6/ counter claimant no:3 to 6 at the rate of Rs.12,000/- per Bigha and received the total consideration amount of Rs.96,000/- and delivered the possession of the same to them. The defendants/ counter claimants alleged that it was agreed that the plaintiffs would execute a formal registered sale deed and in this regard the defendants/ counter claimants approached the plaintiffs several times to register a formal sale deed in respect of the schedule D land but the plaintiffs avoided on this or that pretext and thereafter instituted this suit; hence the defendants prayed for dismissal of the suit and also prayed for a decree of specific performance of contract for sale of the suit land and other reliefs.

6. The plaintiffs filed their written statement/ objection against the counter claim and stated that the defendants are not entitled to any relief and denied any such agreement of sale.
7. Upon the pleadings of the parties, the following issues were framed in this suit by me learned Predecessor-

***(1) Whether the suit is maintainable in law & facts?***

***(2) Whether the suit is bad for want of cause of action?***

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

***(3) Whether the suit is barred under Order 2 Rule 2 CPC & section 31 of the S.R Act (Specific Relief Act)?***

***(4) Whether the suit is under valued?***

***(5) Whether the plaintiff has right, title & interest over the suit land?***

***(6) Whether the plaintiff is entitled to get khas possession over the suit land by evicting the defendants?***

***(7) To what relief/ reliefs the parties are entitled?***

**Issues on Counter Claim:**

***(1) Whether the counter claim is maintainable?***

***(2) Whether the counter claim is barred by limitation?***

***(3) Whether the Court has pecuniary jurisdiction to try this suit?***

***(4) Whether there was an agreement between the O.P no:1 & 2 (plaintiffs) and counter claimants for D schedule land and possessing the said land?***

***(5) Whether the counter claim (claimant) is entitled to get the decree as prayed for?***

***(6) To what relief/ reliefs the parties are entitled?***

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

8. I have heard the arguments put forwarded by both the parties. Both the parties have adduced evidence in support of their respective case.
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 of the suit & 1 of Counter claim:**

10. The brief facts of the case of the plaintiffs is narrated above and it is seen that the plaintiffs are claiming their right, title and interest over the suit land; whereas the defendants/ counter claimants have admitted that the plaintiffs had the right, title and interest over the suit land but contended that the plaintiffs agreed to sell the suit land to them and had in fact received the total sale consideration of the suit land but did not execute the formal registered sale deed as per agreement; hence the counter claim for specific performance of the said contract. It is seen that both the parties have raised triable issues in this suit and both the suit as well as the counter claim is civil in nature and this Court has the jurisdiction to try the same; hence it is held that both the suit as well as the counter claim is maintainable.
11. It is further seen from the above that the plaintiff disclosed a cause of action because cause of action is nothing but a bundle of material facts which the plaintiff must allege and prove in order to succeed.
12. DECISION: The issue no:1 & 2 of the suit and 1 of the counter claim are answered in the affirmative and it is held that the suit as well as the counter claim is maintainable and the plaintiff disclosed a cause of action.

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TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

**ISSUE NO.3 & 4 of the suit and issue no:3 of the counter claim:**

13. The defendants/ counter claimants had contended that the suit is barred under Order 2 Rule 2 CPC, but the defendants could not bring to the fore as to why the same is barred.
14. In my considered opinion the provision of Order 2 Rule 2 CPC is not applicable in this case because there had been no previous suit between the parties in respect of the same cause of action and unless there is a previous suit wherein the plaintiff had omitted to sue for some reliefs and thereafter instituted this suit seeking those omitted reliefs, the provision of Order 2 Rule 2 CPC is not applicable.
15. Moreover, the suit or the counter claim is not undervalued because the plaintiff had instituted this suit by showing a valuation of Rs.2,05,000/- and the defendants/ counter claimants have instituted the counter claim with valuation of Rs.1,30,000/- which according to me is not grossly undervalued.
16. DECISION: The issue no:3 & 4 of the suit is answered in favour of the plaintiffs and the issue no:3 of the counter claim is answered in favour of the defendants.

**Issue no:5, 6 & 7 of the suit and 4, 5 & 6 of the Counter claim:**

17. The defendants/ counter claimants had admitted that the plaintiffs are the owners of the suit land, but they had contended that the plaintiffs had sold the suit land to them about 18/20 years ago and that it was agreed that the formal sale deed would be registered later on, however, the plaintiffs failed and neglected to execute the sale deed; hence the counter claim for specific

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TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

performance of the contract.

18. It is seen from the above that the defendants had admitted that the plaintiffs have the right, title and interest over the suit land, but their only contention is that the plaintiffs had sold the suit land to them but had not registered the formal sale deed and as such they preferred the counter claim for specific performance of the contract for sale. Considering the fact that the right, title and interest of the plaintiffs over the suit land is admitted by the defendants, it is held that the facts admitted need not be proved and thus it is held that the plaintiffs have the right, title and interest over the suit land.
19. It is seen from the above that the plaintiffs admittedly have the right, title and interest over the suit land; as such the burden lies with the defendants/ counter claimants to prove that there was an agreement between them and the plaintiffs in respect of the suit land and that they had purchased the same by payment of total sale consideration.
20. It would be pertinent to mention herein that the defendants have stated that there was oral agreement between them and the plaintiffs in respect of the suit land and that no written document was executed in this regard. The defendants had examined Shri Hekmat Ali (DW1) in support of their case and he had specifically stated in his cross examination that there is no written agreement of sale between them. The DW1 further stated that he paid an advance amount of Rs.29,000/- towards the sale consideration, but no written receipt was taken in respect of the payment made. It is very unlikely that anyone would purchase a land without any written document and further he would make payment of such a huge amount of money and still not take any receipt of the said payment. The DW1 further stated that

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

there were witnesses present at the time when he made payment of Rs.29,000/- to the plaintiffs, but no such witnesses are examined by the defendants which renders the evidence of the DW1 unbelievable. Moreover the defendants had failed to provide any explanation as to why those independent witnesses who had allegedly witnessed the payment of the amount of Rs.29,000/- were not examined; as such the non examination of the said witnesses leads me to draw adverse inference against the case set up by the defendants. The DW1 further stated that he does not remember the date when he made the payment and also does not remember the date when the possession of the suit land was allegedly delivered to him. It is seen from the above that the DW1 had failed to state any material details about the alleged transaction and moreover his oral evidence is not at all corroborated by any other material on record; as such the oral evidence of the DW1 in respect of the alleged transactions cannot be relied upon and believed.

21. The DW1 further stated that the final patta in respect of the suit land was issued in favour of the plaintiffs but still he did not file any objection in this regard before the concerned authorities. The conduct of the defendant, Shri Hekmat Ali (DW1) is very unusual and suspected because any reasonable person would have objected to the issuance of patta in the name of the plaintiffs if he would really have purchased the land. The fact that the defendants never raised any objections regarding the issuance of patta in favour of the plaintiffs and also the fact that the defendants never instituted any suit for specific performance of contract for the last about more than 18 years, i.e till the institution of this suit, leads me to infer that no such agreement of sale ever took place between the plaintiffs and the defendants. Further the DW1 had failed to specify the agreement of sale

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

with the attending details; hence his evidence in this regard cannot be relied and believed. Moreover, the evidence of the DW1, as discussed above, does not inspire my confidence because the same is devoid of details and is not at all corroborated by any independent witness.

22. Moreover, the defendants had contended that the defendant no:1 and 2 had paid Rs.27,000/- towards the sale consideration whereas during cross examination the DW1 had stated that he had paid Rs.29,000/-, which further leads me to infer that the DW1 is not speaking the truth.

23. Similarly the DW2, Shri Jan Mohammad had also stated that no written agreement of sale took place between them. The DW2, Shri Jan Mohammad further stated that they had paid Rs.1,96,000/- towards the sale consideration of the 8 Bighas of land allegedly purchased by them from the plaintiffs, which figure does not tally with the amount stated in their written statement. The defendants had specifically pleaded that the defendant no:3 to 6 had paid Rs.96,000/- in total for the 8 Bighas of land; whereas during cross examination the DW2 had stated that they had paid Rs.1,96,000/- which is contradictory. Moreover, admittedly there is no receipt acknowledging the above payments allegedly made by the defendants; as such the oral evidence of the DW2 in this regard, without any corroboration from independent sources cannot be believed and relied upon.

24. Further the DW2 had specifically admitted in his cross examination that he does not remember the date when he came into the possession of the suit land and also does not remember when he paid the consideration amount, which shows that the DW2 did not specifically state the details of the transactions and as such his evidence in this regard cannot be believed. It also cannot be believed that any reasonable person would pay such a huge

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TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

sum of money and not take any receipt of the said payment.

25. In view of the above discussions it is held that the oral evidence of the DW2 regarding the alleged transactions in respect of the suit land cannot be believed and relied upon and moreover the evidence of the DW2 is not consistent.
26. The defendants had examined one Shri Haran Ali (DW3) who is an independent witness, but his evidence is of no assistance to the case set up by the defendants. The DW3, Shri Haran Ali had specifically admitted in his cross examination that he was not present when the possession of the suit land was allegedly delivered and he was also not present when the alleged payments were made; as such it is seen that the DW3 is not a witness to the alleged transactions in respect of the suit land and hence his evidence cannot be relied upon.
27. In view of the above discussions it is seen that the defendants have failed to prove by leading cogent evidence that there was any agreement of sale of the suit land and also failed to prove that they had made any payment of money to the plaintiffs in respect of the suit land; as such it is held that the defendants/ counter claimants had failed to prove the existence of any such contract.
28. In view of the fact that the plaintiffs have the right, title and interest over the suit land and the defendants are admittedly in possession of the suit land, it is held that the defendants/ counter claimants are liable to be evicted.
29. The learned counsel for the defendants/ counter claimants has submitted

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

that the defendants are in possession of the suit land for the last more than 18/20 years and as such they are not liable to be evicted. The above contention of the defendants/ counter claimants is not sustainable because possession, how long so ever does not confer any title and the possessors cannot resist the original owners from coming into the possession of the suit land. In order for the defendants/ counter claimants to remain in possession over the suit land to the exclusion of the original owners, i.e the plaintiffs, the defendants ought to show some superior right to remain in possession, but in the instant case at hand, the defendants have failed to plead or prove any such right. The defendants had pleaded that the possession of the suit land was delivered to them after the contract for sale, but it is already held that the defendants have failed to prove any such contract for sale of the suit land; as such it cannot be held that the possession of the suit land was delivered to the defendants in part performance of any contract for sale under section 53A of the Transfer of Property Act, 1882; hence the defendants are liable to be evicted because their status over the suit land is that of trespassers.

30. The learned counsel for the defendants had contended that the plaintiffs have specifically failed to prove that the defendants came into the possession of the suit land on 28/10/2006 and as such the defendants cannot be evicted. The above contention of the defendants/ counter claimants is not sustainable because once it is held that the plaintiffs have the right, title and interest over the suit land, then the burden shifts upon the defendants to prove as to how they had entered into possession of the suit land and what is the nature of their possession and under what right they can remain in possession of the suit land to the exclusion of the original owners, i.e the plaintiffs in this case. In the instant case at hand,

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TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

the defendants had neither pleaded nor proved that they are in adverse possession of the suit land and also have failed to prove any legal right to remain in possession of the suit land, i.e by way of any lease or licence or such other rights and thus the status of the defendants is that of trespassers and no more and their possession, how long so ever cannot confer any title in their favour.

31. In view of the above discussions it is held that the plaintiffs have the right, title and interest over the suit land. It is further held that no such agreement of sale of the suit land exists between the plaintiffs and the defendants as such the defendants are not entitled to the specific performance of the contract of sale or any other reliefs. It is further held that the plaintiffs are entitled to recover the possession of the suit land by evicting the defendants.
32. DECISION: The issue no:5,6 & 7 of the suit is answered in the affirmative and in favour of the plaintiffs; whereas the issue no:4, 5 & 6 of the counter claim are answered in the negative and against the defendants/ counter claimants.

**Issue no:2 of the Counter claim:**

33. The plaintiffs have contended that the counter claim is barred by limitation, but it is already discussed and held above that there is no agreement of sale between the plaintiffs and the defendants/ counter claimants and as such there is no question of the suit being barred by limitation for specific performance of contract as such the above issue is answered accordingly.
34. The counter claim is not barred by limitation.

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TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

35. DECISION: The issue no:2 of the counter claim is answered in the negative and in favour of the defendants.

ORDER

36. In view of the above discussions and the decisions reached in the foregoing issues the suit of the plaintiffs is decreed on contest with cost. It is further directed that the counter claim of the principal defendants is dismissed on contest with cost. It is hereby decreed and declared that the plaintiffs have the right, title and interest over the schedule B land. It is further directed that the defendants do hand over the khas possession of the schedule B land to the plaintiffs or else the plaintiffs would be at liberty to get the decree executed.

37. The suit is decreed on contest with cost and the counter claim is dismissed on contest with cost.

38. Prepare decree accordingly.

Given under my hand and seal of this court on this the 4<sup>th</sup> day of January, 2017 at Dhubri.

Yusuf Azaz,  
Civil Judge, Dhubri.

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE SUIT NO:24 OF 2011  
PLAINTIFF: SHRI MOHIRUDDIN SK & ORS  
DEFENDANTS: SHRI HEKMAT ALI & ORS

**APPENDIX**

**PLAINTIFF'S WITNESSES :**

- 1) SHRI MOHIRUDDIN SK
- 2) SHRI GAFUR ALI
- 3) SHRI MOZIBOR RAHMAN
- 4) SHRI NURUDDIN SK

**DEFENDANT'S WITNESSES:-**

- 1) SHRI HEKMOT
- 2) SHRI JAN MOHAMMAD
- 3) SHRI HARAN ALI

**PLAINTIFF'S EXHIBITS :-**

- 1) EXT. 1- SALE DEED NO:1737/ 1962
- 2) EXT. 2- SALE DEED NO: 3691/ 1980
- 3) EXT. 3- KUTCHA PATTA

**DEFENDANT'S EXHIBITS :**

NONE

Yusuf Azaz,  
Civil Judge, Dhubri.

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