

Assam schedule VII, Form No.132.
High court form No.(J)2.

HEADING OF JUDGMENT IN ORIGINAL SUIT.Dhubri

IN THE COURT OF MUNSIFF NO 2, DHUBRI

Title Suit No.486/07

Present: B. Medhi,
Munsiff no 2, Dhubri

Plaintiff.....1. Sri Dwiprahar Das

S/O-Sri Dwijesh Chandra Das
R/O-Ward No.1, Gauripur town
Dist –Dhubri

-----VS-----

Defendant.....1. Sri Ajit Kr. Baruah

S/O- late prabhat Chandra Baruah
R/O- Ward no-1, Gauripur Town
Dist—Dhubri

2. Sri Subhankar Bhatacharjee

S/O- Sri Susil Kr. Bhatacharjee
Word No—3, Gauripur town

3. Sri Sanjay Kr. Dev Adhikary

S/O-Sri Sudhir Ch. Dev Adhikary
Word No—3, Gauripur

4. Sri Dhurba Jyoti Bhuyan

S/O—Late Raman kanta Bhuyan
Ward No-1, Gauripur town

Pro Forma Defendant.....1. Sri Subhas Kr. Saha

S/O- Surja Kr. Saha
Ward No-2, Gauripur Town

2. Sri Gaur Karmakar

S/O- late Debendra Karmakar
Ward No -2, Gauripur town

This is a suit for specific performance of contract an injunction:

Given under my hand and seal on this 3rd of october of 2013 in the presence of,

1. Sanjib Kr Sur&Aninda Paul,Learned advocate for the Plaintiff.
2. Sri B.K. Das,Anupam Ghose & A. Roy,Learned Adocate for the Defendant.

JUDGEMENT

Brief fact leading to the suit:

The plaintiff's has filed this case against the defendants claiming that the the defendant number one is the absolute owner of our landed property maintaining 1K 5L having and old assam type house and been actually occupation and possession thereof as absolute owner. The plaintiff claims that his wife Smt. Chitra Barman is the tenant and carrying business of a medical store in the name of M/S Gauripur Medical Hall under the landlordship of the defendant. The plaintiff alleges that on27.02.06. The defendant number one or for the plaintiff to purchase the said tenant shop including the vacant lands measuring 1K 5L as described in schedule and having agreed to purchase the same at of rupees 1,40,000/-by the plaintiff a sale agreement was prepared on 27.2.006. and executed the same on acceptance of rupees 20,0000/-as advance. The plaintiff further alleges that since the time of the agreement in spite of its being ready with the remaining amount for defendant was dodging in executing the sale deed. The plaintiff claims that having left with no option he issued advocate notice on 03.08.07. For the defendant asking the defendant move before the deputy commissioner to obtain the permission of the same meeting three days from the deed of receipt of this notice and the execute and register the sale deed in favour of the plaintiff on or by being seven days thereafter failing which an interest @18% p.a. Shall be charged on advance sum of rupees 1,30,000/-and to which the defendant paid no heed.

The plaintiff makes father allegation that in order to frustrate the above stated agreement the defendants with mala fide intention executed a fatherland sale deed vide registered sale deed number 808/06 dated 27. 04. 06 in favour of

the defendant number two and three namely Sri Subhankar Bhattacharjee and Sri sanjay Kr. Dev Adhikary and sold out the entire suitland described in the a schedule of the plaint. Therefore the defendant number two in turn on his part of 12 ½ L out of total suitland vide another fraudulent sale deed number 1132/06 dated. 07 . 06. 06 in favour of the defendant number four Sri Dhruba Jyoti Bhuyan.

The plaintiff went on to claim that the suitland is in possession of the plaintiff all along long before the suit and afterwards. The plaintiff alleges and is plaint that the suitland be a game to be resold to subsequent purchaser having manpower to evict the plaintiff from the suitland by applying legal force. Under that circumstance the plaintiffs has prayed for a Decree for specific performance of contract against the defendant to execute and register sale deed to sale the suitland in favour of the plaintiff and also a Decree for permanent injunction against the defendant to enforce his right, title and interest.

After registering the case summons were served upon the defendants and they made their appearance and defendant number 1,2,&4 and filed their written statements separately.

In the written statement of defendant number one he has admitted the fact that the wife of the plaintiff has been occupying the suitland as a tenant. And also the fact that he had received advocate notice on 03. 08. 2007 from the plaintiff. However he refrained from answering the notice as the entire alleged agreement was false and was never executed.

The defendant number 1 has contended that the suit is not maintainable, there is no cause of action and the suit is that for non-joinder of necessary parties. Both plaintiff and defendant number one enunciates a common fact that prior to the alleged sale agreement a part of the suitland has already been sold to proforma defendant number one and two namely Subrata Kr. Saha and Gaur Karmakar vide registered sale deed number dated 05.12.2005 and registered sale deed number 2207 deed 05.12.2005 respectively and possession of which has already been delivered to them. Accordingly the defendant number one claims that he is not the sole owner of the alleged suitland. He further claims that prior to that alleged sale agreement he had

already sold 0B-1K-5L to Subhankar Bhattacharya and Sanjay Kr. Dev Adhikary vide registered sale deed number 808 dated 27.04.2006. Later on Sri Subhankar Bhattacharjee sold his half share of land measuring 12 ½ L to Dhruba Jyoti Baruah the defendant number four.

He is specifically denies of having entered into an agreement on 27. 02. 06 that the plaintiff to sale the suit property. As such he claims that the plea taken by the plaintiff in regard to the value of the suit property and acceptance of advance money is false and baseless. The defendant alleges the alleged agreement to be fake.

The defendant had a different story to tell the regarding the alleged sale agreement. The defendant claimed that the wife of the plaintiff Smti Chitra barman was a tenant in a part of the suit property under the landlords Amal Ch. Baruah, Ajay Kr. Baruah and Ajit Kr. Barua all S/O- Late Prabhat Ch. Barua. There was no written tenancy agreement between the parties. After some time the above mentioned landlords got the property immediately partitioned amongst themselves and the tenanted premises fell into their share of Shri Ajit Kr. Barua, the defendant. He thereafter asked Smti Chitra to execute the written tenancy agreement for the tenanted premises under her occupation. Accordingly she agreed to the same and took the responsibility of collecting papers for executing the tenancy agreement. Thereafter the plaintiff brought to plaint stamp papers of rupees 50/- including some demi Papers and requested the defendant number one to put his signatures on the blank of the two stamp papers including the demi papers. The defendant in good faith to put his signature on the said two stamp papers some and demi papers. The defendant alleges that he believed a tenancy agreement was written in the said two blank stamp papers. However having received the advocate notice dated 03/08/2007 he came to know that a sale agreement was written in place of the tenancy agreement.

The defendant number two, Sri Subhankar Bhattacharjee also appeared and filed his written statement separately. In his written statement he altogether washed his hands from the alleged agreement. Of the apart from raising the common plea that the suit is no cause of action he took almost the similar plea to that of defendant number one. There is no difference as to the facts as how portion of the suitland fell in his name and are as regards the position of

plaintiff vis-a- vis the suitland between him and the defendant number one. Therefore for the sake of brevity I deem it fit to avoid writing his plea at length.

Defendant number four also appeared and filed a suit for written statement. Here also I find him raising similar plea to that of defendant number one and two. Hence elaborate mentioning of those Pleas are avoided in this case as well.

ISSUES

My learned predecessor was pleased to frame the following issues for the purpose of adjudication the suit.

1. Whether the suit is maintainable in its present form?
2. Whether there is a cause of action for the suit?
3. Whether the suit is that for non-joinder of necessary parties?
4. Whether the defendant entered into an agreement for sale on 27. 02. 06 by the plaintiff is alleged to sail the suit property?
5. Whether the plaintiff is entitled to get the reliefs as claimed for?
6. To what other relief or reliefs the plaintiff is entitled to?

My learned predecessor was later on open consideration of various facts again framed one additional issue which is the issue number seven and reads as follows,

7. Whether the alleged sale deed number 808/06 dated 27. 04. 06 and 1132/06 dated. 07. 06. 06 is probable and not binding upon the plaintiff?

I have heard the learned counsel from the defendant Sri B. K. Das. And perused the case record and the evidence produced by a both sides if any. The learned counsel from the plaintiff had been continuously taking adjournment in almost every stage of the case. During the agreement also the learned counsel from the plaintiff took as many as three adjournments. Looking at the previous conducts of the plaintiff the last adjournment petition was dismissed and the suit was fixed for judgment. Now considering all the documents and arguments I go on to adjudicate upon the issues in the following ways.

Decision, discussion, and the reason thereof:

Issue number one: whether the suit is maintainable in the present form?

The learned counsel air from the defendant did not throw any light as to why the suit is not maintainable. It is in their written statements that there seem to take a casual plea that the suit is not maintainable. On perusal of the record it appears as have been discussed above the suit has arising out of a non-performance of sale agreement. The alleged sale deed was made he on 27.02.06. And the suit was filed on 3rd December, 2007. Thus it is within the period of limitation. I don't see any other ground or law that makes the suit not maintainable. Hence this issue is decided in the positive in favour of the plaintiff.

Issue number two: whether there is a cause of action for the suit?

On this point also the learned advocate from the defendant side did not argue anything. Here also it appears the defendant might have taken this plea casually in the written statement. Cause of action is the bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed. It is those facts which one party alleges to exist under the denies. Cause of action is there antecedent to the institution of the suit and on the basis of it the suit must have been filed. The plaintiff has alleged that cause of action arose on the day on which the defendant number one and refused to execute the sale deed on the basis of a sale agreement dated 27.02.2007. The the plaintiff have denied of having executed any such agreement. Accordingly I find there is clear case to be proved by the plaintiff to get the relief. Hence the suit has a cause of action. Accordingly this issue is decided in the positive in favour of the plaintiff.

Issue number three: whether the suit is bad for non-joinder of necessary parties?

The defendant in its written statement has stated that the suit is that for non-joinder of necessary parties. The ground that they had raised was that part of the suitland was already been sold to Sri Gaur Karmakar and Sri Subrata Kr. Saha and gave delivery of possession prior to that alleged sale agreement shown in the plaint. Further it is claimed in the written statement of the defendant that he had sold some other portions of suitland to Subhankar Bhattacharlee and Sanjay Kr. Dev Adhikary and accordingly all of them should

have been made parties. On perusal of the plaint it palpably appears that all of them as claimed by the defendant to have sold part of the suitland had been made parties. Accordingly I find there is no necessary party who is left out without impleading and the suit. In our

Was this issue is decided in the positive in favour of the plaintiff.

Issue number four: Whether the defendant entered into an agreement for sale on 27. 02. 06 by the plaintiff is alleged to sail the suit property?

The learned counsel from the defendant side has submitted written argument in favour of their stand. The written of them and he has stated that the plaintiff could not prove his case because he did not had used any evidence. After the evidence in chief of be W1 was filed he got anourmous time to get himself cross examined but he didn't avail it and consequently the plaintiff's evidence was expunged. There isn't being had that the plaintiff could not prove his case because of lack of evidence.

On perusal of the record it appears the plaintiff be of no evidence in support of his claim.

Therefore this issue is decided in the negative against the plaintiff.

Issue number 5&6: whether the plaintiff is entitled to any relief is claimed for? And Whether the plaintiff is entitled to any other relief/reliefs.

For my convenience and brevity I have taken up these two issues together.

In view of decisions arrived in issue number four it's clear that the plaintiff is not entitled to any relief is claimed for. And by the same logic his not entitled to any other relief/reliefs either.

Issue number 7: Whether the alleged sale deed number 808/06 dated 27. 04. 06 and 1132/06 dated. 07.06.06 is probable and not binding upon the plaintiff?

The plaintiff in their plaint has stated that with mala fide intentionn in order to frustrate the alleged sale agreement the defendant had executed the Sale deed no 808/06 and 1132/06 dated 07.06.06 in favour of Defendant number two, three and four respectively. Defendant has admitted to have executed those sale deeds in their written statements. However plaintiff has failed to

adduce any evidence to show as to how those sale deeds are liable to be set aside and howw they are fradulent.

Hence this issue is decided in the negative against the plaintiff.

ORDER

The plaintiffs are not entitled to get any relief. The suit is dismissed on contest. Parties shall bear their own costs.

Prepare a decree accordingly.

Given under my hand and seal on this 10th day of Decembar 2013.