

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

HEADING OF JUDGMENT IN ORIGINAL SUIT.Dhubri

IN THE COURT OF MUNSIF NO 2, DHUBRI

Title Suit No.09/2001

Present: B. Medhi,  
Munsiff no 2, Dhubri

1. Md. Futu Sk.  
S/O- Late Saker Sk.  
Vill-Banimari  
P.S. Gollakganj  
Dist.-Dhubri, Assam.....Plaintiff

--VS--

1. Legal Heirs of late Jabed Ali
  - a) Dulal Sk. S/O- Late Jabed Ali
  - b)Amjad Ali. S/O—do—
  - c)Ektar Ali. S/O—do—
  - d)Sattar Ali. S/O—do—Vill- Balajan, P.S.- Golakganj
2. Legal heirs of Late Dewan Sk.
  - a)jamirul Islam S/O—Late dewan Sk.
  - b)Saher Ai S/O—do—
  - c)Chinibhan Bibi D/O—do—
  - d)Bina Bibi D/O—do—
  - e) Saharbehen Bibi —do—Vill—Banimari P.S.—Golakganj
3. Kesalu Sk. S/O—Late Babu Sk.
4. Moinal Haque S/O—do—  
Vil—Banimari P.S. Gollakganj,Dist.-Dhubri, Assam
5. Sabur Sk. S/O—Late Samed Ali
6. Fulmahamud S/O—Late Saker Sk @ Saher Sk  
Vil—Banimari P.S. Gollakganj,Dist.-Dhubri, Assam
- 7.Pagla Sk. S/O—Late Bondey Sk.  
Vil—Balajanbazar P.S. Gollakganj,Dist.-Dhubri, Assam  
.....Defendants

1. Legal heirs of Late Aizar Ali Sikdar
  - a) Buchi Bewa W/O-- Late Aizar Ali Sikdar
  - b) Ser Ali S/O—do—
  - c) Pinu Sk S/O—do—
  - d) Samser Ali S/O—do—
2. State of Assam, Represented by the Collector Dhubri.

Defendants .....Pro Forma

Given under my hand and seal on this 3<sup>rd</sup> of October of 2013 in the presence of,

1. Kazi M. Hussain, Learned advocate for the Plaintiff.
2. R. N Mandal., Learned Advocate for the Defendant.

Date of evidence: 04.08.2010, 25.08.2010, 12.10.2010, 20.04.2011,

Date of Argument: 05/10/13

Date of Judgement: 10/10/13

### **JUDGEMENT**

This is the suit for declaration of right, title and interest and for khas possession and permanent injunction.

#### **Brief fact Leading to the case:**

1. That Seker Ali the father of the plaintiff and Pana Sk the predecessor in interest of the defendants were the brothers having equal shares over a said plot of land measuring 7B 12K. It is alleged by the plaintiff that the share of Pana Sk was sold by his legal heirs vide registered sale deed and the shares of saker ali i.e. 3B 16k was similarly sold by him to Late Mohimuddin vide registered sale deed number 1114 of 1934. As alleged by the plaintiff the said plot of land 3B 16K presently measuring as 3B 1L was illegally recorded in the Khatian no 186 in the name of the legal heirs of the original land owners namely Saker Ali and Pana Sk during the settlement operation. As the incident unfolded said Mohimuddin died in the meantime and his legal heirs, pro forma defendant number 1 sold out 1B-2K-10L of land covered by Khatian No 186 dag No 764 situated at village Banimari under P.S Golakganj to the plaintiff and the possession thereof was also accordingly handed over to him. The plaintiff alleges that the defendants deceitfully in collusion with the circle staff illegally and collusively recorded entire land in the names of defendant number 1 and 2

and the predecessor of interest of other defendants along with the plaintiff vide order of the assistant settlement officer Golakgonj dated 29/09/2000. Thereafter on the strength of that entry to the defendants illegally entered into the 2 B 10L of land of the Plaintiff from the southern side of this purchased land and dispossessed the plaintiff from it.

2. On receipt of summons the defendant appeared and filed his written statement. As per the claims of the defendant, Mohimuddin was closed door neighbour of Saher Sk and paana Sk and denies the fact that Mohinuddin had ever purchased any plot of land from Sehar Sk and thereby acquired any right, and interest over the suitland. The defendant claims that the alleged suitland is continuously in their possession and the sale deed by virtue of which the plaintiff claimed to have purchased the suitland is illegal. The related story untwined by the defendant tells that the defendants have been continuous possession over the suitland by having residence on it and further that in the southern portion of the land there is the burials of pana sk and their relatives. Eventually the defendant have also denied that their recording of the names in the land revenue documents giving settlement operation was illegal and was made in collusion with the revenue staff. On the other hand the defendant came claims that it is actually they who have a right title interest over the suitland.

3. In support of they claim the plaintiff has examined as many as three witnesses.

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### **ISSUES**

4. My learned predecessor had framed the following issues.

1. Whether the suit is rules maintainable in its present form an manner?
2. Whether there is any cause of action of the suit?
3. Whether the suit is hit by a provision of waiver, acquiescence and waiver?
4. Whether the plaintiff has right title and interest and possession of the suitland on the strength of sale deed no. 6275 dated 21/09/79?
5. Whether the plaintiff is entitled for permanent injunction?
6. Whether any other relief/reliefs he is entitled to?

### **Discussion decision and reason thereof:**

5. **Issue no 1** The defendant in his written statement is claimed that the suit is not maintainable. However there have failed to mention as to how and why the suit is not maintainable. On perusal of the case record I have found nothing to warrant the suit to declare not maintainable. Accordingly

the suit is held to be maintainable in favour of the plaintiff. Thus this issue is decided in the positive in favour of the plaintiff.

6. **Issue number 2**: whether there is any cause of action?

Cause of action is the bundle of facts asserted by one party and denied by the other which if unrebutted would accord the party so claimed the relief as prayed for. The plaintiff in its pleading is stated that the defendant has no right title interest over the suitland and the defendant has on 13/11/2000 dispossessed the plaintiff from the schedule A land. On the other hand the defendant has claimed that the said suitland is their ancestral property and there is no question of dispossessing the plaintiff as there had been in continuous possession of the same. Thus there is a clear fact claimed by one party and denied by the other. Hence there is a cause of action. Accordingly this issue is decided in the positive in favour of the plaintiff.

7. **Issue number 3**: whether the suit is hit by waiver, acquiescence, and the estoppels?

The defendant in his written statement has taken the plea that the suit is hit by waiver, acquiescence, and estoppels. However the defendant could not adduce any proof to substantiate his claim. I have gone through the record and the evidence adduced by the plaintiff as well. On perusal of all I have found nothing which warrant me to come to the conclusion that the suit is hit by waiver, acquiescence, and estoppels. Accordingly this issue is decided in the negative in favour of the plaintiff.

8. **Issue number 4**: whether the plaintiff has right title interest and possession of the suitland on the strength of sale deed number 6275 dated 21/09/79.

**The PW1, Futu Sk** in his evidence in chief has stated almost the similar facts as what is written in the plaint. He has stated that Late Mohim Sekari was the honor and possession of 3B 16K of land covered by dag number 764 recorded in khatian no 186. Also that after the death of Mohim Uddin Sikari his son Aizar Ali Sikari, now deceased inherited the aforesaid land of which 1B. 2K .10L he sold out to the plaintiff vide registered sale deed number 6215 dated 21/09/79 and delivered possession accordingly. He further stated that the defendants in collusion with circle staff recorded their names in the said Khatian without any right title and possession over the suitland. Thereafter on 13/11/2000 the said defendants illegally entered into the suitland measuring 2K.10L. And constructed thatched house thereon.

In his cross examination the plaintiff has stated that in the southern part of the suitland there is the burial ground of Pena Sk and the other relatives. He has also stated that he has never applied to the assistant settlement officer for correction of record. Nor has he ever given notice to the government for correcting the record.

**The PW2, Shri Chandra Kanta Ray** in his evidence in chief has stated that his land is situated on the western boundary of the suitland and as such he knows about the fact of the case and the possession. He stated that the suitland measuring 1B. 2K. 10L. belongs to the plaintiff which he purchased from Aizar Ali about 28 years ago and since then the plaintiff had been possessing that until the defendant forcibly occupied 2K.10L. of land out of the alleged suitland.

**The PW3, Md. Rahman Ali Sk,** in his evidence in chief has stated that that the plaintiff is his grandfather and he is fully acquainted with the facts of the case. In describing the history of the suitland he said that Saker Ali and Pena Sk were brothers and they had 7B 12k of land at mauza Baniamari Under Gauripur Parbat Jawar Estate. He further stated that the share of Pena Sk was sold out by his legal heirs and their share of Saker Ali measuring 3K 16L was sold out by himself to Mahimuddin Sk. vide registered sale deed number 1114 dated 21/05/34. That during settlement operation the said land presently measuring 3B. 10L was mistakenly recorded in the name of legal heirs of Late Saker Ali and Late Pena Sk. But the said land was in exclusive possession of Late Mohimuddin Sk. After the death of Mohimuddin Sk this to sons Aizar Ali Sikdar and Safar Ali sikdar, inherited the land. Out of that land Aizar Ali Sikdar sold out 1B. 2K. 10L of land to the plaintiff vide registered sale deed number 6215 dated 21/09/79 and delivered possession accordingly. Since then the plaintiff has been possessing the said suitland. He went on to saying that the defendants deceitfully in collusion with the circle staff illegally recorded entire land of 3B. 1K. In the name of defendant number 1 and 2 and predecessor in interest of the defendants along with the plaintiff vide order dated 29.09.2000. He also stated in the same tune as that of previous PWs that the defendants illegally entered and forcibly dispossessed the plaintiff from the land measuring 2K.10L. out of the total suitland.

PW3 in support of the case, exhibited registered sale deed number 1015 dated 17/05/34 as **exhibit number 1**. This sale deed is in respect of sale made by Punu Sk of his share of land. Interestingly this document has not been counter signed by the presiding officer and not exhibited according to the proper procedure. Accordingly this document cannot be taken into consideration. Moreover this document is irrelevant as it totally unconnected with the fact in issue.

PW3 exhibited another document as **exhibit number 2** the photo-state copy registered sale deed number 1114 dated 21/05/34. As claimed by the plaintiff, by this sale deed late Saker Ali had sold out his share of land measuring 3B 1K to Late Mahimuddin Sk. Interestingly again this is not exhibited according to the proper procedure. Moreover even it were properly exhibited the plaintiff would not have hold water for his claim as the most sacramental law of proving a fact by secondary evidence as enshrined in section 65 of Indian evidence has not been followed by him. Section 65 of Indian evidence act says,

*Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-*

*(a) When the original is shown or appears to be in the possession or power--*

*of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or*

*of any person legally bound to produce it,*

*and when, after the notice mentioned in section 66, such person does not produce it;*

*(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;*

*(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;*

*(d) when the original is of such a nature as not to be easily movable;*

*(e) when the original is a public document within the meaning of section 74;*

*(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in<sup>1</sup>[India] to be given in evidence<sup>2</sup>;*

*(g) when the original consists of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.*

It is established fact that registered sale deed is not a public document and as such the plaintiff in order to prove a fact by producing secondary evidence has to prove that the said document is either lost or destroyed or in the position of some other person etc. The plaintiff in this case has failed

to complied with any of the said conditions. Accordingly, under the circumstance also exhibit-2 cannot be taken into consideration as prove of the fact that late Saker Ali Had sold out a land measuring to Late Mahumuddin Sk.

The other exhibits of PW3 includes registered sale deed number 6215 dated 21/05/34 as **exhibit no 3**. This also in utter astonishment to me is not properly exhibited. However here also I find no need to go deep into the legality of the document not properly exhibited. This is the original registered sale deed by which the legal heirs of Late mahumuddin Sk, Md. Ali Sikdar purportedly had sold the land measuring 1B 10K to the plaintiff. However since the original title of Late Mahumuddin Sk could not be established by the plaintiff, this original registered sale deed has no standing in the eyes of law. Accordingly plaintiff failed to have proved his title over the suitland.

The PW3 has exhibited exhibit 4 is the certified copy of jamabandi, exhibit 5 the final khatian, exhibit 6&7 the rent receipt. All these documents are a revenue records signifying only the possession of a party and carries no strength to prove any title of any body.

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

**9. Issue number 5:** whether the plaintiff is entitled for permanent injunction?

In view of decision arrived in issue number 4&3 it can be naturally concluded that plaintiff is not entitled to permanent injunction. Accordingly this issue is decided in the negative against the plaintiff.

**10. Issue number 6:** whether any other relief/reliefs plaintiff is entitled to?

Considering the decision arrived at issue number 4&5 I am of the opinion that the plaintiff is not entitled to any other relief accordingly this issue is also 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 10<sup>th</sup> day of October 2013.

**APPENDIX**

**Witnesses examined by the Plaintiff:**

1. The PW1, Futu Sk.
2. The PW2, Shri Chandra Kanta Ray.
3. The PW3, Md. Rahman Ali Sk.

**Witness examined by the Defendant: NIL**

**Documents exhibited by the plaintiff:**

1. Ext. No 1, Registered sale deed no 1015 dated 17.05.34.
2. Ext. No 2, Registered sale deed no 1114 dated 21.05.34.
3. Ext. No 3, Registered sale deed no 6215 dated 21.09.79.
4. Ext. No 4, Copy of jamabandi.
5. Ext. No 5, Copy of final Khatian.
6. Ext. No 6, rent receipt.
7. Ext. No 7, Rent receipt.

**Documents exhibited by the Defendant: NIL**