

HIGH COURT FORM NO. (J) 3

HEADING OF JUDGMENT ON APPEAL

District - **Dhubri**
In the Court of the **District Judge, Dhubri**

Present : **Sri A. Bhattacharyya, A.J.S.**
Dhubri

Monday, the **6th** day of **January, 2014**

TITLE APPEAL No. **1** of **2010**

from the decree/order of
Munsiff/Subordinate Judge of
Suit/case No. **1** of **2004** and mode in

1. Sri Bholanath Dey
S/o. Lt. Balailal Dey
Resident of South Tokrersara Part IV
Under P.S. Golakganj, Dist. Dhubri, Assam

Appellant (s)

Versus

1. Shib Narayan Mahato
S/o. Budhan Mahato
Servant quarter of P.W.D. Bungalow at
Golakganj, Dist- Dhubri.
2. The Divisional Manager (Works) N.F. Railway
Alipur Duar Junction, West Bengal.
3. The General Manager, North Frontier
Railway Head office at Maligaon,
Guwahati.

Respondent (s)

* Give date or dates This appeal coming on this day (or having been heard on)* 23-12-2013
In the presence of

Sri K. Anam & Sri M.K. Roy
Advocate(s)
----- for Appellant (s)
Pleader (s)

Sri S.K. Das, Sri D. Choudhury &
Sri A. Sobhan
Advocate(s)
----- for Respondent (s)
Pleader (s)

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

J U D G M E N T

This Title Appeal is projected against the judgment and decree dated 24-03-2010 and 29-03-2010 passed in the Title Suit No.1/2004 by the appellant-plaintiff Sri Bholanath Dey.

2. Being aggrieved and dissatisfied with the aforesaid judgment and decree, the plaintiff Sri Bholanath Dey assailed the impugned judgment and decree on a various grounds, which are narrated in the Memo of Appeal.

3. During hearing learned counsel of the parties are heard also the L.C.R. is called for.

4. I have carefully gone through the L.C.R, pleadings of the parties and evidences on record.

5. During hearing learned counsel of the appellant laid written arguments. Copy of the same is furnished to the respondent.

6. On a minute perusal the story of the appellant is that the plaintiff after obtaining licence vide Memo No.W/209/GKJ/W-3 dated 06-01-82 from the Divisional Railway Manager (Works), N.F. Railway, Alipurduar Junction- the defendant No.2 started pisciculture by availing financial assistance under the Scheme of the World Bank in two ditches out of three ditches each measuring 125 X 76.25 sq.m. and 151.28 X 76.25 sq. m. under Gag No.674 & 676. The defendant No.1 by foul play got recommendation of the Senior Sectional Engineer for the fishing licence of the eastern adjacent third ditch alongwith one ditch of the plaintiff under Dag No.676 and on the strength of said recommendation the defendant No.2 issued letter No.W/335/Auction/Fishing/W-4 Pt. VI dated 24-12-02 directing the Senior Sectional Engineer to collect licence fee, to deliver possession and process the agreement, thereafter immediately the defendant No.1 deposited the licence fee and without waiting for other processes trespassed into the eastern part of the plaintiff ditch/fishery on 22-01-03 and stolen away fishes reared by the plaintiff. The matter was brought to the notice of the Sectional Engineer and he issued letter to the defendant No.1 asking not to do any activity until final measurement by the Sectional Engineer (II/W), Fakiragram. The plaintiff also by letter dated 27-01-03 requested the defendant No.2 to enquire the matter and to revise the licence of the defendant No.1. The Sectional Engineer, Fakiragram submitted report before the defendant No.2 stating that there was an error since in the original sanction order of the plaintiff only one ditch was allotted but the allotted ditch was converted into two ponds by erecting embankment in the middle. And although the defendant No.2 vide letter No.W/335/Auction/Fishing/W-Pt.VI dated 27-06-03 rectified the earlier order reducing the leased-out area of the defendant No.1, but the plaintiff suffered losses due wrongful act of the defendant No.2 and the Sectional Engineer by granting licence in respect of the eastern part of the plaintiff pond and despite rectification the defendant No.1 stolen away fishes & other properties for which the plaintiff was compelled to file criminal cases.

Thereafter, after issuing due notice u/s.80 of CPC the plaintiff instituted the present case for compensation for the illegal settlement of the eastern part of the fishery measuring 151.28m X 76.25 m of the plaintiff.

The defendant No.1 in the written-statement took the plea that the suit is not maintainable; that the suit is barred by limitation and acquicence; that the suit is bad for defect of the parties; and further challenging the case of the plaintiff averred his defence case that he obtained a licence from the defendant No.1 vide letter No.W/335/Auction/Fishing/W-4/Pt-VI on 24-12-02 and possessing the same by paying licence fee of Rs.15,997/- and the plaintiff never possessing the suit land. Thus he prayed for dismissal of the suit with cost.

The defendant No.2 in the written statement also pleaded that the suit is not maintainable; that there is no cause of action; that the suit is bad for non-joinder of necessary parties; and submitted that there are two railway ditches near Golokganj Railway Station and out of two ditches only one ditch was allotted to the plaintiff but he without notice & permission of the railway authority converted the allotted ditch into two ponds by encroaching some portion of the contiguous ditch of the railway and on acceptance of the proposal of the defendant No.1 in respect of the settlement of the second ditch by the railway, the plaintiff cooked up a false story of theft and requested for revision of the order, however, the railway administration with consent of both licencees revised the matter re-assessing the licence fee afresh, but none of the licensee paid the required licence fee within the specified period and they became defaulter for which they have no actionable claim against the railway. Therefore, prayed for dismissal of the suit with cost & compensation.

7. On the aforesaid pleadings following issues were framed:

- 1) Whether the suit is maintainable?
- 2) Whether there is any cause of action for the suit?
- 3) Whether the suit is bad for non-service of notice u/s.80 CPC?
- 4) Whether the plaintiff without following the terms of the agreement and Railway norms had converted his allotted ditch into two ponds thereby made encroachment of some portion of the contiguous ditch of the railways?
- 5) Whether the plaintiff had deposited the licence fee within the specified period as per assessment made afresh by the railways?
- 6) Whether the railway authority had illegally settled the eastern side of the plaintiff pond to the defendant No.1?
- 7) Whether the plaintiff defendants are liable to pay compensation to the plaintiff jointly and / or severally?
- 8) Whether the plainriff is entitled to get a decree as prayed for?
- 9) To what other reliefs the parties are entitled?

8. During trial of the case, both-sides adduced evidence in support of their respective cases. The Court below heard arguments put forward by the learned counsel of both-sides. The plaintiff side in addition to oral arguments submitted written argument furnishing the copy to order side.

9. Learned trial Court below after hearing the arguments delivered the judgment whereby the suit of the plaintiff was dismissed. Thus the occasion of the plaintiff to raise his grievances in the instant appeal.

10. Now, the point for determination in this case will be as to whether the learned trial Court below was justified to dismiss the suit of the plaintiff on the basis of the evidences on record.

DECISIONS AND REASONS THEREON

11. I have carefully perused the impugned judgment. Learned trial Court below took up the issue No.5 & 6 together and decided both of them in the negative and against the plaintiff. According to the learned trial Court below both the issues are co-related and main crux of the dispute between the parties lies on of the aforesaid issues. The learned trial Court below decided the issue No.3 in favour of the plaintiff and so far other issues are concerned, learned trial Court opined that the same are redundant as provided under order XX Rule 5 of CPC since the decisions in the forgoing issues are sufficient to determine the dispute between the parties.

12. Let us examined the propriety and correctness of the aforesaid decisions.

13. From the pleadings of the plaintiff, it appears that plaintiff-appellant here in this case claimed as the Licencee of two ditches in question under Railway Department. In the aforesaid status, the plaintiff has sought compensation from the railway department due to the loss suffered by him and thereby sought a decree for recovery of certain amounts. From the evidences on record, the plaintiff himself admitted that the licence fee was required to be paid every year but he did not file any receipt of licence fee and also did not file any document to show period of termination of the licence. During hearing of this appeal, the Appellate Court has asked appellant repeatedly to show any document in respect of payment of renewal licence fee. Then at the time of hearing of this appeal, the appellant vide an application states that respondent vide Ext-D in para No.6 admitted as to the receipt of letter dated 28-01-2004, which was not in record, hence, letter dated 28-01-2004 along with enclosure are filed here with for perusal as the documents is a part of the official documents of the railway department and according to the appellant, the same is admissible document under documentary evidence and can be used in deciding the suit.

14. The aforesaid letter dated 28-01-2004 was neither exhibited by the plaintiff before the trial Court below nor by the respondent during the trial of the suit. Therefore, the said letter cannot be taken into consideration before the appellate Court as it has not been exhibited as per the procedure laid in CPC in connection with the additional evidence. Accordingly the application preferred in this regard is disposed off.

15. On the other hand, Ext-D shows that the appellant-plaintiff was required to pay an arrear amount of Rs.5,988/- and the said exhibit further shows that Plaintiff-appellant paid an amount of Rs.1,916/- and as such as per the version of the railway department, plaintiff did not deposit the said amount till date nor executed any agreement with the railway and as such, railway department treated the plaintiff as the unauthorized occupier since 1997. Therefore, from the evidence on record, it is clear that plaintiff was the licensee under railway department on payment of Rs.1,916/- as the licence fee. The aforesaid licence for the ditches in question was allowed to the plaintiff for a period of 5 (five) years subject to the payment of renewal licence fee. But the plaintiff during trial could not submit any documents or papers showing the payment of renewal licence fee to the railway department. Due to the aforesaid failure of the plaintiff, he cannot be regarded as the licensee for the ditches in question. Since the plaintiff recorded failure to establish himself as the bona fide licensee for the ditches in question, thus his prayer for allowing him compensation and damage cannot be considered inasmuch as he who seek equity must come with clean hand.

16. Considering the decision of learned Court below in regard to issue No.5 & 6 in the light of the aforesaid observations, I do not find materials to upset the decisions of the aforesaid issues.

17. In view of the above, I do not find any reasons to reverse the decisions of learned trial Court below as regard the other issues.

18. Thus, it cannot be observed that the appeal has merit and in the result, judgment and decree passed by the learned trial Court below is hereby affirmed and appeal is dismissed on contest and without cost.

Given under my hand and seal of the Court on this 6th day of January, 2014.

Dictated & Corrected by me

District Judge, Dhubri

District Judge, Dhubri