

T.S NO-34/2011

Nirod Chandra Roy and other V/S Nagendra Nath Roy and others

FORM NO-(J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Dhubri

IN THE COURT OF MUNSIFF NO-1, DHUBRI

Present: **Nur Jamal Hoque, AJS**
Munsiff No-1
Dhubri

Thursday, 16th day of January, 2014

Title Suit No- 34/2011

1. Nirod Chandra Roy
 2. Kanak Chandra Roy.....Plaintiff
- V/S
1. Nagendra Nath Roy
 2. Archana Roy.....Defendants
1. Rajo Bala Barmani
 2. Brojo Bala Barmani
 3. Bhabendra Nath Barman
 4. Surendra Nath Barman
 5. Namita Bala Roy
 6. Kasu Bala Roy
 7. Kamala Bala Roy.....Proforma Defendants

This suit coming on for argument on -7/1/14 in presence of:-

Mr. J. I Ahmed & A. R Sarkar
Mr. A.B SK

LD Advocate for the plaintiff
LD advocate for the defendant

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

JUDGMENT AND ORDER

“This is a suit for declaration of title, cancellation of sale deed, correction and permanent injunction”

1. Plaintiffs case in a nutshell is that father of plaintiffs namely Narendra Nath Roy, defendant no-1 and proforma defendants no-1 to 4 were the Khatiandars/pattadars of a plot of land measuring 1B-2K covered by dag no-34(old), 138(new) Patta no-92(old), 249(new) under khatian no-75, which is described in suit A schedule of plaint. That proforma defendants no-1 to 4 relinquished their share over A schedule land and accordingly suit A schedule land fell in the share of father of plaintiffs and defendant no-1 and subsequently the father of plaintiff and defendant got ½ share of suit A schedule land i.e 3K-10L each. That father of plaintiffs got B schedule land by constructing houses and after death of father of plaintiffs the proforma defendant no-5 to 7 and present plaintiff inherited the suit B schedule land and thereafter proforma defendant no-5 to 7 relinquished their claim over B schedule land and plaintiffs accordingly possessing the suit B schedule land. That defendant no-1 in order to grab the land of plaintiffs sold 4K of land from A schedule land

which is 10L excess that his share of 3K-10L to defendant no-2. That said excess 10L of land belongs to plaintiffs and defendant has no right to sell the land to any persons. That defendant on the strength of said sale deed attempted to dispossess the plaintiffs and plaintiff after inquiry came to know in the last week of October,10 about sale deed no-872/10. Hence plaintiffs brings instant suit claiming declaration of their right, title, interest and possession over the B schedule land along with a reliefs of cancellation of sale deed.

2. The defendants contested the suit filling written statements both in law and facts. The defendants with the plea of maintainability, cause of action etc, denied entire averments of plaint save and except those are specifically admitted in the written statement. The defendants further pleaded that land shown in A schedule of plaint originally owned by predecessor of plaintiffs and defendants named Noboi Roy and all the heirs of Noboi Roy and other Khatiandar are owned and possessing their land without partition. That land shown in A schedule of plaint is under possession of plaintiffs father and defendants and as per the possession the defendants owned and possessing land measuring 4K out of total land 1B-2K and accordingly defendant no-1 sold the said 4K of land and delivered possession to defendant no-2. Hence upon the above defendant prayed dismissal of suit with cost.

3. Upon the above pleadings my predecessor in office framed following issues:-

ISSUES

1. **Whether the suit is maintainable in law and facts?**
2. **Whether there is any cause of action for the suit?**
3. **Whether the suit is under valued?**
4. **Whether the suit is bad for non-joinder of other pattadars and purchaser as necessary parties?**
5. **Whether plaintiffs have right, title, interest and possession over the suit land?**
6. **Whether the sale deed no-872 dated-7/10/10 fraudulent, illegal, void and liable to be canceled?**
7. **Whether the plaintiffs are entitled to a decree as prayed for?**
8. **To what reliefs the plaintiffs are entitled?**

4. In this case plaintiff side adduces both oral and documentary evidences before the court. In the other hand defendants side also adduces both oral and documentary evidences before this court.

5. I have heard the arguments put forwarded by plaintiff and defendant side. I have also perused the pleadings of both sides along with the entire evidences on records.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

6. ISSUE NO-1:- MAINTAINABILITY OF SUIT

The defendant in the instant suit alleged that the suit is not maintainable in its present form. INhe instant suit failed to mention specifically as why and how the suit is not maintainable. Whereas Order –8, Rule- 2 of C.P.C says that defendant must raise all the pleadings specifically regarding the non maintainability of the suit. I also do not find anything in the suit which renders the suit is not maintainable. Hence the suit is maintainable. This issue is answered in affirmative and in favor of the plaintiff.

7. ISSUE NO-2:- CAUSE OF ACTION FOR THE SUIT

This issue is relates to the cause of action for the suit. Defendants in their written statement pleaded that instant suit has no cause. I have carefully gone through the entire pleadings of both sides, where it appears that plaintiff in this suit claimed declaration of their right, title, interest and possession over B schedule land showing the ground that suit A schedule land earlier owned and possessed by the predecessor of plaintiffs, defendant no-1 and proforma defendants no-1 to 4 and subsequently the suit A schedule land divided between the plaintiffs predecessor and defendant no-1, as proforma defendants no-1 to 4 relinquished their claim over such land and accordingly suit B schedule fell in the share of plaintiffs, but defendant no-1 sold 4K of land to defendant no-2, which is in excess of 10L of land from B schedule land. Hence the plaintiffs prayed cancellation of sale deed executed by defendant no-1 in favor of defendant no-2 along with other reliefs. In the other defendants no-1 and 2 submitted written statement denying the averments of plaint and claimed that defendant no-1 got 4 K of land as his share and accordingly he sold said land to defendant no-2. The averments of both sides gives raise a bonafide dispute between the parties and that dispute requires adjudication in this suit.

A cause of action is bundle of facts affirmed by one party and denied by the other and such assertion and denial already found from the pleadings of both side. That shows this suit has cause of action. Hence this issue is answered in affirmative and in favor of plaintiff.

8. ISSUE NO-3:-PLEA OF VALUATION

The defendants in their written statement alleged that suit is bad for under valuation, but they failed to plead specifically as to why the suit is not valued properly. The defendants also failed to prove anything in this case, that can show that suit is bad for under valuation. After consideration of entire case records and nature of dispute between the parties I also don't find anything on records which can prove the fact that this suit is bad for under valuation. Hence this issue is answered in affirmative and in favor of plaintiffs.

9. ISSUE NO-4:-NON-JOINDER OF NECESSARY PARTIES

The defendants in their written statement alleges that suit is bad for non-joinder necessary party contending that other pattadar and purchaser are necessary parties. The defendants in this case failed to prove the fact as to who are those necessary parties required to implead as party to this suit. After meticulous perusal of entire dispute in hands this court not find any one left or any person left necessary who required to implead as party to this suit. Upon the above discussion it can be safely decide that this suit is not bad for non-joinder of necessary parties. Hence this issue is answered in affirmative and in favor of plaintiff.

10. ISSUE NO-5 &6 RIGHT, TITLE, INTEREST OF PLAINTIFF OVER B SCHEDULE LAND & WHETHER SALE DEED NO-872/10 IS FRAUDULENT, ILLEGAL, VOID AND LIABLE TO BE CANCELED:-

Both issues above are the bone contentions between the parties in this suit and decision of issue no-5 will decide the fate of issue no-6, that is why both the issues above are taken together for discussion and decision. Before going to the aspect of evidences of both side, let have a look over the prime contentions of both side as put forwarded by both side through their pleadings. After careful and meticulous perusal of the plaint and written statement it appears before the court that plaintiffs claimed their right, title, interest and possession over the B schedule land contending that father of plaintiffs namely Narendra Nath Roy, defendant no-1 and proforma defendants no-1 to 4 were the Khatiandars/pattadars of a plot of land measuring 1B-2K covered by dag no-34(old),

138(new) Patta no-92(old), 249(new) under khatian no-75, which is described in suit A schedule of plaint. That proforma defendants no-1 to 4 relinquished their share over A schedule land and accordingly suit A schedule land fell in the share of father of plaintiffs and defendant no-1 and subsequently the father of plaintiff and defendant got ½ share of suit A schedule land i.e 3K-10L each. That father of plaintiffs got B schedule land by constructing houses and after death of father of plaintiffs the proforma defendant no-5 to 7 and present plaintiff inherited the suit B schedule land and thereafter proforma defendant no-5 to 7 relinquished their claim over B schedule land and plaintiffs accordingly possessing the suit B schedule land. That defendant no-1 in order to grab the land of plaintiffs sold 4K of land from A schedule land which is 10L excess that his share of 3K-10L to defendant no-2. That said excess 10L of land belongs to plaintiffs and defendant has no right to sell the land to any persons. Upon the above plaintiffs prayed cancellation of sale deed of defendants no-1. On contra defendants admitted the fact that suit A schedule land earlier belongs to the predecessor of plaintiffs, defendant no-1 and proforma defendant no-1 to 4 and defendants further admitted the fact in para 7 of their written statement that suit A schedule land is under possession of plaintiffs father and defendants. But the defendants claimed 4K of land out of 1B-2K on the basis of his possession over the A schedule land. So, from the pleadings of plaintiffs and defendants it apparently appears before the court that both sides in their pleadings admitted their ownership over A schedule land. The defendants in para -7 of their written statement further admitted the possession of plaintiffs father and defendant over A schedule land. That clearly indicates that suit A schedule land earlier possessed by plaintiffs father and defendant and both sides have got their right, title, interest over the suit land. The defendant in para no-6 of their written statement admitted that suit land as described in the plaint was originally belongs to Noboi Roy predecessor of plaintiff, defendants and proforma defendants who during his life time besides the suit land owned other plots of land. But the defendants failed to described other land of their predecessor. From the admission on the part of defendants it proves that plaintiffs predecessor, defendant no-1 and proforma defendants no-1 to 4 are have right, title, interest over the suit land and defendant and plaintiffs father also possessed the suit A schedule land. That strengthen the claim of plaintiffs that their father was the owner of suit A schedule land and they have also got their possession over the land described in schedule A of plaint. It is the settled provisions of law that admitted fact needs not be proved further. From the admission on the part of defendants it clearly proves that plaintiffs are have got right, title, interest and possession over land described in schedule A of plaint. One fact remains unproved regarding the fact as to whether the proforma defendants no-1 to 4 relinquished their claim over the suit A schedule or whether the suit A schedule land equally portioned between the plaintiffs father and defendant no-1 and whether the suit B schedule fell into the share of father of plaintiffs.

The defendants in their written statement pleaded that suit land never partitioned between the plaintiffs, defendants and proforma defendants. If there is no partition took place between the plaintiffs and defendant no-1 and proforma defendants no-1 to 4, then how the defendant no-1 got 4K of land out of 1B-2K of land that fact is not clearly pleaded by the defendants in their written statement. The total land as described in schedule A of plaint is 1B-2K and as per admission on the part of defendants the father of plaintiffs, defendants no-1 and proforma defendants no-1 to 4 are the co-sharer of such land, then without partition of such 1B-2K of land how the defendant no-1 got 4K of land that facts is not proved before the court.

Now coming to the question relating the facts as to whether the proforma defendants no-1 to 4 relinquished their claim over the suit A schedule land or whether the suit A schedule land equally partitioned between the plaintiffs father and defendant no-1 and whether the

suit B schedule fell into the share of father of plaintiffs. In this case proforma defendants appeared and submitted their written statement admitting the claim of the plaintiffs. That proves the fact that proforma defendants relinquished their share in favor of plaintiffs father and defendant no-1. The proforma defendants further admitted the fact that plaintiffs have right, title, interest and possession over the suit B schedule land. So, the pleadings of proforma defendants supported the fact that plaintiffs are have right, title, interest and possession over B schedule land. Now the question remains as to whether the suit A schedule land equally divided between the plaintiffs father and defendant no-1 or whether the suit B schedule land fell into the share of plaintiffs father. In this case plaintiffs to answer those facts examined as many as two witnesses and exhibited three numbers of documents. On contra defendants side also examined as many as four witnesses and exhibited two documentary evidences.

I have carefully traveled through the oral and documentary evidences of both the plaintiffs and defendants side. It reveals that Et-1 is land holding certificate, Ext-2 is certified copy of Draft Chitha and both the documents proves the fact that suit A schedule land stand recorded in the name of plaintiffs father, defendants no-1 and proforma defendants no-1 to 4. Ext-3 is the certified copy of sale deed executed in favor defendant no-2 by defendant no-1 and through Ext-3 total land 4K from suit dag no34(old), 138(new) of Khatian no-75 sold by defendant no-1 in favor of defendant no-2. It further reveal that said 4K of land is part of suit A schedule of plaint. The defendants side also exhibited certified copy of said sale deed of defendant no-2 and draft Jamabandi of suit land as Ext-A and B. So, from the documentary evidences of both sides it clearly appears that suit land stands recorded in the name father of plaintiffs, defendant no-1 and proforma defendants no-1 to 4 and defendant no-1 sold 4K of land to defendant no-2 by executing a registered sale deed.

The oral testimonies of plaintiffs side supported the averments of plaintiffs. On contra defendant defendant no-1 being DW-1 in his cross-examination testifies that suit land possessed by him and plaintiffs. DW-1 further testifies that he sold 10L excess land. DW-2 in his cross-examination testifies that Narendra Nath Roy and Nagendra Nath Roy have equal share over the suit land. To sum up the oral evidences of plaintiffs and defendants side it clearly proves before the court that plaintiffs and defendants possessing the suit land and both the plaintiffs and defendants have their equal share over the suit land and suit land not yet partitioned. It also proves before the court that defendant no-1 sold out 4K of land to defendant no-2 vide Ext-3, which is 10 L of excess land. That facts also admitted by the defendant no-1 in his cross-examination.

Therefore in the light of all the above discussion I am of considered opinion that plaintiffs side proves their case by establishing the fact that father of plaintiffs namely Narendra Nath Roy, defendant no-1 and proforma defendants no-1 to 4 were the Khatiandars/pattadars of a plot of land measuring 1B-2K covered by dag no-34(old), 138(new) Patta no-92(old), 249(new) under khatian no-75, which is described in suit A schedule of plaint and proforma defendants no-1 to 4 relinquished their share over A schedule land and accordingly suit A schedule land fell in the share of father of plaintiffs and defendant no-1 and subsequently the father of plaintiff and defendant got $\frac{1}{2}$ share of suit A schedule land i.e 3K-10L each. It further proved the of plaintiffs got B schedule land by constructing houses thereon, but defendant no-1 sold out 4 K of land to defendant no-2 through executing sale deed vide Ext-3 and that indicates that defendant no-1 sold out 10L of land excess from the suit B schedule land. In the other hand defendant side failed to prove the fact as to how defendant no-2 got 4K of land without partition of suit A schedule land. Hence, upon the above it can be safely decide here that plaintiffs have got right, title, interest and possession over the suit land and defendant no-1 fraudulently and illegally sold

out 4K of land from A schedule land with intention to grab the suit B schedule land of plaintiffs. As such issue no-5&6 are answered in affirmative and in favor of plaintiffs.

11. ISSUE NO-7,8&9:- RELIEFS

All the issues above are co-relates with each other and are same in nature, that is why all the issues above taken together for discussion and decision. In the light of discussion and decision made in all the foregoing issues, the plaintiff is entitled to get reliefs of declaration of right, title, interest and possession over B schedule land, declaration regarding the legality of sale deed no-872/10, cancellation of said deed and permanent injunction only, except that plaintiffs are not entitled to get decree of correction of records as there is no pleading in their plaint about any correction of records. Hence all issues above are answered partly in affirmative and in favor of plaintiff.

ORDER

12. In the result plaintiff suit is decreed partly on contest with cost declaring plaintiff right, title, interest and possession over the suit B schedule land. A decree declaring that the sale deed no-872/10 is fraudulent, illegal and void ab-initio. A decree to cancel the sale deed no-872 dated-7/10/10 executed in the office of Sub-Registrar, Golakganj. An order of permanent injunction restraining the defendants from entering into and dispossessing the plaintiffs over the part of suit land.

13. Prepare a decree accordingly.

14. Judgment is pronounced and delivered in open court under the hand seal of this court on 16 th day of January , 2013.

**MUNSIFF NO-1
Dhubri**

APPENDIX

1. **PLAINTIFFS WITNESSES** PW-1 Kanak Chandra Roy
PW-2 Surendra Nath Roy
PW-3 Bimal Chandra Roy
PW-4 Jogendra Ray

2. **DEFENDANTS WITNESSES:-** DW-1 Nagendra Nath Roy
DW-2 Subash Roy
DW-3 Khagendra Nath Ray
DW-4 Jahanur Rahaman

3. **PLAINTIFFS EXHIBITS :-** Ext-1 Land Holding Certificate
Ext-2 C.C of Draft Chitha
Ext-3 C.C. Of Sale Deed No-872/10

4. **DEFENDANTS EXHIBITED:-** Ext-A C.C of Draft Jamabandi
Ext-B C.C of Sale Deed

**MUNSIFF NO-1
Dhubri**