

**Form no. (J) 2**

Heading of judgment in original suit/case

**THE COURT OF MUNSIFF, HATSINGIMARI, DHUBRI.**

Present: Sri AbhijitSaikia, A.J.S.

Tuesday, the30<sup>th</sup> day of June,2020.

**TITLESUIT NO. 103/2017**

ABDUL MATIN PRODHANI

..... Plaintiff

*Versus*

1. MONI SK.
2. JAHANGIR SK.
3. HAZI SHAHA ZAMAL
4. BAKTA ZAMAL (MASTER)
5. BABU SK.
6. ABUL SK.
7. ABDUR ROHIM SK.
8. EBRAHIM SK.
9. ABDUR ROHIM
10. FOJAL KOBIRAJ
11. BOKTA ZAMAL ANSARY
12. JIAUR RAHMAN
13. BHUTTA
14. TAHIBUL ISLAM
15. SHAHAJAHAN SK.
16. SHUBAJUDDIN SK.
17. MIACHAN ALI

18. NUR AZIM SK.

19. CHANDU MUNSHI

20. JOIN SK.

.....Defendants Group-I

21. ABDUS SALAM

22. HAZRAT ALI

23. HAMIDUR RAHMAN

24. MEGHA SK.

25. ABDUL HAMED

26. SIDDIQUE ALI

..... DefendantsGroup-II

This suit/case coming on for final hearing on 26/06/2020 in the presence of –

Mr. Abdul Baten Sk. , LearnedAdvocatefor the plaintiff;and

, Learned Advocate for the defendants,

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

## **JUDGMENT**

1. The plaintiff had instituted this suit, seeking amongst other reliefs, a decree for declaration of his right, title and interest over the suit land described in the schedules appended to the plaint. Further, the plaintiff had prayed for a decree for confirmation of his possession over the suit land. Furthermore, the plaintiff had prayed for a decree of permanent injunction against the defendants.
2. The brief facts leading to the institution of this suit as revealed from the plaint are that:

3. The plaintiff had purchased 1 (One) Bigha, 4 (Four) Kathas and 11 (Eleven) Lechas of land, covered by Dag No. 51 under the Khatian No. 138, presently included under Dag No. 672(old)/438(new) under the Patta No. 153(new), situated at revenue village Bhimapara within the revenue circle Mankachar, from one Md. Foyen Uddin vide registered Sale Deed No. 676/1996 dated 25.06.1996. Accordingly, he took possession of the plot. Although he had purchased the aforementioned plot, the plaintiff's land was recorded to be measuring 1 (One) Bigha, 3 (Three) Kathas and 19 (Nineteen) Lechas only, as per the re-survey and settlement operation. The said plot has been described in the schedule 'A' of the plaint. The plaintiff had been possessing the schedule 'A' land by constructing residential houses in the northern side whereas the southern part and the western part were kept vacant for his domestic works. Previously, the Defendants Group-II had dispossessed the plaintiff from land measuring 1 (One) Katha and 8 (Eight) Lechas out of the A scheduled land. As such, the plaintiff had preferred Title Suit No. 200/2002 in the court of learned Munsiff, Dhubri seeking reliefs of declaration, eviction and Khas possession. The suit of the plaintiff was decreed in his favour by a judgment dated 07.04.2012. Thereafter, the defendants filed Title Appeal No. 39/2012 in the court of Honourable Civil Judge, Dhubri. The said appeal was also dismissed by a judgment dated 05.10.2015. At present, the execution case pertaining to the decreed suit is pending before the learned Munsiff, Hatsingimar for recovery of possession against the Defendants Group-II. The land measuring 1 (One) Katha and 8 (Eight) Lechas involved in Title Suit No. 200/2002 has been described in schedule 'B' of the plaint whereas the remaining land measuring 1 (One) Bigha, 2 (Two) Kathas and 10 (Ten) Lechas out of schedule A land has been described in schedule 'C' of the plaint. Both the scheduled B and C lands are part and parcel of the scheduled A land. As the Defendants Group-II failed in Title Suit No. 200/2002, they made a pact with the Defendants Group-I, the neighbours and adjacent possessors of the schedule A land, in order to create paths from east to west and south to north respectively, within the southern and western part of schedule C land. The defendants intended to use the path for their communication, plying of Carts, Motorcycles, Bicycles, Auto Rickshaws etc. The defendants have been trying to forge the paths since June, 2017 by application of sheer force and repeated threats of dismantling the boundary

fencings of the schedule C land. The plaintiff had been constantly raising his protests against the illegal force and threats from the defendants. As such, they had become furious and had obstructed the plaintiff from extending his residential houses towards the vacant portion of schedule C land since 05.07.2017, without having any right title or authority to do so. The threats of obstruction against any possible construction is continuing even now. On 15.08.2017, the defendants attempted open a path in the schedule C land by intimidation. However, they could not succeed on account of the timely intervention of the plaintiff and his family members. Earlier, some neighbours to the suit land, in collaboration with some Government officials viz. the Block Development Officer and others, had tried to forge a path within a part of the suit land. Therefore, the plaintiff was forced to file Title Suit No. 119/1998 against them. The said suit had been decreed in favor of the plaintiff with a decree to restrain the defendants from opening any path within the suit land. The plaintiff has every right, title and interest over the entire schedule B land. On the other hand, the defendants have no right, title and interest on any part of the suit land. Yet, the defendants are restraining the plaintiff from extending his residential house towards the southern part of his land, with the intention to forcibly forge a path from east to west and south to north respectively, within the C scheduled land. Therefore, the plaintiff had filed this suit seeking the aforesaid reliefs.

4. The defendant Nos.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 25 and 26 had initially appeared in the suit after service of summonses upon them. They had taken repeated adjournments to file their written statements but could not submit their written statements within the statutory period prescribed by law. Therefore, the suit had proceeded ex-parte against the said defendants. The remaining defendants i.e. the defendant Nos. 21, 22, 23 and 24 did not appear even once in the suit, in spite of proper service of summonses upon them. As such, the suit had proceeded ex-parte against all the defendants.
5. In support of his plaint, the plaintiff adduced evidence in affidavits of 3 (Three) witnesses. These witnesses had exhibited certain documents in support of their pleas. The plaintiff had further summoned and examined 1 (One) official

witness in furtherance of his case. I have heard the arguments put forward by the learned counsel for the plaintiff. I have perused the Case Record as well.

6. From the materials available on record, the following points for determination are taken up for consideration and decision:
  1. *Whether there is a cause of action for the suit?*
  2. *Whether the plaintiff has right, title and interests over the suit land described in the schedules A, B and C of the plaint?*
  3. *Whether the plaintiff is entitled to the relief(s), as prayed for?*

**DISCUSSION, DECISIONS AND REASONS THEREOF:**

7. Now, let me discuss the materials on record and try to arrive at definite findings as regards the points for determination.

**Point for Determination No. 1:**

8. The plaintiff has pleaded that he is the sole owner and possessor of a plot of land measuring 1 (One) Bigha, 4 (Four) Kathas and 11 (Eleven) Lechas, as described fully in the schedule A of the plaint, having purchased it through a registered Sale Deed from one Md. Foyen Uddin in the year 1996. After his purchase, he has been possessing the plot by constructing a residential house in the northern part whereas the southern and western parts were kept vacant. The defendants group-II had previously dispossessed him from a part of the A schedule land, fully described in schedule B of the plaint. As such, the plaintiff had approached the courts of law, which had decreed the suit in his favour as by affirming his right title and interest over the said plot. Even the appeal against the decree in his favour was dismissed by the appellate court. Thereafter, the two sets of defendants had entered into a malicious pact with the intention to create a path which would pass through the vacant portion of the schedule C land. They had tried to use force with repeated threats to the plaintiff in order to achieve their illegal ends. The plaintiff has been resisting the attempts with all his might but the defendants have been deterring him from making any construction over his own plot of land. As such, he has

approached this court seeking protection for himself. The ownership of an immovable property bestows certain rights upon an owner, first and foremost of which is the right to peaceful possession over the same. The plaint in this case indicates the infringement of this very right, thereby arming the plaintiff with a remedy and a cause of action. Thus, the point No. 1 is decided in the affirmative and in favor of the plaintiff.

**Point for Determination No. 2:**

9. In order to arrive at a conclusion on the aforesaid point for determination, it is essential to have a brief discussion on the evidence adduced by the plaintiff. The plaintiff Abdul Matin Prodhani had himself deposed as the PW 1 in this case. In his evidence on affidavit, he deposed that he has filed the suit against the defendants for a declaration and for permanent injunction. The suit is proceeding ex-parte against the defendants. He is the absolute owner and possessor of the suit land measuring 1 (One) Bigha, 4 (Four) Kathas and 11 (Eleven) Lechas which he had purchased from one Md. Foyen Uddin vide registered Sale Deed No. 676/1996 dated 25.06.1996. The aforesaid land purchase by him is a part of the Dag No. 51 under the Khatian No. 138, presently included under Dag No. 672(old)/438(new) under the Patta No. 153(new), situated at revenue village Bhimapara within the revenue circle Mankachar. The purchase was coupled with delivery of possession of the plot. At the time of re-survey and settlement operation, the aforementioned plot purchased by him had been recorded to be measuring 1 (One) Bigha, 3 (Three) Kathas and 19 (Nineteen) Lechas only. That land has been fully described in the schedule A of the plaint. Previously, the Defendants Group-II had dispossessed him from land measuring 1 (One) Katha and 8 (Eight) Lechas out of the A scheduled land. As such, he had preferred Title Suit No. 200/2002 in the court of learned Munsiff, Dhubri seeking reliefs of declaration, eviction and Khas possession. The said suit was decreed in his favor by a judgment dated 07.04.2012. Against this judgement, the defendants Group-II filed Title Appeal No. 39/2012 in the court of Honourable Civil Judge, Dhubri. The said appeal was also dismissed by a judgment dated 05.10.2015. At present, the execution case pertaining to the decreed suit is pending before the learned Munsiff, Hatsingimari for recovery of possession against the

Defendants Group-II. The land measuring 1 (One) Katha and 8 (Eight) Lechas involved in Title Suit No. 200/2002 has been described in schedule 'B' of the plaint whereas the remaining land measuring 1 (One) Bigha, 2 (Two) Kathas and 10 (Ten) Lechas out of schedule A land has been described in schedule 'C' of the plaint. Both the scheduled B and C lands are part and parcel of the schedule A land. As the Defendants Group-II failed in Title Suit No. 200/2002, they made a pact with the Defendants Group-I, the neighbours and adjacent possessors of the schedule A land, in order to create paths from east to west and south to north respectively, within the southern and western part of schedule C land. The defendants intended to use the path for their communication, plying of Carts, Motorcycles, Bicycles, Auto-Rickshaws etc. The defendants have been trying to forge the paths since June, 2017 by application of sheer force and repeated threats of dismantling the boundary fencings of the schedule C land. He had been constantly raising his protests against the illegal force and threats from the defendants. As such, they had become furious and since 05.07.2017 they had obstructed him from extending his residential houses towards the vacant portion of schedule C land, without having any right title or authority to do so. The threats of obstruction against any possible construction is continuing even now. On 05.08.2017, the defendants attempted open a path in the schedule C land by intimidation. However, they could not succeed on account of the timely intervention from him and his family members. Earlier, some neighbours to the suit land, in collaboration with some Government officials viz. the Block Development Officer and others, had tried to forge a path within a part of the suit land. Therefore, he was forced to file Title Suit No. 119/1998 against them. The said suit had been decreed in his favorwith a decree to restrain the defendants from opening any path within the suit land. He has every right, title and interest over the entire schedule A land. On the other hand, the defendants have no right, title and interest on any part of the suit land. Yet, the defendants are restraining him from extending his residential house towards the southern part of his land, with the intention to forcibly forge a path from east to west and south to north respectively, within the C scheduled land. As such, he has been forced to file the suit.

10. The PW 1 exhibited the following documents:

Exhibit 1 is the certified copy of the registered Sale Deed No. 676/1996.

Exhibit 2 is the certified copy of draft Jamabandi of Patta No. 153.

Exhibit 3 is the certified copy of draft Chitha of Patta No. 153.

Exhibit 4 is the Land Holding Certificate.

Exhibit 5 is the certified copy of judgment in Title Suit No. 119/1998.

Exhibit 6 is the certified copy of decree in Title Suit No. 119/1998.

Exhibit 7 is the certified copy of the plaint in Title Suit No. 119/1998.

Exhibit 8 it is the certified copy of order dated 05.10.2015 in Title Appeal No. 39/2012.

Exhibit 9 is a certified copy of judgment in Title Appeal No. 39/2012.

Exhibit 10 is the certified copy of decree passed in Title Appeal No. 39/2012.

11. PW 2 AbulFojolProdhani is a nearby resident to the plaintiff and the defendants. Therefore, he is familiar with the parties to the suit, the suit land and the facts involved in this suit. Through his evidence on affidavit, he fully corroborated the evidence of the plaintiff/PW 1.
12. PW 3 Anowar Ali Sk. is also a nearby resident to the plaintiff and the defendants. Therefore, he is familiar with the parties to the suit, the suit land and the facts involved in this suit. Through his evidence on affidavit, he too fully corroborated the evidence of the plaintiff/PW 1.
13. PW 4 Rahimuddin Ahmed is an official witness who works as an Extra Writer in the Hatsingimari Sub Registrar's Office. He had deposed that the Sub-Registrar, Hatsingimari had received summons from the court and entrusted him to produce certain documents mentioned in the summons. Accordingly, he had produced the Register No. 1, Volume Book No. 05/1996 in court. The contents of Sale Deed No. 673/1996 are included in the aforesaid Sale Deed. As per the Volume Book, the seller Md. Foyen Uddin had sold land measuring 1 (One) Bigha, 4 (Four) Kathas and 11 (Eleven) Lechas to Abdul Matin Prodhani i.e. the plaintiff. The Exhibit 1 is the certified copy of the aforesaid Sale Deed, as issued from their office. He (PW 4) had written the certified copy and after its verification by the verifying officer, he had put his signatures therein. Thereafter, the Sub-Registrar Mr. N. Zaman had put his signatures therein. The Exhibit 1(i) is the signature of Verifying Officer/Head

Clerk Abdur Rahim, which he personally knew. The Exhibit 1(ii) is his own signature while the Exhibit 1(iii) is the signature of the then Sub-Registrar NurujZaman, which he personally knew. The contents of the Exhibit 1 are identical to the corresponding entries in the Register brought by him before the court.

14. First and foremost, it has to be reiterated here that the defendants never contested the suit by filing written statement or otherwise. Hence, the witnesses of the plaintiff or the Exhibits on record were not disputed/challenged by any cross examination. As such, the evidence on record from the plaintiff's side remains unchallenged and undisputed. Therefore, it is imperative to analyze whether the oral and documentary evidence adduced by the plaintiff are sufficient to establish his case or not.
15. The plaintiff had asserted that he purchased 1 (One) Bigha, 4 (Four) Kathas and 11 (Eleven) Lechas of land, covered by Dag No. 51 under the Khatian No. 138, presently included under Dag No. 672(old)/438(new) under the Patta No. 153(new), situated at revenue village Bhimapara within the revenue circle Mankachar, from Md. Foyen Uddin vide registered Sale Deed No. 676/1996 dated 25.06.1996. Exhibit 1 is the certified copy of the aforesaid Sale Deed. The plaintiff proved the Exhibit 1 by adducing the evidence of the official witness PW 4, who had written the certified copy himself. He vouched for the genuineness of the execution and the contents of the deed as he compared the Exhibit 1 with the corresponding entries mentioned in the Volume Book kept at their office. It is important to note here that the execution, contents or the registration of this deed have never been disputed here, either by the executor Md. Foyen Uddin or the defendants in this suit. As such, it can be held that the plaintiff has successfully proved the execution and registration of the aforesaid deed and thereby his purchase of the plot, of which the suit land is a part.
16. The Exhibit 2 is the certified copy of the draft Jamabandi of the suit Patta No. 153. It includes the name of Md. Foyen Uddin as a registered Pattadar. This would indicate that the person from whom the plaintiff had derived his title had a proper title himself over the suit lands and was lawfully capable of

transferring the same. Further, the draft Jamabandi contains the relevant entry which states that the name of the plaintiff was substituted in place of the vendor Md. Foyen Uddin over 1 (One) Bigha, 3 (Three) Kathas and 19 (Nineteen) Lechasland under the suit Dag No. 438 on the strength of Mutation Case No. 494/2017. The said recorded land is the suit land as described in the schedule 'A' of the plaint and the evidence on affidavit. The Exhibit 3 is the draft Chitha of the suit Patta No. 153 which includes the suit Dag No. 438. Here too, the names of both the vendor Md. Foyen Uddin Sk. and the purchaser Abdul Matin Prodhani (plaintiff) are included as registered Pattadars. It too contains the relevant entry indicating that the name of the plaintiff was substituted in place of the vendor Md. Foyen Uddin over 1 (One) Bigha, 3 (Three) Kathas and 19 (Nineteen) Lechas land under the suit Dag No. 438 on the strength of a Mutation Case.

17. The Honourable Gauhati High Court had held in the case of **Amiya Bala Dutta vs Mukut Adhikari (1999 1 GLR 229)** that, "under the Assam land and revenue regulation a patta holder is a land holder having permanent heritable and transferrable rights of use and occupancy subject to section 9. Patta must be given due weightage and cannot be brushed aside as it is issued under section 17 and can be considered a document of title. Mutation orders cannot be brushed aside until proved to be not done properly. Record of rights under section 40 and 41 shall always be deemed to be correct until proved otherwise." The Exhibit 4 is the Land Holding Certificate issued by the Assistant Settlement Officer, Mankachar Circle in the name of the plaintiff. This document also asserts that the plaintiff is the recorded possessor of the suit land. Overall, through the Exhibits 1 to 4, the plaintiff was able to prove that he had lawfully purchased the suit land described in schedule A and has absolute right, title and interests over the same.

18. The Exhibits 5, 6 and 7 are the certified copies of Judgment, Decree and the Plaint in Title Suit No. 119/1998, respectively. The plaintiff had preferred this suit against some of his neighbours who had tried to dispossess him from a portion of the A scheduled land by trying to forcefully forge a path therein. The suit was decreed in his favour on the strength of the very Sale Deed which has been exhibited here as the Exhibit 1. The Exhibits 8 to 10 are respective certified copies of Order, Judgment and Decree passed by the

Honourable Civil Judge, Dhubri in Title Appeal No. 39/2012. This appeal had been preferred by the defendants Group-II of this suit against the present plaintiff. It was preferred against the Judgment and Decree passed in favour of the present plaintiff whereby the plaintiff's title was established over 1 (One) Katha and 8 (Eight) Lechas of the schedule A land. The Honourable Appellate Court had considered the matter in its entirety and dismissed the appeal by upholding the right, title and interests of the plaintiff and the legal sanctity of the registered Sale Deed No. 676/1996 (Exhibit 1).

19. As stated earlier, the oral evidence of the PW 1, as duly corroborated by the testimonies of the PW 2 and PW3, do establish that since June, 2017, the defendants have been trying to forge paths from east to west and south to north directions within the southern and western part of schedule C land, by application of sheer force and repeated threats of dismantling the boundary fencings. The defendants had even obstructed the plaintiff from extending his residential houses towards the vacant portion of schedule C land since 05.07.2017. Overall, the plaintiff has been able to prove through his oral and documentary evidence that he has right, title and interests over the entire A scheduled land and that the defendants are trying to dispossess him from a portion of the A scheduled land, as described in schedule C. Therefore, the point No. 2 is decided affirmatively and in favour of the plaintiff.

**Point for Determination No. 3:**

20. In view of the decisions on the previous points for determinations, this point is decided in favour of the plaintiff.

**ORDER**

21. In view of the above discussion and the decisions on the aforesaid points for determination, the instant suit is decreed ex parte in favour of the plaintiff, with costs. It is hereby declared that the plaintiff has right, title and interest over the suit lands described in the schedules A, B and C of the plaint. His possession over the suit lands is hereby confirmed. The defendants, their agents, servants, representatives or men are hereby restrained from entering

the suit lands and from interfering in the peaceful possession of the suit land by the plaintiff in any manner.

22. Prepare decree accordingly.

Given under my hand and the seal of this court on this the 30<sup>th</sup> day of June, 2020 at Hatsingimari, Dhubri.

ABHIJIT SAIKIA,

MUNSIFF, HATSINGIMARI, DHUBRI.

## **APPENDIX**

### **Witnesses examined by the Plaintiff:**

1. Abdul Matin Prodhani (PW1)
2. Abul Fojol Prodhani (PW 2)
3. Anowar Ali Sk. (PW 3)
4. Rahimuddin Ahmed (PW 4)

### **Documents exhibited by the Plaintiff:**

1. Exhibit 1 is the certified copy of the registered Sale Deed No. 676/1996.
2. Exhibit 1(i) is the signature of Verifying Officer/Head Clerk Abdur Rahim.
3. Exhibit 1(ii) is the signature of PW 4 Rahimuddin Ahmed.
4. Exhibit 1(iii) is the signature of the then Sub-Registrar Nuruj Zaman.
5. Exhibit 2 is the certified copy of draft Jamabandi of Patta No. 153.
6. Exhibit 3 is the certified copy of draft Chitha of Patta No. 153.
7. Exhibit 4 is the Land Holding Certificate.
8. Exhibit 5 is the certified copy of judgment in Title Suit No. 119/1998.
9. Exhibit 6 is the certified copy of decree in Title Suit No. 119/1998.
10. Exhibit 7 is the certified copy of the plaint in Title Suit No. 119/1998.
11. Exhibit 8 it is the certified copy of order dated 05.10.2015 in Title Appeal No. 39/2012.
12. Exhibit 9 is a certified copy of judgment in Title Appeal No. 39/2012.
13. Exhibit 10 is the certified copy of decree passed in Title Appeal No. 39/2012.

### **Witnesses examined by the Defendants:**

None.

### **Documents exhibited by the Defendants:**

None.

**T.S. 103/2017**

**ORDER**

**30.06.2020**

The Case is taken up out of the Special Cause List prepared for hearing of cases through video conferencing.

Plaintiff is represented.

The Judgment is prepared in separate sheets, to be tagged together with the case record. The same is pronounced through video conferencing in presence of the plaintiff's learned counsel.

In view of the discussion and decisions made therein, this suit is decreed ex parte with costs.

It is hereby declared that the plaintiff has right, title and interest over the suit lands described in the schedules A, B and C of the plaint. His possession over the suit lands is hereby confirmed. The defendants, their agents, servants, representatives or men are hereby restrained from entering the suit lands and from interfering in the peaceful possession of the suit land by the plaintiff in any manner.

Prepare decree accordingly.

The instant suit is hereby disposed.