

T.S. No.56/2013
Dated: 16.08.2019

IN THE COURT OF MUNSIFF NO. 1 AT TINSUKIA
DISTRICT-TINSUKIA
Title Suit Case No. 56/2013

SRI RATNESWAR BARUAH

S/o. Sri Tomesar Baruah,

by religion-Hindu, a resident of

Dhulijan Gaon, P.O.Makum,

P.S. Bordubi,Dist. Tinsukia ,Assam

.....Plaintiff

VERSUS-

1. SRI PUNA BAILUNG,

S/o.Sri Dilip Bailung,

2. SRI BARKU KARMAKAR,

S/o Girish Karmakar,

3. SRI SITARAM KARMAKAR,

S/o Lt Girish Karmakar,

4. SMTI. SHANTI KARMAKAR @MINI

W/o.Lt. Hiru Karmakar,

ALL RESIDENT OF

TENGA PANI GAON(GORBASTI),

P.O MAKUM, P.S.BORDUBI,

DIST- TINSUKIA, ASSAM

..... Defendants

This suit coming on for final hearing on 03.08.2019 in the presence of:

Smt. Pallavi Phukan : Advocate for the Plaintiff; and

Sri Subharam Moran : Advocate for the Defendant No. 1

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

JUDGMENT

1. This is a suit for declaration, eviction and permanent injunction, etc.

Condescendence of the plaint in brief

2. The facts leading to the institution of this suit as averred in the plaint is that vide registered Deed of Sale no. 871 of 2004 ,dated 2/8/2004 of Tinsukia Sr.Sub Register Office ,the plaintiff has become the absolute lawful owner of the land measuring 1Bigha only covered under part of Dag No .154 of P.P.No.101,situated at Tengapani Gaon ,under Tipling Mouza, P.S.Bordubi, Dist-Tinsukia, Assam morefully described in the schedule A of the Plaint and since then the plaintiff was in continuous physical possession of the same until dispossessed from a part thereto by the defendants as mentioned in the plaint. The plaintiff also got his name mutated in the revenue record and started to pay the land revenue to the Government in respect of the same. That on 5/11/2013, while the plaintiff was out of station ,the defendants taking advantage of his absence, illegally trespassed in to the said land of the plaintiff described in "Schedule A" of the Plaint. The defendant no.1 forcefully and illegally occupied the land described in the schedule "B" of the paint which is a part of the land described in schedule "A" of the plaint, and the defendant no.2,3 and 4 also illegally trespassed and occupied the land mentioned in schedule "C","D" and "E" of the plaint which are the part of the land described in Schedule "A" of the Plaint and for convenience and brevity the said schedule "B","C","D" and "E" are referred to as the suit land as described in the Plaint.

PRAYER OF THE PLAINTIFF

- (a) *Declaration of Plaintiff's right ,title and interest over the suit land described in the Schedule-B, Schedule-C, Schedule -D and Schedule-E below*
- (b) *Recovery of possession of the land described in the Schedule -B below(A part of the suit land) by evicting the Defendant No.1 Shri Puna Bailung with all his dependents, goods and belongings thereform as well as by dismantling and removing the houses, pucca latrine and other constructions whatsoever standing thereon;*
- (c) *Recovery of possession of the land described in the Schedule-C below (another part of the suit land) by evicting the Defendant No.2 Sri Barku Karmakar including his dependants, goods and belonging therefrom as*

- well as by dismantling and removing the houses and other constructions whatsoever standing thereon;*
- (d) *Recovery of possession of the land described in the Schedule-D below (another part of the suit land) by evicting the Defendant No.3 Sri Sitaram Karmakar including his dependant ,goods and belongings there from as well as by dismantling and removing the houses and other constructions whatsoever standing thereon;*
- (e) *Recovery of possession of the land decribed in the Schedule-E below (another part of the suit land) by evicting the Defendant No.4 Smti. Shanti Karmakar @Mini including her dependants, goods and belongings there from a well as by dismantling and removing the houses and other constructions whatsoever standing thereon;*
- (f) *Permanent injuction restraining the Defendants, their dependants, relatives, employees and workman from making any constructions on the Suit land or any part thereto as well as from transferring /alienating the suit land or any part thereto to any third party by way of scale or otherwise,*
- (g) *Cost of the suit;*
- (h) *Any other relief of reliefs to which the plaintiff is found to be entitled under the Law, equity and Justice.*

APPEARANCE OF THE DEFENDANTS

3. Accordingly summons were issued to the defendants and it appears from the case record that summons have been duly served upon the defendants. The defendant 1 filed written statement and contested the suit. The defendant No. 2, 3 and 4 did not appear to contest the suit and the suit proceeded ex parte against Defendant No. 2, 3 and 4 vide order dated 05/04/2014 by the Court of my learned predecessor.

CASE OF DEFENDANTS

4. The defendant No. 1 only contested the suit by filing written statement inter-alia contended that the suit is not maintainable in law as well as on fact and that the plaintiff has no right to sue in the present form of the suit. Defendant No. 1 further

contended that the suit is bad due to non joinder of necessary parties. The defendant No. 1 also took the plea that the schedule of the land as described in the plaint, is improper, incomplete and insufficient. He also took the plea that the suit is bad for want of cause of action as no cause of action arose on 5.11.2013 and 20.11.2013. The Defendant No. 1 admitted the Registered Sale Deed filed by the plaintiff matter of records which is admitted but the defendants have not dispossessed the plaintiff from his land at any time.

5. The defendant No. 1 inter-alia contended that the defendant Puna Bailung has not occupied illegally the land described in the schedule 'B' in the plaint and stated that Smti. Jusna Bailung, wife of Sri Mukut Bailung @ Puna Bailung has purchased a plot of land from Sri Purna Kanta Gogoi (Vendor) measuring area about 0B -2K-10 Ls under Dag No. 154, P.P.No.101 of Tengapani village, under Tipling Mouza, Dist. Tinsukia , Assam- bounded in the Northern side by the land of Smt. Uttara Nath, in the southern side by the Land of Sri Ratneswar Baruah, in the eastern side by the land of 12'-0" wide extended road and in the western side by the land of Sri Binod Gogoi.
6. It is also contended that vide Registered Sale Deed No. 655 dated 18th. Day of June, 2011 at Sr. Sub-Registrar Office, Tinsukia, duly obtained Sale permission No.TSK/LSP/2011/TSK-1662 dated 18.6.11 from Office of the Deputy Commissioner, Tinsukia, and the said land is duly mutated and demarcation is made accordingly by the Office of the Revenue Circle, Tinsukia and obtained Mutation Certificate for payment of land revenue. The vendor delivered the physical possession of the land measuring about 0 B- 2K-10Ls to Smt. Jusna Bailung and Smti. Jusna Bailung is the absolute lawful owner and peaceful possessor of the land described in the Registered Sale Deed No. 655/11 and Smti. Jusna Bailung has been peacefully occupying the land since the date of 18th Day of June, 2011 constructing her house and pucca latrine paying land revenue regularly. The said Defendant No. 1 accordingly pressed for dismissal of the suit.
7. Defendant No. 2, 3 and 4 did not turn up to proceed with the case and hence, suit proceeded exparte against them and they also did not adduce any evidence.

ISSUES

8. On the basis of the rival pleadings of the parties my learned predecessor-in-office framed the following five (5) issues.

- (I) *Whether the suit is maintainable in law as well as in facts?*
- (II) *Whether the plaintiff is the lawful owner of the suit land?*
- (III) *Whether the plaintiff is entitled to recover possession of the suit land from the respective defendants?*
- (IV) *Whether the plaintiff is entitled to the reliefs as prayed for ?*
- (V) *To what other reliefs (if any) the parties are entitled to ?*

EVIDENCE ADDUCED

9. In support of his case the plaintiff has examined 2 (two) witnesses including himself and exhibited as many as three documents to prove his case. The defendant has examined 1(one) witness, i.e the Defendant No. 1 himself and exhibited as many as five documents. It is significant to know that Defendant No. 2, 3 and 4 has no pleadings of their own on record and the suit was ordered to proceed ex-parte against Defendant No. 2, 3 and 4 on 05/04/2014 and hence they did not adduce any evidence.

DISCUSSION, DECISION AND REASONS THEREOF

10. I have carefully perused the pleadings of the parties and the evidence on record, and heard the submissions of the learned Counsels appearing for the parties. I have also scrutinized the written arguments submitted by the parties. Having so heard and perused, I shall now discuss and decide the aforementioned issues accordingly.

Issue No. (i) : Whether the suit is maintainable in law as well as in facts ?

11. The defendant No. 1 in his written statement contended that the suit is not maintainable. But, he failed to disclose as to how and why the suit is not maintainable. Order 8 Rule 2 of the Code of Civil Procedure, 1908 (for short "the CPC") mandates that the defendant must rise by his pleading all matters which shows the suit not to be maintainable. However, there is no specific pleading in the

written statement of the defendant to show that the suit is not maintainable. I also find nothing in the record to hold that the suit is not maintainable.

12. However, at a time of argument, the learned counsel for the defendant No. 1 submitted that there is no cause of action in the suit of the plaintiff, which renders the suit not maintainable, and in the written statement of defendant No. 1 he also contended that no cause of action ever aroused on 05/11/2013 and 20/11/2013 and on any other dates as alleged by the plaintiffs. Stated shortly, the plaintiff claimed right, title, possession and interest over the suit land described in Schedule B, Schedule C, Schedule D and Schedule E. The learned counsel for the defendant No. 1 referred to the judgement of Supreme Court in **India National Textile Corpt Ltd. & Ors. Vs M/S Horibox Swalram & Ors. {Appeal (Civil) 3142-43 of 2002}** in which it was held that "Cause of action as understood in the Civil proceeding means every fact which, if traversed, it would be necessary for the plaintiff to prove, in order to support his right to a judgement of the court". Learned counsel for the defendant No. 1 submitted that as per pleadings in the plaint of the plaintiff the initial cause of action has arose on 5.11.2013 at 5 P.M. in the plaint, but, however, as per evidence of the P.W.2 and P.W.1 it is safely presumed that no incident has ever been taken place on 5.11.2013 at 5.00 P.M. and hence the plaintiff has totally failed to establish the initial accrual of the cause of action on 5.11.2013 and other subsequent dates for filing this Title Suit and as such the Plaintiff is not entitled to support his right to a judgement of the court. Learned counsel for the contesting defendant No. 1 also referred to the judgment of Hon'ble Supreme Court in **Ashraf Kokkur Vs K. V. Abdul Khader etc., AIR 2015 SC 147** on point of cause of action, in which Hon'ble Supreme Court held that "Expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court." Learned counsel for the contesting defendant No. 1 submitted that the suit is not maintainable due to the failure of the plaintiff to establish the cause of action by adducing proper and cogent evidence by the plaintiff. Learned Counsel for plaintiff in her reply, submitted that Learned counsel for the plaintiff referred to the judgement of Hon'ble Supreme Court of India in **Hema Kattar and another vs Shiv Khera, (2017) 7 SCC 716**, wherein it is held that "A cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual

infringement of the right sued on but includes all the material facts on which it is founded." Learned Counsel for plaintiff submitted that the P.W. 1 have clearly stated in his cross examination that the defendant no.1 and other defendant have encroached upon his land.

13. It is pertinent to mention here that after perusing pleadings and evidence in record, it is evident that the defendant no.1 in his written statement has admitted the ownership of the plaintiff over the land described in the schedule "A" of the Plaint to which the schedule "B" land is a part and the defendant no.1 has pleaded that he has legally occupied the schedule "B" of the suit land. Moreover, perusal of the evidence on record shows that during the cross examination of PW-1 and PW-2, PW-1 stated that defendant No.1 had encroached upon his land and PW-2 also denied the suggestion that defendant No.1 did not encroached upon the land of plaintiff. The expression cause of action would mean the existence of the right in favour of the plaintiff and the infraction thereof by the defendant. Needless to say, if the plaintiff succeeded in proving his pleadings as narrated in the plaint by leading cogent and credible evidence, then he will be entitle to relief. I am therefore of the view that there is prima facie cause of action in the present suit and hence it is accordingly held that the suit is maintainable in law and in facts.

Decision:- The issue is decided in the affirmative in favour of the plaintiff.

Issue No. (ii) : Whether the plaintiff is the lawful owner of the suit land?

14. The plaintiff claims right, title & interest over the Schedule - B, Schedule - C, Schedule - D & Schedule - E land measuring more or less 0B - 0K -3 Ls approx, 0B - 0K - 0.90 Ls approx, 0B- 0K-0.98 Ls approx and 0B-0K-0.58 Ls approx respectively out of the said 1B-0K-0Ls of land described in Schedule-A, covered under part of Dag No 154 of P.P. No. 101, situated at Tengapani Gaon, under Tipling Mouza, P.S. Bordubi, in the District of Tinsukia, Assam. He claims absolute ownership over the above suit land on strength of registered sale deed no. 871 of 2004 dated 2-8-2004, i.e Exhibit 1, which he claims to have been executed by the previous owner Purna Kanta Gogoi. The plaintiff also claims that immediately after purchase of the aforesaid land, he took possession of the same and mutated his name in the revenue record and started paying land revenue to the Government in respect of the same.

15. The onus to prove the case lies on the plaintiff who claimed title to the suit. The PW 1, namely, Sri Ratneswar Baruah, and PW 2, namely, Smt. Renu Baruah, reiterated the averments of the plaint and exhibited as many as 3(three) numbers of documents. For substantiating his claim, the plaintiff has exhibited the original registered sale deed bearing no. 871 of 2004 dated 2-8-2004, certified copy of jamabandi, i.e. Exhibit 2 and revenue payment receipt i.e. Exhibit 3.
16. It is pertinent to note that defendant No.2, 3 and 4 did not turn up to contest the suit and the suit proceeded ex-parte against them and hence they failed to rebut and challenge the evidence of plaintiff. Only defendant No.1 contested the suit. The learned counsel for the defendant No.1 argued that plaintiff.
17. It is evident from the contention in the written statement filed by the defendant No.1 that he has not denied the execution of the registered sale deed bearing No.871 of 2004 dated 02-08-2004 (Exhibit 1), on the basis of which the plaintiff is claiming his right, title and interest over the Schedule-A land. As per **Section 64 of the Indian Evidence Act, 1872**, provides that the documents must be proved by primary evidence, except in cases covered by the succeeding sections. In the present suit the defendant No.1 in his written statement has admitted the execution of the Exhibit 1 and has not denied the execution of the same. Hence, in my considered opinion Exhibit 1 has been deemed to be proved as the execution of Exhibit 1 is not denied.
18. It is pertinent to note that learned counsel for plaintiff that the defendant no.1 in his written statement has admitted the ownership of the plaintiff over the land described in the schedule "A" of the Plaint to which the schedule "B" land is a part and the defendant no.1 has pleaded that he has legally occupied the schedule "B" of the suit land and under such circumstances, since the ownership of the plaintiff over the schedule "A" land to which schedule "B" of the suit land is a part is already admitted by the defendant no.1, hence his occupation of the suit land described in the schedule "B" of the plaint without effecting any valid and legal transfer of the said schedule "B" of the suit land by the plaintiff to the defendant no.1 is not tenable in law, and his occupation over the schedule "B" of the suit land is always illegal and he is liable to be evicted therefrom by the true owner ,i.e. the plaintiff himself. In reply to this above submission by the learned counsel for the plaintiff, the learned counsel for the defendant No.1 argued that due to oversight a typographical mistake has arisen in a sentence in the written statement and the word "not" has crept in the sentence due to typographical mistake and submitted that the correct pleading should be that "It is specifically denied that the defendant Puna Bailung has occupied

illegally the land described in the Schedule 'B' in the plaint." The learned counsel for defendant No.1 argued that the defendant has not admitted the fact regarding his illegal possession in his pleadings as a whole and referred to the judgment of **Uttam Chand Kothari Vs Gouri Shankar Jalan and other, 2007 (1) GLT 37** wherein it is held that "in order to determine if an admission has been made in a written statement, the written statement has to be read as a whole". In the present case, careful scrutiny of the written statement as a whole shows that the defendant No.1 had denied that the defendant No.1 has illegally occupied the land described in Schedule-B of the plaint. Hence I am on the considered opinion that, the crept of the word "not" is a typographical error and cannot be considered as an admission to the fact that defendant No.1 admitted the fact that he has illegally occupied Schedule-B land of the plaint.

19. From the careful scrutiny of Exhibit 2, i.e. the certified copy of jamabandi it becomes evident that the name of the plaintiff is mutated in respect of the area of 1 Bigha 0 Katha 0 Lecha comprising under part of Dag No.154 covered by Periodic Patta No.101 and Exhibit 3 is the revenue paying receipt which shows that the plaintiff has been paying the land revenue to the Government.
20. During the cross examination of PW 1, Sri Ratneswar Baruah, who is the plaintiff himself, stated that the he has purchased 1 Bigha of land and stated that defendant No.1 has encroached upon more or less 4 lechas of land belonging to him. This evidence given by him is in no way contradiction to his pleadings. During cross examination of PW 1 he has stated regarding the encroachment of land by the defendants. During cross examination of PW 2, Smt Renu Baruah, also stated that the defendants are occupying the land of the plaintiff since last 2 to 3 years.
21. Now, let me appreciate the evidence of defendants. As already noted herein before, the suit is proceeded exparte against the defendant No.2, 3 and 4 and they did not adduce any evidence. Coming to the evidence of the defendant No.1, he has given evidence in affidavit of himself as DW 1, and in his evidence in affidavit stated that he is the husband of Smt Jusna Bailung and Jusna Bailung had purchased 0 Bigha 2 Kathas 10 Lechas of land from one Sri Purna Kanta Gogoi covered under dag No.154. Exhibited as many as 5(five) numbers of documents. Exhibit A is the sale deed no.655/11 which belongs to Smt Jusna Bailung, Exhibit B is the Jamabandi Copy showing mutation of the name of Smt Jusna Bailung, Exhibit C is the revenue receipt, Exhibit D is the mutation Certificate and Exhibit E is the land sale permission being No.TSK/LSP/652/2011/TSK-163 dated 18-06-2011.

22. During cross examination of DW 1, he stated that in Exhibit A the dimension of the land is not mentioned. DW 1 also stated that he has not subscribed his signature as a attesting witness in Exhibit A. He further stated during cross examination that vide Exhibit A the land purchased by Smt Jusna Gohain Bailung is not properly demarcated. He also stated that during the time of demarcation of land he have not called the plaintiff. From the cross examination of the DW 1, it is evident that he himself deposed that the land purchased by Smt Jusna Bailung is not properly demarcated.
23. From the aforesaid discussions it is already evident that Sri Ratneswar Baruah has purchased Schedule A land vide Exhibit 1, and he has being in possession of the Schedule A land of the paint. The defendant no.1 mainly relied upon the sale deed being Exhibit A which belongs to Smt. Jusna Bailung and she is not called for by him as a witness to prove that the suit land of schedule "B" is a part and parcel of the land purchased by her vide Exhibit A. Further the defendant no.1 is also not attesting witness in Exhibit A and no other attesting witness of Exhibit A has been called for as a witness by the defendant no.1 to prove that the suit land of schedule "B" is a part and parcel of the land purchased by her vide Exhibit A and that Exhibit A is a genuine one. It is pertinent to mention that he defendant no.1 is not legally entitled to prove a document which belongs to a third party. In Exhibit A, no dimension of the land purchased by Jusna Bailung has been mentioned and thus it can be presumed that the said land has not been demarcated under the law.

Decision:- The issue is decided in the affirmative in favour of the plaintiff.

Issue No. (iii) : Whether the plaintiff is entitled to recover possession of the suit land from the respective defendants?

24. The plaintiff has pleaded that on on 5/11/2013, while the plaintiff was out of station, the defendants taking advantage of his absence, illegally trespassed in to the said land of the paintiff described in "Schedule A" of the Plaint. The defendant no.1 forcefully and illegally occupied the land described in the schedule "B" of the paint which is a part of the land described in schedule "A" of the plaint, and the defendant no.2, 3 and 4 also illegally trespassed and occupied the land mentioned in schedule "C", "D" and "E" of the plaint which are the part of the land described in Schedule "A" of the Plaint. During the cross examination of PW 1, Sri Ratneswar Baruah, who is

the plaintiff himself, stated that the he has purchased 1 Bigha of land and stated that defendant No.1 has encroached upon more or less 4 lechas of land belonging to him. PW 2 also corroborated the evidence of PW 1 that defendants encroached land of plaintiff. As already discussed in Issue No. II, the defendant no.1 is also not attesting witness to Exhibit A and no other attesting witness of Exhibit A has been called for as a witness by the defendant no.1 to prove that the suit land of schedule "B" is a part and parcel of the land purchased by her vide Exhibit A and that Exhibit A is a genuine one. It is pertinent to mention that he defendant no.1 is not legally entitled to prove a document which belongs to a third party. The most vital point to be noted is that during cross of DW-1 he stated that in Exhibit A, no dimension of the land purchased by Jusna Bailung has been mentioned and thus it can be presumed that the said land has not been demarcated under the law. Hence, the plaintiff have substantiated his claim regarding the illegal encroachment of the suit land by the defendants with the help of an independent witness.

Issue No. (iv) : Whether the plaintiff is entitled to the reliefs as prayed for?

Issue No. (v) : To what other reliefs (if any) the parties are entitled to?

25. Both the issues are decided together for convenience and brevity. In issue No. 2, it has been decided that the plaintiff has right , title and interest over the suit land i.e. plaintiff is the lawful owner of the suit land. In issue no. 3, it has been decided that the plaintiff is entitled to recover possession of the suit land from the respective defendants. Thus, the plaintiff being the lawful owner of the suit land and also being entitled to recovery of possession of the suit land from the respective defendants, the plaintiff is entitled to the relief as prayed for.

Decision:- The issue is decided in the affirmative in favour of the plaintiff.

ORDER

After hearing the argument of Learned Counsels for both sides and considering the materials on record, I am of the considered opinion that the plaintiff has successfully proved his case on the scale of preponderance of probabilities in his favour.

In the result, the suit of the plaintiff is decreed on contest with cost, with the following reliefs:-

A decree declaring that Plaintiff has right ,title and interest over the suit land described in the Schedule-B, Schedule-C, Schedule –D and Schedule-E.

Plaintiff is entitled to recovery of possession of the land described in the Schedule B, Schedule C, Schedule D and Schedule E and by evicting the Defendant No. 1, 2, 3 and 4 including their dependants ,goods and belongings there from as well as by dismantling and removing the houses and other constructions whatsoever standing thereon.

Permanent injunction restraining the Defendants, their dependants, relatives, employees and workman from making any constructions on the Suit land or any part thereto as well as from transferring /alienating the suit land or any part thereto to any third party by way of sale or otherwise,

Cost of the suit;

The judgment is pronounced in open court, which is given under my hand and seal of the Court on this the 16th day of August, 2019.

Prepare decree accordingly.

MUNSIFF NO. 1, TINSUKIA

APPENDIX

PLAINTIFF WITNESSES:

PW-1: Sri Ratneswar Baruah

PW-2: Smt. Renu Barua

DEFENDANTS WITNESSES:

DW-1: Sri Puna Bailung @ Mukut Bailung

PLAINTIFF EXHIBITS:

Exhibit 1 : Original Sale Deed No. 871 of 2004 dated 2/8/2004.

Exhibit 2 : Cerified copy of Jamabandi of p.p. No. 101 of Tengapani Gaon.

Exhibit 3 : Revenue payment receipt being receipt no. 2148107 dated 26/8/2015.

DEFENDANTS EXHIBITS:

Exhibit A : Sale Deed No. 655/11.

Exhibit A (1 to 5) : Signatures of the vendor Sri Purna Kanta Gogoi.

Exhibit B : Jamabandi copy.

Exhibit C : Land Revenue Receipt.

Exhibit D : Mutation certificate.

Exhibit E : Land Sale Permission being No.TSK/LSP/652/2001TSK-1663 dated 18.06.2011.

MUNSIFF NO. 1, TINSUKIA