

HIGH COURT FORM NO. (J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT/ CASE

District: Dibrugarh

In the Original Court of the Munsiff No 1, Dibrugarh

Present: *Nisanta Goswami, AJS*

Thursday, the 18th day of July 2013

Title Suit/ Case No 11/2009

Bihu Binjuwar & Ors Plaintiffs

Versus

Jagru Kishan & Ors Defendants

This suit/ case coming on for final hearing on 11/07/2013 in the presence of

Mr. P. Gogoi Advocate for the plaintiffs

And

Mr. A.K.Dutta Sr. Advocate for the defendants

And having stood for consideration to this day the Court delivered the following judgment:

JUDGMENT

1. This is a suit for declaration of right, title and interest, for eviction and for permanent injunction

PLAINTIFF'S CASE:

2. The case of the plaintiffs, in brief, is that late Sombari Binjuwar was the original owner of a plot of land measuring 15 Bigha 2 Katha 16 Lecha covered by Dag No 25,26,30 and 32 and PP No 80 of Powali Pathar village, Mouza Khemeria, District Dibrugarh Assam. Sombari Binjuwar had two wives. The proforma defendant

No 3 Lakhimoni Binjuwar is the second wife and the plaintiff No 1,2 and 3 are the sons of Sombari Binjuwar from the side of his second wife. The first wife of Sombari Binjuwar and her son died intestate. After the death of Sombari Binjuwar the plaintiff No 1 to 3 and the proforma defendant No 3 became the possessor of the land measuring 15 Bigha 2 Katha 16 Lecha. The plaintiff No 1 to 3 got their names mutated in the revenue records in respect of that land.

3. During the lifetime of Sambari Binjuwar in 1988 he mortgaged 2 Bigha of land covered by Dag No 26 of PP No 80 of Powali Pathar village to the father of the plaintiff No 4 Dolka Gowala by executing a mortgage deed. The plaintiff No 1 to 3 also gave the adjacent 2 Bigha land to the plaintiff No 4 for cultivation on *adhi* basis. Hence the plaintiff No 4 has been in possession of that 4 Bigha of land.
4. In the year 2005 the plaintiff No 1 to 3 allowed the defendant No 1 and 2 to cultivate 11 Bigha of land on the condition that the defendant duo would share half of the crops produced by them in a year with the plaintiff No 1 to 3. In the year 2007 the defendant duo deliberately omitted to give the half of the crops to the plaintiffs and instead they offered to purchase the land against a nominal price of Rs.30,000/- The plaintiff No 1 to 3 disagreed with the defendants and they took back the possession of the land from the defendants and they started cultivating the land with the help of plaintiff No 4 and 5.
5. Thereafter the plaintiff No 1 to 3 sold 4 Bigha of land (Dag No 26 PP No 80) to the plaintiff No 4 vide Sale Deed No 444 of 2008 and 8 Bigha of land (Dag No 25 and 31, PP No 80) to the plaintiff No 5 vide Sale Deed No 445 of 2008. In the last week of December 2008 when the plaintiffs went to the suit land for physical delivery of possession of the land the defendant No 1 and 2 came with *dao* and spade in their hand and they prevented the plaintiffs from entering into the suit land measuring 12 Bigha (Described in detail in the Schedule C of the plaint) Thereafter the defendant No 1 and

2 and their family members forcefully took possession of the suit land. The plaintiffs have contended that now the defendants are planning to build their residential houses and excavate a pond over the suit land.

6. The plaintiffs have instituted this suit with prayers *inter alia* for a decree declaring the right, title and interest of the plaintiffs over the suit land, for eviction of the defendants and their family members from the suit land and for permanent injunction restraining the defendants and their servants and agents from entering into the suit land and making any constructions thereon.

DEFENDANT'S CASE:

7. After the institution of the suit summonses were issued to the defendants. The defendant No 1 and 2 contested the suit by filing written statement and the suit proceeded *ex parte* against the defendant no 3.
8. The defendants have admitted that the original owner of the suit land was late Sombari Binjuwar and the plaintiff No 1 to 3 are the sons of Sombari Binjuwar from the side of his second wife. The first wife of Sombari Binjuwar and her son Kartik Binjuwar died earlier.
9. The defendants have averred that during his lifetime Kartik Binjuwar used to take money from the defendant No1 from time to time against the sale of the land measuring 15 Bigha 2 Katha 16 Lecha covered by Dag No 25,26,30 and 31 and PP No 80 of Powali Pathar village of Kheremia Mouza, District Dibrugarh Assam. Kartik Binjuwar took Rs.6000/- on 6/12/94, Rs. 30,000/- on 04/04/96, Rs. 48,000/- on 07/04/98 and Rs. 37,000/- on 25/03/99. Thus the defendants have altogether paid Rs.1,21,000/- to Kartik Binjuwar for the aforesaid plot of land. The contesting defendants have been possessing the land for a long period and they have been paying the land revenue in the name of Sombari Binjuwar and Kartik Binjuwar. The defendants have denied all the other averments of the plaint. The defendants have averred that the plaintiffs have no right to enter into the suit land. The suit land has

already been purchased by the defendants from Kartik Binjuwar during the latter's lifetime and the defendants are in possession of the land since long. The defendants have prayed to dismiss the suit with cost.

ISSUES IN THE SUIT:

10. On the basis of the rival pleadings of the parties the following issues were framed:
 - i) Whether the suit is maintainable in law and facts?
 - ii) Whether there is any cause of action for the suit?
 - iii) Whether the plaintiffs have right, title and interest over the suit land?
 - iv) Whether Kartik Binjuwar (since deceased) entered into any agreement with the defendant No 1 and 2 to sell the suit land and after taking the consideration thereof delivered possession to them?
 - v) Whether the plaintiff is entitled to the reliefs claimed for?
 - vi) To what reliefs the parties are entitled to in the facts and circumstances of the case?

DISCUSSION, DECISION AND REASONS THEREOF:

11. During the course of the trial the plaintiff side adduced evidence of four witnesses and exhibited five documents. The defendant side adduced evidence of five witnesses and exhibited eleven documents
12. I have heard the learned counsels for both the parties and perused the materials on record
13. Now let me discuss and decide the issues one after another

Issue No (i)

MAINTAINABILITY

14. This issue is framed on the basis of the averments made in the written statement. However the defendants have not

specifically averred as to why the suit is not maintainable in its present form. The written argument filed on behalf of the contesting defendants is also silent on this aspect. There is nothing on the records which suggests that the suit is not maintainable in its present form. This issue is decided in favour of the plaintiffs.

Issue No (ii)

CAUSE OF ACTION

15. The plaintiffs have averred in their plaint that in the year 2008 the plaintiff No 1 to 3 had sold 4 Bigha land from the suit patta to the plaintiff No 4 and they sold another 8 Bigha of the suit patta land to the plaintiff No 5 by executing registered sale deeds. Thereafter in the last week of December 2008 when the plaintiffs went to the suit land for physical delivery of possession of the land the defendant No 1 and 2 came with *dao* and spade in their hand and they prevented the plaintiffs from entering into that land. Thereafter the defendant No 1 and 2 and their family members forcefully took possession of the suit land. The defendants are also planning to build their residential houses and excavate a pond over the suit land. The amalgam of these facts shows that there is a cause of action for this suit. This issue is decided in favour of the plaintiffs.

Issue No (iii)

RIGHT, TITLE AND INTEREST OF PLAINTIFFS OVER THE SUIT LAND

16. The plaintiffs have claimed that the plaintiff No 1,2 and 3 have inherited the suit property from its original owner Sombari Binjuwar and the plaintiff no 4 and 5 have purchased 4 Bigha and 8 Bigha of the suit patta land respectively from the first three defendants. Exhibit 2 is the copy of Jamabandi of PP No 80 of Powali Pathar village. The jamabandi copy of the same patta was exhibited by the defendant side and marked as Exhibit A. The Jamabandi reveals that the plaintiff No 1,2 and 3 inherited the suit land after the death of its original pattadars Sambari Binjuwar. Exhibit 4(1) is the certified copy of the Sale Deed No 444 of 2008 which shows that 4 Bigha of the suit patta land was sold by Bihu Binjuwar, Debaru Binjuwar and Sansarua Binjuwar to Munu Gowala. Similarly Exhibit 4(2), which is the certified copy of Sale Deed No 445 of 2008, shows that Bihu Binjuwar and his two

brothers sold 8 Bigha of suit patta land to Bipin Changmai. These documentary evidences produced by the plaintiffs supports their claim that the plaintiffs have right, title and interest over the suit land. The defendants have failed to adduce any cogent evidence to disprove the case of the plaintiffs. The defendant No 1 and 2 have claimed that they purchased the entire suit patta land from late Kartik Binjuwar. However the defendants have failed to produce any persuasive evidence to prove the same. There is nothing on the records which shows that Kartik Binjuwar became the owner of the suit patta land at any point of time. Exhibit C, D and E are unregistered Sale Deeds which are not acceptable under the law. Section 54 of the Transfer of Property Act provides that in the case of any tangible immovable property of the value of one hundred rupees and upwards sale could be made only by a registered instrument. The documents exhibited by the defendants (Ext C,D and E) cannot be considered as sale deeds. The other documents exhibited by the defendants also do not support the claim of the defendants. The copy of the revenue records shows that the suit land is still in the names of the plaintiff No 1 to 3 and the revenue receipts also show that the revenues were paid in the name of the plaintiff and their predecessor. The mere fact that the defendants have been in possession of the suit land for some time cannot have the effect of conferring title upon the defendants. The plaintiffs have adduced sufficient evidence to prove that they have right, title and interest over the suit land. This issue is decided in favour of the plaintiffs.

Issue No (iv)

WHETHER KARTIK BINJUWAR AGREED TO SELL THE SUIT LAND TO THE DEFENDANTS

17. The defendants have averred that Kartik Binjuwar since deceased agreed to sell the entire 15 Bigha 2 Katha 16 Lecha of suit land to the defendant No 1 and 2 and Kartik Binjuwar also took the entire sale consideration from the defendants. In the written argument submitted on behalf of the defendant no 1 and 2 it has been stated that the defendants have purchased the suit land on payment of Rs.1,21,000/- However, as observed while discussing the previous issue, the defendants have produced some unregistered documents as Sale Deeds for the suit land. The

documents exhibited by the defendants do not have the effect of transferring the ownership of the suit land. Hence the claim of the defendants that late Kartik Binjuwar entered into an agreement for sale of the suit land to the defendants and he also delivered possession of the land to the latter doesn't seem to be probable. The defendants have also failed to produce any written agreement for sale executed by late Kartik Binjuwar. This issue is decided against the defendants.

Issue No (v) & (vi)

RELIEFS

18. It appears from the discussions made in the aforesaid issues that the plaintiffs have proved their right, title and interest over the suit land. The defendants have failed to prove that they purchased the suit land from its lawful owner. Hence the defendants are not entitled to any relief. The plaintiffs are entitled for a declaration of right, title and interest over the suit land and for eviction of the defendants there from. These two issues are decided in favour of the plaintiffs.

ORDER

19. In the result the suit is decreed on contest with cost. The right, title and interest of the plaintiffs over the suit land are declared. The defendants are directed to vacate the suit land and deliver vacant possession of the same to the plaintiffs after removing structures, if any, erected thereon. The defendants are further directed not to disturb the peaceful possession of the suit land by the plaintiffs in future.

20. Let a decree be drawn up accordingly

21. Given under my hand and seal of this Court on this 18th day of July at Dibrugarh

Nisanta Goswami, AJS

APPENDIX

A) Plaintiff's Exhibits:

Exhibit 1: Revenue receipts

Exhibit 2: Jamabandi copy of PP No 80

Exhibit 3: Mortgage deed

Exhibit 4(1) & 4(2): Copy of Sale Deeds

Exhibit 5(1) & 5(2): Rectification deeds

B) Defendant's Exhibits:

Exhibit A: Jamabandi copy of PP No 80

Exhibit B: Money receipt

Exhibit C, D & E: Unregistered Sale Deeds

Exhibit F to K: Revenue receipts

C) Exhibits produced by witnesses: None

D) Exhibits of Court: None

E) Plaintiff's Witnesses:

PW 1: Munu Gowala

PW 2: Bihu Binjuwar

PW 3: Ranjit Gogoi

PW 4: Krishna Baglari

F) Defendant's witnesses:

DW 1: Jawru Kissan

DW 2: Lita Kissan

DW 3: Durlov Bora

DW 4: Masu Mura

DW 5: Promod Hazarika

G) Court witnesses: None

Nisanta Goswami, AJS
Munsiff No 1, Dibrugarh