

Form No.(J)3
HEADING OF JUDGMENT ON APPEAL
District :: Nalbari

IN THE COURT OF CIVIL JUDGE :::::::::::::::::::::NALBARI

Present : Himakshi Thakuria Buragohain
Civil Judge
Nalbari.

Saturday, the 20th day of November, 2018

TITLE APPEAL No.30/15

From the Judgment & Decree dated 22-04-15 passed by Learned Munsiff No.1,
Nalbari in Title Suit No.62/10.

Hemanta Dutta

-----Plaintiff/Appellant

- VS -

Karuna Talukdar

-----Defendant/Respondent

This appeal having been heard on 09-11-2018 in presence of :-

Advocate for the Appellants :- Sri Deepamoni Bhattacharya

Advocate for the Respondents :- Sri Dwijen Deka

J U D G M E N T A N D O R D E R

1. The judgment and decree dated 22-04-15 passed by the Ld. Munsiff No.1, Nalbari i/c with T.S. No.62/10, are the subject matter under challenge in this present Civil first appeal.
2. Being highly dissatisfied and aggrieved with the Judgment delivered in T.S. No.62/10 in which the case was dismissed vide the Judgment and decree dated 22-04-15 passed by the Ld. Munsiff No.1, Nalbari, the plaintiff as appellant has preferred the instant appeal on the following grounds:-

G R O U N D S

- a) That the court below failed to appreciate the evidence in record, misconstrued principles of law and attained in a wrong decision in respect of Issue No.3, 4, 5, 6, 7 which resulted miscarriage of justice. Hence the judgment and decree is liable to be set aside.
- b) That the court below clubbed the Issue No.3, 4, 5 and by one decision decided those against the plaintiff. But all these three issues are of different nature and relates to different set of documentary and oral evidence. The provision of CPC directs court to decide the issues independently. Hence, the court below applying same scale and same view rejected all the issues against plaintiff. Thus resulted in error of law and hence the judgment and decree of the suit is erroneous and liable to be set aside.
- c) That the court below hold the opinion that sale of land to two person namely Bhadia Ram Boro and Bhabendra Basumatary is not proved in spite of clean entry in the Jamabandi about Sale to the said persons. The provision of ALRR (S-54) clearly stated that entry in records of rights must be hold as correct unless proved otherwise under such

situation, the above finding of the court below is erroneous such resulted in erroneous judgment and decree. Hence the same liable to be set aside.

Further the High Court of the state opined that "record of right are to be deemed correct unless otherwise proved, mutation entry cannot be brushed aside. (GFLR 1999 (i)) page 229.

Under such situation the burden shifted to the defendants that they did not sell land to the above named person. But the court below wrongly stated that the matter of sale was not proved by the plaintiffs. Hence the impugned judgment and decree is liable to be set aside.

- d) That the court below put very high emphasis on Ex. "Gha" which is alleged to be a consent letter written by plaintiffs. The consent letter was denied by the plaintiffs. The said Ex. "Gha" is a document used in a separate land acquisition proceeding in a non judicial forum. It has very little evidentiary value unless the same is independently prove in the judicial court, specifically when the signatories deny the same. But the court below did not discuss the evidentiary value of the same and whole judgment and decree was made up on that documents. Hence the impugned judgment and decree is liable to be set aside.
- e) That the Exhibit- "Ccha" a RTI report has been taken as the base of the impugned judgment and decree without proving the report as per evidence act. A report of Lat Mandal and revenue circle about possession of any land cannot be the final word in a judgment of civil court. It has not evidentiary value unless the person giving report is examined and the original documents where from report is given in produced to make the report authentic. But the court below giving undue importance on exhibit "Ccha" dismissed the suit and hence the impugned judgment and decree is liable to be set aside.
- f) That there were as many as eight exhibits by the plaintiff. But the court never discussed about any one of them. Court must discuss them even

before rejecting their value in the evidence. It makes the judgment perverse (GLT 2011 (V) 291). Hence the impugned judgment and decree is liable to be set aside.

- g) That the court below wrongly ignored the cross examination portion of the DW-1, Karuna Talukdar (defendant) who categorically admitted that his father sold land to Bhadia Ram Boro and Bhabendra Basumatary, which sale the court did not accept for non submission of sale deed, now this wrong to press for sale deed after clear admission by defendants in cross examination. The judgment suffered from misconception of the court for not holding the cross examination part of the DW-1 as part of the case record. Had it been accepted by the court as part of the case record, the impugned judgment must have been different. Hence the same is liable to be set aside.
- h) That the appellants reserve rights to take any other ground if the time of hearing along with these.
- i) That for any other view of the matter, the impugned judgment and decree is liable to be set aside.

3. On the above grounds the appellant has prayed for setting aside the impugned judgment and decree. After admitting the appeal the record of T.S. No.62/10 was called for and the same was received.

4. On appraisalment of the original case record, it appears that the plaintiff has filed the suit for declaration, injunction, confirmation of possession and other consequential relief.

5. The plaintiffs case interalia is that the suit patta no.31 originally comprised of 7 bigha 1 katha 11 lecha land and there were 8 pattadars. Each of them got their equal share of 4 katha 10 lecha land. The plaintiffs predecessor Harmohan, Hargobinda, Baloram and Sonaram were the pattadars

and after their land the plaintiffs became the owners by inheritance. Plaintiff No.8 is the sole heir of Harmohan. Baloram left behind Bipin and Nripen. Plaintiff No.1-3 are the sons of Bipin and Plaintiff No.4 to 7 are the sons of Nripen. Hargobinda and Sonaram died leaving behind no heirs as such their shares also devolved upon the plaintiffs. It is the case of the plaintiff that Rajat Rajbongshi had also got a share of 4 katha 10 lecha land in the suit patta as one of the pattadars. But he had sold 2 katha 7 lecha land to Bhadia Ram Boro and 3 katha land to Bhabendra Nath Basumatari. Thus Rajat Rajbongshi sold his entire land in the suit patta and sold 17 lecha land in excess. The defendants no.2 and 3 vide A/C case no.286/63 acquired 1 bigha 15 lecha land of the suit patta for expansion of the National Highway and necessary compensation was declared to be awarded to the respective pattadars. Accordingly the present plaintiffs received the award for their definite share through the present plaintiff no.1 as per succession certificate no.69/03 issued by Hon'ble District Judge, Nalbari. But defendant no.4 to 7 in spite of having no rights and without any succession certificate received a part of the compensation by giving false information to the revenue authority. So the defendants are liable to refund the sum of compensation received by them. In the said A/C 268/63 an amount still remained undecided and for that the plaintiff filed succession case 42/04 before the Hon'ble District Judge, Nalbari. Defendants also filed another case SC 95/04 and the Hon'ble District Judge ordered that unless and until the rights of the parties are determined by the competent civil court, the intended succession certificate could not be issued. Pending disposal of A/C Case No.268/63 the land acquisition branch declared compensation i/c with L/A case no.47/06 but this time also the defendant no.4 to 7 are trying to grab the money by giving false information. Hence the plaintiff filed this suit and also served notice U/S 80 CPC requiring the defendant no.2 to keep the proceeding of L/A 47/06 in abeyance till the rights of the parties are decided.

6. On receiving notice the defendant no.4 appeared before the court and contested the suit by filing written statement. In his written statement the defendant denied the averment made in the plaint. The defendant stated that

the answering defendants received a part of award awarded in AC Case No.286/62-63 from the defendants no.2 and 3 after proper enquiry and written declaration of the plaintiff before the defendant no.2 and 3 of the suit. The question of refund of the amount does not arise. The defendant stated that the state Government of Assam despatched a notice to Rajat Rajbongshi awarding Rs.1,44,210/- only for land measuring 1 katha 15 lecha in dag no.124, 125 (kha) and 148 (kha) in N.K. Patta No.31 of village Barsarkuchi in AC Case No.286/62-63. The legal heirs of Rajat Rajbongshi appeared in the case for receiving the awarded amount. The plaintiff along with some other pattadars filed a petition before the Deputy Commissioner, Nalbari in AC Case No.286/62-63 declaring themselves that they have no right, title and possession over the acquired land. The plaintiffs have no objection if they receive the award money. Later, the National Highway is converted to a four land Highway and for that land measuring 2 katha under dag no.124, 125 and 148 of patta no.31 and land measuring 1 katha under dag no.714, 716 and 719 of NK Patta No.31 was acquired under AC Case No.47/06. The plaintiffs names are included in the patta without possession and right over the acquired land. The father of defendant no. 4, 6 and 7 and the grandfather of defendant no.8 Rajat Rajbongshi were enjoying possession over the land since 1958 and after their death their legal heirs were in possession over the land. They have been paying land revenue till acquisition of the land by AC Case NO.47/06. The plaintiffs in order to deceive the answering defendants from their legitimate claim have instituted this false case.

7. Upon pleadings of the parties learned trial court has framed the following issues:

I S S U E S

- i) Whether there is any cause of action for the suit?
- ii) Whether the suit is bad for non-joinder of necessary parties?
- iii) Whether the plaintiffs had sole right, title and interest over the suit

land described in Schedule 'A' and 'B' of the plaint?

- iv) Whether the plaintiffs had sole right, title and interest over the land acquired vide LAC Case No.286/62-63 and 47/06 which are described in the schedule of the plaint and solely entitled to the compensation money for the land acquired thereon?
- v) Whether the defendant no.4-7 received part of the award given by the Government in LAC Case No.286/62-63 for the land acquired by giving false information and without any rights over the land and hence is liable to refund the award received?
- vi) Whether the plaintiff is entitled to the relief or reliefs as prayed for?
- vii) To what other relief/reliefs the parties are entitled to?

8. The plaintiff side had adduced the evidence of 2(Two) witnesses and exhibited 8(Eight) documents. The defendant side has also adduced the evidence of 2(Two) witnesses and has exhibited 7(Seven) documents.

I have heard the Ld. Counsels for both the parties and gone through the materials on records as well as the memorandum of appeal.

FINDINGS AND REASONS THEREOF

9. The vital point of this suit are issue No. (iii) ,(iv) and (v) and the result of the present appeal is depended upon the discussions and findings in this issues.

10. For the sake of convenience issue No (iii) and (iv) are taken up for discussion together in the very beginning. Issue No (iii) and (iv) are contingent upon the question as to **“Whether the plaintiffs have right title interest over the suit land described in schedule A and B of the plaint?”** and **“Whether the plaintiffs had sole right, title, interest over the land acquired vide LAC Case No : 286/62-63 and 47/06 which are described in the schedule of the plaint and are solely entitled to the**

compensation money over the land acquired thereon?"

11. In their pleadings the plaintiff/appellant pleaded that originally the total land in the suit patta was 7 bigha 1 katha 11 lechas and there were 8 pattadars. The plaintiff further averred that each of the 8 pattadars got 4 katha 10 lechas of land. The defendant denied this plea in their written statement.

12. On perusal of the entire evidence and materials on record it appears that the plaintiff side adduced no evidence to show in what manner the 8 pattadars got equal share in respect of the suit patta. The plaintiff side also did not adduce any evidence to prove the said division of shares among them.

13. The learned counsel for the plaintiffs submitted while arguing the case that PW 1 in his evidence on affidavit exhibited the jamabandi which is marked as Ext-3 wherein the sale to Bhadiaram Boro and Bhaben Basumatary is recorded. According to the learned counsel for the plaintiff in the jamabandi of patta No 31 of village Barsarkuchi, there are entries showing sale of land in favour of Bhadiaram Boro and Bhabendra Nath Basumatary in place of Rajat Rajbangshi. The learned counsel for the appellant further submitted that the provisions of section 54 of ALRR clearly states that entries in records of right must be hold as correct unless provided otherwise. Under such situation the findings of the learned court below is erroneous.

14. The learned counsel for the plaintiffs further submitted while arguing the case that DW- 1 in his cross-examination admitted that in the year 1981 and 1982 his father, Rajat Rajbangshi sold his share of land measuring 2 katha 7 lechas to Bhadiaram Boro and 3 katha to Bhabendra Nath Basumatary. However, on perusal of the cross-examination of DW-1 we find him stating that in the suit patta along with his father's name, the names of Harmohan, Hargobinda, Baloram and Sonaram are also mutated. We also find him stating that his father Rajat Rajbangshi sold 2 katha 7 lechas land to Bhadiaram Boro and 3 kathas land to Bhabendra Nath Basumtary in the year 1981 and 1982 from the dag No. 42 and 43 of patta No 31. DW-1 did not state anywhere in his cross-examination that Rajat Rajbangshi sold 5 katha 7 lechas of land from

Dag No 42 and 43 of PP No. 31 which was his only share, as submitted by the learned counsels for the appellant.

15. I have carefully perused the jamabandi marked as Exhibit-3. On perusal of Exhibit-3, it transpires that dag no 82 consisted of 2 kathas of land and dag No 83 consisted of 4 katha 18 lechas of land. The plaintiff did not mention anywhere in his pleadings about how much land from which dag was sold by the plaintiff to Bhadiaram Boro and Bhabendra Nath Basumatary. Though DW-1 stated that Rajat Rajbangshi sold 2 katha 7 lechas of land to Bhadiaram Boro and 3 kathas of land to Bhabendra Nath Basumatary from Dag No. 42 and 43 of PP No.31, it is seen in column No. 'Ka' of Exhibit-3 that Rajat Rajbangshi sold 2 katha 7 lechas land to Bhadiaram Boro from Dag No 43 and from column No 'Ga' of Exhibit-3, it is seen that Rajat Rajbangshi sold 3 kathas of land to Bhabendra Nath Basumatary from Dag No 43. As per column 'Ka' and 'Ga' of Exhibit -3 it appears that Rajat Rajbangshi sold 5 katha 7 lechas of land to Bhadiaram and Bhabendra from dag no 43. Whereas it is clearly mentioned in Exhibit-3 that Dag No 43 consisted of only 4 katha 18 lechas of land. If dag no 43 contains only 4 katha 18 lechas of land it is not possible for Rajat Rajbangshi to sell 5 katha 7 lechas of land from the said dag. Hence, we can assume that there is a mistake made in the mutation entry in Exhibit-3. Again it is seen from Exhibit-3 that even after selling 5 katha 7 lechas of land to Bhabendra Nath Basumatary and Bhadiaram Boro the name of Rajat Rajbangshi is still exists in Exhibit-3 which means Rajat Rajbangshi has more land other than the land which is sold to Bhadiaram Boro and Bhaben Basumatary. Further, if Rajat Rajbangshi had only 4 katha 10 lechas of land in his share and even then he sold excess land than his share in the year 1981-82 the other pattadars could have filed a civil suit against the sale of the excess land or could have also file a petition for cancellation of his name from the mutation entry.

16. The learned counsel for the plaintiff / appellant has submitted that it is the defendant who has to explain how he is the owner of such a big amount of land when his share in the suit patta is only 4 katha 17 lechas of land. It has

been held in a number of cases that the plaintiff can not take in the advantage of the weakness in the defendant's case as the burden is always on the plaintiff to prove his own case. The plaintiff hopelessly failed to prove their plea that each of the 8 original pattadars in the suit patta got 4 katha 10 lechas of land as their share and in that manner the plaintiff has acquired right, title and interest over the suit land mentioned in the schedule of the plaint.

17. Further if we go through the cross-examination of PW-1 who is the plaintiff in this case we find him stating that he does not know how much land is in the suit dags. It also appears that he never did any measurement of the land. Surprisingly we find PW 1 stating in his cross-examination that he does not know how many share holders are there in the suit patta. But the very next moment PW-1 stated that there are no other share holders. As PW 1 contradicted from his own statement, the truthfulness regarding the statement is doubtful.

18. We also find PW 1 stating in his cross-examination that at present there may be a total land measuring 4 ½ bigha in dag No 124/125/148 (old), but he can not say the exact area of land as he did not do the measurement of the same. After going through the cross-examination of PW- 1 it appears that he himself does not know how much land is in their share and how much share belong to the other pattadars. Under such circumstances it can be held that the plaintiff has sole right, title, interest over the land acquired vide LAC Case No : 286/62-63 and 47/06 as described in the schedule of the plaint and that the plaintiff are still entitled for the compensation money for the land acquired thereon.

19. The findings of the learned trial court below in these two issues warrants no interference and the same is upheld. Situated thus issue No. (iii) and (iv) are decided in favour of the defendant/ respondent.

20. Coming up next for discussion the issue No. (v) which is contingent upon the question as to **"Whether the defendant no.4-7 received part of**

the award given by the Government in LAC Case No.286/62-63 for the land acquired by giving false information and without any rights over the land and hence is liable to refund the award received ?”

21. In their pleadings the plaintiff averred that the defendant No. 4 in spite of having no rights and without any succession certificate, received a part of award along with the plaintiffs by giving false information to the revenue authority. According to the plaintiffs the false information was given by filing petitions dated 09/07/2003 and 18/07/2003.

22. The defendants in their written statement denied about the fact of false information and stated that the plaintiffs along with some other pattadars of the suit patta entertained a petition before the Deputy Commissioner, Nalbari in LAC Case No : 286/62-63 declaring themselves that they have no right title and possession over the acquired land.

23. The plaintiff as PW 1 in his evidence on affidavit as well as in his cross-examination denied this averments of the defendant. The learned counsel for the plaintiff/appellant stated that the learned trial court was wrong in relying on the consent letter exhibited by the defendant as Ext-'Ga' as they did not prove the same by adducing proper evidence.

24. I have gone through Ext-'Ga' which is the alleged consent letter of the plaintiff and other pattadars. Though the defendants ought to have proved the consent letter which they alleged to be filed by the plaintiff along with other pattadars, it is averred by the plaintiffs in their pleadings that the false information was given by the defendants by filing petition dated 09/07/03 and 18/07/03. It is already held in the previous issues that the plaintiff failed to establish his right title interest over the suit land. Apart from that PW-1 stated in his cross-examination that the suit dag no are converted into new one and he can not say who has how much share in those dags. When the plaintiff is himself not aware of the fact as to who is possessing how much land in the dag nos., it is not possible for him to rely on his plea that the defendant received a part of award given by the defendant no.2 & 3 by giving false

information vide petition dated 09/07/03 and 18/07/03. Moreover if any petition was filed by the defendants by giving false information, the plaintiff could have filed objection against those petitions.

25. Again if we go through the cross-examination of PW 2 we find him stating that the land of Harekrishna i.e. the father of defendant No. 7 is just adjacent to the acquired land. From the statement it can be assumed that the land acquired by the Govt. went from the share of the defendant. It is also revealed from the cross of PW 2 that earlier Karuna, Samin, Mahendra and Harekrishna received compensation as they did not have possession in other pattas. It is also revealed from the cross of PW 2 that at present also these 4 persons has possession over the suit land. We also find DW-2 stating in his cross-examination that Karuna will get 3 kathas of land. Ext-'Chaa', a report of RTI in relation to the possession of land described in the schedule of the plaint also reveals that the plaintiffs does not have possession over the schedule mentioned land, where as the same is found to be in possession of the defendants. Hence, it is clear from the evidence of the plaintiff side that the defendants side are still in possession of the schedule mentioned land and for this the allegation of the plaintiff that vide petition dated 09/07/03 and 18/07/03 that the defendant gave false information and receives compensation can not be accepted.

26. In view of the above discussions it appears that the findings of the learned trial court in issue No. (v) warrants no interference and the same is upheld. Situated thus issue No. (v) is decided in favour of the defendant.

27. Issue No (i) is relating to the cause of action of the suit. The learned trial court has decided this issue in the affirmative and in favour of the plaintiff. Cause of action means every fact which if traversed, it would be necessary for the plaintiff to prove in order to support of his right to a judgment of the court. In the instant suit the plaintiff has averred that the defendant had fraudulently received the amounts awarded by the Govt. in relation to the land acquisition in AC case No 286/62-63 and are trying to grab the award of compensation in

AC case No 47/06 without having any right, title and interest over the acquired land. The defendant on the other hand has taken the plea in their written statement that the father of defendant No. 4,6 and 7 and the grand father of defendant No. 8 were enjoying the possession of the suit land since 1958 and after their death their legal heirs are in possession of the land and are paying land revenue till acquisition of the land by AC Case No 47/06. According to the defendant the plaintiff have filed no objection petition before the Deputy Commissioner, Nalbari in AC Case No : 286/62-63 declaring that they have no right title interest over the acquired land. As such the defendant are entitled to receive compensation from the Government in both the cases. As there is assertion of right by the plaintiff and denial of right by the defendant there is cause of action for the suit.

Hence, the findings of the learned trial court in issue No 1 warrants no interference.

28. Regarding issue No (ii) which is contingent upon the question as to **“Whether the suit is bad for non joinder of the necessary parties?”** It is seen that the defendant has not mentioned in their written statement as to who should have been made necessary parties in the suit by the plaintiff. On perusal of the pleadings it is seen that the plaintiff has filed this suit alleging that the defendants had fraudulently received the compensation awarded in AC Case No 286/62-63 and are further trying to grab the award of compensation in AC Case No : 47/06 in connection with the land acquisition. It is seen that in this case the plaintiff has not disputed any right of other co-pattadars. Hence even if the plaintiff did not make the other co-pattadars parties in the suit it will not adversely effect their right and interest if the plaintiff is given a decree . Considering all aspects I am of the opinion that the suit is not bad for non joinder of necessary party.

Situated thus issue No (ii) is decided in the negative and in favour of the plaintiff and the findings of the learned trial court in this issue warrants no interference and the same is upheld.

29. **Issue No (vi) and (vii) are relating to the reliefs claimed by the**

parties. In view of the above discussion it appears that the plaintiff could not prove the plea taken by them. Hence, the plaintiff is not entitled to any relief as prayed for. I find nothing to interfere with the findings of the learned trial court in the above mentioned issues and as such the same are upheld.

O R D E R

30. In the result, the present first Civil Appeal is dismissed on contest with cost.

The impugned Judgment and Decree dated 22/04/15 in T.S. No.62/10 passed by the Learned Munsiff No.1, Nalbari is hereby affirmed.

Send down the original case record being T.S. No.62/10 to the court of the first instance with a copy of the Judgment forthwith.

Given under my hand and seal of this court on this the 20th day of November/2018.

Civil Judge
Nalbari

Dictated & Corrected by me

Civil Judge
Nalbari