

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 15th day of December, 2018

**TITLE APPEAL No. 40/15**

From the Judgment & Decree dated 28/09/2015 passed by Learned Munsiff  
No.1, Nalbari in Title Suit No 30/10

**Urubala Das & Others**

**-----Appellant / Defendants**

**- VS -**

**Raban Bala Das**

**Respondent/ Plaintiff**

This appeal having been heard on 16/11/2018 in presence of :-

Advocates for the Appellant :- Mr. Dwijendra Nr. Deka, Mrs. Bharati Patgiri  
Deka and Mr. Himkar Medhi.

Advocate for the Respondent:- Mr. Champak Dutta.

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

1. The judgment and decree dated 28/09/15 passed by the Ld. Munsiff No.1, i/c with T.S. No.30/10, 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.30/10 in which the case was decreed vide Judgment and decree dated 28/09/15 passed by the Ld. Munsiff No.1, Nalbari, the defendant as appellant has preferred the instant appeal on the following grounds:-

### **G R O U N D S**

- a) That, the learned Munsiff No. 1 has committed grave error of law and fact in passing the judgment and decree thereby caused miscarriage of justice and is liable to be set aside and reversed.
  
- b) That, the learned Munsiff No. 1 has not applied her judicious mind in arriving at a judicious decision of the suit rather erroneously passed the impugned judgment and decree which manifests miscarriage of justice.
  
- c) That, the learned Munsiff No. 1 ought to have decided the issues in favour of appellant defendant and against the plaintiff respondent. The learned Munsiff has wrongly decided the issues.
  
- d) That, the learned Munsiff No. 1 ought to have decided the issue whether the suit is maintainable in the present form. The learned Munsiff has erred in deciding the issue that the plaintiff respondent wants to declare the final decree as fraudulently obtained by the appellant defendant which is the basic contention of the plaintiff respondent. But the learned Munsiff hurriedly came to the conclusion

that the suit is maintainable in my opinion without discussing the reason thereof the learned Munsiff has failed to implication of law in proper angle and thereby cause miscarriage of justice.

- e) That the learned Munsiff has acted without any substantive evidence in record as such the judgment and decree is liable to be set aside.
- f) That the learned Munsiff has totally failed to appreciate the evidence on record without perusing the original record of execution proceeding No. 06/09 which is the basis of fraud alleged by the plaintiff respondent.
- g) That the learned Munsiff has opined that although the PWs stated during their cross-examination that they do not know much about the suit land and their dag number and patta number etc. overall they supported the claim of the plaintiff. These opinion can safely beheld that the learned Munsiff has not applied her judicial mind in deciding the evidence on record thereby cause miscarriage of justice and the impugned judgment and decree is liable to be set aside.
- h) That the learned Munsiff has failed to peruse the documents and copies of judgment and order submitted by the parties in proper angle and failed to determine the basic principle of law. The parties are near relative and they derived their title from the same source. This important fact of the suit is overlooked by the learned Munsiff in deciding the judgment and decree passed by the Munsiff after remand in proper perspective and the judgment is liable to be set aside.
- i) That the appellant defendant adduced the best evidence in support of their claim and the plaintiff respondent has hopelessly failed to prove her case as such the impugned judgment and decree is liable to be set aside.
- j) That the learned Munsiff has totally misinterpreted the concept of fraud and thereby caused miscarriage of justice and is liable to be set aside.

- k) That the appellant defendant will suffer irreparable loss and on injury if the impugned judgment and decree is not set aside as the impugned judgment is against the principle of natural justice.
- l) That the appellant has reserved the right to take additional plea or pleas at the time of hearing.
- m) That the appeal has been made bonafied and place before your honour for the ends of justice.

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.30/10 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 and other consequential relief.

5. The plaintiffs case interalia is that the predecessor of the defendants, Lt. Gobinda Das instituted a Title Suit NO.04/92 in the Court of Munsiff No.1, Nalbari against the plaintiff and others for declaration of his right, title, interest and khas possession and for issuing separate patta in respect of Schedule A land. The plaintiff filed written statement and the Court after hearing both parties passed judgment and decree dated 03.01.96 against which the plaintiff preferred Title Appeal No.05/96 in the Court of District Judge, Nalbari. The District and Sessions Judge, Nalbari set aside the judgment and decree vide his judgment dated 17.05.96 and remanded the case for fresh disposal by framing additional issue. The Court thereafter took up the case for fresh disposal and after hearing both parties, passed judgment and decree dated 09.09.97 declaring the right, title and interest over the suit land and also declaring joint possession with other co-pattadars in favor of Gobinda Das. The plaintiff being highly aggrieved and dissatisfied by the said judgment preferred Title Appeal No.19/97 in the Court of District Judge, Nalbari who after hearing both sides allowed the appeal and set aside the judgment and decree dated 09.09.97 and dismissed Title Suit No.04/92. At this, Gobinda Das preferred Second Appeal No.53/98 in the Hon'ble Gauhati High Court and after hearing both

parties, the judgment and decree in Title Appeal 19/97 was set aside and judgment and decree dated 09.09.97 passed by Munsiff No.1, Nalbari in Title Suit No.04/92 was upheld. The defendants by suppressing material facts got an order issued to the Collector, Nalbari for effecting partition in terms of the preliminary decree dated 03.01.96, which was already set aside by the District Judge, Nalbari in Title Appeal 05/96 and accordingly the collector issued a separate patta on favor of Gobinda Das and got the revenue records corrected. Thereafter the defendant no.2 filed a petition dated 06.07.09 for passing a final decree in terms of the preliminary decree dated 03.01.96 and accordingly a final decree was passed on 06.07.09 in respect of the suit land. Thereafter the defendants filed an execution proceeding in this court bearing T. Ex. No.6 of 2009 praying for execution of decree dated 03.01.96 and 06.07.09 and accordingly the Court executed the decree and delivered khas possession of the land on 13.03.2010 by dismantling the houses standing thereon and by removal of articles and jirats belonging to the plaintiff. The plaintiff stated in the plaint that the defendants by their actions caused damage to the plaintiff to the tune of Rs.1,07,000/- (Rupees One Lakh Seven Thousand) only approximately. Hence the plaintiff preferred this suit for declaration that the final decree dated 06.07.09 passed by this Court in TS 04/92 was obtained by the defendants by practicing fraud and deception and as such is liable to be declared null and void and inoperative. The plaintiff also prays for khas possession over Schedule A land by evicting the defendants from there and for compensation of Rs.1,07,000/- and for issuing precepts to the collector to cancel periodic Patta No.498 of Nalbari Town issued in favor of the defendants. Hence this case.

6. On receiving notice the defendant appeared before the court contested the suit by filing written statement. In her written statement, the defendant denied all the averments made in the plaint. The defendant has stated in the written statement that the decree dated 03.01.96 is a preliminary decree. The defendant further stated that they had instituted a suit in the Court of Munsiff No.1, Nalbari for declaration of right, title and interest over land measuring 10 lechas and for khas possession over 3 lecha out of 10 lecha land. The Ld.

Munsiff declared possession of Gobinda Das over land measuring 7 lechas and Gobinda Das was also entitled to recover khas possession over land measuring 3 lechas out of 10 lechas and also separate patta. The plaintiff agitated the decree but not the preliminary decree. The District Judge remanded back the case for fresh disposal by framing additional issue and in this case the suit was decreed in favor of Gobinda Das by declaring his joint possession over the land with the other co-pattadars. The Hon'ble High Court, in the second appeal allowed the appeal and set aside decree dated 12.02.98 but restored the judgment and decree dated 09.09.97 passed by Munsiff No.1, Nalbari. The defendants also stated that the plaintiffs had knowledge about the execution and the execution was done on due process of law.

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 this suit?
- ii) Whether the suit is maintainable in its present form?
- iii) Whether the final decree dated 06.07.09 passed in TS 04/92 was obtained by the defendants by practicing fraud and deception as alleged in the plaint?
- iv) Whether the plaintiff is entitled to the reliefs as prayed for?
- v) To what other relief/reliefs the parties are entitled to?

8. The plaintiff side had adduced the evidence of 4(Four) witnesses and exhibited 14 (Fourteen) documents. The defendant side has also adduced the evidence of 3(Three) witnesses and has exhibited 4(Four) documents.

9. 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**

10. **Issue No (i) is relating to the cause of action for the suit.**

The 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 this suit the plaintiff has averred that the defendant has fraudulently and with deception has executed the final decree dated 3/1/1996 inspite of knowing the fact that the judgment and decree dated 3/1/1996 was already set aside by the Hon'ble Sessions Judge. According to the plaintiff instead of executing the decree dated 9/09/97 the defendant had executed the decree dated 3/01/96. The defendant, on the other hand, has stated in their written statement that as the plaintiff had agitated only the decree before the Sessions Judge and not the preliminary decree dated 3/1/1996 the execution of the decree was rightly done. 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.

11. **Regarding the issue No (ii) relating to the question of maintainability of the suit,** it is seen that in their written statement the defendant has stated that the suit is not maintainable in its present form. However, there is no specific pleading that the plaint is not in its present form or in the manner in which it should have been filed.

The plaintiff has filed this suit for a declaration, that the final decree dated 6/7/09 passed by the learned Munsiff No. 1, Nalbari in TS No. 4/92 was obtained by the defendants by practising fraud and disception and as

such the same be declared null and void, inoperative and not binding upon the plaintiff and accordingly the same be cancelled. The plaintiff has also prayed for a decree of khas possession and compensation amounting to Rs.1,07,000/- along with other consequential relief. I find nothing to hold that the suit is not maintainable.

12. Coming up next for discussion is issue No (iii) which is contingent upon the question as to **“Whether the final decree dated 06.07.09 passed in TS 04/1992 was obtained by the defendants by practicing fraud and deception as alleged in the plaint ?”**

In her pleadings the plaintiff has averred that inspite of the fact that the judgment and decree dated 3/1/1996 passed in Title Suit No. 4/92 was set aside by the judgment dated 17/8/1996 passed by the Hon'ble District Judge in TA No. 5/96 whereby the said case was remanded back for fresh disposal after framing an additional issue and inspite of the fact that the learned trial court took up the case for fresh disposal and passed judgment and decree dated 9/9/1997 which was upheld by the Hon'ble High Court vide judgment and order dated 23/01/2006 in second appeal No. 53/1998, the defendants by supressing the materials fact got an order directing the Collector, Nalbari for effecting partition in terms of preliminary decree dated 3/1/1996 which was already set aside. Accordingly the collector effected partition and issued a separate patta in favour of Gobinda Das and got the revenue records corrected. It is alleged by the plaintiff that thereafter the defendant No. 2 filed a petition No. 64/09 dated 6/7/09 for passing a final decree in terms of the preliminary decree dated 3/01/1996 in respect of the suit land and accordingly, the court passed a final decree on 6/7/09 in respect of the suit land. It transpires from the pleadings of the parties that the defendants in their written statement admitted the averments of the plaintiff made in the plaint that their predecessor Gobinda Das had instituted title suit No. 4/1992 in the Court of Munsiff No. 1, Nalbari in respect of the suit land which was decreed on 3/01/1996. The defendant also admitted that the said judgment was set aside by the sessions court vide judgment and order dated 17/05/1996 passed in TA No 5/96 and the suit was remanded back for fresh

disposal after framing of additional issues. It is further admitted that vide judgment dated 9/9/1997 the joint possession of the predecessor of the defendant, Gobinda Das was declared along with other co-pattadars. The defendants also admitted that the said judgment was challenged before the appellate court and the same was again set aside by the appellate court. Being aggrieved late Gobinda Das preferred a second appeal vide second appeal No. 53/1998 before the Hon'ble Gauhati High Court which was allowed.

It is also stated by the defendant that vide judgment and order dated 3/1/1996 passed in TS No 4/92, the learned Munsiff No. 1 decreed the suit, declaring right, title and interest of the predecessor of the defendants over 10 lechas of land, covered by Dag No 1488 of KP patta No. 314 of Nalbari town under Khata Mouza in the district of Nalbari. The learned Munsiff No.1 declared possession of Gobinda Das over land measuring 7 lechas out of 10 lechas and confirmed his possession. Gobinda Das was also entitled to recover the khas possession of the land measuring 3 lechas out of 10 lechas and also for separate patta. The learned Munsiff also ordered to draw up a preliminary decree and sent it to the collector for effect of the preliminary decree for separate patta in respect of 10 lechas of land. The collector was further directed to submit report within 4 months from the date of receipt of the preliminary decree. It appears from the written statement that the defendants put the decree in execution and learned Executive Court executed the decree on due process of law. According to the defendants the plaintiff agitated the decree, but not the preliminary decree in the court of District Judge, Nalbari.

I have carefully gone through the evidence and materials available on records. It is very clear from Exhibit-5 itself that the plaintiff had preferred an appeal before the Hon'ble District Judge, Nalbari against the entire judgment dated 3/1/96 passed by the learned Munsiff in TS 4/1992 and Exhibit -5 makes it very clear that the entire judgment of Munsiff, Nalbari dated 3/1/96 passed in TS 4/92 was set aside and the case was remanded back with a direction to frame additional issue and pass fresh judgment. Exhibit-6 is the judgment dated 9/9/1997 passed by the learned Munsiff No 1, Nalbari in TS No 4/92 after freshly deciding the case which was decreed in favour of the defendant by declaring his right, title and interest over the suit

land and also by declaring his joint possession over the suit land with other pattadars. Exhibit-8 is the judgment of the Hon'ble District Judge, Nalbari passed in Title Appeal 19/97 wherein the judgment dated 9/9/97 passed by the learned Munsiff was set aside. Exhibit-10 makes it very clear that after hearing both the parties the Hon'ble Gauhati High Court was pleased to set aside the judgment dated 12/2/1998 passed by the Appellate Court and restore the judgment dated 9/9/1997.

From the exhibits mentioned above it is very clear that judgment dated 9/9/97 passed in TS 4/92 was restored by the Hon'ble Gauhati High Court. As such the judgment and decree dated 3/1/1996 passed earlier by the learned Munsiff, Nalbari in TS 4/1992 is not executable, the same being already set aside by the District Judge. On perusal of Exhibit-11 which is the certified copy of the petition dated 6/7/09 it is seen that the defendants had prayed for passing a final decree in terms of the preliminary decree dated 3/1/1996 in respect of the suit land.

From the above discussion, it is very clear that inspite of knowing the fact that the judgment and decree dated 3/1/1996 passed in TS 4/92 was set aside by the Hon'ble District Judge, Nalbari vide judgment dated 17/5/96 and in place of it a fresh judgment was delivered on 09/09/1996 which was further restored by the Hon'ble Gauhat High Court, the defendants has obtained the final decree dated 6/7/09 passed in TS 4/92 by practicing fraud and disception. In view of the above discussion it appears that the learned Trial Court has rightly decided this issue and the same is upheld.

Situated thus this issue is decided in affirmative and in favour of the respondent/ plaintiffs.

13. **Issue No (iv) and (v) are relating to the reliefs claimed by the parties.** It is already discussed in the previous issue that by practising fraud and disception the defendant had obtained the final decree dated 6/7/09 in TS No. 4/1992. Regarding the damage caused to the plaintiff, we find the plaintiffs stating in their pleadings that the defendant filed a execution proceeding in the Court of learned Munsiff bearing case No Title Execution Case No : 6/2009 praying for execution of the decree dated 3/1/1996 and

6/07/2009 and accordingly the court executed the decree and delivered khass possession of the land to the defendant on 13/03/2010 by dismantling the house standing thereon and by removal of articles and jirats belonging to the plaintiffs. The plaintiffs alleged in their plaint that the defendants by their actions had caused damaged to the plaintiffs to the tune of Rs. 1,70,000/- approximately the details of which are mentioned in schedule B of the plaint.

In their written statetment the defendant admitted that they had put the decree in execution and the learned Executing Court executed the decree in due process of law. Now if we go through the evidence of the PWs we find PW 1 stating in her cross-examination that the people of the court went to the disputed land once and damaged her house. PW 2 also stated that there were two rooms in the suit land and the said rooms were 33x 16 feet. PW 3 stated that there was house and valuable trees like 'Segun' 'Krishnasura', 'Radhasura' over the suit land. Even PW 4 stated that there were two houses over the suit land along with valuable trees and in the year 2010 the said land was handed over to the defendants after demolishing the house. The defendant could not demolish the plea taken by the plaintiffs at the time of cross-examining them that they suffered a loss of Rs. 1,70,000/- the particulars of which are furnished in schedule B of the plaint.

Considering the above discussion it appears that the plaintiff is entitled to all the relief as claimed for. The learned trial court has rightly decided all the issues in favour of the defendant. Therefore, I find nothing to interfere with the findings of the learned trial court in issue No (iv) and (v).

### O R D E R

14. In the result the present first Civil Appeal is bereft of merit and thus the same stands dismissed on contest with cost.

The impugned judgment and decree dated 28/09/2015 passed by the learned Munsiff No. 1, Nalbari in TS No. 30/10 is hereby affirmed.

Draw up a decree accordingly.

Send down the original case record being Title Suit No. 30/10 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 15th day of December/2018.

Civil Judge  
Nalbari

Dictated & Corrected by me

Civil Judge  
Nalbari