

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

J U D G M E N T

1. This is a suit filed for Specific Performance of Contract with other consequential relief.

2. The plaintiff's case in brief is that the suit land measuring 1 katha of PP No 56 covered by Dag No 1 and 2 katha out of 3 katha 10 lechas of PP No 101 covered by Dag No 3 i.e. the total land measuring 3 katha is the purchased land of the defendant and the same is in possession of them. The defendant wanted to sell the suit land in need of money and the plaintiff agreed to purchase the same. The market price of the suit land was 25 lakhs per bigha. As per the market value of the suit land the consideration price for 3 katha of land was fixed at Rs. 15 lakhs out of which the defendant received Rs. 1,50,000/- from the plaintiff and executed the agreement in favour of the plaintiff. It was agreed between the parties that after one month the defendant will obtain the sale permission from the concerned authority and thereafter she received remaining 7,50,000/- from the plaintiff and executed a registered sale deed in favour of them in respect of the suit land. On 5/2/15 the defendants received Rs. 1,50,000/- and on that day itself the consideration price for the suit land was fixed at Rs. 15,00,000/- and the agreement was executed by the defendant in favour of the plaintiff. According to the plaintiff on 5/2/2015 the defendants received Rs. 15 lakhs, on 5/3/2015 the defendants received Rs. 4,00,000/- and on 10/3/2015 the defendants received Rs. 2 lakhs i.e. in total the defendants received Rs. 7,50,000/- as advance from the

plaintiff. On 5/3/2015 after applying for sale permission the plaintiff asked the defendants to received the balance amount of Rs. 7,50,000/- and execute the registered sale deed. But the defendants were delaying the matter on this or that ground. The plaintiff further averred that he approached the defendants on 12/12/15 and on 8/1/2016 for requesting them to execute the registered sale deed. But the defendants turned a deaf ear to their request. Finally on 21/01/16 the plaintiffs had sent an advocate notice to the defendants. But inspite of that the defendants did not execute the sale deed. On 29/01/2016 the defendants refused to execute the registered sale deed in favour of the plaintiff.

3. On receiving summons the defendant no 2,3,4 and 5 appeared and contested the suit by filing written statement jointly. It was reported that defendant No 1, Biren Barman had expired and vide order dated 17/05/16 the legal heirs of the defendant No 1 were impleaded in the suit. But as they failed to appear inspite of receiving summons the suit proceeded exparte against them. In their written statement the defendants stated that the suit land is their purchased land who are still the joint owners of the suit land which is cultivable land. In the beginning of the year 2015 the plaintiff approached the defendants for purchasing the suit land. The defendants agreed at Rs. 15,00,000/- but consent of another brother Kalicharan was not obtained. The defendants stated that Kalicharan Barman was not in good terms with the defendants. Hence the plaintiff took the responsibility to convince Kalicharan Barman and obtain his signature on the agreement. According to the defendants they signed the agreement on different dates as approached by the plaintiffs. The defendants admitted that Rs. 1,50,000/- was taken as advance by them in the beginning and Rs. 2 lakhs was taken by one of them later on. But the defendants denied the claim of the plaintiff that another amount of Rs. 4 lakhs was also taken by Biren Barman (

deceased). The defendants alleged that the plaintiffs had done manipulation in the agreement by forging the signature of Biren Barman near Rs. 4 lakhs. The defendants further stated that the plaintiff did not come forward in proper time for performance of his agreement and also failed to convince another co sharer Kalicharan Barman for consent. The plaintiff also failed to implead Kalicharan Barman in the suit. The defendants further stated that they are ready to return the advance amount of Rs. 3,50,000/- which was taken by them along with interest. Hence, the defendants prayed to dismiss the suit of the plaintiff.

4. On perusal of the pleadings following issues were framed--

- (i) Whether there is cause of action for the suit ?
- (ii) Whether the suit is maintainable ?
- (iii) Whether the defendants agreed to sell land measuring 3 katha as described in Schedule "Ka" of the plaint to the plaintiff and execute a sale agreement by receiving Rs. 1,50,000/- as advance from the plaintiff ?
- (iv) Whether the defendants received an amount of Rs. 7,50,000/- as advance from plaintiff out of total consideration of Rs. 15,00,000/- ?
- (v) Whether the defendants have failed to perform their part of contract ?
- (vi) Whether the plaintiff is entitled to any relief as claimed for ?
- (vii) To what other relief/ reliefs are the parties are entitled to ?

FINDINGS AND REASONS THEREOF

5. In support of the case the plaintiff has adduced the evidence of 5(five) witnesses and has exhibited 7(Seven) documents. The defendants on the other hand had adduced the evidence of 4(Four) witnesses and has exhibited no

documents.

6. I have heard the arguments of the Ld. Counsels for both the parties and have discussed the issues as follows :-

ISSUE NO (i)

Whether there is cause of action for the suit ?

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. The plaintiff has pleaded in his pleading that as proposed by the defendants, he agreed to purchase the land mentioned in the schedule of the plaint, at a consideration price which was fixed at Rs. 15,00,000/- on 5/2/15 and on the same day an agreement was executed between the defendants and the plaintiff and a sum of Rs. 1,50,000/- was received by the defendants from the plaintiff as advance. It was agreed between the parties that the rest of the half of the amount will be paid within one month i.e. within 5/3/2015. Accordingly the defendants accepted Rs. 4 lakhs from the plaintiffs on 5/3/2015 and Rs. 2 lakhs on 10/03/2015 i.e. the defendants accepted a sum of Rs. 7,50,000/- from the plaintiffs in three installments as advance money out of the consideration price of Rs. 5,00,000/- The defendants assured the plaintiff that they would execute the registered sale deed after receiving the remaining balance amount. But inspite of repeated request by the plaintiff the defendants did not execute the registered sale deed as per the agreement dated 5/2/15. The defendants, on the other hand, admitted about the agreement and receipt of Rs. 1,50,000/- and Rs. 2 lakhs in two installments, but they refused to accept the plea of the plaintiff that they had received Rs. 4 lakhs from the plaintiffs on 5/3/2015. According to the defendants one of the co-sharers Kalicharan Barman did not give his no objection for execution of the registered sale deed and for this reason they will not be able to execute the registered sale deed. As there is a dispute regarding the payment and acceptance of 7,50,000/- in three installments, there is cause of action for the suit.

Accordingly, this issue is decided in the affirmative and in favour of the plaintiff.

ISSUE NO (ii)

Whether the suit is maintainable ?

There is no specific pleadings that the suit is not maintainable in its present form or in the manner in which it should have been filed. The plaintiff has filed this suit for Specific Performance of Contract with other consequential relief. The suit is filed within the period of limitation and within proper jurisdiction. I find nothing to hold that the suit is not maintainable in its present form.

Accordingly, this issue is decided in the affirmative and in favour of the plaintiff.

ISSUE NO (iii) :

Whether the defendants agreed to sell land measuring 3 katha as described in schedule "Ka" of the plaint to the plaintiff and execute a sale agreement by receiving Rs. 1,50,000/- as advance from the plaintiff ?

It is the pleadings of the plaintiff that as per the market value of the suit land which was Rs. 25,00,000/- per bigha, the total consideration price of the suit land measuring 3 katha was fixed at Rs. 15,00,000/-. According to the plaintiff the defendant after receiving a sum of Rs. 1,50,000/- as advance executed an agreement in respect of the suit land in favour of the plaintiff. The defendants in their written statement has admitted to have signed on the agreement on different dates and has also admitted to have received Rs. 1,50,000/- as advance.

Hence from the said admission it is clear that the defendants agreed to sell land measuring 3 katha as described in schedule "ka" of the plaint to the plaintiff and execute a sale agreement by receiving Rs. 1,50,000/- as advance from the plaintiff.

Accordingly this issue is decided in the affirmative and in favour of the plaintiff.

ISSUE NO (iv) :

Whether the defendants received an amount of Rs. 7,50,000/- as advance from plaintiff out of total consideration of Rs. 15,00,000/- ?

It is already discussed in the previous issue that the defendant had received Rs. 1,50,000/- from the plaintiff and have signed on the agreement marked as Exhibit 1.

Now coming to the pleadings of the plaintiff it is seen that in paragraph No 3 the plaintiff has averred that the total consideration price of the suit land was fixed at Rs. 15,00,000/- and out of which the defendants received a sum of Rs. 1,50,000/- and executed an agreement in his favour. The plaintiff averred that after receipt of half of the consideration amount of Rs. 15,00,000/- from the plaintiff within one month the defendant would execute the registered sale deed on receipt of the remaining Rupees Seven lakhs Fifty thousand. It is further averred by the plaintiff that later on 5/3/15 the defendants received Rs. 4,00,000/- and on 10/03/2015 the defendants received Rs. 2,00,000/- from the plaintiff. Thus according to the plaintiff the defendants received a sum of Rs. 7,50,000/- as advance from him out of the total consideration price.

The defendants in their written statement denied the receipt of Rs. 4,00,000/- from the plaintiff but admitted the fact that Rs. 2,00,000/- was received by one of the defendants later on.

The learned counsel for the plaintiff has submitted that all the PWs has stated about their presence at the time of execution of the agreement, at the time when the transaction was made and also at the time of the next two installments. The Ld. counsel also submitted that PW 5 wrote Exhibit 1 as directed by both the parties and the signatures of the PWs are also found in Exhibit 1.

Now, if we go through the cross-examination of PW 1 we find him stating that Sahedur Rahman wrote about the acknowledgement of Rs.

4,00,000/- on 5/3/15 and Abdul Rezzak wrote about the acknowledgement of Rs. 2,00,000/- in Exhibit 1. But on perusal of Exhibit 1 we neither find the signature of Sahedur Rahman nor the signature of Abdul Rezzak below the acknowledgement. Coming across the cross-examination of PW 5, Sahedur Rahman who is the scribe of the Exhibit 1, we find him stating that he did not write about the acknowledgement of Rs. 4,00,000/- and Rs. 2,00,000/-. Though the PWs has stated that the transaction of Rs. 4,00,000/- was made in their presence, none of their signatures are seen near the acknowledgement.

Apart from that, it is seen that the plaintiff in his pleading has not specifically mentioned the names of the defendants, who received the amount of Rs. 1,50,000/- on 5/2/15, Rs. 4,00,000/- on 5/3/15 and Rs. 2,00,000/- on 10/3/15 from the plaintiff. But in the evidence on affidavit of the PWs it is specifically mentioned that on 5/3/15 the defendant No 1 Biren Barman received a sum of Rs. 4,00,000/- and defendant No 5 Dipu Barman received a sum of Rs. 2,00,000/- from the plaintiff. Hence, there is no doubt that this part of the evidence of the PWs are beyond pleading.

It is also revealed from the cross-examination of the PW 1 that the defendant No 1 Biren Barman had expired within one year from the date of agreement. In spite of that he has filed this suit against Late Biren Barman. Though the legal representatives of defendant No 1 was impleaded in the suit the plaintiff cannot seek any relief from them. As the suit was originally filed against a dead person, it was void ab initio.

The plaintiff could not prove the transaction of Rs. 4,00,000/- on 5/3/15 which he alleged to have been received by Biren Barman. However, the defendants in their pleadings as well as in their evidence has admitted about the transactions of Rs. 1,50,000/- on 5/2/15 and Rs. 2,00,000/- on 10/03/15 as claimed by the plaintiff.

Therefore, it appears that the defendants received a sum of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only) from the plaintiff out of total consideration amount of Rs. 15,00,000/-in two instalments.

Hence, this issue is decided accordingly.

ISSUE NO (v) :

Whether the defendants have failed to perform their part of contract ?

The Ld. counsel for the plaintiff during the course of his argument submitted that as the plaintiff neither made any contract to purchase the share portion of Kalicharan Barman nor Kalicharan Barman executed any agreement for sale with the plaintiff, the question of denial of Kalicharan Barman does not arise. But if we go through the cross-examination of PW 2 we find him stating that the sale deed is not executed only because Kalicharan has his share in the land agreed to be sold and objection. PW 3 also stated that the suit land is the ancestral property of both Kalicharan and Biren. According to PW 3 Kalicharan told them that his shares is in the suit land and without his no objection the suit land cannot be sold. It is further revealed from the cross-examination of PW 5 that they had seen the land records in the office and found Kalicharan's name in the suit patta.

It transpires on perusal of Exhibit 1 that initially the agreement was executed between the plaintiff and the defendants only. The name of Kalicharan is found nowhere in Exhibit 1. Even if for the sake of discussion we belief in the submission of the Ld. counsel for the plaintiff that the plaintiff did not enter into any contract to purchase the share portion of Kalicharan, some manipulations are seen in the schedule of Exhibit 1 without any initial.

In view of the above discussion, it can not be held that the land agreed to be sold to the plaintiff does not include any share of Kalicharan. The plaintiff has not exhibited any document to prove that the defendants has exclusive right in the suit land. If the exclusive rights are not entitled to each co-owner, such transfer of rights cannot take place without the consent of other joint co-owners. From the cross of PW 5 it is very clear that they had seen the land records in the office and found Kalicharan's name in the suit patta.

Further, it is revealed from the evidence of DWs that the defendants are not able to register the sale deed only because Kaicharan has not agreed. It is also clear from Exhibit 2 that the defendants had applied for sale permission before the concerned authority.

Hence, it cannot be held that the defendants failed to perform

their part of contract.

Accordingly, this issue is decided in the negative and in favour of the defendants.

ISSUE NO (vi) & (vii) :

Whether the plaintiff is entitled to any relief as claimed for ?

A N D

To what other relief/ reliefs are the parties are entitled to ?

The plaintiff has prayed for a decree of Specific Performance of Contract along with other consequential relief. It is the plea of the plaintiff that the defendants received Rs. 7,50,000/- in total from the plaintiff in three transactions of Rs. 1,50,000/-, Rs. 4,00,000/- and Rs. 2,00,000/- as advance out of the total consideration price of Rs. 15,00,000/-. It is already decided in the previous issues that the defendants has received a sum of Rs. 3,50,000/- from the plaintiff in two transactions. The defendants in their pleadings and evidence has agreed to return back the said amount of Rs. 3,50,000/- to the plaintiff. As the plaintiff could not prove the transaction of Rs. 4,00,000/- on 5/3/15 he is entitled to get back only a sum of Rs. 3,50,000/- (Rupees Three Lakhs Fifty thousand only) from the defendants.

O R D E R

7. In the result the suit is decreed partly on contest with cost.

The plaintiff is entitled to get back a sum of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only) from the defendants.

The defendants are directed to pay the decretal amount to

the plaintiff within 1(one) month from the date of this order.

Prepare a decree accordingly.

Given under my hand and seal of this court on this the 20th day of July/2019.

Civil Judge
Nalbari

Dictated & Corrected by me

Civil Judge
Nalbari

A P P E N D I X

(A) **Plaintiff's witnesses :**

PW 1 : Tamiruddin Ahmed,
PW 2 : Sahar Ali,
PW 3 : Md. Ayejuddin,
PW 4 : Doulat Khan and
PW 5 : Sahedur Rahman.

(B) **Plaintiff's exhibited documents :**

Ext-1 : Agreement dated 5/02/2015,
Ext-2 : Application for sale permission dated 5/03/15,
Ext-3 : Tracing paper of suit land,
Ext-4 : Advocate Notice,
Ext-5 : Acknowledgement,
Ext-6 : Advocate notice dated 21/01/2016,
Ext-7 : Written statement filed by defendant No 2 and

5.

(C) **Defendant's witnesses :**

DW- 1 Sri Dipu Barman,

DW- 2 Sri Baikuntha Barman,

DW- 3 Sri Rakesh Dey,

DW- 4 Sri Sanjeeb Talukdar,

(D) **Defendant's exhibited document** : Nil.

Civil Judge,

Nalbari