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Jadav Thakuria

vs

Binanda Thakuria

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

IN THE ORIGINAL COURT OF THE MUNSIF NO.1, NALBARI

Present: Rubina Yasmin, AJS

Dated: 26th day of Feb, 2020

Title suit: 83/2014

JADAV THAKURIA.....Plaintiff

Versus

BINANDA THAKURIA.....Defendant

This suit/ case coming on for final hearing on the 26th day of February, 2020 in the presence of:

Mr. Naba Kumar Dutta --- Advocate for the Plaintiff

Mr. Dhiren Barman-----Advocate for the Defendant

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

JUDGMENT

This is a suit for declaration of right, title and interest and recovery of Khas possession and other consequential relief.

1. Plaintiff's suit in brief is that, he has purchased the suit land from the original pattadar by virtue of registered sale deed no. 1223 in the year 1975 and since the day of purchasing the suit land, he has been in possession of the same. He has further stated that he has made several efforts for mutation in the revenue record, but he failed as he is service man working at Guwahati and hence could not spend much time in the revenue office for mutation. Taking advantage of absence of the plaintiff, the defendant with some hired persons entered into the suit land on 21.3.2014 and dug a pond with the help of JCB in the suit land measuring 1 katha 10 lechas. Plaintiff filed written complaint before the President of Belsoria Namghar Supa on 22.3.2014 and accordingly village 'bichar' was held on 23.3.2014 in which the defendant admitted his guilt and assured that he would fill up the pond within seven days, but he has not complied with the decision of the village 'bichar' rather he continued digging the pond. Hence the suit.

2. Defendant no. 1 Binanda Thakuria pursuant to receipt of summons appeared and filed written statement denying that plaintiff has purchased the suit land from the original pattadar by virtue of sale deed no. 1223/75 in the year 1975. Defendant stated that he has purchased the land from Krishna Thakuria, Mrinal Thakuria and Chandra Thakuria on 13.2.1975 by virtue of registered sale deed no. 1223/75 and he is in possession of the same and also mutated his name in the revenue record and paying land revenue regularly. Defendant has also purchased another plot of land by virtue of registered sale deed as mentioned in the plaint. He further stated that a pond was already there in the scheduled land since five years which was dug by his son Mantu Thakuria, who is living separately from the defendant and thus earning same income by fishing. He has denied the other averments made by plaintiff and hence prayed to dismiss the suit. Other pro forma defendant did not appear and the suit proceeded ex parte against them.

3. Considering rival pleadings my learned Predecessor framed the following issues in this suit:

1. Whether there is cause of action for the suit?

2. Whether the plaintiff has purchased the suit land from original pattadar by registered sale deed no. 1223/75?

3. Whether the defendant has purchased the suit land by registered sale deed no. 1220/75?

4. Whether the plaintiff is entitled to the decree of right, title and interest and Khas possession over the suit land?

5. To what other relief(s), the parties are entitled to?

4. The plaintiff has submitted evidence of 3 Pws and exhibited other relevant documents to establish his claim. Defendant on the other hand adduced evidence of 1 DW that is the defendant himself and exhibited other documents in his favour.

5. I have heard the argument of plaintiff side. Defendant side did not appear even after repeated call and the suit was an old pending one and it was pending at the stage of argument since 10.10.18. Hence vide order dated 10.02.20 the case was fixed for judgment allowing an opportunity to the defendant side to do the argument within 10 days from the date of said order. However defendant did not appear for argument.

6. Now let me decide the case in hand issue wise

ISSUE NO. 1:

Whether there is cause of action for the suit?

7. The plaintiff in his plaint has averred that suit land is his purchased land by virtue of a registered sale deed no. 1223/75 and that, he has been in possession over the suit land since the date of purchase. He further stated that defendant on 21.3.2014 entered into the suit land and dug pond over the same measuring 1 katha 10 lechas. Plaintiff has also furnished the sale deed no. 1223 to prove his title. Percontra, defendant stated that he has purchased the suit land from original pattadar by registered sale deed no. 1220/75 and has been in possession of the same and that pond was already there in the suit land since five years. Considering the rival pleadings between the parties, it is found that there is cause of action for filing of this suit and hence the plaintiff has right to seek relief against defendant. Hence, issue is decided in favour of the plaintiff.

ISSUE NO. 2:

Whether the plaintiff has purchased the suit land from original pattadar by registered sale deed no. 1223/75?

8. Plaintiff has reiterated in her evidence on affidavit the same as in the plaint. Plaintiff has claimed right title over the suit land through the registered sale deed no. 1223/75. To establish his claim he has furnished the sale deed as Exhibit 1. Perusal of the said exhibit it is seen that the plaintiff has purchased total land measuring 2 bigha 12 lecha in the patta no. 277, 199 and 190 and dag no. 418,416 and 410. Exhibit 1 is the registered sale deed and any registered document is presumed to be authentic unless the execution of document itself is challenged to be a fake one. Here in this case defendant though denied the plaintiff's claim that he has purchased the suit land but has not challenged the deed. Moreover, Pw 2 during her cross examination has also made it clear that he has purchased the suit land. Further Pw 2 and 3 also corroborated the same. Further plaintiff through exhibit 2 and 3 shows that the suit land belonged to original pattadar Krishna, Harimal and Chandra Thakuria and the said persons are the vendor to the the exhibit 1. Defendant has also not challenged the title of the original pattadars nor the validity of the exhibit 1. Therefore, in absence of contrary, sale deed no. 1223 is found to be valid. Hence it is established that plaintiff has purchased the suit land from the original pattadar vide the regd sale deed no. 1223/75.

ISSUE No 3.

Whether the defendant has purchased the suit land by registered sale deed no. 1220/75?

9. Defendant in his written statement and evidence on affidavit averred that he has purchased the suit land from its original pattadar. But to establish his claim he has not submitted any documents which could establish that he has purchased the suit land. On perusal of the documents submitted by the defendant it is seen that he has furnished the sale deed no. 1220/75 as Exhibit Ka. On perusal of the said sale deed it is seen that defendant has purchased the suit land measuring 4 bigha from harimal Thakuria, Chandan Thakuria and Nirmal thakuria in the suit patta but in different dag number which is 446. However the suit land mentioned in the schedule to the plaint is situated in dag 416 and 418 of suit patta and not 446. Though defendant has purchased a land through the registered sale deed no. 1220/75 but the said land is different from the suit land. Further

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he has not submitted any other documents to establish that he has purchased the suit land. Hence the issue is decided against the defendant.

ISSUE NO. 4 & 5

Whether the plaintiff is entitled to the decree of right, title, interest and khas possession of the suit land?

To what other reliefs parties are entitled?

10. The source of plaintiff's title to the suit land is the registered sale deed no. 1223/75. though the defendant has denied that plaintiff purchased the suit land from original pattadar but he has never challenged the deed. Moreover the deed being valid plaintiff has acquired right, title and interest over the suit land. Further plaintiff averred that defendant on 21.03.14 entered into the suit land and dug a pond over the suit land through a Jcb. This is corroborated by Pw 2 and Pw 3. Perusal of the entire cross examination of the plaintiff as Pw 1 transpires that defendant though cross examined Pw 1 at length but has not put any question with regard to the dispossession. This means whatever Pw 1 has deposed in his chief about the dispossession by defendant is admitted by the latter. Further Pw 2 stated during his cross that he has not seen the while the pond was dug in the suit land as it was done at night. Thus Pw 2 though has not seen the digging of pond but has admitted the construction of the same in the suit land. Moreover, Pw 3 also confirmed during his cross that defendant has dug the pond in the suit land two years ago with the help of JCB and this gave rise to a village proceeding where he was also present. Over and above defendant while cross examining the witnesses has given a suggestion that there was an Ashram in the suit land earlier which was dismantled by the plaintiff. But he has not mentioned anything about the ashram in his written statement. Further he has stated in his written statement that there was already a pond since 5 years ago in the suit land which was dug by his son whereas in his evidence he stated that the pond was there from 10 years ago. Marshalling of the written statement and the evidence of defendant side it is seen that defendant himself has contradicted with regard to the time of digging of pond. Whatever it may be defendant has by this or that way admitted that he has dug a

pond in the suit land.

11. The entire evidence on record suggests that both plaintiff and defendant purchased land in the suit patta from the original pattadar but the land are situated in different dags. Defendant could not establish that he has purchased the suit land described in the schedule to the plaint as claimed by him. On the other hand it is established that plaintiff has bought the suit land vide registered deed no. 1223/75 and that defendant has dispossessed him from the suit land by digging a pond in the same. As plaintiff has acquired right, title and interest over the suit land and was dispossessed from the same hence he is also entitled to the khas possession of the same.

Order

In view of the discussions made above the plaintiff suit is decreed on contest with cost. Plaintiff is entitled to the right title and interest over the suit land. He is entitled to the recovery of khas possession of the suit land by causing defendant to fill up the pond dug on suit land. Also issue precept to the Circle officer Banekusi Revenue Circle for mutation of plaintiff's name in the revenue record.

Prepare a decree accordingly.

Given under my hand and seal of this court on this 26th day of February, 2020.

Munsiff No. 1

Nalbari

Appendix

Plaintiff's Witness

1. PW 1 – Jadav Thakuria
2. PW 2 – Bhupen Das
3. PW 3 – Ramani Thakuria

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Plaintiff's Exhibits

1. Exhibit 1 – Registered sale deed no. 1223/75
2. Exhibit 2 & 3 – Jamabandi of KP patta no. 277 and 199
3. Exhibit 4 – Revenue paying receipt

Defendant's witness

Dw 1 – Binanda Thakuria

Defendant's Exhibits

1. Exhibit 1 – Registered sale deed no. 1220/75
2. Exhibit 2 – Revenue paying receipt

Munsiff No. 1

Nalbari