

Form No.(J)2
HEADING OF JUDGMENT IN ORIGINAL SUIT

District-----Nalbari

IN THE COURT OF CIVIL JUDGE (SR DIVN)::::NALBARI

Present : Himakshi Thakuria Buragohain
Civil Judge (Sr. Divn.)
Nalbari.

Tuesday, the 30th day of June, 2020

TITLE SUIT NO : 40/17

1. **Sri Akhil Bhattacharya**
2. **Sri Ramesh Bhattacharya**

.....Plaintiffs

- VS -

1. **Sri Shiva Prasad Bhattacharya.**

.....Principal defendant

2. **Sri Keshab Bhattacharya**
3. **Smti. Bharati Devi**
4. **Smti. Arati Devi**
5. **Smti. Rebati Devi**
6. **Smti. Monomati Devi**
7. **Smti. Sarala Devi**
8. **Smti. Dipanjali Devi**
9. **Smti. Kunja Devi**
10. **Smti. Anu Devi**
11. **Smti. Jaya Devi**
12. **Smti. Minati devi**
13. **Smti Pranita Devi**
14. **Smti. Juti Devi**
15. **Sri Dipak Bhattacharya**
16. **Smti Anju Devi**
17. **Sri Jaydev Sarma**
18. **Smti Hiran Devi**
19. **Sri Mukul Mishra**

**20. Sri Girish Bhattacharya &
21. Sri Umesh Bhattacharya**

.....Proforma Defendants.

The suit is coming on for final hearing on 02/06/2020 in presence of:-

Advocate for the Plaintiffs:- : Mr. K. Bhatta,
Mr. P. Medhi, &
Mr. K.D. Goswami.

Advocate for the Defendant : Mr. P. Sarma.

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 for declaration of right, title and interest and possession for parties of the suit land for issue of precept and for permanent injunction.

2. The fact of the plaintiff's case, in brief is that the original owner and pattadar of the suit land measuring 6 Bighas 4 Kathas 19 Lechas covered by Dag No.319 and 321 of K.P Patta No.72 (old) and 121 (new) of village 'Jowardi' was Narayan Sarma (since deceased). Narayan Sarma expired leaving behind four sons and one daughter, namely, Gopal Bhattacharya, Padmapani Bhattacharya, Arun Bhattacharya, Dinesh Bhattacharya and Damayanti Devi. The children of Narayan Sarma also expired leaving behind the plaintiffs and Proforma defendant No.1 to 21 (except 19) as their legal heirs. The suit land is used for residence as well as cultivation and there is an old dilapidated Assam type house over the suit land constructed by Narayan Sarma. The plaintiff has averred that the land and the other property of late Narayan Sarma had not been

partitioned amongst his legal heirs at any time. The plaintiff and the proforma defendants have different residences in different places for which they allowed proforma defendant No.19 to stay in the old house as care taker and permissive possession on condition that he will vacate the house whenever needed. Late Narayan Sarma also had land in other places and the names of the four sons have been mutated over the said land and there are no dispute among legal heirs. The plaintiff further avers that they have no objection in all or any of the present defendants gets further mutation or partition. It is alleged by plaintiff that in the suit land there only one illegal mutation. According to the plaintiff during his life time one of the son of late Narayan Sarma, namely Dinesh Ch. Bhattacharya had filed an application dated 04.10.93 before concerned Circle Officer praying for mutation of the names of the four sons of late Narayan Sarma in the revenue record of the suit land and at that time the said application was not disposed of. Thereafter, said applicant expired and subsequently after his death the Circle Officer was also transferred. In the year 2015 the plaintiff filed an RTI application before the Banekuchi Revenue Circle Officer seeking information about revenue records of the suit land and about the mutation of the names of legal heirs of the local pattadar. But they were informed by Circle Officer that such records were not tressable in their office. No information regarding the illegal 'chitha', mutation of defendant No.1 and his father were provided to the plaintiffs. It is averred by plaintiff that all legal heirs of late Narayan Sarma pays the land revenue of the unpartitioned land. The plaintiff has alleged that as the suit land is a valuable land, the defendant No.1 and his father somehow managed the revenue and mutated their names illegally suppressing about legal heirs of the original pattadar. The fact of mutation of the name of late Arun Bhattacharya and defendant No.1 Shiv Prasad Bhattacharya was unknown to the plaintiff and other legal heirs in the year 2011 and thereafter, they filed mutation Case No.8/2012-13 and No.9/2012-13. While disposing of the aforesaid cases vide order dated 12.-1.16 the Circle Officer observed that the applicant do not have possession over the unpartitioned land. According to the plaintiff in patta No.121 of the suit, the Dag No.319 contains 5 bighas 4 kathas 19 lechas and Dag No.320 contains 1 bigh 0 katha 5 Lechas and

both dags are adjacent to each other. If the suit land is equally partitioned among the sons of late Narayan Sarma then each of the four sons get 1 bigha 3 katha 14.75 lechas land. However, if the share is given to the daughter then share of each son and daughter will 1 bigha 1 katha 19.8 lechas. According to the plaintiff the proforma defendant No.1 and Proforma defendant No.9,10,11,12,13 and 14 are entitled to $\frac{1}{5}$ th share of suit land through their father late Arun Bhattacharya. In the same way proforma defendants No.15 and 16 are entitled to $\frac{1}{5}$ th share of the suit land. The plaintiffs states that the suit properties is not the self acquired property of proforma defendant No.1 and his deceased father, late Arun Bhattacharya and therefore, he has exclusive right, title and interest and possession over the suit land. It is also stated that on 01.10.17 some unknown persons and agents of proforma defendant No.1 came to the suit land and were discussing about the sale of the suit land. When the plaintiff discussed the matter with proforma defendant No.1 he denied the right, title and interest of the plaintiff, claiming the suit land to be his sole property. Hence this case.

3. On receiving summons the defendant No. 1, 9, 10, 11, 12, 13, 14, 15, 16 and 19 appeared and filed their written statement separately. The proforma defendants except defendant No.15 and 16 denied all the averments made by plaintiff in their pleadings. The proforma defendant No.1 also filed a counter claim along with his written statement. According to the proforma defendants the suit land of the plaintiff is not maintainable and is barred by the law of limitation. The defendant No.1 has also stated that the suit land is bad for non-joinder of necessary party as the wife of late Dinesh Ch. Bhattacharya and the three daughters of late Damayanti Devi are not made parties in this suit. In his counter claim the defendant No.1 has stated that the suit land is not original place of residence of the plaintiff. The father of the defendant No.1 had constructed Assam type house over the suit land. According to the defendant No.1 his father started practicing 'Ayurveda' and developed his suit land by earth filling and constructed one Assam type house and also planted herbs and trees. Accordingly, on 26.01.1957 the defendant's father came to the suit land from

their original village Gamarimuri and started residing in the suit land with his family and also started an Ayurvedic pharmacy, namely, "Narayan Oushadalay" according to the defendant No.1 late Narayan Sarma died on 09.03.1970. As the suit land was developed by defendant's father Late Narayan Sarma executed a deed dated 13th 'Aaghun' of Bengali year 1375 (as per English calendar 29.11.1968) and disposed of the suit land in favour of proforma defendant's father by authorizing him to hold the land and mutata his name in the suit land. It was stated in the deed that the "Basti" land at Gamarimuri would be divided amongst three other sons and agricultural land would be divided among the four brothers. The defendant's states that he has been continuously in exclusive physical possession over the suit land since 26.01.1957 and has a good title against the plaintiff and other legal heirs by way of adverse possession. According to proforma defendant No.1, proforma defendant No.19 have been residing in the Assam type house as tenant since 01.06.2016. The father of proforma defendant No.1 has been paying land revenue since 1966 and after his death the proforma defendant No.1 is paying the same. In their counter claim the defendant has prayed for declaration of right, title and interest of proforma defendant No.1 over the suit land by adverse possession and for permanent injunction.

4. The plaintiffs have filed their written statement against the counter claim of proforma defendant No.1 and has denied the entire averments made by proforma defendant No.1 in his counter claim. The plaintiffs has stated that late Arun Bhattacharya illegally presented himself as the sole legal heir of late Narayan Sarma and got his name mutated in revenue records. The plaintiff has also stated that the execution, legality and authority of the alleged deed dated 29.11.68 is forged. Therefore, the plaintiff has prayed for dismissal of counter claim.

5. The proforma defendants No.9, 10, 11, 12, 13, 14, and 19 have fully supported the pleading of proforma defendant No.1 in their written statement. On the other hand, the proforma defendants No.15 and 16 has

supported the pleading of the plaintiff by stating in their written statement that the legal heirs of late Narayan Sarma had died without any partition of the ancestral properties. According to proforma defendants No.15 and 16, the proforma defendant No.19 is in possession of the suit land and house standing thereon with terms to vacate the same as and when required by plaintiffs and the defendants. According to the proforma defendants No.15 and 16 though the predecessor of the answering defendant Dinesh Ch. Bhattacharya tried to mutate the name of all legal heirs of late Narayan Sarma in the suit land in the year 1993 but the said application was not disposed of. The proforma defendants No.15 and 16 have alleged that the predecessor of proforma defendant No.1 illegally got his name mutated over the suit land in the 'chitha' as the only legal heir of late Narayan Sarma and after his death proforma defendant No.1 got his name mutated in the suit land and this fact came to the notice of the other legal heirs of late Narayan Sarma in the year 2011. Hence, the proforma defendants No.15 and 16 has prayed for decreeing the suit of the plaintiff.

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

- i) Whether the suit is maintainable?
- ii) Whether the counter claim is maintainable?
- iii) Whether the suit is bad for non-joinder of necessary parties?
- iv) Whether the plaintiffs have right, title and interest over the suit land?
- v) Whether the father of the defendant No.1 came to the suit land on 26.01.1957 and started to reside over there with his family after developing the suit land and constructing an Assam Type House over the same?
- vi) Whether the original pattadar, Late Narayan Ch. Sarma during his life time disposed of the suit land in favour of the father of the defendant No.1 on 13th Aghon of the Bengali year (as per English calendar the execution deed was 29th November, 1968) by authorizing him to have and hold the suit land ?

- Vii) Whether the plaintiff is entitled to any relief as claimed for?
- Viii) Whether the defendant No.1/counter claimant is entitled to any relief as claimed for?
- ix) To what other relief/reliefs the parties are entitled to?

(DISCUSSION, DECISION AND REASONS THEREOF)

7. In support of the suit the plaintiff has adduced 4(four) witnesses and exhibited 6(six) documents. But their evidence were not considered as they failed to face cross-examination. The defendants have adduced the evidence of 5(five) witnesses and exhibited 7(seven) documents. However, the evidence of PW-2 and PW-5 cannot be considered as they failed to face cross examination.

8. I have heard the arguments of the learned counsel of the plaintiff and the defendants and have discussed the issues as follows --

ISSUE NO : (i)

Whether the suit is maintainable ?

9. The defendant No.1 and defendants No.9, 10, 11, 12, 13, 14 and 19 has taken the plea in their written statement that the suit is not maintainable in its present form. Learned counsel for the defendants has submitted while arguing the case that the suit is possessed by the father of the defendant No.1 since 1957 by developing the land and after his death the defendant No.1 mutated his name over the suit patta. According to the learned counsel of the defendant customary rights were given in the year 1968. But this suit was filed in the year 2017 i.e after more than 50 years, as such according to him the suit is barred by limitation.

10. A brief perusal of the pleadings reveals the plaintiff has filed his suit for declaration of right, title, interest and possession, for partition of the suit land, for issue of precept and permanent injunction. In our case, it is stated by

plaintiff that they came to know about illegal mutation of the defendant in the year 2011 and after that they filed two mutation cases in the year 2012 which were disposed of against them vide order dated 12.01.16. according to me the plaintiff filed his suit within the period of mutation as the right sue accrued on 12.01.16 and this case was filed on 30.10.2017. Hence, the suit is not barred by limitation and is maintainable in its present form. Accordingly, this suit is decided in the affirmative and in favour of the plaintiff.

ISSUE NO (iii) :

Whether the suit is bad for non-joinder of necessary parties ?

11. In his written statement cum counter claim the defendants No.1 and also defendants No.9, 10, 11, 12, 13, and 14 has taken the plea that the suit of the plaintiff is bad for non-joinder of necessary party as the wife of late Dinesh Bhattacharya is not made party in the suit and the three daughters of late Damayanti Devi are also not made party in this suit. Now, if we go through the pleadings of the plaintiff we find that two of the heirs of late Damayanti Devi, namely, Joydev Sarma and Hiran devi were made parties in this suit as proforma defendants No.17 and 18. But as they did not contest the suit, the suit proceeded ex-parte against them. The defendants have nowhere in their written statement mentioned the names of the other three daughters of late Damayanti Devi. Apart from that it is revealed from the cross-examination of DW-1 that out of the ancestral property Late Narayan Sarma's daughter did not take share. Regarding the question of not making the wife of Dinesh Bhattacharyya a party in this suit, it is seen that the two heirs of Late Dinesh Bhattacharyya, namely, Dipak Bhattacharya and Anju Devi are made parties in the suit as proforma defendants No.15 and 16 and they has fully supported the plea of the plaintiff and has not stated anything about their mother not being made a party in the suit. While cross-examining the PWs also, the defendants failed to establish the fact that the wife of Dinesh Bhattacharyya is alive. Considering all aspect it appears that the plaintiff has impleaded all the necessary parties in their suit and as such the suit is not bad for non-joinder of necessary parties.

ISSUE NO. (vi) :

Whether the original pattadar, Late Narayan Ch. Sarma during his life time disposed of the suit land in favour of the father of the defendant No.1 on 13th Aaghon of the Bengali year (As per English calendar the execution deed was 29th November, 1968) by authorizing him to have and hold the suit land" ?

12. In his written statement cum counter claim the defendant stated that in order to uplift his practice of "Ayurveda" his father Arun Bhattacharya developed the suit by earth filling, planting different harvest, plants, trees etc and also by constructing an Assam type house over the suit land. According to the defendant No.1 on 26.01.57 his father came to the suit land from his original residence at Gamarimuri and started residing over there with his family by starting one "Ayurvedic" pharmacy in the name of "Narayan Oushadhalay". The defendant also proved the plea that on 13 "Aaghon" of Bengali year 1357 (as per English calendar 29.11.1968). Late Narayan Sarma disposed of the suit land in favour of his father by authorizing him to have and hold the suit land. Vide said deed, it was also stated that the "Basti" land situated at Gamarimuri village would be divided amongst three other brothers and the agricultural land would be divided among his four sons. In support of his plea the defendant No.1 has exhibited the deed as Exhibit-'C' executed by late Narayan Sarma.

13. On brief perusal of Exhibit-'C' it is revealed that possession of plot of a land measuring 6 bighas 4 kathas 19 lechas of patta No.121 of Jowardi village under Dharmapur mouza was handed over to Arun Ch. Sarma by Narayan Sarma with permission to construct an "Ayurvedic pharmacy" in his name and a house in his own expense. It is also stated in the said exhibit that Arun Bhattacharyya shall also mutate his name over the said patta to which none shall have any objection. It is further seen that vide the said deed the other three sons of late Narayan Sarma shall be entitled to get share in the old residential plot of land at Gamarimuri village and newly purchased plot of land measuring 2

bighas and the remaining land shall be divided among the four brothers.

14. However, a careful scrutiny of exhibit-'C' as well as cross examination of DW-1 reveals that exhibit-'C' is neither a gift deed nor a partition deed. It is also seen that there is no dag No. or boundary of land mentioned in Exhibit-'C'. Exhibit-'C' also does not mention any share of land given to others and also does not bear the signature of the sons and daughter of Narayan Sarma.

15. It is revealed from the cross examination of DW-1 that there are five witnesses in the deed out of whom only witness No.5 is resident of 'Jowardi'. DW-1 has further stated that the writer and witness of Exhibit-'C' has expired. It is also seen the signature of late Narayan Sarma has also not been exhibited by DW-1 in order to prove the same.

16. In view of the above discussion, it appears that Exhibit-'C' could not be proved by DW-1. As such the plea taken by defendant that the original pattadar, Late Narayan Sarma during his life time disposed of the suit in favour of the father of the defendant No.1 on 13th 'Aaghun' of the Bengali year by authorizing him to have and hold the suit land cannot be believed.

17. Accordingly, this suit is decided in negative and in favour of the plaintiff.

ISSUE NO (iv) & (v)

Whether the plaintiffs has right, title and interest over the suit land ?

and

Whether the father of the defendant No.1 came to the suit land on 26.01.1957 and started to reside over there with his family after developing the suit land and constructing an Assam Type House over the same ?

18. For the sake of convenience issue No. 4 and 5 are discussed together. It is the pleadings of the plaintiff that the original pattadar of the suit land was their grand father, Late Narayan Sarma. According to the plaintiffs Late Narayan Sarma expired leaving behind four sons and a daughter. The plaintiffs and defendants No.1 to 21 (except defendant No.19) are the legal heirs of the children of late Narayan Sarma. It is averred by the plaintiff that the suit land is used for residential as well as cultivatable purpose along with an old dilapidated Assam type House over the suit land constructed by Narayan Sarma. As the plaintiffs and defendants has different houses they allowed defendant No.19 to stay in the old house as permissive possession on condition that he will vacate the house whenever needed. But in the year 2011 the plaintiffs came to know about the illegal mutation of the names of late Arun Bhattacharya and Shiva Prasad Bhattacharya over the suit land. According to the plaintiffs the four sons of Narayan Sarma are entitled to get 13B 3K 14.75Ls land each. The plaintiffs has further averred that the names of the four sons of Narayan Sarma are mutated in the other pattas.

19. The defendant No.1, on the other hand, in his written statement cum counter claim has taken the plea that on 26.01.1957 the father of defendant No.1 late Arun Bhattacharyya came to the suit land from their original village Gamarimuri and started residing in the suit land with his family and also started one Ayurvedic pharmacy, namely, "Narayan Oushadalay" after developing the suit land. It is further stated by the answering defendants that as the suit land was developed by the defendant's father, late Narayan Sarma executed a deed dated 13th "Aghun" of Bengli year 1375 (as per English calendar 29.11.1968) and disposed of the suit land in favour of defendant's father by authorizing him to hold and mutate his name in the suit land. According to the defendant No.1, he has been continuously in exclusive physical possession over the suit land since 26.01.1975 and has a good title against the plaintiffs and other legal heirs by way of adverse possession.

20. Defendant No.1 as well as defendant No.19 has stated in their

pleading that defendant No.19 has been staying in the Assam type house as tenant since 01.06.2013. According to them a tenancy agreement has also been exhibited in that respect which is marked as Exhibit-D. On perusal of Exhibit-D it appears that the signatures of the witnesses are not exhibited in order to prove the execution. It is also seen that not a single rent receipt is exhibited in the case. Though it is admitted by the witnesses that defendant No.19 has been residing in the old house over the suit land, it is not proved that he is a tenant under defendant No.1.

21. It is already discussed in the previous issue that the defendant No.1 could not prove the plea taken by him that late Narayan Sarma executed a deed in favour of his father on 13th "Aaghun" of Bengali year 1375 through which he disposed of the suit land in favour of him.

22. Regarding the issue of staying of the defendant No.1 over the suit land by constructing a house and pharmacy since long it is admitted by all the PWs including PW-1 that initially late Arun Bhattacharya used to practice in Gamarimuri and after 1-2 years he continued his practice at Joardy by constructing a house and named it "Narayan Oushadalay".

23. The learned counsel of the defendant while submitting his argument has taken the plea that all the PWs admitted in their cross-examination that Arun Bhattacharya was in the suit land. It is also revealed from the cross-examination of the PWs that Arun Bhattacharya died in the suit land and his last rites were performed there. According to the learned counsel the PWs also admitted that the marriage of the children of Arun Bhattacharya were solemnized in the suit land and after the death of Arun Bhattacharya his wife used to stay over the suit land. The learned counsel for the defendant has submitted that the continuous possession of Arun Bhattacharya and his family is admitted by all the PWs and as they were in continuous possession for more than 12 years they have acquired title over the suit land by way of adverse possession.

24. Taking up now the plea of the defendants in regards to adverse possession let us at first discuss what adverse possession actually is. The essential of adverse possession were succinctly summed-up by the **Hon'ble Supreme Court in Karnataka Board of Wakf -Vs- Govt. of India [(2004) 10 SCC 779]** in the following words :-

"it is well settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nic clam, nec precario", i.e peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in accident to show that their possession is adverse to the true owner. It must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Plea of adverse possession is not a pure question of law but a landed one of fact and law. Therefore, at present a person who claims the adverse possession should show :

- I) On what date he came into possession?
- II) What was the nature of his possession?
- III) Whether the factum of possession was shown to the other party?
- IV) How long his possession had continued?
- V) Whether his possession was open and undisturbed?

25. A careful scrutiny of the pleadings of the defendants reveals that they have not stated in their written statement as to when there possession became adverse and against whom they claimed adverse possession. In his cross-examination DW-1 stated that his possession did not become adverse but during the period from 1957 to 06.07.1971 the possession his father became adverse. In the very next instance DW-1 stated that the adverse possession of the suit land has been sought against late Narayan Ch. Sarma and his legal heirs. It is also revealed from the cross-examination of DW-1 that he has been residing in Guwahati from 1980. DW-1 also stated that the other legal heirs of late Narayan Sarma used to visit the suit land and that there was no quarrel amongst them regarding the possession of the suit land. Though DW-1 has exhibited the land revenue paying receipts marked as Ext-F(1) to F(41), in his cross

examination he has clearly stated that Ext-F series were paid by Arun Bhattacharya on behalf of his brothers. We find DW-1 stating in his cross-examination that the property claimed by him is derived by partition as his share in the ancestral property. Again making a contradictory statement DW-1 stated that he only claim the share which his father inherited from his grand father. It is already discussed earlier that the defendant could not prove the plea of partition.

26. From the above discussion it appears that though the father of the defendant was residing in the suit land along with his family, it was the duty of the defendant to prove that the possession had become adverse. There was no mental attitude on the part of the plaintiffs that the property ceased to belong to them as the ancestral property is not unpartitioned. The plea of adverse possession taken by the defendant essentially implies that he is claiming title to the suit property on the basis that he does not own it and that he is very much aware of the fact that he wishes to snatch it from the real owner on the bare ground that he was continuously, publicly and openly in possession of the property.

27. From the above discussion it is very much clear that the suit property is the unpartitioned ancestral property of the plaintiff's and the defendants No.1 to 21 (except defendant No.19). At this point I would like to cite the decision of the **Hon'ble Supreme Court in P. Lakshmi Reddy Vs L. Lakshi Reddy AIR 1957 SC 314** where in it was observed that,

"But it is well settled that in order to establish adverse possession of non-co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one-co-heir is considered, in law, as possession of all the co-heirs. When one-co-heir is found to be in possession of the properties it is presumed to be one the basis of joint title. The co-heir in possession cannot render his possession adverse to the other

co-heir, not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heirs title. It is settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to be knowledge of the other so as to constitute ouster”.

28. From the above discussion, it is clear that in an unpartitioned ancestral property one co-heir cannot claim title by adverse possession against the other co-heirs. As such the defendant cannot claim his title over the suit land by way of adverse possession. The plaintiffs has successfully proved their plea that they has right, title and interest over the suit land by way of inheritance.

29. Accordingly, these two issues are decided in favour of the plaintiffs.

ISSUE NO (ii) :

Whether the counter claim is maintainable ?

30. The defendant has filed the counter claim with a prayer for declaration of right title and interest of the counter claimant/ defendant No.1 over the schedule A plot of land i.e. the suit land as his title over the suit land is perfected by adverse possession. In the earlier issues it is already discussed that the defendant No.1 failed to prove the plea that the suit land was gifted to his father by Late Narayan Sarma. It is also revealed that the ancestral property of the plaintiffs and the defendants was unpartitioned property. The defendant cannot claim title by way of adverse possession in an unpartitioned ancestral property against the other co-heirs. Hence, the counter claim of the defendant No.1 is not maintainable in its present form.

Accordingly issue No. (ii) is decided in the negative and in favour of the plaintiffs.

ISSUE No. VII, XIII, and IX

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

and

Whether the defendant No.1/counter claimant is entitled to any relief as claimed for ?

and

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

31. The plaintiff has pleaded in the pleadings that in the patta No.121 of the suit land dag No.319 contains 5 (five) Bighas 4 (four) Kathas 14 (Fourteen) Lechas and Dag No.302 contains 1 (one) Bigha 0 Latha 5 (five) Lechas and both the dags are adjacent to each other. If the suit land is equally partitioned among the sons of Late Narayan Sarma then each of the four sons get 1 (one) Bigha 3 kathas 14.75 lechas land. However, if the share is given to the daughter also then the share of each son and daughter will be 1 Bigha 1 Kath 19.8 Lechas. The plaintiff No.1 being one son out of 5 legal heir of Late Gopal Sarma, then plaintiff No.1 (for himself as well as for proforma defendant No.2, 3, 4 & 5) wants one share as the share of inherited land of Late Gopal Bhattacharya. The plaintiff No.2 also being a son of Late Padmapani Bhattacharya want one share as the share of plaintiff No.2, 3, 4 and defendant No.6, 7, 8, 20 and 21 through their father Late Padmapani Bhattacharya. It is clarified by the plaintiff that the plaintiff No.1 and 2 defenedant No.2, 3, 4 and 5 have no clash of interest as regards to their right over the suit land and accordingly partition may be effected.

32. On scrutiny of the entire materials available on record it is seen that Late Narayan Sarma had five legal heirs namely, Gopal Bhattacharye, Padmapani Bhattacharya, Arun Bhattacharya, Dinesh Bhattacharia and Damayanti Devi. All of the heirs of Late Narayan Sarma has expired. However, their children namely, the plaintiffs and defendant No.1 to 21 (except defendant No.19) are parties to the suit. It is also appears that the heirs of Late Damayanati Devi namely defendant No.17 and 18 did not contest the suit even after receiving summons and as such the case proceeded exparte against them.

As proforma defendant No.17 and 18 willfully did not contest the case it can be assumed that they do not want to claim their share in the ancestral property.

33. It is already discussed in the previous issue that the suit property is not the self acquired property of the defendant No.1 and his deceased father Late Arun Bhattacharya and falls in the unpartitioned property of Late Narayan Sarma. Hence, each of the four branches of the legal heirs of Late Narayan Sarma, namely, Late Gopal Bhattacharya, Late Padmapani Bhattacharya, Late Arun Bhattacharya and Late Dinesh Bhattacharya are entitled to $\frac{1}{4}$ th share of the suit land and partition is to be effected by metes and bounds.

ORDER

34. In the result, the suit is decreed on contest with cost.

The counter claim of the defendant No.1 is dismissed.

The plaintiffs and the defendants (except defendant No.19) has right title and interest over the suit land by way of inheritance.

The four branches of the legal heirs of Late Narayan Sarma, namely, Late Gopal Bhattacharya, Late Padmapani Bhattacharya, Late Arun Bhattacharya and Late Dinesh Bhattacharya are entitled to $\frac{1}{4}$ th share of the suit land and partition is to be effected by metes and bounds.

The defendant No.1 is restrained from alienating the suit land and from disturbing the other heirs in user and possession of the suit land.

The defendant No.19 is directed to vacate the suit land immediately.

Let a preliminary decree be prepared.

Issue precept to the concerned authority for complying the order of partition.

Given under my hand and seal of this court on this the 30th day of June/2020.

Civil Judge (Sr. Divn.)
Nalbari

Dictated & Corrected by me

Civil Judge (Sr. Divn.)
Nalbari

A P P E N D I X

(A) Plaintiff's witnesses :

PW 1 : Ramesh Ch. Bhattacharya,
PW 2 : Akhil Ch. Bhattacharya,
PW 3 : Sridhar Sarma,
PW 4 : Keshab Bhattacharya.

(B) Plaintiff's exhibited documents :

Ext-1 : Certified copy of the Jamabandi of the suit land.
Ext-2 : Copy of the patta standing in the name of Late Narayan Sarma.
Ext-3 : Certified copy of order dated 12.01.16 passed in Mutation Case No.8/2012-13 and 9/2012-13 passed by the Circle Officer, Banekuchi Revenue Circle.
Ext-4 : Notice of Mutation Case No.8/2012-13 and 9/2012-13.
Ext-5 : Report of Public Information Officer.
Ext-6 : Report of Public Information Officer.

(C) Defendant's witnesses :

DW 1 : Shiva Prasad Bhattacharya.
DW 2 : Mukul Mishra.
DW 3 : Ramen Barman.
DW 4 : Khagen Baishya.

(D) Defendant's exhibited document : Nil.

Civil Judge,
Nalbari