

Assam Schedule VII, Form No- 132

HIGH COURT FORM NO (j) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT
IN THE COURT OF MUNSIFF NO.2 AT NALBARI
DISTRICT- NALBARI

Present: Mayurakshi Roy Medhi, AJS

On this 7th day of May, 2021

Title Suit case No- 56/2020

Sri Pabin Sarma
.....plaintiff

-Vs-

Sri Krishna Kalita
.....Defendant

The suit coming on for final hearing on
17/04/2021 in the presence of:-

Mr. Champak Kr. Dutta....advocate for the
plaintiff

Mrs. Arunima Chakrabarty....advocate for the
defendant.

-----**TS NO: 56/2020**-----

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 specific performance of contract of sale.

Plaintiff's Plea

2. Plaintiff's case is that the defendant agreed to sell to the plaintiff an area of land measuring 1(one) katha and 10(ten) lechas described in schedule of the plaint for the price of Rs 4,50,000/- only. The defendant executed a deed of agreement on 30.7.2014 on receipt of Rs 2,80,000/- in cash as earnest money and he promised to execute and register the sale deed in favour of the plaintiff on receipt of the balance amount of the purchase price being Rs 1,700,000/- within 3 years and 6 months from the date of execution of the said agreement. The defendant took the responsibility to obtain the permission for sale from competent authority and after doing so promised to execute the sale deed. The plaintiff then requested the defendant for obtaining the

sale permission and to accept the balance amount but the defendant refused and has failed to perform his part of the contract. Defendant is now trying to sell the suit land to some other person for wrongful gain. On demand made by the plaintiff to the defendant on 18-09-2017 to execute and register the sale deed in respect of the aforesaid land the defendant flatly refused. The plaintiff has always been ready and willing to perform his part of the contract but the defendant has failed to perform his part of the contract for sale.

3. The plaintiff has therefore prayed for the following relief:

i) A permanent injunction restraining defendant from executing a sale deed in favour of some other persons in respect of the suit land.

ii) A decree for specific performance of contract directing the defendant to execute a proper sale deed in favour of the plaintiff by accepting the balance amount of the purchase price of Rs. 1,70,000/.

iii) In case of failure by the defendant to do so, the necessary sale deed may be executed by the court and registered according to the provision of Order 21 Rule 34 CPC.

iv) A decree for khas possession be passed in favour of the plaintiff and he may be put in possession of the land in suit.

v) In alternative, a decree of compensation of Rs. 2,80,000/- (Rupees two lakh eighty thousand) being the earnest money plus interest @ 12% per annum due thereon and Rs 25,000/- being cost and expenses incurred by the plaintiff in respect of the transaction.

vi) A decree for cost of the suit be passed in favour of the plaintiff.

vii) Such other relief/reliefs as the plaintiff may be found entitled to may also be granted.

Defendant's Plea

4. Neither any agreement for sale of land by the defendant is executed nor any earnest money was taken by the defendant from the plaintiff as alleged in the plaint. During the ailment of the mother of defendant, he took Rs 75,000/- from the plaintiff with a promise to return the amount within one month. After 3 days of obtaining the amount of loan the plaintiff insisted upon to put his signature on a blank paper stating the this was a token so that there may not be any controversy

in future between him and the plaintiff. The defendant signed in a single page on the bottom and right side not in two pages which is submitted in the case record. After one month of taking the amount, to return the amount the defendant trying or consult to sale his part of ancestral property. Hearing about the sale of the plot of land the plaintiff said the defendant that he would purchase the land. But the defendant had to execute the sale deed on said Rs 75,000 only. The remaining amount will be paid by him after taking loan on the said plot of land. But the defendant disagreed. Then the plaintiff threatened the defendant that he will file a case by writing more amount on the above said blank paper.

ISSUES

5. Upon the pleading of the parties, following issues are framed for determination of the present suit:
 - A. Whether there is any cause of action for the suit?
 - B. Whether the suit is maintainable in its

present form?

- C. Whether the defendant executed a deed of agreement on 30.07.14 on receipt of Rs. 2,80,000/- in cash as earnest money from the plaintiff?
 - D. Whether the plaintiff was willing to perform his part of contract?
 - E. Whether on 18.09.17 the defendant refused to perform his part of the contract?
 - F. Whether the plaintiff is entitled to any relief as claimed for?
 - G. To what other relief/reliefs the parties are entitled to?
- 6.** Plaintiff (Pabin Sarma) adduced evidence of himself (PW1), Md. Imran Hussain (PW2), Boloram Kalita (PW3) and Bijay Kalita (PW4). Plaintiff had exhibited 3(three) documents. The defendant (Krishna Kalita) had examined himself (DW1), Sri. Munindra Kalita (DW2) and Sri Pabin Kalita (DW3). Defendant has exhibited 4 documents.

DISCUSSION, DECISION AND REASONS**THEREOF:*****ISSUE A: Whether there is cause of action for the suit?***

7. The perusal of the plaint shows that the plaintiff claims to have entered into an agreement for sale with the defendant and had paid an advance amount of Rs 2,80,000/- but the defendant did not take any step for executing the agreement for sale of his land and had neither returned the advance amount of money received from the plaintiff. Per contra, the defendant filed the written statement wherein he alleged that the agreement for sale to be fraud and had not received any advance amount of Rs 2,80,000/- from the plaintiff. Therefore, if the pleadings are read in its entirety, it discloses that there arises a cause of action for suit of specific performance of contract.

DECISION: The issue no. A is decided in affirmative.

ISSUE B: Whether the suit is maintainable in its present form?

8. Regarding the maintainability of the instant suit, there is nothing stated in the pleadings of the defendant as to why the suit is not maintainable. The defendant has to show specifically if the defendant takes the plea of maintainability. Hence I do not deem it fit to hold the suit as non maintainable.

DECISION: The issue no. B is decided in affirmative.

ISSUE C: Whether the defendant executed a deed of agreement on 30.07.14 on receipt of Rs. 2,80,000/- in cash as earnest money from the plaintiff?

9. PW1 in his evidence on affidavit has stated that the defendant executed a deed of agreement on 30-07-2014 on receipt of Rs. 2,80,000.00 (Rupees two lakh eighty thousand) in cash as earnest money in favor of PW1 and he promised to execute and register the sale deed in favor of PW1

on receipt of the balance amount of the purchase price being Rs. 1,70,000.00 (Rupees one lakh seventy thousand) within 3 (three) years and 6 (six) months from the date of execution of the said agreement. PW3 and PW4 have also stated the same in their evidence on affidavit.

PW1 has exhibited the "Baina Patra" dated 30.07.2014 as Ext.1 executed by DW1 in favor of PW1. Ext.1(1) and Ext.1(2) are the signatures of Krishna Kalita(DW1) as executant. Ext. 1(3) is the signature of witness Baloram Kalita(PW3) and Ext. 1(4) is the signature of witness Bijay Kalita(PW4). Ext. 1(5) and Ext. 1(6) are the signatures of the writer Imran Hussain(PW2). Ext. 1(7) is note written by the PW2 on the 2nd page of the 'Baina Patra' and Ext. 1(8) is the signature of the PW2 writing the aforesaid note.

10. PW2 in his cross examination clearly stated that he has written Ext. 1 at Nalbari Court. PW3 & PW4 in their cross examination has admitted the signatures in Ext. 1(3) and 1(4).

11. DW1 in his affidavit has stated that the

alleged agreement of sale is invalid and he did not execute any agreement for sale of land and had not taken any earnest money from the plaintiff for sale of land.

Per contra, DW1 in his cross examination clearly admitted that Ext 1(1) and 1(2) are his signatures.

12. DW1 further stated that he only secured a loan of Rs. 75,000/- from the plaintiff for the treatment of his mother and promised to return it within one month, but after three days of obtaining the amount of loan the plaintiff insisted him to put his signature on a blank paper i.e. a stamp paper stating that this was nothing but a token so that there may not be any controversy in future between him and the plaintiff. DW1 signed in a single page and not in two pages which are submitted in the case record and hence his sign in Ext 1 is duplicate.

DW2 and DW3 have also reiterated the same in their affidavit.

13. But, DW2 & DW3 in their cross examination could not state clearly as to when the defendant took the loan advance amount of Rs. 75,000/- as

mentioned in their affidavit. DW2 stated that he had seen the blank stamp paper over which the defendant had put his signature in the village mel and in the said stamp paper the signatures of his four brothers could be seen but those signatures are forged.

14. DW3 in his cross examination could not state anything clearly regarding the contentions of the defendant. He also does not know anything regarding the institution of this suit and cannot identify the signature of plaintiff & defendant. DW3 stated that usually a proceeding book is maintained in village mel and the signatures of the members attending the said mel are taken in the decision of the proceeding and in their village also they follow the same procedure in serious cases. DW3 further stated that in Ext. D there is no mention anywhere that there was a raiz mel on 10/02/2017. Ext. D is written by mohori and DW3 has alone put his signature on it and also he does not know the name of the mohori.

15. Here it is pertinent to mention that DW1 in his evidence has been completely silent about the

village mel mentioned by DW2 and DW3. I would also like to mention that DW3 in his affidavit stated that he have seen the blank paper signed by all four brothers of DW1 in the village mel whereas in his cross examination, he stated that he does not identify the signature of DW1. Further DW1 stated about one blank paper in which he signed whereas from the evidence of DW2 & DW3 it appears that DW2 & DW3 had seen one blank paper in village mel which contained signature of DW1 and all his brothers and whereas Ext 1 contains signature of only DW1 and not of all his four brothers. Thus I find contradiction in the evidences of DW1, DW2 and DW3 regarding the signature of the DW1 in the single page blank paper. Moreover regarding Ext D on which DW3 has relied, DW3 could not say the name of the writer and also the writer has not been examined in this case.

- 16.** Further from the evidences of DWs, it appears that they have also not seen the duplicate agreement anywhere as mentioned in their respective affidavits.

- 17.** It is also pertinent to mention that the defendant DW1 did not file any police case for recovery of the said blank paper.
- 18.** DW1 has stated that Ext 1 has been fraudulently prepared by the plaintiff and on the contrary DW1 has admitted his signatures in 1(1) and 1(2). DW2 and DW3 have only mentioned about the blank paper on which DW1 signed but with variations to the version of DW1. Nothing have been mentioned by DW2 and DW3 as to whether the Ext 1 is the same stamp paper where DW1 had signed and are completely silent about Ext 1 whether it was executed by DW1 or whether it is made fraudulently by the plaintiff. Hence defendant could not lay down proper and sufficient evidence regarding the fraudulency of Ext. 1.
- 19.** Further, defendant side argued about the overwriting of the date in Ext 1 and hence to declare the entire document as fraud.
- PW2 in his cross examination admitted that the correction of the date in Ext. 1 was done by

him and there is no remark or explanation about the correction done in the date as the date is written twice. PW3 has admitted that in the date of execution of Ext.1 there is a correction by using whitener.

20. On thorough perusal of Ext 1 and the evidences, it appears that there is a correction made by whitener in one of the dates mentioned in the agreement but it is seen that the corrected date tallies with the other two dates written by the scribe in Ext 1(7) and 1(8). Therefore a mere correction in the month of the date of the agreement does not lead to prove that the entire document has been fraudulently made. Thus relying upon the oral and documentary evidence submitted in this case it is held that the defendant failed to demolish the evidence adduced by plaintiff and hence it can be held that Ext 1 is genuinely made by both the parties.

DECISION: This issue is decided in affirmative and in favor of the plaintiff.

ISSUE D: Whether the plaintiff was willing to perform his part of contract?

ISSUE E: Whether on 18.09.17 the defendant refused to perform his part of the contract?

21. For the sake of convenience, both the issues are taken up together.

22. PW1 in his plaint as well as in his evidence has stated that he requested the defendant more than once to take steps for acquiring permission for sale and purchase of the aforesaid land from the competent authority and to execute the sale deed in favor of him by accepting the aforesaid balance amount of the purchase price. But the defendant did not respond to him. Despite of repeated request and demand made by him the defendant has not come forward to execute and register the sale deed in favour of him and he has failed to perform his part of the contract. PW1 also stated that inspite of performing his part of the contract the defendant raised disputes with him and on 16-11-2016 the defendant assaulted him. Thereafter, on 18-09-2017 when he made a demand to the defendant to execute and

register the sale deed in respect of the aforesaid land the defendant flatly refused to execute and register any sale deed in favour of him in respect of the said land. PW3 and PW4 have also repeated the same in their evidence on affidavit and were corroborative with PW1.

23. DW1 in his evidence on affidavit has stated the plaintiff has not send any demand notice to him to execute the deed. DW2 and DW3 have also repeated the same in his evidence on affidavit and were corroborative with DW1.

24. On perusal of the pleadings and the evidences on record, it s seen that PW1 was ready and willing to pay the balance amount of money after acquiring permission for sale and purchase of the aforesaid land from the competent authority by the defendant. It is also seen that the plaintiff has taken initiatives by approaching the defendant several times.

On the other hand the defendant and his witnesses have been constantly stating that the whole agreement is fraud which could not be proved by the defendants as it is discussed above in issue no. C. All the defendant witnesses have pressed upon the fact that the plaintiff has not sent any demand notice for executing the deed. On this point I would like quote decisions of Apex Court:

- 25.** In the case of ***Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337,*** the Hon'ble Supreme Court has held that —*“the language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form.”*
- 26.** Again the Hon'ble Supreme Court in ***Aniglase Yohannan v. Ramlatha, (2005) 7 SCC 534*** has held that—

“The basic principle behind the Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”

27. In view of the above, I would like to mention that to show a person’s willingness to perform a contract a demand notice is not mandatory. A verbal intimation is enough to prove on the part of the plaintiff to show his readiness and willingness. Therefore in view of the decisions of the Apex Court referred above and discussions made above, it can be averred that the plaintiff has shown his ‘readiness and willingness’ towards the performance of the remaining part of the contract.

28. PW1 in his evidence has stated that on 18-09-2017 when he made a demand to the defendant to execute and register the sale deed in respect of the aforesaid land the defendant flatly refused to execute and register any sale deed in favour of him in respect of the said land. To this point, the defendant witnesses have mentioned nothing in their evidences. Therefore, it can be safely presumed that on 18.09.17 the defendant refused to perform his part of the contract?

DECISION: Hence both the issues D and E are decided in affirmative and in favor of the plaintiff.

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

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

29. For the sake of convenience, both the issues are discussed together.

30. DW1 in his affidavit has stated that the disputed land is the joint property of all the brothers of the plaintiff so, no agreement for sale

can be done by one joint owner. So, there is any agreement then also it is void in law. No permission was given to a co-owner without the signed of other co-owners for sale or gift of a property by the government. DW2 and DW3 reiterated the same in their evidence on affidavit.

31. DW1 in his cross examination stated that he and his brothers inherited their ancestral properties after the death of my father. The suit land is also inherited from their father. DW2 & DW3 have also stated that the suit land is their ancestral land.

32. PW1 In his cross examination has admitted that the land is 'ejmali' and the said land is a joint property. PW1 further stated that he knows that one pattadar cannot sale his share in the 'ejmali' land until and unless the said land is partitioned among the co-pattadars. PW1 has exhibited the certified copy of Jamabandi of P.K. Patta No. 120 of Village Poila, Mouza- Khata as Ext 2.

33. PW3 In his cross examination has deposed that PW1 is his father-in-law and DW1 is his younger brother. The name of his

two brothers along with him is mutated in the suit patta.

34. DW1 further in his cross has stated that as per exhibit- 2 it is seen that he had sold 1 katha 2 lechas of land in the suit patta to Bhaben Chakrabarty. Exhibit 2(1) is the mutation dated 09/04/2014. DW2 and DW3 have also admitted the same in their cross examination. PW1 in his cross examination stated that defendant has sold some land in his share to other people. PW3 has also supported PW1 in this regard.

35. Thus from the evidence on both sides, it is apparent that the suit land is ancestral land and is the joint property of DW1 and his brothers. The land is also ejmali land and in an ejmali property all the co-sharers have equal right, title, interest over every inch of the same and in such facts and circumstances the suit of the present nature is required to be decided in the presence of all the co-sharers having interest in the suit patta. PW1 in his cross examination clearly admitted non inclusion of some of the co-sharers in the suit as

defendants. The co pattadars i.e all the brothers of the defendant are not made party in this suit and hence the defendant cannot sell a part of his land without the consent of all the co pattadar of the said land.

36. Further, on thorough perusal of Ext 2, it is also evident that DW1 has sold some land to some Bhaben Chakraborty but nothing has been brought on record under what facts and circumstance DW1 previously sold a part of land to someone else which is ejmali in nature. Here I would like to mention that it cannot be held that since DW1 has previously sold some portion of land to other person, now he is eligible and have right to sell a part of his joint property which is also ejmali in nature. Hence DW1 is not in a position to sell the suit land to the plaintiff according to the agreement.

37. Therefore considering all aspects, the Court is of the opinion that the plaintiff is not entitled for the decree of specific performance of contract of sale as prayed for. The plaintiff is however entitled for a decree of compensation of Rs. 2,80,000/- (Rupees two lakh eighty

thousand) being the earnest money plus interest.

38. The plaintiff is also entitled for cost of the suit against the defendant.

DECISION: The issues are decided in affirmative and in favor of the plaintiff.

ORDER

The suit is decreed on contest with cost with the following reliefs to the plaintiff :

- a. Decree is passed directing the defendant for paying a compensation of Rs. 2,80,000/- (Rupees two lakh eighty thousand) being the earnest money plus interest @ 9% per annum from the date of agreement till realization of the amount.
- b. Decree directing the defendant to pay the cost of the suit borne by the plaintiff.

Prepare decree accordingly.

Given under my hand and seal of the court on this the 7th day of May, 2021.

Mayurakshi Roy Medhi, AJS

Munsiff No.2, Nalbari

A P P E N D I X

Plaintiff Witness :

1. PW1 : Pabin Sarma
2. PW2 : Imran Hussain
3. PW3 : Boloram Kalita
4. PW4 : Bijay Kalita

Plaintiff Exhibits:

1. Ex. 1 : Baina patra dated 30/07/2014.
2. Ext.1(1) and Ext.1(2): The signatures of Krishna Kalita(DW1).
3. Ext. 1(3) : The signature of witness Baloram Kalita(PW3).
4. Ext 1(4) : The signature of witness Bijay Kalita(PW4).
5. Ext. 1(5) and Ext. 1(6): The signatures of the writer Imran Hussain(PW2).
6. Ext. 1(7) : Note written by the PW2 on the 2nd page of the 'Baina Patra'.

7. Ext. 1(8) : The signature of the PW2 writing the aforesaid note.
8. Ext. 2 : The certified copy of Jamabandi of P.K. Patta No. 120.
9. Ext. 3 : The certified copy of FIR.

Defendant Witness :

1. DW1 : Krishna Kalita
2. DW2 : Munindra Kalita
3. DW3 : Pabin Kalita

Defendant Exhibits:

1. Ex. 1 : Death certificate of Pratibha Kalita.
2. Ext.2: Copy of Sale deed in the name of Amrit Kalita of dated 28/04/1949.
3. Ext. 3 : Copy of sale deed in the name of Amrit Kalita of dated 29/11/1949.

Mayurakshi Roy Medhi, AJS

Munsiff No.2, Nalbari