

Assam Schedule VII, Form No- 132

HIGH COURT FORM NO (j) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT

**IN THE COURT OF MUNSIFF NO- 1 AT NALBARI**

DISTRICT- NALBARI

Present: Dr. Nabanita Kalita

Munsiff No- 1, Nalbari

**Title Suit case No- 84 of 2014**

On this 22<sup>nd</sup> day of February, 2022

1. Md. Rafiqul Islam

.....Plaintiff

-Versus-

1. Md. Abdul Ali & ors.

..... Defendants

This suit coming on for final re-hearing on  
23/12/21 in the presence of:

Mr. Naba Kr. Dutta, Advocate for the plaintiff(s)

Mr. Manabendra Sarma, Advocate of the  
defendant(s)

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

### **JUDGMENT**

1. This is suit for declaration of right, title and interest over the plot of land described in the schedule for recovery of Khas possession and for granting permanent injunction and for consequential relief.

2. The suit land relates to a plot of land measuring 4 kathas 16 lechas under dag no. 211 of K.P. Patta no. 121 of village Mukalmua under mouza Madhyam Barkhetri in the district Nalbari, Assam which is bounded by-

North :- Dalser Ali and Mahtab Ali,

East :- Abdul Ali (defendant No,1),

South :- Hazo-Daulashal PWD Road,

West :- Sadhul Ali

### **The case of the plaintiff**

3. Plaintiff's case in brief is that the plaintiff is the owner and possessor having right, title and interest over the plot of land described in the schedule of

the plaint. The suit land has been possessed by the grandfather of the plaintiff late Faraj Ali by virtue of inheritance, then the father of the plaintiff Md. Riyaj Ali. It is claimed that Md. Riyaz Ali has gifted the property to the plaintiff and the plaintiff has got mutation in the revenue records. It is stated that there is land of the defendant no. 1 in the eastern side of the suit land. The suit land is situated about two furlongs far from the residence of the plaintiff. The contention of the plaintiff is that taking this advantage on 17.4.14 the principal defendants forming an unlawful assembly entered into the suit land. Thereafter, the defendants made a heap of straw and erected a Chali house. The plaintiff and his father tried to resist them from doing so, but the defendants chased them away being armed with weapons and threatened with dire consequences. It is stated that the defendants have been collecting housing materials in order to erect permanent house in the suit land which would cause irreparable loss to the plaintiff. It is also stated that the defendants have been threatening the plaintiff with dire consequences if the plaintiff ever enters into the suit land. Thus, the plaintiff has been dispossessed from the suit land and his right, title

and interest over the suit land has become cloudy. Hence, Plaintiff is compelled to institute the instant suit.

**Written statement of Defendant 1, 2, 3, 4, 5**

4. Having received the summons issued from this court, the defendants appeared and contested the suit by filing written statement. Though written statement was filed jointly on behalf of defendant no. 1,2,3,4,5 and 27. But defendant no. 27 informed the court that he has not filed any written statement since he has not contested the claim of the plaintiff and the signature on the WS was not done by him hence prayed not to consider him as contesting defendant. Vide order dated 6/6/16 this court allowed his prayer as such the written statement was considered on behalf of defendant no. 1, 2, 3, 4, and 5.

5. In their written statements the contesting defendants denied the allegations levelled against them. The defendants contended in the written statement that there was no cause of action for the suit and plaintiff has not impleaded the necessary parties to the suit. The suit land was never in possession of the plaintiff, so the question of

dispossession does not arise. It is stated that the plaintiff has concealed material facts regarding relation of ancestors of plaintiff and defendant. Defendants have pleaded that Plaintiff concealed material facts about equal division of land in suit dag and patta among the three ancestors namely Ajim, Asar and Velu. It is averred that the plaintiff has concealed material facts about nature, details and time of so called gift. The averment of the plaintiff is that in the disputed dag no. 211 of KP Patta 121 there was total 14B 2K 16L of land and out of this 3B was taken away to dag no. 899 so in dag 211 there remained 11B 2K 16L land. It is stated that Velu, Asar, Ajim three brothers were original pattadar of this patta. Velu is ancestor of defendant no. 1, 2, 3, 4, 5 and Asar is ancestor of plaintiff. In dag no. 211, Velu, Asar and Ajim got equal share i.e. 3B 4K 5L. All the stake holders jointly sold 2B 2K 16L to Hasan and others. So all three shareholders lost 2K 10L each from their share. Faras also lost 2K 10L. Further, 'Faras' sold 1B 5L to Sadhul Ali and also sold 2B 2K 19L to Hamid Ali. Like this he totally sold 4B 14L which is more than his share in dag no. 211. In the dag no. 899, 3B land was brought from dag no. 211. So,

here also 'Faras' gets 1B. It is further pleaded that though dag no. 899 presently shows total 6B of land only 3B came from dag no. 211. Therefore, when the share of the old dag no. 211 is concerned, 'Faras' get only 1B in dag no. 899 and that part he has taken. It is further stated that the plaintiff collusively with Lat Mandal has shown 6B in dag no. 899. Hence, defendants have pleaded that there was no land to gift the suit land to the plaintiff by Faras. Further, the sale deed to Sadhul (15/18) was executed by Faras where he mentioned Abdul Ali on the east of the sold land. Now on the west of the suit land same Sadhul Ali is mentioned in the suit land. It is contended that Faras now cannot say that the land on east of Sadhul is his land and such land cannot be gifted to anybody. The averment of the defendants is that the suit land is part of the share of the defendant, obtained by inheritance and all the defendants are still not separated. It is further stated that the disputed land how came to Faras Ali, the donor of the plaintiff that is nowhere explained in the plaint. Hence the suit is not maintainable. Further, defendants have pleaded that the suit is bad for non-joinder of necessary party, as Faras Ali, father of plaintiff and alleged donor is not made

party in this suit. Hence, the defendants prayed to dismiss the suit.

- 1.** Both parties submitted relevant documents to establish their claims.
- 2.** Having gone through the pleadings of both sides and after hearing for determination of this suit, following issues are formulated.

### **ISSUES**

- i) Whether there is cause of action for the suit?
- ii) Whether suit is bad for non-joinder of necessary parties?
- lii) Whether the plaintiff or his predecessors obtained the suit land by registered gift deed?
- iv) Whether defendants dispossessed the plaintiff ?
- v) Whether the plaintiff has right, title and interest over the suit land ?
- vi) Whether plaintiff is entitled to the relief/reliefs as claimed for?

vii) To what other relief(s) the parties are entitled to ?

**DISCUSSION, DECISION AND REASONS**  
**THEREOF:**

6. I have carefully perused the pleadings of the parties and the evidence on record, and heard submissions of the learned counsel appearing for the parties. Having so heard and perused, I shall now discuss and decide the aforementioned issues accordingly.

7. The plaintiff side examined Md. Rafiqul Islam as PW1, Md. Riyaj Ali as PW2, Md. Sadul Ali as PW3 , Md. Sahed Ali as PW4 and Dharam Choudhury as PW5. Plaintiff side exhibited the following documents-

- 1.** Ext. 1- Revenue paying receipt Sl. no. 3526841 dtd. 17.06.2006.
- 2.** Ext. 2- Revenue paying receipt Sl. no. 7825042 dtd. 28.01.2011.
- 3.** Ext. 3- Revenue paying receipt Sl. no. 1226245 dtd. 01.01.2014.
- 4.** Ext. 4- Revenue paying certificate dtd. 01.01.2015

- 5.** Ext. 5- Revenue paying receipt Sl. no. 1940413 dtd. 08.08.2015.
- 6.** Ext. 6- Certified copy of Jamabandi of Patta no. 121 and
- 7.** Ext. 6(1)- Mutation order in the name of plaintiff.
- 8.** Ext. 7- Trace map of dag no. 211 and Patta no. 121.

8. Defendant side examined Md. Abdul Ali as DW1, Abdul Hekim as DW2, Azgar Ali as DW3, and Md. Hazarat Ali as DW4. Defendant side exhibited following documents-

- a)** Ext. A- Jamabandi of patta no. 121
- b)** Ext. B- Chitha of Dag 899
- c)** Ext. C- Chitha of Dag 211
- d)** Ext. D(1) to D(4)- Revenue paying receipt
- e)** Ext. E- Certified true copy of Sale deed

15/81

### **Decision on issue No. 1**

9. This issue relates to the question as to whether there is any cause of action for this suit. As regards this issue, the defendants in their written statement had contended that there is no cause of action for filing this suit. In this respect, perusal of

plaint reveals that the plaintiff has instituted this suit claiming right title interest, recovery of khass possession and permanent injunction. Plaintiff has asserted that suit land was inherited by his grandfather Late Faraz Ali as ancestral property then father of the plaintiff Md. Riyaz Ali possessed the same by virtue of inheritance and Md. Riyaz Ali gifted the suit land to the plaintiff. Plaintiff further pleaded that the principal defendants forming an unlawful assembly entered into the suit land. They made a heap of straw and erected a chali house on the suit land. It is contended that when plaintiff and his father tried to resist, defendants chased them away and threatened with dire consequences. On the contrary defendants have denied that they dispossessed the plaintiff and stated that suit land is the part of the share of ancestral property of the defendants obtained by inheritance. The averment of the defendant is that there was equal division of land in the suit dag and patta among three ancestors namely Velu, Asar and Ajim. Velu is the ancestor of defendant No. 1,2,3,4,5 and Asar is ancestor of plaintiff. According to the defendants already the ancestors of plaintiff sold more than their share in the suit dag hence there was no land

left to gift the suit land to the plaintiff by his father Faras.

10. The expression "*cause of action would mean the existence of a right in favour of the plaintiff and the infraction thereof by the defendant*". Thus from the pleadings as narrated herein before shows that there exist bundle of essential facts containing allegation and counter-allegation between the parties which requires adjudication of the court. Therefore it appears that there is prima facie cause of action in the present suit. This issue is accordingly decided in the affirmative and in favour of the plaintiff.

### **Decision on issue No. 2**

11. The second issue is whether the suit is bad for non-joinder of necessary parties. This issue sprouts from the pleading of the answering defendants that the instant suit is not maintainable for non-joinder of necessary parties. Defendants in their written statement as well as in their evidence on affidavit stated that the suit is bad for non-joinder of necessary party as father of the plaintiff being alleged donor of the suit land is not made

party of this suit. Also brothers and sisters of the plaintiff are not made party in the suit.

12. The question is whether the suit is bad for non-joinder of necessary party. Rule 9 of order 1 lays down that “no suit shall be defeated by reason of misjoinder or non-joinder of parties. In such cases, the court may deal with the matter in controversy as regards the rights and interests of the parties actually before it.” The presence of necessary party is obviously required for the Court to adjudicate and pass an effective and complete decree granting relief to the plaintiff. Necessary parties are those parties from whom relief is claimed. The issue relating to joinder and non-joinder of necessary parties was settled by Supreme Court in Deputy Commissioner HARDOI Vs Rama Krishna Narayan and others (reported in AIR 1953 Supreme Court 521). The Hon'ble Supreme Court laid down the test to decide the question of non-joinder of necessary parties in civil suit. In the above referred case the test are (i) there has to be a right of relief against such a party in respect of the matters involved in the suit. (ii) the court must not be in a position to pass an effective decree in absence of such a party.

13. In the instant suit from the pleadings and the evidence on record it appears that Plaintiff has sought relief against the principal defendants only for dispossessing him from the suit land and claimed that he got right, title and interest over the suit land as gifted land from his father namely Md. Riyaz Ali. Since Md. Riyaz Ali, the alleged donor has deposed in this suit as one of the plaintiff witnesses, therefore, it is a case where effective relief can be passed in absence of the brother and sister of plaintiff. Hence this suit is not bad for non-joinder of necessary party. Accordingly this issue is decided in favour of the plaintiff.

**Decision on issue no. 3, 4 and 5**

14. Issue no 3 relates to whether the plaintiff or his predecessors obtained the suit land by registered gift deed. Issue no 4 relates to whether defendants dispossessed the plaintiff. Issue no 5 relates to whether plaintiff has right, title interest over the suit land.

Since all the above mentioned three issues are inter connected hence, for the sake of convenience and brevity these issues are taken up together for discussion and decision. Now issue no. 3 has

emerged from the claim of the plaintiff in his plaint that his father Riaj Ali gifted the suit land to the plaintiff and he had got mutation in revenue records. On the contrary defendants' averment that plaintiff has not disclosed about nature and details of the gift.

As regards this issue, PW 1 Rafiqul Islam who is the plaintiff himself deposed in his evidence on affidavit that suit land was received by his grand-father by virtue of inheritance. Thereafter, it was received by his father from his grand-father. Again the said suit land is gifted by the father of the plaintiff to him. During cross examination, PW 1 admitted that the suit land is received by him from his father and his father transferred the suit land in his name by way of 'citha' mutation and there is no registered deed executed for that purpose. PW 2 Riaj Ali, who is the father of the plaintiff and the alleged donar of the suit land stated in his evidence on affidavit that his father Faraj gifted him 4 kathas 16 lechas land through 'citha' mutation. Later on, he gifted that land to his son Rafiqul Islam. During his cross examination, PW 2 testified that he gifted 4 kathas 16 lechas land to Rafiqul 6-7 years before. That is not given through registered deed, but he

has gifted through 'citha' mutation. PW 3 Sadul Ali, PW 4 Sahed Ali and PW 5 Dharam Choudhury corroborated in their evidence on affidavit to the fact that father of the plaintiff Riaj Ali gifted the suit land to the plaintiff. During cross examination defendants have not put any question to PW3 regarding the mode of gift or whether the father of the plaintiff Riaj gifted the suit land to plaintiff through gift deed or not. PW 4 is one of the proforma defendants of this suit and he has not contested the suit. During cross examination, PW 4 Sahed Ali testified that there is no gift deed of the land gifted to Rafiqul by Riaj. PW 5 Dharam Choudhury testified in his cross examination that suit land is gifted from his grand-father to the plaintiff and now it is in the name of Rafiqul. Except it he does not know where Rafiqul had and how much land his father Riaj and Faraj had are not known to him. Pw1 exhibited the jamabandi copy of the patta no. 121 as Ext. 6 and it shows that vide order dtd. 23.02.2007 a plot of land 4 kathas 16 lechas in dag no. 211 and patta no. 121 is mutated in the name of Rafiqul in place of Riaj by virtue of gift.

Hence, it can be safely concluded that suit land was not gifted through registered gift deed. Hence, issue no. 3 is decided in negative since it is proved that gift was not made through any gift deed but through 'Citha' mutation.

15. Issue no. 4 has sprouted from the contention of plaintiff that on 17/04/14 the defendants forming an unlawful assembly, entered into the suit land, made a heap of straw and erected a chali house. On the other hand defendant made the rival pleading that the suit land was never in possession of the plaintiff so the question of dispossession does not arise rather claim it to be ancestral property of the defendants. Here as plaintiff has asserted that defendant forming unlawful assembly dispossessed them from the suit land on 17/4/14 therefore burden lies with the plaintiff to prove the same. However, to decide this matter plaintiff has not led any cogent evidence. All the DWs denied the suggestion that defendants have erected tin chali on the suit land dispossessing the plaintiff. Moreover, I have not perused any record to show that plaintiff had taken any measure for the alleged dispossession by defendant forming unlawful assembly. Hence, this court reasonably holds that

plaintiff has failed to lead cogent evidence to decide issue no. 4

16. As plaintiff has discharged his initial burden as per section 101 of Evidence Act, now burden shifts to defendant side to establish their case. It is to be mentioned here that Hon,ble Gauhati Highcourt held in Prasauta Goswami v. Ramala Das 2009(4) Gauh LR 775 (Gauh) that in terms of section 102 of the Evidence Act, 1872 the initial onus to prove its claim is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would dis-entitle the plaintiff to the same. Let us go through the evidence on record to see whether defendants succeed to rebut the claim of the plaintiff. Defendants have tried to establish their pleadings through cross examination and adducing both oral and documentary evidence. . Defendant took three pleas/defenses to rebut the claim of the plaintiff. First of all defendant through the cross examination of all the PWs have established that the suit land was not transferred by executing registered gift deed. Secondly they pleaded that in the disputed dag 211 of K.P. Patta 121 there was total 14 Bigha 2

Katha 16 lechas of land out of which 3 bigha was taken away to dag no. 899, so in dag no. 211 there remained 11 bigha 2 katha 16 lechas land. Velu, Asar, Ajim three brothers were original pattadar of this patta. Velu is ancestor of defendant no. 1, 2, 3, 4, 5 and Asar is ancestor of plaintiff. In dag no. 211, Velu, Asar and Ajim got equal share i.e. 3B 4K 5L. All the stake holders jointly sold 2B 2K 16L to Hasan and others. So all three shareholders lost 2K 10L each from their share. Faras also lost 2K 10L. Further, 'Faras' sold 1B 5L to Sadhul Ali and also sold 2B 2K 19L to Hamid Ali. Like this he totally sold 4B 14L which is more than his share in dag no. 211. In the dag no. 899, 3B land was brought from dag no. 211. So, here also 'Faras' gets 1B. Hence, defendants have pleaded that there was no land to gift the suit land to the plaintiff by Riaj. Further, the sale deed to Sadul (15/18) was executed by Faras where he mentioned Abdul Ali on the east of the sold land. Now on the west of the suit land same Sadul Ali is mentioned in the suit land. It is contended that Faras now cannot say that the land on east of Sadul is his land and such land cannot be gifted to anybody.

17. First of all I want to see whether the first plea of defendant is tenable in law or not. As per section 129 of Transfer of Property Act, nothing in the chapter of gift applies to Mohammadan gifts. Thus, Hiba of subject matter of whatever value need not be registered as required by section 123 of T.P. Act. Under Mohammadan Law writing is not essential for the validity of a gift either of movable or immovable property. There are three essentials of a gift under Mohammadan law namely (1) a declaration of gift by the donar (2) an acceptance of the gift, express or implied by or on behalf of the donee and (3) delivery of possession of the subject of the gift by the donar to the donee. Therefore, the mere fact that suit land has not been gifted through registered gift deed will not be enough to defeat the claim of the plaintiff as both the parties are governed by Mohammedan law. However, another point to be noted here is that the gift to the plaintiff by his father Riaj through the citha mutation is also not a conclusive proves of his title over the suit land. In Smt. Sawarni v/s Smt. Inder Kaur & others, 1996 (6) SCC 223, the Hon'ble Supreme Court held that: "Mutation of the property in the revenue record does not create or extinguish title nor has it

any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question”

18. To substantiate the plea of the defendant that the father of the plaintiff Riaj have not that much land in his share to gift it to the plaintiff in dag no 211 of patta no. 121 as claimed by the plaintiff, defendants exhibited jamabandi copy of patta no. 121 as Exhibit A, chitha of dag no. 211 as exhibit C, and citha of dag no. 899 as Exhibit B. Exhibit A shows that in dag number 211 of patta number 121 there are total land measuring 11 bigha 2 katha 16 lecha and 3 bigha land from this dag has been taken away creating a new dag no. 899. Defendant exhibited Exhibit E under objection. Exhibit E is the certified copy of sale deed No. 15/81 executed between grandfather of plaintiff Faraj and Sahdul Ali. Plaintiff argued that the defendant got opportunity to cross examine the PW Sahdul Ali who is the purchaser of the sale deed 15/81 but defendant did not put any question regarding the original of this sale deed or content of sale deed. The copy of that sale deed is not admissible in law. So the plaintiff raised objection.

Section 65 of the Indian Evidence Act lays down under what circumstances secondary evidence relating to documents may be given. Defendant side has not fulfilled any of the conditions provided under section 65 of Indian Evidence Act regarding Exhibit E. Therefore this court deems it proper to allow the objection.

19. Coming to the oral evidences, relevant portions of the witnesses are extracted here. Both PW1 and PW2, who are the plaintiff and his father in their evidence in chief on affidavit stated that all three ancestors received 4 bigha 4 katha 5 lechas of land as per share. They deposed that their ancestor Faraj sold 2 bigha 2 katha 19 lecha land to Hamed Ali and 1 bigha 5 lecha land to Sadul Ali thereby total land measuring 3 bigha 3 katha 4 lecha is sold out. They stated that Faraj did not sale any land to Hasen Ali and others. It was sold from the share of the defendants. It is further deposed that in the sale deed executed in favour of Sadul Ali by mistake name of Abdul Ali was written to the east boundary. PW1 and PW2 further deposed that actually to the east boundary there is land of Faraj and that land is the suit land. To the east of that suit land is the land of Abdul Ali. The grandfather of the

plaintiff sold land to Hamed and Sadul before creating Dag no. 899 hence the measurement of land shown by defendants in WS in dag no. 211 is not correct. Though defendants mentioned Faraj received 1 bigha in dag no. 899 but that is under 211/899 no dag.

20. During cross examination PW1 testified that in the suit patta brothers of his grandfather also have share of land. In the dag no. 211 of suit patta his grandfather sold 1bigha 5 lecha land to Sadul Ali. It is not known to him if except that land any land in the disputed patta is sold by his grandfather or father. From the record he has come to know that from the disputed dag one new dag 899 is created. As per official record it is written that from the old dag to the new dag 3 bigha land is taken away. In the new dag his father should have 1 bigha land and that land is not sold by his father. Before creating new dag in the old dag 211 there was land measuring 14 bigha 4 katha 5 lecha. After creation of new dag, land measuring 3 bigha is reduced in dag no. 211. He does not know whether 2 bigha 2 katha 19 lecha land is sold to Hamed Ali or not, it is known to his father. He knows that in the suit dag no. 211 Hamed Ali has possession but the how

much land is under his possession is not known to him. In the disputed dag and patta Hasen Ali has possession and on being asked he told that Hasen purchased from Abdul and others. He has not seen the sale deed and with whom Hasen has got mutation. He has come to know now that in the sale deed executed for the sale of land to Sadul Ali the east boundary is wrongly mentioned. The land to the east of the land of Sadul Ali is the suit land. My grandfather executed the registered sale deed and there to the east boundary is written Abdul and he has come to know it to be wrong. He denied the suggestion that after death of grandfather out of greediness the boundary is stated to be wrong. He applied to SDC office Mukalmua for correcting the mistake but as case is going on so his application is not accepted.

21. PW2 Riyaj Ali in his cross examination stated that he has given Rafikul 4 katha 16 lecha land. That land is lying barren. They have grown wheat there. Rafikul is not living there. The dag no. and patta no. of land measuring 14 bigha 2 katha 16 lecha is 211 and 121 respectively. The portion to the west side of this dag was taken by Azim, middle portion is taken by Asar and the portion towards

east is taken by Velu. If there are other dag no. in patta no.121 is not known to him. His father sold 2 bigha 2 katha 19 lecha land to Hamed. Besides it his father sold 1 bigha 5 lecha land to Sadul. A new dag numbering 899 is created from dag no. 211 and from dag no. 211 land measuring 3 bigha is taken away to dag no. 899. The land measuring 1 bigha under dag no. 899 is under my possession. I do not know the land of my share in dag no. 899. He denied that his grandfather Velu, Asar and Azim sold land to Hasan. Abdul, Shekh Ali Shah, Tanuj, Hazarat, Majun and Anar sold land measuring 2 bigha 2 katha 16 lecha to Hasan. He denied the suggestion that his father was involved in that sale. My father sold land to Sadul 30-35 years ago. During the life time of father application was filed for correcting the boundary in the office but it was not kept . Thereafter till today no case is filed due to the wrong entry of boundary in the sale deed. He has not submitted the application returned by mandal. If the boundary of the sale deed executed in favour of Sadul remains without correcting then they will not have their share and if it is proved to be wrong then they will have their share. To correct the boundary in the sale deed which was executed

in favour of Sadul neither Rafikul has prayed in this suit nor he instituted any case.

22. PW3 Sadul Ali, in his cross examination admitted that he does not know the patta no. and dag no. of the suit land. He can recognise the suit land. Towards west is Azim, to the south is PWD, to the north is Hunu Sarkar and to the east is not known to him. He purchased 1 bigha 5 lecha land from Faraj Ali. No case is instituted regarding that sale deed. To the east of his house is the suit land. To the east of the suit land is the house of Abdul, Hazarat. The broken house over the suit land was constructed by Abdul Ali. At present attached to his land adjacent to the suit land plaintiff Rafikul has no land. It is known to him that Faraj sold some land to Hamed . The suit land before erecting the house was used as peddy field. I can't remember whether the house was erected before one year or earlier.

PW4 Sahed Ali, during his cross examination deposed that suit land is known to him and Patta no. is 121. This land is situated to the north of Mukalmua- Daulashal Road. To the east of the suit land is the house of Abdul and to the west is the house of Sadul. In patta no. 121 his father and the

brothers of his father got how much land in what dag, he can't remember.

PW5 in his cross examination stated that he does not know the dag no. and patta no of the suit land. It is known to him that suit land was transferred from grandfather of the plaintiff to the father of the plaintiff and thereafter transferred to Rafikul. He does not know how much land Rafikul has and in which places. Except the suit land Riaj and Faraj had how much land where is not known to him. He does not know at the time of the grandfather of Rafikul how the ancestral land was divided. Defendants are of the same clan of the plaintiff. He does not know if defendants also have mutation in the same dag and patta where plaintiff and his father have mutation. As mentioned in the para no. 5 of his evidence on affidavit he knows that Sadul Ali purchased land but the dag, patta no of the sale deed and its boundary is not known to him.

23. DW Abdul Ali reiterated the facts mentioned in the written statement. DW 1 in his cross examination stated that to the east of the suit land there are houses and basti of their five brothers.

They have been residing there constructing houses since 1963. DW 1 asserted that in the disputed dag and patta of three brothers of his grand-father had equal share. Suit land is situated to the north and south of Hajo-Doulashal road. In the suit land, there are total land 11 bighas 2 kathas and some lechas and all land are divided among three brothers. Plaintiff is descendant of Asar and they are descendant of Valu and Aziz and others are descendant of Ajim. DW 1 testified that in the disputed dag 211, they have 1 bigha of land in their possession. If it is measured, then land measuring 1 bigha will be found in the eastern boundary of the share of Faraj, the grand-father of plaintiff. He further admitted that his grand-father got 3 bighas 3 kathas land in the disputed dag and his grand-father sold 2 bighas 2 kathas 16 lechas land. Ajim sold 3 bighas 3 kathas 16 lechas. He stated that in the disputed dag defendant Ajim has been possessing 2 bighas 1 katha 10 lechas. He further stated that in the disputed dag, descendent of Asar have no possession. He denied the suggestion that in the disputed dag descendent of Asar had possession over 4 kathas 16 lechas of land. He also

denied the suggestion that he dispossessed the descendent of Asar from 4 kathas 16 lechas of land.

24. DW 2 in his cross examination admitted that his house is situated one furlong away from the suit land. Adjacent to the suit land is house of Sadul, Sayed Ali, Muslem Ali. PW 3 does not know family clan of plaintiff and defendant. He testified that defendant Abdul Ali is possessing the suit land erecting house. There is Tin chali and defendant Abdul used it as cowshed. He denied the suggestion that in year 2014 defendant Abdul Ali dispossessed the plaintiff and erected Tin Chali house.

DW 3 in his cross examination stated that 4-5 years before Abdul Ali erected Tin Chali house and used it as a cowshed. He denied the suggestion that he has falsely deposed in para 4 of his evidence on affidavit that in the suit land Abdul Ali has possession.

DW 4 Hazarat Ali in his cross examination testified that the dag no. of the suit land is 211 and patta no. is 121. Velu, Asar and Azim, the ancestors of the plaintiff and defendants were brothers. They three got partitioned of their ancestral land equally and as per that partition now defendants also have

received their respective share . In each dag and patta they got equal share. They are descendants of Valu and Valu had one son namely Mostafa and defendants are his sons. They have not partitioned their father's land. DW 4 stated that he has pucca house in the suit land. In the suit land defendants, plaintiff and sons of Azim have got mutation by virtue of inheritance.

25. Now having gone through the oral and documentary evidence adduced by both sides, it can be ascertained that in the disputed dag no. 211 after creation of new dag no. 899, there are total land measuring 11 bighas 2 kathas 16 lechas. When it is equally divided among the three ancestors Velu, Asar and Ajim, each of them got share of 3 bighas 4 kathas 5 lechas. It is admitted that Faraj has already sold 3 bighas 3 kathas 4 lechas land in dag no. 211 of patta no.121. Besides that defendant could not prove the sale of other land by grandfather of plaintiff namely Faraj in dag no. 211 of patta no. 121. Defendants have not submitted any sale deed and it is well established that mutation entry cannot create or extinguish title. As such, apparently there remains only 1 katha 1 lecha land in the share of Faraj. Therefore, it is evident

that at the time of gifting 4 kathas 16 lechas land to plaintiff by his father Riaj, there was not that much land in his share in dag no. 211. As plaintiff has claimed the suit land to be gifted by his father in dag no. 211 of patta no. 121, same is not tenable. Even though we accept the argument put forward by plaintiff side that Faraj sold land to Hamed Ali and Sadul Ali before creation of new dag no. 899 and out of total land measuring 14 bigha 2 katha 16 lecha in dag no. 211 of patta no. 121 every one of Valu, Asar and Azim received in each share 4 bigha 4 katha 5 lecha land then also after creation of dag no. 899, when 3 bigha land is taken away from dag no 211, Riaj will not have in his share 4 katha 16 lecha land in dag no 211 of patta no.121. From careful perusal of Exhibit 6 it appears that Faraj transferred 4 katha 16 lecha land to Riaj by virtue of gift in dag no 211/899 of patta no. 121. But Plaintiff has claimed that his father Riaj gifted 4 katha 16 lecha land in dag no. 211 of patta no. 121. Therefore, this court has come to the reasonable finding that the claim of plaintiff could not sustain as Riaj Ali did not have 4 katha 16 lecha land in dag no. 211 at the time of gifting the same to the plaintiff. Hence in the present suit, plaintiff failed to

prove his case by preponderance of probability. In view of the above discussions and reasons thereof it is held that Plaintiff has no right, title and interest over the suit land.

Accordingly issue no 5 is decided in negative and against the plaintiff.

**Decision on issue no. 6**

26. In view of the foregoing discussion and decision arrived at the issue No 5, plaintiff is not entitled to any relief(s) as prayed for.

**Decision on issue no. 7**

27. In view of Issue No.5 & 6, it is found that plaintiff has failed to prove his case and as such he is not entitled to any other relief. Defendants have not sought any relief in this suit. Accordingly parties are not entitled to any other relief.

*Md. Rafiqul Islam*  
*Vs.*  
*Md. Abdul Ali & ors.*

**TS No- 84 of 2014**

**ORDER**

The suit is dismissed on contest without cost.  
Prepare the decree accordingly.

The judgment is written, signed, sealed, tagged with the case record, pronounced and delivered in the Open Court on this the 22<sup>nd</sup> day of February, 2022.

Dr. Nabanita Kalita  
Munsiff No- 1, Nalbari

**APPENDIX**

**Witnesses examined by the Plaintiff:**

1. PW 1- Rafiqul Islam
2. PW 2- Riyaj Ali
3. PW 3- Sadul Ali
4. PW 4- Sahed Ali
5. PW 5- Dharam Choudhury

**Documents exhibited by the Plaintiff:**

1. Ext. 1- Revenue paying receipt Sl. no. 3526841 dtd. 17.06.2006.
2. Ext. 2- Revenue paying receipt Sl. no. 7825042 dtd. 28.01.2011.
3. Ext. 3- Revenue paying receipt Sl. no. 1226245 dtd. 01.01.2014.
4. Ext. 4- Revenue paying certificate dtd. 01.01.2015
5. Ext. 5- Revenue paying receipt Sl. no. 1940413 dtd. 08.08.2015.
6. Ext. 6- Certified copy of Jamabandi of Patta no. 121
7. Ext. 6(1)- Mutation order in the name of plaintiff.

8. Ext. 7- Trace map of dag no. 211 and Patta no. 121.

**Witnesses examined by the Defendant:**

1. DW 1- Abdul Ali
2. DW 2- Abdul Hakim
3. DW 3- Azgar Ali
4. DW 4- Hazarat Ali

**Documents exhibited by the Defendant:**

1. Ext. A- Certified copy of Jamabandi of patta no. 121
2. Ext. B- Certified copy of Chitha of Dag No. 899
3. Ext. C- Certified copy of Chitha of Dag No. 211
4. Ext. D(1) to D(4)- Revenue paying receipt
5. Ext. E- Certified copy of Sale deed No. 15/81

Dr. Nabanita Kalita  
Munsiff No- 1, Nalbari