

Sri Sambhunath Sarma
Vs.
Sri Aikon Deka & anr.

TS No- 2 of 2019

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- 2 of 2019

On this 25th day of February, 2022

1. Sri Sambhunath Sarma

.....Plaintiff

-Versus-

1. Sri Aikon Deka

..... Principal defendant

2. Sri Fulkon Deka

3. Sri Maikon Deka

4. Sri Kanaklata Deka

..... Prof. defendants

This suit coming on for final hearing on
11/02/2022 in the presence of:

Mr. Islam Gajiur Rahman, Advocate for the
plaintiff(s)

Mr. Khitish Talukdar, Advocate of the defendant(s)

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

JUDGMENT

- 1.** This is a suit for enforcement of contract for sale in respect of property described in the schedule to the plaint on the basis of the deed of agreement for sale executed on 09.07.2018 by defendant no. 1 in favour of the plaintiff for sale of the suit land described in schedule to the plaint.
- 2.** The suit land relates to a plot of land measuring cut 1 katha along with Tin chali and latrine covered by dag no. 460/466/467 under KP patta no. 24 of village Majdiya, Mouza- Khata, PS- Nalbari in the district of Nalbari and bounded by North- Dhiren Haloi, South- plaintiff Sambhunath Sarma and Dipak Kalita, East- Rajani Kanta Kalita, West- Hangsha Haloi.

The case of the plaintiff

- 3.** The case of the plaintiff in brief is that total land measuring 3 kathas 13 lechas 1 powa 3 kani along with disputed land was purchased by mother of the defendant namely late

Parameswari Kalita on 22.07.1979 from the earlier pattadar Surendra Goswami giving proper value and possessed the same. There are four daughters of late Parameswari Kalita but she had no son. Therefore, after the death of mother of the defendants that purchased land devolved upon the defendants by right of inheritance. It is stated by plaintiff that among the defendants, defendant no. 1, 2 and 3 are married and defendant no. 4 is unmarried and she is staying at her mother's house. It is further stated that defendant no. 2 and 3 have declared that they will not take any share on the land left by their mother and they have not claimed yet. It is further stated by the plaintiff that all the four sisters amicably given 1 katha land to defendant no. 1 and remaining land remained with defendant no. 4. The contention of the plaintiff is that defendant no. 1 proposed to sell the said 1 katha land to the plaintiff and since the land was low land, hence the consideration price of the suit land was settled at Rs. 1,05,000/-. It is further contended that though it was agreed to pay the consideration amount at the end of the month of "Magh", but defendant no. 1 had received Rs. 50,000/- as advance money on the

same date when "Bainapatra" was executed i.e. on 09.07.2018 and there remained 55,000/- to be paid. Thereafter, defendant delivered physical possession to the plaintiff.

4. Plaintiff has stated that he has already taken the possession of the suit land. Thereafter he has earth filled the land and constructed 'Chali' house of three rooms and latrine thereon. It is further stated that plaintiff is a businessman and he is running his business in the said three rooms of the 'Chali' house. Plaintiff has pleaded that it was decided that during the month of December, both sides would apply jointly for getting permission from the concerned authority to execute the final registration of the sale deed in favour of the plaintiff, but defendant no. 1 on this plea or other avoided to give signature on the application for permission and finally on 20.12.2018 defendant no. 1 declared that she would not execute register sale deed of the suit land and would not give her signature on the application for permission for sale. It is further contended by the plaintiff that thereafter, a public meeting was arranged where defendant no. 1 though accepted that she has taken 50,000/- as advance money but declared that she

will not execute registered sale deed. It is stated that if the defendants do not perform their part of contract then due to breach of contract, plaintiff will suffer irreparable loss. Hence, plaintiff is compelled to file the instant suit.

5. Upon receipt of summons defendant no. 1 and 2 submitted written statement jointly. Defendant no. 3 and 4 did not appear even after receipt of summons. Suit proceeded ex-parte against Defendant no. 2, 3 and 4 vide order dtd. 28.06.2019. Suit proceeded ex-parte against defendant no. 1 vide order dtd. 31.08.2019.

Written statement of Defendant 1 & 2

6. Defendant no. 1 & 2 objected to the suit of the plaintiff and filed written statement stating inter-alia that there is no cause of action for filling this suit and the suit is bad for non-joinder of necessary parties. It is averred that plaintiff is a married person and his age is about 65 years and it is not written in his affidavit that his age is 65 years. His family is in the Barkuriha village. This fact was not known to the defendants earlier. It is stated that defendant no.1, 2, 3 and 4 are sisters. The land measuring 3 kathas 7 lechas covered by dag no. 460/466/467 under KP Patta no. 24 is still

in the name of their mother. It is stated that Defendant no. 2 and 3 are staying at their matrimonial home in other villages and defendant no. 4 use to stay at their maternal home and she looks after the land. It is further stated that the plaintiff who is an aged person induced their unmarried sister i.e. defendant no. 4 giving the belief of married to him in front of Notary making a deed of marriage dated 18.04.2016 and he used to cohabit with her. Also he use to stay at the maternal home of the defendants. Other defendants came to know these facts later on. It is further pleaded that they did not know that plaintiff was a married person until they enquired after receipt of summons of this suit. They made no objection when he was in possession of share of Kanaklata as because plaintiff married their sister Kanaklata. It is stated that the name of earlier wife of plaintiff is Mira Devi and they have three sons and all are living in the Barkuriha village. The defendant averred that plaintiff instituted number of cases TS 14/12, TS 111/12, TS 66/12, TS 73/12, TS 21/17, TS 22/17, TS 23/17 & TS 24/17 without having any reason for getting right over the land of the defendant instituting false

cases. The averment of the defendant is that defendants have neither executed any deed of agreement for sale nor received any money. It is stated that in the deed of agreement for sale, the value of the sale is written as 1500/- and in words one lakh fifty thousand and again it is written that after receipt of 50,000/- at the time of registration of the sale deed, defendant will received 75,000/-. Accordingly, the value will be 1,25,000/-. Hence, defendant prayed to dismiss the suit of the plaintiff.

7. After filing WS when the suit was at the stage of 89 CPC and document defendant 1 and 2 remained absent without step, hence before framing of issues the instant suit proceeded ex-party against all defendants. As such for determination of this suit, following point for determination is formulated-

i) Whether the plaintiff is entitled to the decree of specific performance as prayed for?

8. I have carefully perused the pleadings of the parties and the evidence on record, also heard submissions of the learned counsel appearing for the plaintiff. Having so heard and perused, I shall

now discuss and decide the aforementioned issues accordingly.

9. The plaintiff side examined Sambhunath Sarma as PW1 and Bipin Bezbaruah as PW2. Plaintiff side exhibited the following documents-

- i. Ext. 1- Bainapatra dtd. 09.07.2018 executed by Aikon Deka in favour of plaintiff.
- ii. Ext. 1(1), 1(2), 1(3) & 1(4)- Signatures of Aikon Deka given before Sambhunath Sarma.
- iii. Ext. 1(5), 1(6), 1(7), 1(8)- Signature of writer Umesh Dutta.
- iv. Ext. 1(9)- Signature of witness Manik Rajbongshi.
- v. Ext. 1(10)- Signature of witness Bipin Rajbongshi.
- vi. Ext. 1(11)- Signature of witness Jogen Deka.

10. Defendant side has neither examined any witness nor exhibited any documents.

DISCUSSIONS, DECISIONS AND REASONS
THEREFORE

POIN NO. I

11. This point for determination relates to the question as to whether the plaintiff is entitled to the decree of specific performance as prayed for. As regards this point plaintiff Sambhunath Sharma in his evidence in chief as PW1 has reiterated contents of the plaint as narrated above. . In support of his statements, the PW1 has produced the original unregistered deed of agreement for sale dated 09/07/2018 as exhibit-1, and the exhibit-1(1) to 1(4) are the signatures of defendant no. 1. He has exhibited signature of the scribe Umesh Dutta as exhibit 1(5) to 1(8), signature of witness Manik Rajbangshi as exhibit 1(9), signature of witness Bipin Bezbaruah as exhibit 1(10) and signature of witness Jugen Deka as exhibit 1(11).

12. In the above context PW2 in his evidence in chief on affidavit deposed that suit land is cut 1 katha under KP patta no. 24 covered by dag no. 460 and 467 of village Majdiya, Mouza- Khata, PS- Nalbari, Dist.- Nalbari bounded by north- Dhiren Haloi, south- Sambhunath Sharma, east-

Rajani Kanta Kalita, west- Hangsha Haloi. He deposed that land measuring 3 kathas 13 lechas including the suit land belongs to defendant Aikon Deka and her three sisters. The defendants have no brother and they are four sisters and except Kanaklata Deka, others are married. PW2 deposed that the said 3 katha 13 lecha land is still in the name of defendants' mother late Parameswari Deka. It is stated by PW 2 that defendant no. 1 Aikon Deka wanted to sell disputed 1 katha land and on 09.07.2018 agreed to sell to plaintiff Sambhunath Sarma. On that day, Aikon Deka executed "Bainapatra" and received Rs. 50,000/- from plaintiff as advance. He and defendant's sisters were present at the time of taking advance. PW 2 stated that said agreement was done on the consent of the sisters. The "Bainapatra" was written by petition-writer Umesh Dutta of Nalbari court. PW 2 stated that he also signed as witness in the "Bainapatra". One person namely Manik Rajbongshi signed as witness in the "Bainapatra". PW 2 also deposed that it was agreed to execute registered deed after defendant taking remaining Rs. 55,000/-. The registered deed has not been

executed till today. So, the plaintiff Sambhunath Sarman has filed this suit.

13. In the light of the above facts and circumstances now let us see whether plaintiff has discharged his burden of proving the facts. As per section 101 of the Evidence Act, a person who asserts a particular fact has to prove the same. I would like to mention here that Hon'ble Supreme Court in a case, Ramesh chand Ardawatiya v. Anil Panjwani, reported in AIR 2003 held that even if the suit proceeds ex parte and in the absence of written statement, unless the applicability of order VIII Rule 10 of the CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. Having gone through the materials on record and pleadings of both sided there is no dispute that suit land belongs to defendant no 1. But defendant no 1 and 2 in their written statement denied the execution of any agreement for sale in favour of the plaintiff and receipt of money 50,000 as advance from the plaintiff. Both PW 1 and PW 2 corroborated to the fact that on 09.07.2018, defendant no. 1 executed an agreement for sale in favour of

plaintiff and consideration price was settled at Rs. 1,05,000/-. Both the PW 1 and PW 2 have also corroborated that 50,000/- rupees was taken as advance money from the plaintiff by defendant no. 1 and remaining 55,000/- was agreed to be paid at the time of execution of registration of sale deed. In support of their claim, PW 1 has produced the original copy of the agreement for sale as Ext. 1. Upon careful perusal of the Ext. 1 it appears that in Ext. 1 the consideration amount in number written as 15,000/- but on letter it is written as one lakh fifty thousand. Further, once it is written that advance money of Rs. 50,000/- will be paid in the end of month Magh and thereafter Ikon will receive 75,000/- at the time of registering the sale deed. Again it is written that already on 09.07.2018 50,000/- rupees is received. Though, PW 1 and PW 2 have deposed that remaining 50,000/- will be paid at the time of registering the sale deed, but in Ext. 12 it is written as 75,000/-. Moreover, amount written in the Exhibit 1 as advanced money and liable to be paid i.e., Rs 50,000 and 75,000/- respectively when added will result in Rs. 1,25,000/-. Since plaintiff has claimed the decree depending on the basis of the agreement for sale

which is Ext. 1 and in that Ext. 1, there are so many anomalies and inconsistency, therefore this court is not satisfied to believe reasonably to the story of the plaintiff side. This court has come to the considered opinion that plaintiff has failed to establish his case by preponderance of probability. Accordingly, this point for determination is decided in negative and against the plaintiff.

ORDER

In the result, this suit is dismissed without cost ex-parte. The plaintiff is not entitled to the decree as prayed for.

Prepare decree accordingly.

The judgment is written, signed, sealed, tagged with the case record, pronounced and delivered in the Open Court on this the 25th day of February, 2022.

Dr. Nabanita Kalita
Munsiff No- 1, Nalbari

APPENDIX

Witnesses examined by the Plaintiff:

1. PW 1- Sambhu Nath Sarma
2. PW 2- Bipin Bezbaruah

Documents exhibited by the Plaintiff:

1. Ext. 1- Bainapatra dtd. 09.07.2018 executed by Aikon Deka in favour of plaintiff.
2. Ext. 1(1), 1(2), 1(3) & 1(4)- Signatures of Aikon Deka given before Sambhunath Sarma.
3. Ext. 1(5), 1(6), 1(7), 1(8)- Signature of writer Umesh Dutta.
4. Ext. 1(9)- Signature of witness Manik Rajbongshi.
5. Ext. 1(10)- Signature of witness Bipin Rajbongshi.
6. Ext. 1(11)- Signature of witness Jogen Deka.

Witnesses examined by the Defendant:

Nil

Documents exhibited by the Defendant:

Nil

Dr. Nabanita Kalita
Munsiff No- 1, Nalbari