

Form No.(J)3

HEADING OF JUDGMENT ON APPEAL

District :: Nalbari

**IN THE COURT OF CIVIL JUDGE :::::::::::NALBARI**

**Present : Rahul Medhi**

**Civil Judge,**

**Nalbari.**

Wednesday, the 21<sup>st</sup> day of Sept/ 22

**TITLE APPEAL No.36/2019**

From the Judgment and decree dated 07/09/2019 passed by Learned Munsiff No.1, Nalbari in Title Suit No.57/2017

**1. Sri Akan Sarma.**

**S/O-Late Nagendra Nath Sarma**

**Vill-Garemara, Mouza-Batahgila,**

**P/O-Chengnoi,**

**PS & Dist-Nalbari, Assam.**

**-----Appellants/plaintiffs**

**Versus**

**1. Sri Pabitra Haloi, W/O-Tarun Haloi**

**2. Sri Dulu Haloi, S/O-Late Tarun Haloi**

**3. Sri Rubul Haloi, S/O-Late Tarun Haloi**

**( Due to death of defendant No.1 Tarun Haloi, vide order dated 28/6/18 the legal heirs of deceased Tarun Haloi are impleaded)**

**Vill-Mairadanga, PO-Chengnoi,**

**Mouza-Batahgila, PS & Dist-Nalbari, Assam.**

**2. Smti. Putuli Haloi****W/O- Sri Umesh Haloi****Vill-Mairadanga, PO-Chengnoi,****Mouza-Batahgila, PS & Dist-Nalbari, Assam.****---Respondents/defendants**

This appeal having been heard on 30/08/2022 in presence of :-

Advocates for the Appellant :- Mr. M. Sarma

Advocate for the Respondent:- Mr. H.K. Sarma.

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

**J U D G M E N T A N D O R D E R**

1. The present appeal is directed against the judgment and decree dated 07/09/2019 passed in TS Case No.57/2017 by the learned Munsiff No.1, Nalbari whereby the learned trial court has dismissed the suit of the plaintiff.

2. Upon admission of the appeal for hearing the notice was issued to the respondents and the original case record of the Title Suit No.57/2017 was called for and received.

3. I have heard learned counsel for both sides. In order to decide the appeal, let me narrate, the brief

facts, leading to this appeal.

### **THE CASE OF THE PLAINTIFF'S**

The case of the plaintiff's in a nutshell, is that, the plaintiff No.1 and 2 are neighbour in the said village. They both have adjacent land. Land described in schedule 'A' is the plot of land where plaintiff No.1 is residing and land described in schedule 'B' is the land of plaintiff No.2 who is residing there. Both are suit land. It is stated that Tangalu, Angad, Tarun and Arun were four brothers who purchased 2 bighas 1 katha 5 lechas of land in Dag No.60 of KP Patta No.39 by registered sale deed No.1883 in the year 1976 from legal heirs of Mahiram Nath. The said land was cultivable land and purchasers were possessing the same. The above said four brothers partitioned and that time, the purchased land was taken by two brothers, namely, Tangalu and Tarun Haloi. Tarun Haloi in the year 1995 sold his part of land to plaintiff No.1 but at the time of registered sale deed it was discovered that the said KP Patta No.39 has become 'Aksone' patta No.7, the reason not known clearly at that time. Still seller Tarun Haloi executed the unregistered sale deed. From the time of purchase the plaintiff No.1 residing over the schedule 'A' land. Total consideration money was paid. Plaintiff

No.1 and both the defendants by joint effort brought back the 'Aksone' patta No.7 to this earlier KP patta No.60 in the year 2003. But still the name of purchasers by sale deed No.1883/76 could not be mutated as the new Jamabandi did not have the record of 1976. The Revenue Officer was approached several times but they only took time to grant mutation. It is stated that Tangalu died in the year 2003. He had no son. His daughter Putuli Haloi inherited the schedule 'B' land. Putuli Haloi, defendant No.2 in the year 2006 sold the schedule 'B' land to plaintiff No.2 taking full consideration money but could not register sale deed as the land was still not properly mutated. Since the time of purchase the plaintiff No.2 is residing over the schedule 'B' land. Land revenue for the total land of the patta was being paid by Akan Sarma since 1995. It may also be mentioned here that remaining part of the Dag was also sold to other person and original pattadars have no land in the dag. Remaining land of the dag is situated at the south of schedule 'B' land and now possessed by Mrinal Sarma after sale and resale. The present Lat Mandal or Revenue Officer did not either deny the sale deed No.1883/76 nor admit the same for mutation as the present Jamabandi did not carry the record of 1976. Defendant No.1 and 2 are vendor of plaintiffs' land. They are also always willing to register the

sale deed. But for the shortness of Govt. record is delay everything and finally Civil Court is the only way out. Hence, this suit.

### **THE CASE OF THE DEFENDANT'S**

The defendant No.1 and 2 appeared in court after summon is served and submitted their written statements against the plaintiff. In his written statement, defendant stated whatever facts asserted by the plaintiff are true. Tarun Haloi executed a kacha agreement deed but as the government documents are not proper hence register deed could not be executed. Four brothers Tangalu, Angad, Arun and he purchased land by registered sale deed. As they have partitioned their property he and his elder brother Tangalu got the land measuring 2B, 1K & 5L. He has sold his share of land to Akon in 1995 and Tangalu's share is sold by his daughter Putuli and Umesh Haloi in 2003 to Bipin Haloi without even any kacha deed. They could not executed registered sale deed in their favour for lack of proper government record. It is stated Registered Sale Deed No.1883 of 1976 by which four brothers purchased the land is given to Akan Sarma at the time of kacha agreement deed.

4. The learned court below after perusing the rival pleading of the parties frame the following

issues :

### **I S S U E S**

- (a) Whether there is cause of action for this suit ?
- (b) Whether plaintiff is entitled to relief(s) as prayed for ?

5. During trial plaintiff examined two witnesses and also exhibited six documents. Ext-1 Jamabandi copy. Ext-2 Original Sale Deed No.1883/76. Ext-3 Unregistered Sale Agreement Deed. Ext-4- RTI Reply. Ext-5(1) to (8) Revenue Paying Receipts and Ext-6 80 CPC Notice. The defendants examined none and exhibited no documents.

6. The learned Munsiff No.1 after going through the oral and documentary evidence of both the parties held that the suit of the plaintiff is dismissed. Hence, aggrieved by the decision of the learned court below, the plaintiff has filed the present appeal citing various grounds.

### **G R O U N D S O F A P P E A L**

- (a) That the learned Munsiff No.1, Nalbari, failed to appreciate the evidence in record and arrived at an erroneous decision ignoring statutory law,

established principles of law and principles of natural justice;

(b) That the learned court below did not frame any issue on the question of non-joinder of necessary parties. But the present suit was dismissed on the ground of non-joinder of necessary parties. Hence, the same is bad in the eye of law and liable to be set aside. The learned court below also ignored Apex Court established principle that no suit should be dismissed on technical ground like non-joinder of necessary parties;

(c) That the learned court below totally ignored one major part of the evidence including exhibited documents and attained in a wrong judgment. Hence, the same is liable to be set aside;

(d) That the learned court below imposed punishment on the plaintiff for erroneous Govt. records and shortage of necessary information on the Govt. records. For this view of the learned court the impugned judgment and decree is liable to be set aside;

(e) That the learned court below also confused about the process of transformation of Govt. land/Eksona land to Myadi land and vice-versa. Replying on such defective concept the learned court below dismissed the suit. Hence, the same is liable to be set aside;

7. After going through the fact of the case and the grounds stated in the appeal, I deem it fit to frame the following points for determination to adjudicate the present appeal.

**POINT FOR DETERMINATION**

8. Whether the judgment and decree dated 07/09/2019 passed by the learned Munsiff No.1, Nalbari in T.S Case No.57/2017 is erroneous and is liable to be set aside ?

9. In this regard, I would like to proceed issue wise. Accordingly, for convenience both the issues a & b are discussed together.

**ISSUE NO. a & b**

The issue of cause of action in the suit was decided by the learned court below in negative as the plaint reveal that the plaintiff stated cause of action arose on 24/01/17 as the Revenue Authority did not mutate name of the defendant in the suit patta No.39. However, the plaintiff while filing this suit had not made the Govt or the Revenue Office as one of the party. It is clear that to assert the issue of cause of action, the plaintiff should have made the Revenue Office or the government a party



as it is the government in the Revenue Office which had denied the mutation of the name of the defendant in the suit patta for which the government or the Revenue Authority becomes a necessary party to the suit patta. It is further clear from the evidence that the plaintiff No.1 & 2 are neighbours residing on the adjacent land which is schedule 'A' and 'B' of Dag No.60 of KP Patta No.39 having equal land measuring 1B 12 ½ Ls. It is also evident from the PW-1 that the legal heir of Ahina Ram Haloi, namely, Tangalu, Angad, Tarun and Arun purchased 2Bs 1K 5Ls of Dag No.60 of KP Patta No.39 of village Baromara and the total land of 2Bs 1K 5 Ls was sold to plaintiff No.1 & 2. The plaintiff exhibited Exhibit-2 which is the original sale deed No.1883/76 and there is no dispute regarding the Exhibit-2 between the buyers, sellers and the defendants. The plaintiff also stated that the 4 brothers, the original pattadar partitioned their property and land measuring 2Bs 1K 5Ls was the share of 2 brothers, namely, Tangalu and Tarun Haloi for which the plaintiff had not made the other two brothers, Angad and Arun and their legal heirs parties to this suit. It is also clear from the evidence that the plaintiff failed to exhibit any documents registered or unregistered regarding the partition deed between the brothers and there is no explanation as to how the partition of the joint

property was made by the brothers which makes the legal heir of Angad and Arun necessary parties to this suit and for which non impleading the other two brothers as defendants, the suit becomes bad for non-joinder of necessary parties. It is further the pleading of the PW-1 that Tarun Haloi was also willing to sale his part of the land by a registered deed to the plaintiff. However, it was found that the KP patta No.39 had become 'Eksona' for which Tarun Haloi executed an unregistered sale deed which was exhibit as exhibit-3 and on perusal of the said exhibit, it appears that the exhibit-3 was an unregistered sale agreement for selling 1B 12Ls of land and it is also clear in the exhibit-3 that the land measuring 1B 12Ls is a land of 'Eksona' patta No.7. It was also mentioned in the exhibit-3 that after conversion of the said land measuring 1B 12Ls from 'Eksona to 'Myadi patta necessary sale permission from the concern department will be taken and sale deed will be executed by Tarun Haloi after payment of the remaining amount of Rs.700/-. It is further mentioned in the exhibit-3, if the land could not be converted to myadi, the balance amount will not be paid and as per agreement deed, the buyer will have to possess the land. It is to be mentioned that if any one is allotted 'Eksona patta we can make an application with payment of premium for converting the said 'Eksona' patta to Myadi Patta land. But

there is nothing to prove that the Myadi land can convert to 'Eksona' patta and it is to be proved that the 'Eksona' land of patta No.7 was earlier KP patta No.39 and it is claimed by the PW-1 that he along with the defendants converted the 'Eksona' patta No.7 to its earlier KP patta No.39 and exhibited the Jamabandi as exhibit-2 by the plaintiff which is bearing the seal and signature of Circle Officer, Nalbari Revenue Circle and the KP patta No.39 that in the KP patta No.39 the recorded pattadar are Muhiram Nath, Lohit Ch. Nath and Khanindra Nath and in the remark column it written that as per application No.2260 dated 02/04/2003 and as per order dated 11/4/03 land measuring 3B 2K 5 Ls of kheraj 'ksona' patta No.7 of Baromara village of Batahgila Mouza is converted to Myadi patta on payment of Rs.64/- as premium and mere entry or any remark in the copy of Jamabandi is not admissible without substantial documentary evidence and the jamabandi is used for corroboration that with other documentary evidence and the allotment of 'Eksona' patta No.7 in the name of Tarun Haloi was not exhibited and the conversion case was also not prove to show as to who had applied for converting the 'kheraj 'Eksona' patta No.7 to Myadi patta No.39 in the name of the defendants. It is the burden of the plaintiff to prove that the 'Eksona' patta No.7 was

earlier KP patta No.39. But the plaintiff failed to discharge the burden. It is also clear from the above that the plaintiff No.1 can not claim declaration of right title and interest as well as mutation of their name over the suit land on the basis of unregistered sale agreement in KP Patta No.39. It is also clear that Tarun Haloi and Tangalu had already died and except the evidence and pleading stating that defendant No.2 selling 'B' schedule land to plaintiff No.2 taking full consideration amount there is nothing mentioned claiming ownership and title over the 'B' schedule land. Further it is also clear from the evidence that plaintiffs have made claim against the government, but the government was not made party in the suit.

10. In view of the above discussion and the consideration of the entire evidence on record, admission of parties, admission of parties and the reasoning arrived at by the learned court below, I have no iota of doubt that the issue No. a & b were rightly decided by the learned Munsiff No.1, Nalbari.

11. Hence, point for determination is decided in negative.

**O R D E R**

12. In the result, it is held that the present civil appeal is devoid of merit and thus the same stands dismissed on contest with cost.

The impugned judgment and decree dated 07-09-19 passed in Title Suit No. 57/17 by the learned Munsiff No. 1, Nalbari is hereby affirmed.

Draw up a decree accordingly.

Send down the original case record to the learned Munsiff No. 1, Nalbari.

Given under my hand and seal of this court on this the 21<sup>st</sup> day of September/2022.

Civil Judge  
Nalbari

Dictated & Corrected by me

Civil Judge  
Nalbari

D.Roy(stenographer Grade II)