

Form no. (J) 2

Heading of judgment in original suit/ case

In the original court of the Munsiff No.2, Kamrup(M)

Present: SMTI. B. SARMAH, A.J.S

Tuesday the 15TH day of March , 2017

TITLE SUIT NO.523 OF 2012

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1. SMTI. PUTUL BALA DAS
2. SRI SANKAR DAS

Both are sons and daughters of Late RAGHURAM KOIBARTA

RESIDENECE OF--

TETELIYA ,

P.O-GOTANAGAR

P.S. – JALUKBARI.

DIST. – KAMRUP(M), ASSAM

Plaintiff /s

Petitioner/s

versus

1. MD.SAHAR ALI

S/ O LATE SULTAN SEIKH

R/O-KATAHBARI, GARCHUK .

KAMRUP (M). PRESENTLY RESIDING AT BORABAON ,
PO/PS—GORCHUK .

KAMRUP (M).

2. MD. RASHID ALI .

S/O-AMIR ALI.

3. MD. SARIF ALI .

S/O-SARBESWAR ALI.

4. SADAGAR SIKDAR

S/O-JAHIDUL SIKDAR.

5. MD.SAJEL ALI .

S/O-SAJAN ALI.

6. MD. RAJAB ALI.

S/O- KAOM ALI.

ALL THE RESIDENECE OF AT BORABAON ,

PO/PS—GORCHUK .

KAMRUP (M).

Defendant/s

Opposite party/s

1. SRI .ISHWAR CH.MAHANTA .

2. SRI PRABHAT CH. MAHANTA .

BOTH ARE SONS OF LATE MAHIRAM KOIBARTA .

PROFORMA DEFENANTS

This suit/ case coming on for final hearing on 10 /3/17 in the presence of

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NONE APPEARED , Advocate for the plaintiff; and

SRI.M BHUYAN. for the defendant,

and having stood for consideration to this day, the court delivered the following judgment-

JUDGMENT

T.S. No – 523/2012

1. This suit has been filed for recovery of possession and permanent injunction.

2. The brief facts of this suit is Makhiram Nadyal @ Kaiborta (since deceased) was the patriarch of plaintiffs and proforma defendants. Makhiram has two sons Raghuram Koibarta and Mahiram Koibarta. The present plaintiffs are son and daughter of Raghuram Koibarta and the proforma defendants are the sons of Mahiram Kairborta. Both the predecessors of plaintiffs and proforma defendants have died. The patriarch owned and possessed a plot of land measuring 3 bigha 1 katha 3 lecha covered by Dag No. 702 and 2 Bigha 2 Katha 14 Lechas covered by Dag NO. 697 and 3 katha 3 Lechas covered by Dag No. 390. All these covered by vide patta no. 152 Village Tetelia, Mouza RamCharani, Dist: Kamrup(M).

3. After the death of the predecessors the plaintiffs and proforma defendants become the owner of the said land of two brothers Rahiram and Mahiram Koibarta acquired the said area from their father Mahiram Koibarta. Rahiram Korbarta and Mahiram Koibarta obtained a kathca patta in respect of the land in the year 1918 and the final kathca patta was issued on 31.12.1957 and Dag Nos. Were shown as changed, old Dag NO. 702 X 310, 697 X 320 and 690 X 325 patta no. remaining the same i.e. 152.

4. The competent authority with the procedure of Land Acquisition Government acquired the same are against Dag NO. 697 and 702 with the purpose of construction of BG line by the department of railway. The area measuring 3 Katha 5 lecha against the Dag No. 697 and are measuring 1 bigha 3 katha 10 lechas against Dag No. 702 were to be spared by L.A. Case No 46/91. The competent authority issued notice dated 12.04.94 and 19.05.94 upon the plaintiffs and the proforma defendants in connection with L.A. Case No 46/91. The total are of land acquired by the Government is measuring 2 bigha 1 katha 5 lecha. The total area of land after acquisition measuring 4 bigha 12 lecha segregating in all over the 3 Dags and it forms the suit land in this suit.

5. A katcha patta for the above area was issued in the joint name of plaintiff and proforma defendants allotting the new patta no. 43. The plaintiff have misplaced the newly issued patta. The suit land was a low lying land and it was not suitable for immediate action and construction of houses. As such the suit land was fenced by bamboo fencing and the land revenue was regularly paid by plaintiffs and proforma defendants. However, in the year 2011 the suit land was developed for construction of houses and it was remained un-partitioned formally but equally possessed by both the parties on mutual understanding. The proforma defendants are financially sound and they are not interested in utilization of the suit land in their share. But the plaintiff had constructed a shed in a part of the suit land and allowed a poor family to stay there.

6. The plaintiff had informed the matter to the proforma defendants and they were not reacted upon it in any manner, but later on since 15.10.12 when the plaintiffs were busy in take care of their close relative who had suffered from some cardiac problems. On 18.11.12 when both the plaintiffs were at their houses at Jalukbari at about 4:00 clock they were informed by one of their familiar person that the suit land was occupied by some person and some temporary houses were built over there. On hearing the same the plaintiff immediately rushed to the proforma defendants and it was expected that they were equipped with money and muscle power shall take quick decision in visiting

the suit land. The plaintiffs were sitting idle depending upon the proforma defendants' but surprisingly they were not found taking any steps. The plaintiff also visited the suit land on 02.12.12 and found that the houses of the caretaker were dismantled and the entire land was occupied by some other persons. By making further enquiries it was found that Md. Sahar Ali, defendant no. 1 occupied the suit land on 14.11.12 by driving out the caretaker family. The defendant no. 1 is a habitual land grabber and he is a terror in the locality. On 06.12.12 the plaintiff no. 2 along with his nephew visited the suit land. While entering into the suit land defendant no. 2 to 6 assaulted the plaintiff and his nephew. The incident was immediately informed to the proforma defendants and they had stated that there is a police case registered bearing no. 386/11 u/s 120(B), 294/406/334 of IPC. The plaintiff had requested the proforma defendant to join hand as co-plaintiff at this present suit but they have avoided since they are the co-owners of the suit land. The plaintiffs have been dispossessed on 14.11.12 and this suit is filed within the 6 months as provided section 6 of Specific Relief ACT. Therefore, having no other option plaintiff has filed this suit for recovery of possession against the defendant and permanent injunction.

7. The defendant no. 1 has filed written statement and contest the suit and categorically denied all the averments made in the plaint stating that this suit is bad for non-joinder of necessary parties. The defendant no. 1 has stated that all the averments made in the plaint are false and baseless and states that the proforma defendant and plaintiffs entered into an agreement to sell the suit land measuring 2 bigha 4 lecha under Dag NO. 697 to the defendant in the year 2010 and executed unregistered sale deed in the first part of 2011. The plaintiffs and proforma defendant also delivered khas possession over the suit land to the defendant. The plaintiff no. 2 and proforma defendants sold out a plot of land measuring 2 bigha 4 lecha out of the 4 bigha 12 lecha land and handed over the possession to the defendant no. 1 in the year 2011 since then the defendant has occupied the same. IN the meantime defendant no. 1 transferred the said land to Bilal Chikdar and Abdus Salam who later sold out the same land to defendant no. 2 to 6 and now possessing the suit land by constructing residential houses. According to the defendant no. 1 plaintiff thus suppressing the material facts and filed this instant suit falsely. The defendant has purchased the land from plaintiff

and proforma defendants on 27.03.11 followed by the agreement dated 10.04.10 and subsequently developed the land. The defendant no. 1 thus denies the allegations of the plaintiff and stated that plaintiff and proforma defendant in the suit land in the Dag No. 697. The defendant no. 1 purchased a plot of land measuring 2 bigah 4 lecha covered by Dag NO. 697(old) 1415(new), Patta No. 42(old) 2(new) situated at Vill: Tetilia, Mouza Jalukbari, Dist: Kamrup(M) and become the owner of the same land by virtue of the sale deed on 27.03.11. Therefore the averments made by the plaintiff are denied by the defendant no. 1 and praying for dismissal of the suit.

8. The defendant no. 2 to 6 have also filed their respective written statement and categorically denied all the averments made by the plaintiff stating that the suit is bad for non-joinder of necessary party such as Md. Rousunat Zaman, S/O. Abdul Hai, Md. Sona Muddin, S/O. Suraj Ali, Nabir Uddin, S/O. Sarbesh Ali, Baharul Islam, S/O. Md. Hajrat Ali, Amir Hussain, S/O. Ramjan Ali who are the co-owners of the same land. The defendant no. 2 to 6 are stated that all the statements made in the plaint are false and vexatious and this suit is filed by suppressing material facts. There was no caretaker over the suit land. The answering defendants accompanied other five persons purchased the possessory right over the suit land by unregistered deed from Bilal Chikdar and Abdus Salam and took their respective share. They developed their share by earthfilling and constructed residential housed there. The vendors of the defendants purchased the land from the defendant no. 1 who purchased 2 bigah 4 lecha of land under dag no. 367 from plaintiff and proforma defendants. The vendors of defendants took peaceful possession of the land from proforma defendants and plaintiffs. The defendant no. 2 to 6 has stated that defendant no. 1 has purchased the said land from the proforma defendants and plaintiffs. Further the defendant no. 2 to 6 has stated that defendant no. 2 to 6 used to occupy one after another after 14.11.10. The defendant no. 2 to 6 has also admitted that proforma defendants and plaintiffs has sold out the land to the defendant no. 1 vide sale deed dated 27.03.11 and thereafter defendant no. 1 sold the land to Bilal Chikdar and Abdus Sala vide sale deed dated 13.02.12. Thus plaintiffs and proforma defendants have no right over the same land and the suit is liable to be dismissed.

9. Proforma defendants no. 1 and 2 also filed joint written statement and categorically denies all the averments made in the plaint and praying for dismissal of the suit.

10. On the basis of the pleadings of both the parties, my Ld. Predecessor in office has framed the following issues:

ISSUES:

1. **Whether the suit is bad in non-joinder of necessary parties?**
2. **Whether the suit is barred by limitation?**
3. **Whether the defendant dispossess the plaintiff as alleged in the plaint?**
4. **Whether the plaintiff are entitled to the decree as prayed for?**
5. **To what other relief(s) the parties are entitled to?**

11. The plaintiffs examined two witness in support of its case whereas the defendants adduce evidence of eight number of witnesses in support of its case

12. The defendants have offered argument but none appeared for argument from the plaintiffs side.

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

ISSUE NO.1: Whether the suit is bad in non-joinder of necessary parties?

13. The defendants have stated that this suit is bad for non-joinder of necessary parties since all the legal heirs of predecessor of the plaintiffs and proforma defendants .

14. In this present suit in hand Makhiram Nadyal @ Kaiborta (since deceased) was the patriarch of plaintiffs and proforma defendants. Makhiram has two sons Raghuram Koibarta and Mahiram Koibarta. The present plaintiffs are son and daughter of Raghuram Koibarta and the proforma defendants are the sons of Mahiram Koibarta.

15. The defendants though contended that this suit is bad for non-joinder of necessary parties i.e the legal heirs of predecessor of plaintiff and the proforma defendants but do not specify the names of those legal heirs . Moreover , the legal heirs of Raghuram Kaiborta i.e the present plaintiffs and the legal heirs of proforma defendant i.e the legal heirs of Mahiram Kaiborta are duly made party in this suit as such this suit is not bad for non-joinder of necessary parties the defendants contention is not established here in this present context.

16. This issue is decided in negative.

ISSUE NO 2—

Whether the suit is barred by limitation?

17. The suit is filed for recovery of khas possession and permanent injunction over the suit land .The Article 64 of the Indian Limitation Act prescribes a period of 12 years for filing a suit .The time starts run from the date of dispossession of the plaintiff from the suit land . But In this present suit it has to be seen that this suit is filed under section 6 of Specific Reliefs Act which being

a special Act has the over riding effects , it provides **Suit by persons dispossessed of immovable property**

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

18. As per the contention of the plaintiffs in the plaint time of commencement of limitation period in this present suit in hand is from 18.11.12 when both the plaintiffs were informed by one of their familiar person that the suit land was occupied by some person and some temporary houses were built over there. The plaintiff also visited the suit land on 02.12.12 and found that the houses of the caretaker was dismantled and the entire land was occupied by some other persons. Md. Sahar Ali, defendant no. 1 occupied the suit land on 14.11.12 by driving out the caretaker family. . On 06.12.12 the plaintiff no. 2 along with his nephew visited the suit land. While entered into the suit land defendant no. 2 to 6 assaulted the plaintiff and his nephew and dispossessed them from the suit land. The plaintiffs have contended that time of commencement of limitation period in this present suit in hand is from the 14/11/12 when the caretaker of the plaintiffs was dispossessed form the suit land and plaintiffs got the knowledge about it further , on 6/12/12 when the plaintiff no2 himself was assaulted and dispossessed from the suit land.

19. However during cross examintion of the pw.1 and pw.2 that are plaintiffs no 1 and 2 have deposed contrary to the plaint and it changed the complete scenario.

20. During cross examination of the pw.1 he deposed that since the year 2010 the defendants have been in possession of the suit land by constructing houses over there. He further deposed that since the year 2010 the plaintiffs have the knowledge about defendants occupation over the suit land but in spite of that they have not filed suit for recovery of khas possession of the suit land.

21. The testimony of the pw.1 is also corroborated by pw.2 Putulbala Das during her cross-examination by stating the same facts that defendants has been in possession over the suit land since the year 2010 and the plaintiffs were dispossessed from there since 2010 .The limitation period for filing of this suit under section 6 sub section 2 (a) of Specific Relief Act is commence from the year 2010.

22. It is pertinent to mentioned here that this instant suit was filed by plaintiffs for 11/12/12 recovery of possession and permanent injunction. The time of commencement of limitation period in this present suit in hand is from the year 2010 as such it is not filed within 6 months from the time (2010) of dispossession of the plaintiffs it appears that instant suit is filed beyond the period of six months as provided under section 6 sub section 2 (a) of Specific Relief Act .

23. This issue is decided in positive , this suit is barred by limitation.

ISSUE NO3---

Whether the defendant dispossess the plaintiff as alleged in the plaint?

24. This suit is barred by limitation as decided in the issue no 2 as such issue no 3 is become redundant , however for the end of justice the other issues are discussed and decided .

25. The pw.1 Sankar Das deposed that the plaintiffs have not exhibited any document as regards to their title and possession over the suit land. The exhibit no 1 and 2 i.e. the katcha patta are admittedly not issued in the name of the plaintiff no 1 and 2. Further he deposed that plaintiff no 2 deposed that he has not exhibited any document relating to his share in his ancestral property since the ancestral landed property is belonged to Late Makhiram Nodiyal @ Koibarta .

26. In this present context it transpires that though the plaintiffs have claimed that defendants forcefully occupied a plot of land measuring 4 bigha 12 lecha comprising of three dags 702, 697 and 690 of A.P patta no. 32 situated at Vill: Tetilia, Mouza Jalukbari, Dist: Kamrup(M) which is a joint undivided property between the plaintiffs and the proforma defendants but they miserably failed to show that the said land is belonged to them since they have not exhibited any documents relating to right or possession over there .

27. In addition to that exhibit no 1 and 2 are land revenue paying receipts issued in the name of the name of the legal heirs of Late Makhiram Koibarta . But no single documents are exhibited in the name of the present plaintiffs and proforma defendants to show that they are the present landholders and further more as per claim of the plaintiffs no kacha patta is exhibited to substantiate their claims. Hence the claim of the plaintiffs over the suit land as landholders that the suit land was unauthorizly occupied by the defendants is not established in this present suit in hand.

28. IN K.Durairaj vs Ashok Kakri on 22 January, 2010 It is held that ,

Section 6 of the **Specific Relief Act** does not bar a person from instituting a suit to establish his title to immovable property and to recover the possession of the same. **Section 6** does not bar any person to bring a regular suit founded upon his title in respect of the immovable property and to recover possession.

29. However , in this present suit the plaintiffs are failed to substantiate their title over the suit land to recover the possession .The plaintiffs are failed to adduced substantive evidence either oral or documentary to establish their title to claim that they have been forcefully dispossessed from the suit land.

30. Moreover the pw.2 i.e plaintiff no 1 Putulbala Das also deposed the same thing that they have not exhibited any documents relating to right and possession over the suit land. Further she doesn't know about her share in the suit land.

31. It is pertinent to mentioned here that in the plaint the plaintiff has stated that Late Raghuram Koibarta is the father of plaintiffs no 1 and 2 but during cross-examination pw.2 denied the same thing by saying that her father name is Raghuram Das not Raghuram Koibarta ,as such the very basis of the plaintiff no 1 that she is the legal heir of Raghuram Koibarta and as legal heirs she is entitled to recovered the khass possession over the suit land from the unauthorized occupants i.e the defendants is not established here . The pw.2 herself denies that her father name is Raghuram Koibarta as such her claim in the suit land is not substantiate since the plaint of the plaintiffs itself speaks that "Makhiram Nadyal @ Kaiborta (since deceased) was the patriarch of plaintiffs and proforma defendants. Makhiram has two sons Raghuram Koibarta and Mahiram Karbartya. The present plaintiffs are son and daughter of Raghuram Koibarta and the proforma defendants are the sons of Mahiram Koibarta. "

32. Hence the palintiffno.1 Putulbala Das is not entitled to get any reliefs in this suit as she is admittedly not a legal heir of Raghuram Kaiborta who is the joint title holder of the suit land being a son of Late Makhiram Nadiyal @ Kaibarta.

33. The matter in dispute in its entirety transpires that the plaintiffs though contended that they are the joint owners of the suit land but they have failed to

established the same in this suit and their claim against the defendants that they had unauthorized occupation over the suit land. . The plaintiffs have not adduced evidence of any other supportive witnesses in this suit not even the proforma defendants who are admittedly the joint owners of the undivided property i.e. the suit land . As such the forceful dispossession of the plaintiffs from the suit land by the defendant is not proved . Apart from this there is no admission on the part of the defendant in respect of the alleged encroachment and the exhibits as well as the evidence adduced by the plaintiff having no strength to prove this case in favour of the plaintiff.

34. This issue is decided in negative.

ISSUE NO 4:---Whether the plaintiffs are entitled to the decree as prayed for ?

34. From the decision reached on issue no 2 and 3 it appears that the plaintiff is not entitled to the decree as prayed for .

ISSUE NO.5: Whether the parties are entitled to any other reliefs (s) prayed for?

35. In view of the discussions made above and the decision reached in the issues wherein it is held that the plaintiffs have failed to prove their claims in the suit .Hence the plaintiffs are not entitled to any other reliefs .

ORDER

In view of the discussions made above and the decisions reached in the foregoing issues it is held that the suit is dismissed on contest without cost.

Prepare decree accordingly.

Given under my hand and the seal of this court on this the 15th day of March ,2017 at Guwahati.

SMTI.B.SARMAH,
Munsiff No.2, Kamrup(M).

APPENDIX

PLAINTIFFS WITNESSES NO 1— SANKAR DAS

WITNESS NO.2—PUTULBALA DAS .

PLAINTIFFS EXHIBIT NO. 1AND 2 – IS THE COPIES OF REVENUE RECEIPTS.

EXHIBIT NO.3 – IS THE NOTICE UNDER LAND ACQUISITION ACT

EXHIBIT NO.4 – IS THE NOTICE UNDER L.A CASE NO.462-528

DEFENDANTS WITNESSES NO. 1--- SAHAR ALI

DW.2—SADAGAR SIKDAR.

DW.3—SAHIDUL ISLAM.

DW.4—ABDUL RASHID.

DW.5—ABDUL MALEK.

DW.6—RAJAB ALI.

DW.7—BILLAL SIKDAR .

DW.8—ABDUL SALAM.

DEFENDANTS EXHIBITS----K-- IS THE SALE AGREEMENT EXECUTED BETWEEN
PALINTIFF ,PROFORMA DEFENANT AND THE DEFENANT

EXHIBIT – KHA – IS THE UNREGISTERED DEED OF SALE OF DEFENANT .

EXHIBIT – GA—IS THE REGISTERED SALE DEED.

EXHIBIT – GHA – IS THE DEED OF SALE.

EXHIBIT – UNGA – IS THE UNREGISTERED DEED.

EXHIBIT – CHA – IS THE DEED OF POSSESSION.

SMTI.B.SARMAH,
Munsiff No.2, Kamrup(M)