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**HIGH COURT FORM NO. (J)2**

***HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE***

DISTRICT: Dibrugarh

**IN THE COURT OF THE MUNSIFF NO.2 AT  
DIBRUGARH**

PRESENT: **Smti. Rituparna Sarmah, AJS**

**Monday, the 6<sup>th</sup> day of December, 2021**

**Title Suit No. 42 OF 18**

**Sri Arvind Kumar Singh**

S/O Sri Nand Kishore Singh

R/O House No. 2, Left Lane

Opposite Lane of Shrishti Hospital, Paltan Bazar

P.O-Jalan Nagar

P.S & District – Dibrugarh, Assam

.....**PLAINTIFF**

V.

**1. Shah Brothers**

Paltan Bazar

P.O, P.S –Dibrugarh

District-Dibrugarh, Assam

**2. Akhtar Nadim Shah**

**3. Mr. Sabir Azim Shah**

**4. Smti. Yasmin Hassin Shah**

**5. Smti. Sadia Hassain Shah**

All are sons and daughters of Late Nouranga Shah

R/O Gabharupathar Tiniali

Near Gabharupathar Police outpost

P.O & P.S Dibrugarh

.....**DEFENDANTS**

.....  
This suit coming on for final hearing on 11<sup>th</sup> day of November, 2021 in presence of

1. Mr. Manoj Kumar Singh..... Ld Advocate for the plaintiff.

2. None appeared for the defendant

and having stood for consideration to this 6<sup>th</sup> day of December,2021, the Court delivered the following Judgment:-

**JUDGMENT**

1. This is a suit filed by the plaintiff for declaration, restoration of electricity and permanent injunction.

**BRIEF FACTS OF THE PLAINTIFF'S CASE**

2. The plaintiff's case in brief is that the plaintiff has taken a plot of land measuring 40ft x 26 ft=1040 sq ft equivalent to 00B-00K-7.22Ls covered by PP No 135, dag no. 423, Lat no 3 holding no 93 of ward no. 21 under Gabharupathar ward of Dibrugarh Town Mouza from defendant no. 1 in the ear 2003 on lease with a view to construct a hosue fro residential purpose subject to payment of rent of the land initially at Rs. 400/-(Rupees Four Hundred) per month. That the plaintiff constructed a Assam type house on the said land in the year 2003 comprising of a C.I Sheet roof, pucca wall, pucca floor

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consisting of three rooms with separate kitchen, bathroom cum toilet including a verandah(hereinafter referred as the suit premises) and the plaintiff along with his family members have been residing without interruption till date. The suit premises has got a holding no 93 of ward no 21 of Dibrugarh Municipality, Dibrugarh in the name of defendant no.1 and also got electricity on the said premises under consumer account no. 51000503407 installation no 5000700534 with the defendant no 6 but the consumer no is standing in the name of the defendant no.1 although electricity is consumed by the plaintiff and he has been paying the bill of electricity from 2003.

3. That the lease rent was regularly paid by the plaintiff from time to time and the defendant no 1 use to issue lease rent payment receipt in the name of the plaintiff. That in the year 2014 Nourang Shah who had lease out the land to the plaintiff had expired leaving behind him surviving legal heirs i.e. defendant no 2 to 5 and thereafter they used to collect the rent from the plaintiff in the name of defendant no. 1. Thereafter they also enhanced the rent with sort intervals as follows

- (a) Rent @ Rs 2000/-per month in July 2003
- (b) Rent 2 rs 20000/-per month in March 2015
- (c) Rent @2500/-per month in March 2016
- (d) Rent @2500/-per month in February 2018

4. That again from March 2018 the defendants enhanced the rent at Rs 3500/- per month to which the plaintiff refused to make payment of objecting to the

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repeated enhancement and paid the rent of Rs 2500/- as fixed earlier to the defendant no 2 who used to collect the rent on behalf of the defendants but the defendant no 2 refused to receive the same claiming that unless the enhanced rent of Rs 3500/- per month. As such finding no alternative the plaintiff send the said amount through money order in favour of defendant no 1 represented by defendant no 2 to 5 but the same was returned by postal authority on refusal by the defendants. As such the plaintiff deposited the rent before the rent controller in favour of defendant no 1 vide misc(J) case no 564/18.

5. That, for nonpayment of the enhanced rent of Rs 3500/- per month the defendants send an eviction notice to the plaintiff to evict the suit premises unless the rent of 3500/- is paid. That the plaintiff replied to the said notice through registered post AD which was duly received by the plaintiff.

6. That the defendant no 1 to 5 with an intention to harass the plaintiff took step of withdrawal of electricity and defendant no 6 together with defendant no 1 to 5 disconnected the electricity supply from the suit premises on 2.04.18. That the defendant no 6 had been regularly receiving the bill of the electricity from the plaintiff against the consumer no 51000503407 but disconnected the same without showing any reason.

7. It is contended by the plaintiff that the electricity is an essential service and being the tenant of the defendants they are bound to keep continue the essential services to

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their tenanted premises. In that backdrop, filed this instant suit praying for the following reliefs:

(a) For declaration that the landlord and the tenant relationship between the plaintiff and defendant are still existing and as such the defendants are not entitled to evict the plaintiff by forceful means in respect of the suit premises.

(b) For restoration of electricity in respect of the suit premises till eviction of the plaintiff in due procedure of law.

(c) For permanent prohibitory injunction restraining the defendants and their man from disturbing the peaceful possession and occupation of the plaintiff over the land and house described in the schedule of the plaint

(d) For permanent mandatory injunction directing the defendant no. 1 to 6 for restoration of the electricity in the suit premises and maintain the same till eviction of the plaintiff with due process of law.

(e) Cost of the suit.

(f) Any other relief/ reliefs for which the plaintiff is entitled in the eye of law.

8. Summon was issued to the defendants. On receiving summon, the defendant no.1 to 5 appeared. However they failed to file the W.S and subsequently remained unrepresented. As such the instant suit proceeded ex-parte against defendant no. 1 to 5.

Defendant no 6 failed to appear on receiving summon. As such instant suit proceeded ex-parte against the defendant

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no 6 also.

9. During trial, the plaintiff examined 1 [one] witness i.e the plaintiff Sri Arvind Kumar Singh as P.W-1 and the defendant having remained absent, did not avail the opportunity to cross examine the witness of the other side. 21 [Twenty one] numbers of documents have been produced by the plaintiff in order to substantiate its case as follows:

- a) Ext-1 to 5: Original copy of electricity bills and payment receipt of three months
- b) Ext-6-7: Original rent payment receipt
- c) Ext-8 to 11: Original rent receipt for the month of July 2003, March 2015, April 2016, February 2018
- d) Ext-12 & 13: Copy of the rent tendering postal receipt and refusal slip
- e) Ext-14-15: Original O/C of Misc(N.J) Case No 564/2018 dated 09.04.18.
- f) Ext14(1)-14(5): Signature of P.W-1
- g) Ext-15(1): Signature of P.W-1
- h) Ext-16: Original copy of the legal notice dated 06.04.18
- i) Ext-17-21: Original copy of reply notice dated 17.04.18 and postal registration receipt
- j) Ext-17(1)-17(5):Signature of the advocate of P.W-1 which he can identify.

**POINTS FOR DETERMINATION**

10. As there is no WS in the instant suit hence no issues are framed. However, for the sake of proper adjudication of

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the case, I have formulated the following points of determination for just decision of the case.

1. Whether the plaintiff is entitled to the relief as prayed for and if so, to what extent?

### **DISCUSSION, DECISIONS & REASON THEREOF**

11. I have heard the Id. counsel appearing for the plaintiff and have gone through the case record. Upon considering the pleading of the plaintiff, submissions made by the learned counsel for the plaintiff and also after delving into evidences adduced by the plaintiff; my findings and reasons are as follows:

12. **Point of determination no. 1:**

#### **Whether the plaintiff is entitled to the relief as prayed for and if so, to what extent?**

At the outset, I would like mention herein that just because a suit proceeded ex-parte; the plaintiff will not entitled to a decree only by accepting uncontroverted version of the plaint. Plaintiff has to stand on his own feet. He has to prove the case by adducing cogent oral and documentary evidence even if the defendant does not appear in a suit. The Court should not proceed to pronounce judgment blindly because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in his plaint. On this point, I would also like to refer to the landmark judgment pronounced by the Hon'ble Supreme Court of India in ***Ramesh Chand Ardawatiya v. Anil***

***Pajwani***, reported in AIR 2003 SC 2508 ; wherein it was held that, even if the suit proceeds ex-parte, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. The Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent, the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.

In that backdrop, now let me discuss the instant case in hand.

In the instant case, the plaintiff has adduced evidence on affidavit of the plaintiff as P.W-1. In his evidence in chief on affidavit, P.W-1 has reiterated the averments made in the plaint and exhibited 21 nos. of documents as mentioned above.

13. Now, the plaintiff averred that he had taken the land mentioned in the schedule of the plaint from defendant no. 1 in the year 2003 on lease subject to payment of rent and thereafter constructed a Assam type house on the said land ('the house standing on the said land' is referred as the suit premises in the schedule of the plaint). Thus, it appears that the foundation of the plaintiff's suit lies upon the said lease. However, no such lease document is adduced by the plaintiff in this suit.



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14. Now, section 105 of the Transfer of Property Act, defines lease as "A lease of immovable property is a transfer of a right to enjoy such property made for a certain time, express or implied or in perpetuity in consideration of a price paid or promised or of a money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms."
15. From a plain reading of the provision it appears that a lease is made for a specified period of time whether express or implied. Further section 17 (1)(d) of the Indian Registration Act, 1908 provides that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent shall be registered.
16. However as already mentioned above in the instant case no lease document is adduced by the plaintiff so as to ascertain that for what period of time the lease is/was in force. In absence of the same, this Court cannot hold that the relationship of lessor and lessee still exists between the defendant and the plaintiff.
17. As such from the discussion made hereinabove; I find and hold that the plaintiff has failed to produce cogent documentary evidence to prove that the relationship between the lessor and lessee (landlord tenant as referred by the plaintiff) is still exists between the defendant and the plaintiff.
18. Situated thus I find and hold that the plaintiff is not entitled to the relief as prayed for.

**ORDER**

19. In view of the discussion made herein above, the suit of the plaintiff is dismissed without contest. No cost is imposed as the defendants failed to contest the suit
20. Prepare a decree within 15 days from today.
21. The judgment is delivered and the operative part of the judgment is pronounced by me in the open court today.

*Given under my hand and seal of this Court, on this 6<sup>th</sup> day of December, 2021 at Dibrugarh.*

*Typed by self:*

**(SMTI. RITUPARNA SARMAH)**

**Munsiff No. 2, Dibrugarh**

**APPENDIX**

**I . Plaintiff's Witness:**

PW1: Sri Arvind Kumar Singh

**II. Plaintiff's Exhibits :**

- i.** Ext-1 to 5: Original copy of electricity bills and payment receipt of three months
- ii.** Ext-6-7: Original rent payment receipt
- iii.** Ext-8 to 11: Original rent receipt for the month of July 2003, March 2015, April 2016, February 2018
- iv.** Ext-12 & 13: Copy of the rent tendering postal receipt and refusal slip
- v.** Ext-14-15: Original O/C of Misc(N.J) Case No 564/2018 dated 09.04.18.
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- ix.** Ext-17-21: Original copy of reply notice dated 17.04.18 and postal registration receipt
- x.** Ext-17(1)-17(5):Signature of the advocate of P.W-1 which he can identify.

**III. Defendant's Witnesses :**

Nil

**IV. Defendant's Exhibits :**

Nil

**(SMTI. RITUPARNA SARMAH)**

**Munsiff No. 2, Dibrugarh**