

T.S 01/21

**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**

**Tuesday, the 21<sup>st</sup> day of December, 2021**

**Title Suit No. 01/21**

**1. Md. Shahjahan Hussain**

S/O Late Nazmal Hussain  
R/O Dehajan, Lawkhowa Gaon (Demow)  
P.O.- Demow Dehajan, P.S.-Moran  
Dist- Dibrugarh, Assam

.....**PLAINTIFF**

V.

**1. Sri Raju Tanti @ Jhabu Tanti**

S/O Late Dukhua Tanti

**2. Smti. Kalamoni Tanti**

W/O Late Dukhua Tanti  
Both are resident of 1 No. Kashamari Gaon  
P.O.-Chakalia, P.S.-Moran  
Dist Dibrugarh, Assam

.....**DEFENDANTS**

**3. State of Assam**

Represented by Deputy Commissioner, Dibrugarh

**4. Deputy Commissioner**

Dibrugarh District, O/O Deputy Commissioner,  
Dibrugarh, Assam

**5. Circle Officer**

Moran Revenue Circle,  
District-Dibrugarh

.....**PRO-FORMA DEFENDANTS**

- .....
1. Sri Subrata Sharma..... Ld Advocate for the plaintiff.
  2. Sri Manash Borah.....Ld. Advocate for the Defendant.
- .....

This suit coming on for final hearing on 6<sup>th</sup> day of December 2021 and having stood for consideration to this 21<sup>st</sup> day of December 2021, the Court delivered the following Judgment:-

**JUDGMENT**

1. This is a suit filed by the plaintiff for declaration and injunction along with the consequential reliefs.

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

2. The plaintiff's case in brief is that originally the predecessor-interest of the defendants namely Dukhua

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Tanti was the recorded pattadar and owner of a plot of land measuring 3Bigha-3Katha-6Lessa covered by Dag no. 186 of P.P. no. 131 situated at 1 No. Kashamari gaon, Mouza-Sepon, Dist-Dibrugarh, Assam. That, due to financial problem, the predecessor-interest of the defendants namely Dukhua Tanti (since deceased) approached the plaintiff to purchase 3 Bigha of his land out of his total land measuring 3Bigha-3Katha-6Lessa land under Dag no. 186 of P.P. no. 131 situated at 1 No. Kashamari gaon, Mouza-Sepon, Dist-Dibrugarh, Assam to which the plaintiff agreed.

3. That accordingly on 11.12.10, the plaintiff purchased a plot of land measuring 3Bigha-0Katha-0Lessa under Dag no. 186 of P.P. no.131 situated at 1 No. Kashamari gaon, Mouza-Sepon, Dist-Dibrugarh, Assam from Dukhua Tanti at a consideration of Rs. 75,000/- (Rupees Seventy Five Thousand) only by executing an unregistered Deed of Sale in presence of the witness and handed over possession of the land of the aforesaid lad in presence of the witnesses.

4. That the plaintiff after taking possession, the plaintiff cultivated tea plantation on the land measuring 2Bigha out of total land measuring 3Bigha-0Katha-0lessa described in the schedule-A of the plaint and remaining one Bigha remained uncultivated described in the schedule-B of the plaint. That in the year 2014 Dukhua Tanti died leaving behind the defendant no.1 and 2 as his legal heirs and successors. That the house of the defendants is adjacent to the schedule-B land (hereinafter referred as the suit land) .

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That in January, 2020 the defendants encroached suit land by covering with bamboo fencing and raised some temporary structures. On objection, the defendants threatened the plaintiff and his sons to face dire consequences. Immediately, after the incident on 21.01.20 the plaintiff filed a written complaint before the Moran Police Station but no action has been taken till date.

5. That on 04.03.20 the plaintiff filed a petition before the Circle Officer, Moran Revenue Circle, Dist Dibrugarh with copy to the Deputy Commissioner, Dibrugarh narrating the incident and requested to vacate the encroachment of the suit land but no action has been taken. That later on, the plaintiff came to know that the defendants are planning to sale the suit land to a third person for their wrongful gain depriving the right of the plaintiff .That in view of the circumstances the plaintiff has filed this suit praying for following reliefs:

- a) For declaration that the defendants have illegally encroached the suit land,
- b) For recovery of the suit land from the possession of defendants.
- c) For declaration and confirmation of possession of the schedule A land.
- d) For permanent injunction restraining the defendants from disposing the suit land to any third party.
- e) For mandatory injunction directing the defendants to dismantle structure made on the suit land
- f) For cost of the suit.

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- g) Any other relief or reliefs.
6. On receiving the plaint the same was registered as T.S 01 of 2021 and summon was issued to the defendants and pro-forma defendants. On receiving summon, the defendants appeared. However subsequently the defendants remained unrepresented and also failed to file the W.S. As such vide order dated 13.09.21 the suit proceeded ex-parte against the defendants. Vide order dated 01.03.21 and 13.09.21 the suit proceeded ex-parte against the pro-forma defendants.
7. As there is no W.S in the suit, no issues are framed. However the following point of determination has been formulated for the just decision of the matter.
- I. Whether the plaintiff is entitled to the relief as prayed for or for any other relief/reliefs
8. Now, the plaintiff in support of their pleading has filed evidence on affidavit of four [04] witnesses namely P.W-1 i.e. Md. Shahjahan Hussain (the plaintiff), P.W-2 Md. Jahir Hussain, and P.W-3 Md. Isak Ahmed., P.W-4 Sri Prem Koiri. P.W-1 has exhibited four numbers of documents:
- a) Ext-1 is the certified copy of jamabandi of the suit land.
- b) Ext-2 is the unregistered sale deed.
- c) Ext-3 is the written complain dated 21.01.20
- d) Ext-4 is the Petition dated 04.03.20.

9. I have heard the argument put forward by the Ld. Counsel for the plaintiff. I have perused the evidence-on-record, oral as well as documentary. My decisions on the issues are given below.

**DISCUSSION, DECEISION AND REASON THEROF**

**10. Point of determination no. (I) : Whether the plaintiff is entitled to the relief as prayed for or for any other relief or reliefs?**

First and foremost it appears that the whole claim of the plaintiff is based on the Ext-2 i.e. the unregistered sale deed. Now, appreciating the evidence on record it appears that all the PWs has averred the averments made in the plaint. Now, the PWs deposed that the plaintiff purchased the suit land from the predecessor in interest of the defendant at a consideration of Rs.75,000/-by executing an unregistered sale deed on 11.12.20. Ext-2 is the said sale deed. I have perused the Ext-2. Upon perusal it appears that the document was allegedly executed by Late Dukhua Tanti in presence of two witnesses namely Sri Ramesh Kurmi and Sri Paresh Tanti. However none of the attesting witnesses has been examined by the plaintiff. As Dukhua Tanti has already been expired, his signature over Ext-2 ought to have been proved in due manner by the plaintiff to establish the genuineness of the document. But the plaintiff did not take any step

regarding signature of the deceased Dukhua Tanti so as to proof the contents of the document.

11. Be that as it may, now the question comes that whether the Ext-2 which is an unregistered document is admissible in evidence.
12. As per section 54 of the Transfer of Property Act,1882 the sale of immovable property above the value of One Hundred Rupees has to be vide a registered document and as per section 17 of the Indian Registration Act,1908 non testamentary documents which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to an immovable property of the value of One Hundred Rupees and upwards shall be registered.
13. Upon perusal of Ext.2, I find that the value of the suit property at the time of executing the document was more than Rs.100/-
14. Now, section 49 of the Indian Registration Act, 1908 states that no document required to be registered by section 17 of the said act or by any provision of the Transfer of Property Act, 1882 shall
  - a) Affect any immovable property
  - b) Confer any power to adopt
  - c) Be received as Evidence of any transaction affecting such property or conferring such power*Unless it has been registered.*

The proviso to section 49 reads as:

"An unregistered document affecting immovable

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property and required to be registered by Indian Registrations Act or Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any *collateral transaction* not required to be effected by registered instrument.”

15. In the instant case, the plaintiff is not claiming the title over the suit land. The plaintiff is claiming the recovery of possession of the suit land.

16. In that backdrop, now let me discuss whether the plaintiff is entitled to the claim on the basis of the unregistered sale deed or whether the claim of the plaintiff comes under collateral transaction as mentioned in the proviso of Section 49 of the Indian Registration Act.

17. The term collateral purpose/transaction is not defined in the act. However it has received judicial interpretation. A collateral transaction must be a transaction not itself required to be effected by a registered document, i.e. a transaction creating any right, title and interest in immovable property of the value of one hundred Rupees and upwards (reliance has been placed on the decision of Hon’ble Supreme Court of India in ***S. Kaladevi v. V.R Somasundaram, 2010 5 SCC 401***). Further the Hon’ble Supreme Court in India in ***Korukonda Chalapathi Rao and Anr v. Korukonda Annapurna and Anr, reported in 2021 0 Supreme(SC) 535*** referred the views expressed by

the Hon'ble Madras High Court in ***K. Panchapagesa Ayyar and Ors. v. K. Kalyanasundaram Ayyar and Ors, reported in AIR 1957 Madras 472*** wherein it was held that "The expression "collateral purpose" is no doubt a very vague one and the Court must decide in each case whether the purpose for which it is sought to use the unregistered document is really a collateral one or is to establish directly title to the immovable property sought to be conveyed by the document. *But by the simple device of calling, it a "collateral purpose" a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if registered*".

18. Now, it is a settled position in law that possession is also a right to remain in a property. Ext-2 is a document on the basis of which the plaintiff is claiming the possessory right over the immovable property. Thus, as per section 17 (1) (b) and 49(a) of the Indian Registration Act and in light of the aforementioned dicta, the Ext-2 it has to be registered document. Situated thus, Ext-2 being an unregistered sale deed is inadmissible in evidence and the plaintiff cannot claim the right over the suit land on the basis of this unregistered sale deed.

19. Now, let me mention herein that just because a suit has proceeded ex-parte; the plaintiff will not be entitled to a decree only by accepting uncontroverted version of

the plaint. Plaintiff has to stand on his own feet. She 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 her plaint.

20. 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, 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.
21. Applying the above dicta into the facts of the instant case it appears that the plaintiff has failed to adduce any convincing evidence to prove their assertion.
22. As such I find and hold that the plaintiff is not entitled to any relief as prayed for.

**ORDER**

23. In view of the discussion made herein above, the suit of the plaintiff is dismissed ex-parte with cost.
24. Prepare a decree within 15 days from today.
25. The judgment is delivered and the operative part of the judgment is pronounced by me in the open court today.
26. Given under my hand and seal of this Court, on this 21<sup>th</sup> day of December, 2021 at Dibrugarh.

Typed by self.

**(SMTI. RITUPARNA SARMAH)**

**Munsiff No. 2, Dibrugarh**

**APPENDIX**

**Plaintiff's witnesses :**

P.W-1 : Md Shahjahan Hussain  
P.W-2 : Md. Jahir Hussain  
P.W-3 : Md. Isak Ahmed  
P.W-4 : Sri Prem Koiri

**Plaintiff's Exhibits:**

Ext-1 : Certified copy of Jamabandi of P.P. no.131  
Ext-2 : Unregistered Sale Deed  
Ext-3 : Written complaint  
Ext-4 : Petition dated 04.03.20

**Defendant witnesses**

NIL

**Defendant Exhibits :**

NIL

**(SMTI. RITUPARNA SARMAH)**  
**Munsiff No. 2, Dibrugarh.**