

FORM NO.(J)3.  
HEADING OF JUDGEMENT ON APPEAL

DISTRICT: **MORIGAON**

In the First **Appellate** Court of the **CIVIL JUDGE** at Morigaon.

PRESENT: **Mrs. MILI HUSSAIN**, LL.M.,A.J.S.  
Civil Judge,  
Morigaon.

**Friday**, the 08<sup>th</sup> day of **March**, 2019.

**Title Appeal No. 9 of 2018**

1. DebaKonwar,  
2. GolapKonwar,  
3. GoleswarKonwar,  
All s/o Late KhargeswarKonwar,  
All r/o Manipur,  
Morigaon. ... Appellants

**-Versus -**

1. DilipKonwar,  
2. MilsingKonwar,  
3. KrisnaKonwar,  
All s/o Late BarsingKonwar,  
All r/o Singmari, Manipur,  
NizTetelia, Morigaon.... Respondents  
And Two Others ... Proforma Respondents

This appeal coming on for final hearing on **14.02.2019** in the presence of—  
**Mr. M. C. Sarkar** and **Ms. G. Deka**, Learned Advocates for the Appellants.  
**Mr.G. C. Deka** and **Ms. J. Bora**, Learned Advocates for the Respondents.

AND having stood for consideration to this day, the Court delivered the following judgment.

**JUDGMENT**

1. This first appeal arose u/s 96 r/w Order XLI Rule 1, 2 CPC out of judgment & decree dated 25.07.2018 passed by learned Munsiff No.2, Morigaon in Title Suit No. 21/2016, whereby learned trial Court dismissed the suit of the appellants/plaintiff with costs. This is a plaintiff's appeal. Upon admission of the

appeal for hearing, the notices were issued to defendants/respondents. The original case record of T.S. No.21/2016 was called for and received.

2. The respondents/defendants contested this first appeal.

3. Before proceeding to decide the strife of parties, it is necessary to lay out in nut shell the factual position and rival sides case.

4. Plaintiffs' pleaded case in concise is that land measuring 6B-1K-5L (Schedule 'A') is covered by dag no. 189 under periodic patta no. 21 out of which 3B-12.5L land (Schedule 'B') is the suit land. Said periodic patta no. 21 was previously an annual patta land, which was converted into a periodic patta vide an order dated 26.09.1974. One Kehubar Lalung was the original pattadar of the said Schedule 'A' land. Proforma defendant no. 4, 5, being brothers, jointly purchased the entire Schedule 'A' land in the name of proforma defendant no. 4 Rupsing Konwar. Later, both the brothers partitioned the said land whereby plaintiff's father obtained half-share on the southern side and the proforma defendant no. 4 obtained the remaining half share on the northern side. They possessed their respective land peacefully. Plaintiff's father mutated his name in respect of his share of the land vide order dated 17.02.1995. One Barsing Konwar also obtained mutation as a sharer along with name of Rupsing Konwar. Plaintiff's father died five years back leaving behind the plaintiffs. The father of defendants died 14 years back. It is alleged that when the plaintiffs refused to allow the defendants from cultivating on the former's land on *chutk* basis, on 27.01.2016 at about 8 AM, the defendants erected one temporary house over the plaintiff's land and also ploughed the said land with a tractor. Plaintiffs' tried to restrain the defendants but in vain. Plaintiffs' also failed in the police station as the police advised them to move the Civil Court. Plaintiffs filed the suit for declaration that they have right, title and interest over the Schedule 'B' land and for recovery of the said land from the defendants and for permanent injunction.

5. The respondents/defendants contested the suit by filing their written-statement, inter-alia pleaded that the suit has no cause of action and the suit is not maintainable and the suit is bad for non-joinder of Bhupendra Deka as a necessary party and the suit is barred by law of limitation and adverse possession. Defendants denied the plaintiff's allegations. It is contended that neither Rupsing nor Khargeswar had any possession in the suit dag as it was under possession of the defendants for more than 60 years. It is also contended

that the suit patta land is not a paddy field as the defendants have residential houses and defendant no. 1 has a poultry farm on one portion of land. Defendants contended that the suit patta land was occupied by BansingKonwar who died 17 years back leaving behind four sons, namely, Mil Singh Konwar, Krishna Konwar, DilipKonwar and BuddeswarKonwar and as per family settlement, the said property fell into the share of the defendants and they equally got 2B-8L land each. BuddeswarKonwar got his share of land in another dag. After their father's death, the defendants mutated their names in respect of the suit land. On 11.01.16, Mil Singh, in need of money, sold one katha land vide a registered sale deed bearing no. 83 to one Gopendra Singh Deka with delivery of possession. Defendants prayed for dismissal of the suit with costs.

5A. Proforma defendant no. 4(i) filed written-statement and admitted the plaintiffs' claim.

6. Upon rival pleadings, learned Munsiff No.2, Morigaon framed the following issues:-

1. Whether there is any cause of action for the instant suit?
2. Whether the suit is bad for non-joinder of necessary parties?
3. Whether the suit is valued properly and proper fee is paid?
4. Whether the plaintiff is entitled to a valid right, title and interest over the Schedule 'B' land as mentioned in the plaint as right to inheritance?
5. Whether the plaintiff is entitled for recovery of khas possession over Schedule 'B' land as described in the plaint?
6. Whether the plaintiff is entitled to a decree as prayed for?
7. To what other relief/reliefs, the plaintiff is entitled?

7. During trial, both the parties adduced oral and documentary evidence.

8. After hearing both the sides, learned trial Court passed the judgment and decree dated 25.07.2018 dismissing the suit. Being aggrieved against dismissal of the suit, appellant/plaintiff have impugned the same in this appeal with the following, amongst other, grounds.

- (a) That the learned trial Court erred both in law and facts in passing the impugned judgment and decree ;
- (b) That the learned trial Court misread the evidence on record and arrived at a wrong conclusion; hence the impugned judgment and decree is liable to be set aside ;

- (c) That the learned trial Court wrongly decided issue No.4, 6 & 7 and held that the plaintiff have no right, title and interest over the suit land ;
- (d) That the learned trial Court failed to appreciate that land holding certificate has been issued by the Circle Officer on the basis of the entry made in the concerned land revenue records and it is immaterial when such certificate has been issued ;

9. I have heard learned counsel for both sides and meticulously perused the case record of Title Suit No.21/2016.

9A. The following point is formulated for a fair adjudication.

**POINT FOR DETERMINATION:**

- 1. Whether the learned trial Court is justified in dismissing the suit of the plaintiff and whether the impugned judgment and decree passed by the learned trial Court needs interference in this appeal?

**DISCUSSION, DECISION AND REASONS THEREOF:**

10. Let me now discuss the grounds taken in the memorandum of appeal and the impugned judgment decided by the learned Trial Court.

**POINT No. 1**

10A. Issue No.1 concerns with cause of action for the suit. Cause of action, literally, is nothing but cause or set of circumstances, which leads up to the suit. Cause of action arises on infringement of legal right. It is the bundle of facts whose proof is *sine qua non* to entitle plaintiff to a relief. As the plaintiffs have asserted their certain rights and the defendants have denied the allegations of the plaintiff, it can be safely inferred that the plaintiff's suit has a definite cause of action. Learned Trial Court's decision in Issue No. 1 is upheld.

11. Issue No. 2 pertains to non-joinder of necessary parties. Issue No. 3 relates to under-valuation of the suit. As far as Issue No. 2 is concerned, defendants have not led evidence to substantiate as to why the non-joinder of Gopendra Singh Deka is bad for constitution of the suit. Notably the suit was a declaratory one . Hence, the plea fails. So far as under-valuation is concerned, plaintiff's suit, being a declaratory one with consequential reliefs, is governed by Section 7(iv)(c) of the Court Fees Act leaving it to open to the plaintiffs to attach their own valuation to the reliefs claimed by them. When such a suit is governed by Section 7(iv)(c) of the Court Fees Act, the Court fees are payable on the

amount at which the relief sought is valued. The value so fixed will be the value for the purpose of jurisdiction under Section 8 of the Suits Valuation Act, 1887. Thus, the plaintiffs have paid proper Court-fees and it cannot be said that the suit is bad for under-valuation. Learned Trial Court's decision in respect of Issue No. 2 and 3 are upheld but for the reasons hereinabove discussed.

11A. Now, I will take up Issues No. 4 and 5 together. The learned Trial Court decided both the Issues against the appellants/plaintiffs by holding that the plaintiffs have miserably failed to prove their title over the suit land and that they are not entitled to recover khas possession of the suit land.

11B. The appellant/plaintiffs' contention as depicted in the plaint is that they are the rightful owner having right, title and interest over Schedule 'B' land (6B-1K-5L land) and as Schedule 'B' (3B-12.5lechas) is part and parcel of Schedule 'A' land, upon which land the defendants had erected houses, they seek declaration of right, title and interest over said Schedule 'B' land with recovery of possession over it. Contrarily, the defendant denied the plaintiff's allegations rather contended that they are possessing their land since long and that the plaintiffs were never in possession of the suit land. Let me unfurl the relevant evidence in this regard.

11B. P.W.1 DebaKonwardeposed by substantiating the plaint. P.W.1 identified the land holding certificate as **Exhibit 1**andthe jamabandi as **Exhibit2**. In his cross-examination, P.W.1 deposed that he does not have knowledge about the documents he has submitted as **Exhibits**. P.W.1 deposed that as the defendants are in possession of the suit land in their respective share, they are paying the land revenue for the last 18 years and that he has not visited the suit land for the last 20 years.

11C. P.W.2 LambudarBordoloi and P.W.3 Rakesh Konwar have corroborated the testimony of P.W.1. In cross-examination, P.W.2 deposed that he does not know who possess the suit land and that if the defendants are possessing the suit land for the last 40-50 years, he does not know. In his cross-examination, P.W.3 deposed that there is a dispute between the plaintiffs and defendants in respect of the suit land.

11D. D.W.1 DilipKonwar deposed by substantiating the written-statement. He identified the jamabandi as **Exhibit Ka**and the revenue receipts as **Exhibits**

**KhaSeries.** In cross-examination, D.W.1 deposed that MilsingKonwar has sold one katha land to Gopendra Singh Deka vide a registered sale deed.

11E. D.W.2 NityanandaNathcorroborated the testimony of D.W.1. In cross-examination, D.W.2 deposed that he has heard that the suit land stands in the name of defendants and proforma defendant no. 5.

11F. From the material-on-record, it is clear that the suit land pertains to dag no. 189 of P.P. no.21. The plaintiff has contended in the plaint that the suit patta was previously an annual patta, which was later converted to periodic patta. Defendants have not disputed the said fact in their written-statement, thus, it can be inferred that the defendants have impliedly admitted about the conversion of annual patta to periodic patta. Even **Exhibits 1/Ka** clearly shows that the land measuring 6B-1K-5L (Schedule 'A') was converted into myadipatta vide Memo No. NRS.289/22/6552-61 dated 26-09-1974 as reflected in the remarks column. **Exhibits 1/Ka** jamabandis further reveals that RupsingLalung's name stood mutated in respect of the suit patta land vide order dated 20-12-1975. Again, said jamabandis also reveal that KhargeswarKonwar's name was mutated vide order dated 17-02-1995 in respect of possession over his share. However, it is not reflected in the said jamabandis about the quantum of his KhargeswarKonwar's share in the suit patta. It is also seen that the names of plaintiffs and defendants were mutated in the suit patta by virtue of inheritance.

12. Time and again, it has been reiterated by our Hon'ble Supreme Court that mutation of land in revenue records do not create title or extinguish the title over land not does it have any presumptive value on the title and it only enables the person in whose favour mutation if ordered to pay the land revenue in question. Jamabandi cannot be equated with a periodicpatta, which is normally issued` to a particular person/persons after completion of a settlement/resettlement operation as per the Assam Land and Revenue Regulation thereby endowing the status of landholder to that particular person/persons.

12A. In *Sawarni (Smt.) Vs. Inder Kaur*(1996) **6 SCC 223**, the Hon'bleSupreme Court held that the mutation of a property in the revenue record does not create or extinguish title nor does it have any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. In *Balwant Singh &Anr. Vs. Daulat Singh (dead) by L.Rs. &Ors.*(1997) **7 SCC 137**, similar observations were made by the Hon'ble

Supreme Court where it was held that a party is not divested of his title in the suit property as a result of mutation entry. In *Narasamma & Ors. Vs. State of Karnataka & Ors.* (2009) 5 SCC 591, the Hon'ble Supreme Court reiterated the above position by observing that it is true that the entries in the revenue record cannot create any title in respect of the land in dispute.

12B. I may also aptly rely on our Hon'ble High Court's decision in *R.K. Madhuryajit Singh and Anr. – Vs - Takhellambam Abung Singh and others* reported in **AIR 2001 Gauhati 181** wherein it has been observed that –

“On consideration of the entire materials/evidence on record, it appears that the title and the case of the plaintiff could not be established positively/affirmatively, Mutation of name of a person in the revenue record does not ipso facto create or extinguish the title of the person, nor does it lead to any presumptive value. The revenue records basically entitled a person to pay the land revenue. Mere entry in the revenue records does not ipso facto lead to the conclusion that the mutation in favour of the plaintiffs conveys title in their favour.”

12C. From the ratio of the aforesaid decisions, it is clear that a plaintiff in a suit claiming his/her title over suit property, must prove his/her title and the manner how it devolved on the plaintiff. Thus, merely relying on jamabandi will not be sufficient for the plaintiff to claim right, title and interest by virtue of inheritance. Thus, having failed to probalilise their right, title and interest over the suit land, no decree of declaration can be obtained by the appellants/plaintiffs in this regard. This is what the learned Trial Court has found and I am in agreement with the same. The decision of the learned Trial Court in Issue No. 4 is upheld but for the reasons recapitulated above.

12D. As far as recovery of khas possession of the suit land is concerned, the test is whether the plaintiffs were in possession of the suit land before their alleged dispossession? P.W.1 and P.W.2's evidence holds the key. P.W.1 deposed in cross-examination that the defendants are in possession of the suit land in their respective share and they are paying the land revenue for the last 18 years and that he has not visited the suit land for the last 20 years. P.W.2 deposed in cross-examination that he does not know who possess the suit land and that if the defendants are possessing the suit land for the last 40-50 years, he does not know. Thus, what transpires out is that the plaintiffs are allegedly not in possession of the suit land for the past 20 years. Moreover, P.W.1 has

categorically deposed in cross-examination that one Daimandal Got could purchase the suit land as the defendants were in possession of the suit land. In such a case, when the plaintiffs' are not possessing the suit land for the past 20 years, they cannot allege that they have been dispossessed by the defendants because the P.W.s' and D.W.s' evidence categorically reflects that the defendants are possessing the suit land since the days of their father (since deceased) by paying land revenue to the concerned authority. **Exhibits Kha Series** reinforces the defendants' position.

12E. There is no cogent evidence led by plaintiffs to establish that the defendants dispossessed them from the Schedule 'B' land on 27-10-2016. A coalesced discussion would apparently show that the plaintiffs have neither been able to probalilise their right, title and interest over Schedule 'B' land nor the factum of their dispossession from the said land. Learned Trial Court made a threadbare discussion of the facts and evidence led by the parties and the decision so arrived at by the learned Trial Court cannot be faulted with. Thus, the decision in Issue No. 5 so decided against the plaintiffs/appellants and is upheld.

13. Coming to Issues No. 6 and 7, it is apparent that the plaintiff's suit is for declaration, recovery of khas possession and permanent injunction. The relief of declaration and recovery of khas possession being consequential ones, is governed by Section 34 of Specific Relief Act. As the plaintiffs failed to obtain declaration, they will not be entitled to the other reliefs, as claimed by them. Therefore, granting of other reliefs depends upon the declaration sought. In such a situation, the declaration is the foundation for other reliefs and the other reliefs are necessary in consequence of the granting of the declaration. As the plaintiffs/appellants failed to probalilise their right over the suit land as well as failed to establish their alleged dispossession by defendants/respondents from the suit land, hence, it is pellucid that the plaintiffs' are not entitled to the decree and reliefs as prayed for. Needless to add, the learned Trial Court's finding in respect of said two Issues is upheld. Therefore, the impugned judgment and decree dated 25.07.2018 passed by the learned Trial Court is just and proper and needs no interference in this appeal. The point for determination is answered as such.

**ORDER**

14. The appellants/plaintiffs' appeal is dismissed on contest with costs. The impugned judgment and decree dated 25.07.2018 passed by the learned Munsiff No.2, Morigaon in T.S.21/2016 is upheld. Prepare a decree accordingly. Send back the LCR along with a copy of this judgment forthwith to the learned Trial Court.

GIVEN under my hand and seal of this Court on this 08<sup>th</sup> day of March, 2019 at Morigaon.

**(MILI HUSSAIN)**  
Civil Judge,  
Morigaon.