

Form No. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Goalpara (Assam).

IN THE COURT OF MUNSIF NO. 2, GOALPARA: ASSAM.

PRESENT: DRISTISIKHA BARUAH, AJS

Friday, the 05th day of March, 2020.

Title Suit No. 14 of 2018.

Eusob AliPlaintiffs.

-Versus-

Bharati Roy & Ors.Defendants.

This suit coming on for final hearing on 17-02-2020 in presence of :-

Advocate for the plaintiff: **Mr. Shahjahan Ali, learned advocate.**

Advocate for the defendants- **None**

And having stood for the consideration to this day, the Court delivered the following judgment:-

J U D G M E N T

1. This judgment has arisen out of Title Suit being filed by plaintiff for specific performance of contract.

PLAINTIFF'S CASE

2. The plaintiff's case, in brief is that the defendants are the legal heirs of the deceased Krishna Mahan Roy S/o Lt. Dhananjoy Ray, a resident of Gosaibari, P.S Matia, Dist.- Goalpara, Assam who had owned and possessed a plot of land measuring 17 Bigha, 1 Lecha covered by Dag no. 84/31 and patta no. 33/20 and during his lifetime had executed a deed of earnest money on 01/07/2013 registered vide no. 117/2013, with the plaintiff against a plot of land measuring 1 Bigha which is described as

Schedule A land, for consideration of amount Rs. 53,000/-(Rupees fifty three thousand) only and out of the total consideration, said Krishna Mahan Ray received a sum of Rs. 24,000/-(Rupees twenty four thousand) only and that the physical possession was also handed over to the plaintiff on the day of execution of the deed of earnest money. Schedule A land is the suit land. That Krishna Mahan Ray also agreed to execute the registered sale deed by receiving the outstanding amount and the plaintiff was ready from time to time and requested Krishna Mahan Ray for executing of the sale deed.

3. That Krishna Mahan Ray died on 14/04/2017 leaving the present defendants no.1 Bharati Ray, defendant no. 2 Basu Dev Ray, defendant no. 3 Jaydev Ray, defendant no. 4 Bhabani Ray, defendant no. 5 Shabitri Ray as legal heirs. That they are legally bound to execute the sale deed in favour of the plaintiff having received the outstanding consideration amount of Rs. 29,000/-(Rupees Twenty Nine Thousand) only.

4. That the plaintiff through his legal counsel served a legal notice on 18/11/2017 and requested them to execute the sale deed against the suit land, within one month from the date of receipt. Defendant no. 1 & 3 had received the notices on 14-12-2017 but neither of them replied. That the plaintiff is ready to perform his part of the contract but the defendants are not willing to perform their part. That apart from sending legal notices, the plaintiff had also visited the defendants on 14-01-2018 but they had refused to perform. Hence, the plaintiff has prayed for a decree of specific performance of contract directing the defendant to execute and register the sale deed in favour of the plaintiff in respect of the suit property described in Schedule-A, on accepting the outstanding purchase money, failing which the sale deed be executed and registered by the process of Court, according to the provisions of Order 21 Rule 34(5) and 6(a) of C.P.C.

DEFENDANT'S CASE

5. On appearance the defendants submits Written Statement jointly. The defendants resisted the suit of the plaintiff on the ground that there is no cause of action for the suit; the suit is not maintainable in its present form, suit is barred by way of limitation and that there is no subject matter of this suit.

6. That the defendants do not have knowledge about the execution of the sale deed by way of earnest money vide registered deed no. 117/2013 dated 01/07/2013, by their predecessor Krishna Mahan Ray and that the defendants have never seen him executing any agreement with the plaintiff. That Krishna Mahan Ray had not executed any sale deed in favour of the plaintiff.
7. That the defendants do not agree that Krishna Mahan Ray agreed to execute any registered sale deed within one month of the deed of earnest money. That during the lifetime of Krishna Mahan Ray plaintiff never requested him to execute any registered sale deed.
8. That the defendants are not legally bound to execute any sale deed in favour of the plaintiff because they did not have the intention to perform the contract, or else they would have performed their part during the lifetime of the Krishna Mahan Ray. That now the plaintiff has filed this case after crossing of limitation period with a malafide intention against the heirs of Krishna Mahan Ray.
9. Defendants contend that by serving the legal notices, the delay cannot be condoned. That as alleged by the plaintiff that the deed of earnest money deed no. 117/2013 was registered on 01/07/2013. That he was even ready to pay the outstanding amount, but that Krishna Mahan Ray caused the delay in the performance of the contract. That after expiry of 4 years the plaintiff sends notice to the defendants for performance of the contract. Hence the suit is time barred.
10. Hence it is prayed that the suit may be dismissed with cost to the defendants for the ends of justice.
11. Having heard both sides and on perusal of materials on record, the Court had framed the following issues in the suit which are as follows:-
 - I. Whether there is any cause of action for the suit?
 - II. Whether the suit is barred by way of limitation?

- III. Whether any deed of agreement for sale was executed between the plaintiff and father of the defendants, namely Late Krishna Mahan Ray?
- IV. Whether plaintiff was ready and willing to perform his part of the contract?
- V. Whether the plaintiff is entitled to specific performance of contract as prayed for?
- VI. Whether plaintiff is entitled to any other relief?
- VII. To what reliefs the parties are entitled to?

- 12. The plaintiff, in support of their case submitted evidence-in-chief of PW-1, PW-2, PW-3 and PW 4 and exhibited the documents.
- 13. At the stage of evidence the defendants remained absent and therefore the case proceeded in their absence since order dated 03/06/2019.
- 14. I have heard the arguments advanced by the learned counsel for the plaintiff. Perused the case record and scrutinized the evidence on record.
- 15. Now, my discussion and decision on the following issues are rendered as follows:-

Issue No.1.

(Whether there is a cause of action for the suit ?)

- 16. It is important to bear in mind that though there is no statutory definition of **“cause of action”** but it is now settled in law that cause of action means and denotes all material facts on which a right is founded. In other words, cause of action is nothing but a bundle of facts which a party to a suit claiming a relief under the law, is required to prove in order to have the suit decreed in his favour. Thus, cause of action means necessarily the facts which the plaintiff is required to prove in order to get a decree. In the present suit, the plaintiff contended that in pursuance of the agreement between the parties, he paid Rs. 24,000/- to the Krishna Mahan Ray (since dead) predecessor of the defendants on 01/07/2013 as earnest money for sale of the suit land. But subsequently Krishna Mahan Ray died on 14/04/2017 before executing the said deed. Later Lt. Krishna Mahan Ray’s legal heirs denied executing the sale deed and its existence in spite of request and demand. Hence the plaintiff approached the court. Defendants however denied the existence of such sale deed executing in the name of

the plaintiff by their predecessors. Thereby refusing to perform the contract as legal heirs on behalf of Lt. Krishna Mahan Ray.

- 17. From the rival pleadings, it clearly appears to me that there is cause of action for the suit. Hence, the issue No.1 is decided in affirmative and in favour of the plaintiff.**

Issue no. 2
(Whether the suit is barred by way of limitation?)

18. As per Article 54 of the Limitation Act, 1963, the period of limitation for the present suit is 3 years which is to be computed from the date fixed for the performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused.
19. In the present suit, plaintiff/PW 1 in his evidence has stated that on 01/07/2013 he executed a deed of earnest money vide registered deed 117/2013 with Krishna Mahan Ray during his lifetime against Schedule A land for consideration of amount Rs. 53,000/-(Rupees fifty three thousand) only. Out of the total consideration, said Krishna Mahan Ray received a sum of Rs. 24,000/-(Rupees twenty four thousand) only and handed over the physical possession of the schedule A land. Although no specific time was decided according to the sale deed for its execution, but the plaintiff during the lifetime of Krishna Mahan Ray tried to deliver the outstanding amount of the consideration amount but Krishna Mahan Ray delayed it. That after Krishna Mahan Ray's death on 14/04/2017, plaintiff issued legal notices to legal heirs on 18/11/2017 to execute the sale deed within one month from the date of receipt, by accepting the outstanding amount. Defendant no. 1 & 3 had received the notices on 14-12-2017 but neither of them replied.
20. From the above evidence it appears to me that no specific time was decided between the parties to the contract for its performance but only that the consideration amount of Rs. 53,000/-(Rupees fifty three thousand) only is to be paid. But before the outstanding amount could be paid, vendor Krishna Mahan Ray had expired. That the plaintiff then approached the legal heirs of Krishna Mahan Ray to perform the contract vide legal notice which was received on 14-12-2017 but the defendants did not

respond. Hence the period of limitation shall commence from 14-12-2017 till the expiry 3 years. But from the record it is seen that the suit was instituted on 25/01/2018, i.e., within the period of limitation.

- 21. From the aforesaid discussion and reasons, I am of the firm view that the suit is not barred by Law of Limitation. Hence, the issue No.2 is decided accordingly and in favour of the plaintiff.**

ISSUE NO. 3

(Whether any deed of agreement for sale was executed between the plaintiffs and father of the defendants, namely Late Krishna Mahan Ray?)

- 22. PW 1 Eusob Ali** states in his evidence-in-chief that the defendants are the legal heirs of the deceased Krishna Mohan Roy S/o Lt. Dhananjoy Ray, a resident of Gosaibari, P.S Matia, Dist.- Goalpara, Assam, who had owned and possessed a plot of land measuring 17 Bigha, 1 Lecha covered by Dag no. 84/31 and patta no. 33/20 and during his lifetime had executed a deed of earnest money on 01/07/2013 registered vide no. 117/2013, with the plaintiff against a plot of land measuring 1 Bigha which is described as Schedule A land, for consideration of amount Rs. 53,000/-(Rupees fifty three thousand) only and out of the total consideration, said Krishna Mahan Ray received a sum of Rs. 24,000/-(Rupees twenty four thousand) only. That the physical possession was also handed over to the plaintiff on the day of execution of the deed of interest money. Schedule A land is the suit land. That Krishna Mahan Ray also agreed to execute the registered sale deed by receiving the outstanding amount and the plaintiff was ready from time to time and requested Krishna Mahan Ray for executing of the sale deed.
- 23.** That Krishna Mahan Ray died on 14/04/2017 leaving the defendants as his legal heirs who are the present defendant no.1 Bharati Ray, defendant no. 2 Basu Dev Ray, defendant no. 3 Jaydev Ray, defendant no. 4 Bhabani Ray, defendant no. 5 Shabitri Ray. That they are legally bound to execute the sale deed in favour of the plaintiff having received the outstanding consideration of Rs. 29,000/-.

24. That the plaintiff through his legal counsel served a legal notice on 18/11/2017 and requested them to execute the deed registered vide no. 117/2013 dated 01/07/2013, within one month from the date of receipt. Defendant no. 1 & 3 had received the notices on 14-12-2017 but neither of them replied. That the plaintiff is ready to perform his part of the contract but the defendants are not willing to perform their part. That apart from sending legal notices, the plaintiff had also visited the defendants on 14-01-2018 but they had refused to perform. Hence, the plaintiff has prayed for a decree of specific performance of contract directing the defendants to execute and register the sale deed in favour of the plaintiff in respect of the suit property described in Schedule-A on accepting the contracted purchase money less the money already paid as an earnest money, failing which the sale deed be executed and registered by the process of Court, according to the provisions of Order 21 Rule 34(5) and 6(a) of C.P.C.

25. In support of his evidence PW 1 has exhibited the following documents.

1. Ext. 1- deed of agreement for earnest money vide deed no. 117/826 dated 01/07/2013.

26. **PW 2 Rofiquil Islam** deposes his evidence in the same line corroborating to the PW 1 evidence. And also states that the agreement to sale deed no. 117/826 dated 01/07/2013 Ext. 1 was executed in his presence. The following documents are exhibited by PW 2 in support of his evidence.

Ext. 1- deed of agreement for earnest money vide deed no. 117/826 dated 01/07/2013.

Ext.1(1), 1(2), 1(3) are the signatures of Sri Krishna Mahan Ray as vendor which he knows.

Ext.1(4), 1(5) and 1(6) are the thumb impressions of Eusob Ali @ Vendi which he made in his presence.

Ext.1(7) is his signature as an attesting witness.

Ext.1(8) is the thumb impression of attesting witness, Hussain Ali made in his presence.

Ext. 2 is the Legal Notice dated 18/11/2017.

Ext. 3, Ext.4, Ext.5, Ext.6 and Ext.7 are the postal registration dated 20/11/2017.

Ext.8 and Ext.9 are the AD card dated 14/12/2017.

27. **PW 3 Hosen Ali** deposes in the same line and corroborates the evidence of PW 1 and PW 2. That the deed of agreement Ext. 1 was executed in his presence and that the deed of earnest money was executed by Krishna Mahan Ray in favour of the plaintiff and that the physical delivery was also made to the plaintiff in his presence. That he is one of the witnesses to the deed in question.
28. **PW 4 Mohini Das** extra writer, Sub-registrar, Goalpara deposes that the Deed no. 117/826 of 2013 was executed by Krishna Mahan Ray, S/o Dhananjay Ray in the presence of Yusuf Ali S/o Zamsher Ali and that Ext. 1 is a document registered in their office.
29. From the evidence of PW 1, PW 2, PW 3 and PW 4 it's discernible that Ext. 1 which is the deed of agreement for earnest money vide deed no. 117/826 dated 01/07/2013 for sale of the suit land is an authentic document executed between the plaintiff and Krishna Mahan Ray, predecessor of the Defendants of this case.
30. However, from having perused the evidence on record, it reveals that both the plaintiff Eusob Ali and Krishna Mahan Ray (during his lifetime) had entered into the contract for deed of earnest money to sale of the suit land in favour of plaintiff for consideration of Rs. 54,000/- out of which Rs. 24,000/- was paid on the day of execution of the agreement i.e., Ext.-1 on 01/07/2013. PW 2 and PW 3 deposes to be present at the time of execution of the deed of earnest money and thus corroborates the plaintiff's contentions.
31. **Hence, the issue No.3 is decided in affirmation and in favour of the plaintiff.**

ISSUE NO. 4

(Whether plaintiff was ready and willing to perform his part of the contract?)

32. From the perusal of both oral and documentary evidence on record, where PW 2 exhibited documents i.e., Ext. 2 Legal notice dated 18/11/2017, Ext. 3, 4, 5, 6 & 7 postal registration date 20/11/2017 and Ext. 8 & 9 A/D cards dated 14/12/2017, it is seen that the plaintiff was willing to perform his

part of the contract by submitting the outstanding amount of Rs. 29,000/- to the defendants, who are the legal heirs of the executant Krishna Mahan Ray (since dead). That on perusal of the said Ext. 2 it is seen evident that the plaintiff had tried his best to intimate the legal heirs of the existence of the Ext. 1 and that they are duty bound to perform the contract on behalf of Late Krishna Mahan Ray. But the defendants did not respond to the legal notice. This shows that the plaintiff has shown willingness to perform his part of the contract.

33. Hence, the issue No.4 is decided in affirmation and in favour of the plaintiff.

ISSUE NO. 5, 6, 7

**(Whether the plaintiff is entitled to specific performance of contract as prayed for?)
(Whether plaintiff is entitled to any other relief?)
(To what reliefs the parties are entitled to?)**

34. For the sake of brevity I am going to decide all the three Issues no. 5, 6 & 7 together. Now considering that Issue no. 3 and 4 were decided in favour of the plaintiff therefore it is only justifiable that the plaintiff is entitled to get a decree as prayed for in the suit.

35. Therefore the defendants being the legal heirs of Lt. Krishna Mahan Ray, is directed to execute a register sale deed of the suit land in favour of the plaintiff, having received the balance amount of Rs. 29,000/-(Rupees twenty nine thousand) only from the plaintiff, on the day of execution of registered sale deed within 3 months from the date of decree, failing which the sale deed shall be registered by the Nazir of this Court and Office on Commission as per Provision of Law.

36. Prepare a decree accordingly.

37. Given under my hand and the seal of this Court on this 05th March, 2020.

**DRISTISIKHA BARUAH,
AJS
MUNSIFF NO.2, GOALPARA**

APPENDIX

1. Plaintiff witness:

PW 1 Eusob Ali
PW-2 Rofiqul Islam
PW 3 Hosen Ali
PW 4 Mohini Das

2. Defence witness:

NIL

3. Prosecution Exhibits.

Ext. 1- deed of agreement for earnest money vide deed no. 117/826 dated 01/07/2013.

Ext.1(1), Ext. 1(2) and Ext. 1(3) are the signatures of Sri Krishna Mahan Ray as vendor which he knows.

Ext.1(4), Ext.1(5) and Ext. 1(6) are the thumb impressions of Eusob Ali @ Vendi which he made in his presence.

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Ext.8 and Ext.9 are the AD card dated 14/12/2017.

4. Defence Exhibits.

NIL

RO & AC

DRISTISIKHA BARUAH, AJS

MUNSIFF NO.2, GOALPARA