

Assam Schedule VII. Form No. 132

HIGH COURT FORM NO.(J)2

HEADING OF JUDGMENT IN ORIGINAL SUIT

DISTRICT: GOALPARA

**IN THE COURT OF THE MUNSIFF NO. 2,
GOALPARA**

Present: **Chandrama Talukdar,**

Munsiff No. 2, Goalpara.

This 20th day of December, 2021

TS Case No. 13/2018

Somed Ali

S/O Joher Ali

R/O Basantapur, NC, PO Dalgoma, PS Matia, Dist.
Goalpara Assam.

.....**Plaintiff**

-Vs-

1. Bharati Ray

W/o Late Krishna Mahan Ray;

2. Basu Dev Ray

S/O Late Krishna Mahan Ray;

3. Jaydev Ray

S/O Late Krishna Mahan Ray.

All are residents of Gosaibari, PO- Gosaibari, Dist.-
Goalpara, Assam;

4. Bhabani Ray

D/O Late Krishna Mahan Ray,

W/O Probin Kalita, R/O Karkoshi, PO Dahela, PS
Dhudhnoi, Dist. Goalpara;

5. Shabitri Ray,

D/O Late Krishna Mahan Ray

W/O Dhirez Ray, R/O Dahela, PO Dahela, PS
Dudhnoi, Dist. Goalpara;

.....**Defendants**

Evidence recorded on : 07.05.2019, 21.08.2019,
20.11.2021

This is a suit came up for final hearing on 08.12.2021, in
presence of following :-

Counsel for the Plaintiff : Mr. Shahjahan Ali.

Counsel for the Defendants: B. K.Chaudhury.

And having stood for consideration to this 20th day of
December, 2021 the Court delivered the following
Judgment.

JUDGMENT

- 1.** The plaintiff has instituted this suit for specific performance of contract in respect of the suit land.

- 2.** The plaintiff's case in brief is that the defendants are the legal heirs of deceased Krishna Mohan Ray, S/O Lt. Dhananjoy Ray, a resident of Gosaibari, P.S. Matia, Dist. Goalpara, Assam and said Late Krishna Mahan Ray had owned and possessed land measuring 17 bighas, 1 lecha covered by Dag No. 84/31 and patta no. 33/20 and during his lifetime, he executed a deed of earnest money with the plaintiff against a plot of land measuring 1 bigha for the consideration of Rs. 53,000/- only and out of the total consideration, said Krishna Mahan Ray received a sum of Rs. 20,000 only. It is submitted that the physical possession of the suit land was also handed over to the plaintiff on the day of execution of the deed of earnest money. Since then, the plaintiff has been possession the suit land by constructing his dwelling houses thereon. Krishna Mohan Ray also agreed to execute the registered sale deed by receiving the outstanding consideration and the plaintiff, from time to time requested said Krishna Mohan

Ray for execution of the sale deed but he used to cause delay. The defendants' predecessor, Krishna Mohan Ray died on 14.04.2017 leaving the defendants as his legal heirs and now they are legally bound to execute a sale deed in favour of the plaintiff having received the outstanding consideration of Rs.33,000/- only from the plaintiff. The defendant's predecessor, Krishna Mohan Ray executed the deed of earnest money against the land, on 01.07.2013 which was also registered vide No. 116 of 2013, annexed as annexure No.1. It is further noted that the plaintiff has learnt that the defendant No. 3, Jaydev Ray is the abandoned son of deceased Krishna Mohan Ray and if it's a fact, he may not execute the sale deed in favour of the plaintiff. Also, the plaintiff through his learned counsel served a legal notice dated the 18th day of November, 2017 upon the defendants and requested them to execute the deed of sale against the suit land in his favour by receiving the outstanding consideration of the suit land within thirty days with effect from the date of service of the notice and the defendants No. 1 and 3 received the notices on 14.12.2017 but they neither executed any sale deed nor replied to the said notice within the specific period of thirty days. It is submitted that the plaintiff is

ever ready to perform his part but the defendants are not willing to perform their part. Apart from the notice the plaintiff approached the defendants on 14.01.2018 and also requested them to execute the sale deed having received the outstanding consideration for the suit land but they refused to do so. Hence, the plaintiff has instituted this suit against the defendants and prayed for the following reliefs :

- a) A decree of specific performance of contract be passed in favour of the plaintiff directing the defendants to execute and register a sale deed in question in respect of the property on accepting the contracted purchase money less the amount already paid as an earnest money.
- b) A decree be passed directing the defendants to execute and register the sale deed within a time specified by the court failing which said deed be executed and registered according to the provisions of Order XXI Rule 34 (5) and 6 (a) of CPC.
- c) All costs of the suit be awarded.
- d) Any other reliefs as per law & equity be awarded.

3. The defendants contested the suit by filing written statement and while denying the averments of the plaintiff, pleads that the suit is not maintainable in this present form and manner, there is no cause of action for this suit, the suit is barred by Law of Limitation, there is no any subject matter of this instant suit etc. It is submitted that the defendants don't have knowledge about the execution of the deed of earnest money by the predecessor of the defendants. During the life time of their predecessor namely Krishna Mohan Ray, the defendants never saw him in executing any agreement with the plaintiff. And as such so far the knowledge of the defendants concerned, Krishna Mohan Ray, had not executed any deed of earnest money in favour of the plaintiff. Also, the defendants do not agree that Krishna Mohan Ray agreed to execute the registered sale deed within one month of the deed of earnest money. During the lifetime of Krishna Mohan Ray, the plaintiff never requested Krishna Mohan Ray for execution of any sale deed in respect of the suit land. In further, the defendants stated that for the sake of argument if it is presumed that Late Krishna Mohan Ray during his lifetime executed any agreement of sale on 01.7.2013 but during the life time of Krishna Mohan Ray the plaintiff

never approached to Krishna Mohan Ray with an intention to perform his part and now after his death and after crossing the period of limitation the plaintiff has filed this suit against the defendants with a malafide intention against the heirs of Krishna Mohan Ray. But they are not legally bound to execute any sale deed in favour of the plaintiff. Further, the defendants stated that the plaintiff alleged that on 01.07.2013, the predecessor of the defendants, Krishna Mohan Ray executed the deed of earnest money against the land in scheduled whereby he agreed to execute the registered sale deed within a month. The plaintiff also alleged that he was ready within the one month, but Krishna Mohan Ray caused delay in his regard. But it is seen that after expiry of 4 years in the year of 2017 the plaintiff has served notice upon the defendants by asking to execute sale deed. Hence, the suit filed by the plaintiff is time barred and liable to be dismissed. The defendants stated that they are not interested at all to execute any kind of sale deed in favour of the plaintiff and denied that the plaintiff approached to the defendants on 14.01.2018 and requested them to execute registered sale deed. Hence, upon the above pleadings defendant prayed dismissal of the suit with cost.

ISSUES

4. Based on the pleadings of both sides, the following issues were framed in this suit by my learned predecessor.
- I. Whether there is any cause of action for the suit?
 - II. Whether the suit is maintainable in the present form and manner?
 - III. Whether the suit is barred by law of limitation?
 - IV. Whether Late Krishna Mohan Ray had executed a deed of earnest money with plaintiff regarding sale of suit land for consideration of Rs. 53,000/- and out of which late Krishna Mohan Ray received a sum of Rs. 20,000/-?
 - V. Whether plaintiff was given possession of the suit land on the date of execution of deed of earnest money and has been possessing the suit land by constructing dwelling houses thereon?
 - VI. Whether plaintiff was ready and willing to perform his part of the contract?
 - VII. Whether plaintiff is entitled to specific performance of contract as prayed for?
 - VIII. To what relief or reliefs the parties are entitled to?

DECISION, DISCUSSION AND REASONS:

5. I have gone through the pleadings of both the parties, the evidence on record and perused the relevant documents and also considered the submissions made by the learned counsels. In order to support the pleadings, Somed Ali, the plaintiff submitted the evidence of himself as PW1, Rofiqul Islam as PW2, Hosen Ali as PW3 and Jubi Kachari as PW4. The plaintiff side has also exhibited documentary evidence in support of their pleadings.
6. The defendants although contested the suit by submitting written statement but neither appear to cross examine the plaintiff's witnesses nor did adduce any evidence in support of their pleadings. And since order dated 01.06.2019, the suit was proceeded ex-parte against the defendants.

Issue No. I: Whether there is any cause of action for the suit?

7. 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.

- 8.** In the present suit, the plaintiff has stated that late Krishna Mohan Ray, the father of the defendants, had owned and possessed land measuring 17 bighas, 1 lecha covered by Dag No. 84/31 and patta no. 33/20 and during his lifetime, he executed a deed of earnest money with the plaintiff against a plot of land measuring 1 bigha for the consideration of Rs. 53,000/- only and out of the total consideration, said Krishna Mahan Ray received a sum of Rs. 20,000 only. Krishna Mohan Ray also agreed to execute the registered sale deed by receiving the outstanding consideration. On the other hand the defendants denied the averments of the plaintiff and contended that they don't have knowledge about the execution of the deed of earnest money by the predecessor of the defendants and as such so far the knowledge of the defendants concerned, Krishna Mohan Ray, had not executed any deed of earnest money in favour of the plaintiff.

9. Thus, it clearly appears that there is a dispute between the parties as the plaintiff has pleaded certain facts which are opposed by the defendants. So, there are indeed some facts which are in dispute and which require adjudication. As such, the Court is of the view that there is a cause of action for institution of the suit. Hence, the issue is decided in affirmative and in favour of the plaintiff.

Issue No. II: Whether the suit is maintainable in the present form and manner?

10. The law is well settled that the defendant(s) must rise by his/their pleading all matters which show that the suit is not maintainable. Order VIII Rule 2 of the Code of Civil Procedure has cast a special duty on the defendant to raise by his pleading all material facts which would go to show that the suit is not maintainable. Therefore, a bald plea of non-maintainability of a suit without adequate details in the pleadings is not sustainable in law.

11. In the present suit, it appears that the defendants in their pleading have averred that the suit is not maintainable, but having perused the pleading, it appears to me that no fact has been specifically pleaded which would go to show that the suit is not maintainable. Be it

mentioned here that the subject matter of the suit is situated within the jurisdiction of this Court and from having perused the pleadings of both the parties it clearly appears that the cause of action for the suit arose within the jurisdiction of this Court. In view of the above discussion, I find and hold that this suit is maintainable in law and facts. Hence, the Issue No. II decided in favour of the plaintiff.

Issue No. III: Whether the suit is barred by law of limitation?

- 12.** Article 54 of the Limitation Act, 1963 provides that the limitation period for specific performance of a contract is three years from the date fixed for the performance and where there is no date fixed for performance, the period of limitation would run from the date on which the plaintiff had noticed that the performance is refused. In the instant case, it appears that the deed of earnest money did not have any date fixed for performance. As such, in the absence of fixed date for performance, it will have to find out the date on which the plaintiff had noticed the refusal of performance of contract by the defendants.

13. On perusal of the evidence on record, it appears that the plaintiff in the plaint as well as in the evidences has stated that after the death of the defendants' predecessor, Krishna Mohan Ray who executed the deed of earnest money, the plaintiff through his learned counsel served a legal notice on 18.11.2017 upon the defendants and request them to execute the deed of sale against the suit land by receiving the outstanding consideration of the suit land within 30 days with effect from the date of service of the notice. And, the defendant No. 1 and 3 received the notices on 14.12.2017 but neither executed the sale deed nor replied to the said notice within the stipulated period. Apart from the notice, the plaintiff approached the defendants on 14.01.2018 and also requested them to execute the sale deed having received the outstanding consideration for the suit land but they refused to do so. As such, it can be considered that the plaintiff had noticed the refusal of performance of contract by the defendants on 14.12.2017 and on 14.01.2018. Thus, it clearly appears that the instant suit is filed within limitation period. Hence, the Issue No. III is accordingly answered and in favour of the plaintiff.

Issue No. IV: Whether Late Krishna Mohan Ray had executed a deed of earnest money with plaintiff regarding sale of suit land for consideration of Rs. 53,000/- and out of which late Krishna Mohan Ray received a sum of Rs. 20,000/-?

- 14.** The plaintiff in the plaint as well as his evidence as PW1 clearly stated that the defendants are the legal heirs of deceased Krishna Mohan Ray S/O Lt. Dhananjoy Ray, a resident of Gosaibari, P.S.-Matia, Dist. Goalpara, Assam and said Lt. Krishna Mohan Ray had owned and possessed land measuring 17 Bighas, 1 lecha covered by Dag No. 84/31 and Patta No. 33/20 and during his lifetime, he executed a deed of earnest money with me against a plot of land measuring 1 Bigha for the consideration of Rs. 53,000 and out of the total consideration, said Krishna Mohan Ray received a sum of Rs. 20,000 only. Also, the physical possession of the suit land was also handed over to the plaintiff on the day of execution of the deed of earnest money. Since, then he has been possession the suit land by constructing dwelling houses thereon. Krishna Mohan Ray also agreed to execute the registered sale deed by receiving the outstanding consideration and the plaintiff from time to time requested said Krishna Mohan

Ray for execution of the sale deed but he used to cause delay. Thereafter, the defendants' predecessor, Krishna Mohan Ray died on 14.04.2017 leaving the defendants as his legal heirs and they are legally bound to execute a sale deed in favour of plaintiff having received the outstanding consideration of Rs. 33,000/- only from the plaintiff. It is also stated that the defendants' predecessor, Krishna Mohan Ray executed the deed of earnest money against the land described in the plaint i.e. suit land, on 01.7.2013 which was also registered vide No. 116 of 2013. It is further stated that the plaintiff has learnt that the defendant No. 3, Jaydev Ray is the abandoned son of deceased Krishna Mohan Ray and if it's a fact, he may not execute the sale deed in favour of the plaintiff. Also, the plaintiff through his learned counsel served a legal notice dated the 18.11.2017 upon the defendants and requested them to execute the deed of sale against the suit land in his favour by receiving the outstanding consideration of the suit land within thirty days with effect from the date of service of the notice and the defendants No. 1 and 3 received the notices on 14.12.2017 but they neither executed any sale deed nor replied to the said notice within the specific period of thirty days. It is submitted that the

plaintiff is ever ready to perform his part but the defendants are not willing to perform their part. Apart from the notice the plaintiff approached the defendants on 14.01.2018 and also requested them to execute the sale deed having received the outstanding consideration for the suit land but they refused to do so.

15. Again, PW2, Rofiqul Islam and PW3, Hosen Ali, who were the attesting witnesses of the alleged agreement for earnest money, have deposed in the same line and corroborated the version of the plaintiff. Further, the plaintiff has exhibited certain documents before this Court in support of his pleading and after careful appreciation of evidence on record; the Court finds that Exhibit-1 appears to be the agreement for earnest money executed between Krishna Mohan Ray and Md. Samed Ali. The signature of plaintiff and defendants' predecessor, Krishna Mohan Ray has been exhibited as Exhibit- 1(1), (2) and (3).

16. Also, PW4, Jubi Kachari, who deposed as official witness, has stated that the Deed No. 825/116 is an agreement for sale, which was executed by Krishna Mohan Ray, S/O Late Dhananjay Ray in favour of Samed Ali, S/O Joher Ali, on 01.07.2013, for the land measuring 1

bigha situated at village- Gosaibari, revenue circle- Matia, Patta No. 33/20, Dag No. 84/31. Exhibit-1 is the original copy of the said deed.

17. It is pertinent to mention here that although the defendants submitted their written statement denying the averments of the plaintiff, but failed to adduce evidence in support of their pleadings. Also, the defendant side failed to cross-examine the plaintiff's witnesses to shake the credibility of the witnesses. As such, it can be presumed that the evidences of PW1, PW2, PW3 and PW4 are admitted by the defendants as the same remain un-rebutted. Moreover, there is nothing on record to disbelieve the exhibits filed on behalf of the plaintiffs' witnesses.

18. Therefore, on the basis of the above discussion, the Court is of considered view that Krishna Mohan Ray had executed a deed of earnest money with plaintiff regarding sale of suit land for consideration of Rs. 53,000/- and out of which late Krishna Mohan Ray received a sum of Rs. 20,000/-

Issue No. V: Whether plaintiff was given possession of the suit land on the date of execution of deed of earnest money and

has been possessing the suit land by constructing dwelling houses thereon?

19. The plaintiff in the plaint as well as in his evidence stated that the physical possession of the suit land was handed over to the plaintiff on the day of execution of the deed of earnest money. Also, PW2 and PW3, in their respective evidence have corroborated the averment of the plaintiff. Again, it appears that the defendants in their written statement remained silent in this aspect and the defendants have not cross-examined the plaintiff's witnesses. As such, it can be presumed that the evidences of PW1, PW2 and PW3 are admitted by the defendants as the same remain un-rebutted. Considering this, the Court opines that the plaintiff was given possession of the suit land on the date of execution of deed of earnest money and has been possessing the suit land by constructing dwelling houses thereon.

Issue No. VI : Whether plaintiff was ready and willing to perform his part of the contract?

20. Section 16(c) of the Specific Relief Act, 1963 provides that specific performance of a contract cannot be enforced in favour of a person, "who fails to prove that he has

performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant". Thus, the language of Section 16 (c) does not require any specific term but only that the plaintiff must assert that he has performed or has always been and is willing to perform his part of the contract.

21. In the present case it is seen that plaintiff in his pleading as well as in his evidence stated that he is ready and willing to perform his part of contract, but the defendants are not willing to perform their part. Again, the plaintiff through his learned counsel served a legal notice dated the 18.11.2017 upon the defendants and requested them to execute the deed of sale against the suit land in his favour by receiving the outstanding consideration of the suit land within thirty days with effect from the date of service of the notice and the defendants No. 1 and 3 received the notices on 14.12.2017 but they neither executed any sale deed nor replied to the said notice within the specific period of thirty days. Apart from the notice the plaintiff approached the defendants on 14.01.2018 and also requested them to execute the sale deed having received the outstanding consideration for the suit land but they refused to do so. The defendants, in their pleading, although

stated that the plaintiff did not approached them on 14.01.2018 but neither denied nor stated anything about the notice served upon them. And, as already mentioned the defendants have not adduced any evidence in support of their claims. As such, it can be observed that the plaintiff has proved his claim as to the fact that the plaintiff was ready and willing to perform his part of the contract. Hence, Issue No. VI is also decided in affirmative and in favour of the plaintiff.

Issue No. VII: Whether plaintiff is entitled to specific performance of contract as prayed for?

Issue No. VIII: To what relief or reliefs the parties are entitled to?

22. Upon considering the above discussions and decision made in abovementioned issues, the Court is of the view that that the plaintiff is entitled to the relief as prayed for. However, considering the claims of the parties as a whole, the Court is of the view that there is no need to grant any other relief to the parties. Accordingly, the issues are decided.

ORDER

23. In result, the suit is decreed on contest in favour of the plaintiff with cost. Accordingly, the plaintiff is entitled to the following reliefs:-

- i)** The plaintiff is entitled to get a decree of specific performance of contract in respect of the Schedule-A land i.e. suit land and the plaintiff will pay the balance sale consideration of Rs. 33,000/- to the defendants within one month from the date of the decree and the defendants will execute the registered sale deed in favour of the plaintiff at the cost of the plaintiff.
- ii)** On refusal or failure of the defendants to obey the decree of specific performance of contract by executing the registered sale deed in favour of the plaintiff after receiving the balance consideration the sale deed will be executed and registered through the Court in accordance with Order XXI Rule-34 of CPC.

24. Draw up a decree accordingly.

25. Given under my hand and seal of this court on this 20th day of December, 2021.

**Chandrama Talukdar
Munsiff No.2, Goalpara**

APPENDIX

Plaintiff witnesses:

- PW1: Somed Ali,
- PW2: Rofiqul Islam,
- PW3: Hosen Ali,
- PW4: Jubi Kachari (Official witness)

Defendant witnesses:

None

Plaintiff Exhibits:

- Exhibit-1: The deed of Agreement for Earnest Money vide No. 116 of 2013
- Exhibit-1(1), Exhibit-1(2) & Exhibit-1(3): The signatures of the vendor, Krishna Mohan Ray.
- Exhibit-1(4), Exhibit-1(5) & Exhibit-1(6): The signatures of Somed Ali as vendee.
- Exhibit-1(7): The signature of the attesting witness, Rofiqul Islam.
- Exhibit-1(8): The thump impression of the attesting witness, Hussain Ali.
- Exhibit-1(9): The signature of Sub-Registrar, Goalpara.
- Exhibit 2 is the legal notice dated 18.11.2017.
- Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6 & Exhibit 7 are the Postal Registration dated 20.11.2017.
- Exhibit 8 & Exhibit 9 are the A/D card dated 14.12.2017.

Defendant Exhibits:

None

**Chandrama Talukdar
Munsiff No.2, Goalpara**