

HIGH COURT FORM NO (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Goalpara (Assam)

IN THE COURT OF CIVIL JUDGE : GOALPARA (ASSAM)

**Present:- Mr. A.Kader, AJS,
Civil Judge, Goalpara.**

Title Suit No. 89 of 2023

Tuesday, the 18th September, 2023.

(1) Mofida Khatun

(2) Selima Aktar *Plaintiffs.*

-Versus-

(1) Nurazzaman Miah

(2) Abul Kalam Azad

(3) Abdus Salam *Defendants.*

The suit coming for final hearing on **07/09/2023** in presence of-

Learned advocate:

For the Plaintiffs : **Mr. Anisur Rahman**

For the Defendants: **Shahjahan Ali.**

*And having stood for consideration on this **18th September, 2023** the Court delivered the following Judgment.*

J U D G M E N T

1. This suit is filed by the plaintiffs praying for a decree of Specific Performance of Contract for sale of land measuring 1 Katha 15 Lecha out of total land measuring 3 Katha 5 Lecha under Patta No. 218 and Dag No. 499, situated at Lakhipur Town under Lakhipur Revenue Circle, Goalpara.

2. That the defendants proposes to sell the suit land 1 Katha 15 lecha in favour of the plaintiffs. Thereafter, both the plaintiffs and defendants executed an agreement for sale of the suit land at consideration of Rs. 42,00,000/- on 07-02-2023. Out of the said amount the defendants received Rs. 2,00,000/- after execution of the agreement for sale and also agreed to execute registered sale deed after three months w.e.f. the agreement and also further agreed to have received the outstanding consideration of the suit land at the time of execution and registration of the sale deed in favour of the plaintiffs.

3. That the plaintiffs have requested the defendants to execute a registered sale deed after receiving the balance amount, but the defendant delayed the same showing some reasons. Subsequently, on 17th May, 2023, after expiry of three months, plaintiffs requested the defendatns for execution of the registered sale deed

by receiving the outstanding consideration amount. But the defendants on 21/07/2023 refused to have sold the land to the plaintiffs. As such, the plaintiffs are ready to pay the remaining amount. Hence, the suit.

4. Learned counsel for the defendants **Mr. Shahjahan Ali** submitted by filing written statement stated that the defendants are agreed to execute the registered sale deed in favour of the plaintiffs if the outstanding consideration amount shall be paid by the plaintiffs and hence, the defendants do not have any objection.

5. POINT FOR DETERMINATION

- (i) Whether there is any cause of action ?
- (ii) Whether the defendant has right, title and interest over the suit land ?
- (iii) Whether the defendant executed an agreement for sale of the suit land in favour of the plaintiffs ?
- (iv) Whether the plaintiff willing to perform his part of the contract and defendant failed to perform his part of contract ?
- (v) Whether is plaintiff is entitled to any relief ?

6. DECISIONS AND REASONS THEREOF:

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

The plaintiffs stated that they as well as the defendants executed an agreement for sale of the suit land fixing consideration of Rs. 42,00,000/- and out of the said amount the plaintiff already paid Rs. 2,00,000/- to the defendants.

Subsequently, the defendants refused to execute the registered sale deed. As such it is found that the plaintiffs has cause of action to institute the suit.

(ii) Whether the defendant has right, title and interest over the suit land ?

The Annexure No.1 is the Computer generated copy of Jamabandi under Patta No. 218, Dag No. 499, which reflects that the land measuring 3 Katha 5 Lecha stood in the name of the defendants as pattadar.

From the above documentary evidence, it is clear that the defendant are the pattadar as well as owner of the suit land measuring 1 Katha 15 Lecha out of 3 Katha 5 Lecha of land.

(iii) Whether the defendants executed an agreement for sale of the suit land in favour of the plaintiffs ?

Annexure-3 is the agreement for sale dated 17-02-2023 which was duly executed by the defendants. It reflects the fact that both the parties entered into an agreement for sale of the suit land, which is considering of Rs. 42,00,000/-. Out of the said amount, the defendant received Rs. 2,00,000/-. As such it is found that the plaintiffs and the defendants entered into an agreement for sale of the suit land and the defendant received consideration money.

(iv) Whether the plaintiff willing to perform his part of the contract and defendant failed to perform his part of contract ?

The plaintiffs stated that he already paid Rs. 2,00,000/- and also willing to pay remaining amount of Rs. 40,00,000/- only in pursuance of an agreement for sale of the suit land vide Annexure-3. Since, the plaintiffs on 17th May, 2023 after expiry of three months, requested to defendants for execution and registration of the sale deed in their favour. But the defendants on 21/07/2023 refused to have sold the land to the plaintiffs. As such it is clear that the plaintiffs were always ready and willing to perform their part of contract. But the defendant were not ready and willing to perform their part of contract.

(v) Whether the plaintiff is entitled to get any relief ?

Considering above discussion as well as the admission of case by the defendants in the W.S. this court is of opinion that the plaintiffs are entitled to following decree as follows:

(a) That the plaintiffs as well as the defendants executed an agreement for sale of the suit land dated 17-02-2023 on consideration of Rs. 42,00,000/- and out of the said amount the defendant received Rs. 2,00,000/- on the same date.

(b) The defendants are bound to execute a registered sale deed in favour of the plaintiffs upon receiving of balance consideration amount of Rs. 40,00,000/- from the plaintiffs in respect of the suit land. Otherwise, the plaintiffs are entitled to get

execution of the registered sale deed through the court and also entitled to Khas Possession over the suit land.

(c) The plaintiff is directed to deposit the remaining consideration amount within 2 (two) months from the date of judgment.

7. Considering the above discussions the instant suit is allowed. The plaintiffs are entitled to get cost of the suit from the defendants.

8. Prepare a decree accordingly.

9. The case is disposed of.

Given under my hand and seal of this court on this 18th day of September, 2023.

**(Abdul Kader, AJS,
CIVIL JUDGE (Sr.Div), GOALPARA**