

Form No. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Jorhat

IN THE COURT OF MUNSIFF NO.1, JORHAT*Present:* Shri Jaspal Singh, AJS.Friday, the 23rd day of September, 2011.**Title Suit No. 122 of 2006**Sri Kamaljit Singh.....*Plaintiff**versus*

1. Smti. Anup Kaur
2. Sri Pradeep Singh @ Prabhdeep Singh
3. Smti. Surinder Kaur
4. Smti. Harjeet Kaur
5. Miss Simran Kaur
6. Miss Chandpreet Kaur
7. Master Jaspreet Singh..... *Defendants*

This suit coming on for final hearing on...NA....in presence of:-

Advocate for the Plaintiff: Shri B. K. Didwani

Advocate for the Defendants No. 1 and 2: Shri Abhijit Ghosh

Advocates for the Defendants No. 3 to 7: None.

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

J U D G M E N T

1. This is a suit for ejection, recovery of arrear rent and compensation. The case of the plaintiff, in brief, is that the plaintiff is the owner of the suit room described

in Schedule A to the plaint. The defendants no. 1 and 2 along with late Raghubir Singh, predecessor-in-interest of defendants no. 5, 6 and 7, and late Prakash Kaur, predecessor-in-interest of defendants no. 3 and 4, were monthly tenants in respect of the suit room under late Darshan Singh, the predecessor-in-interest of the plaintiff, and after his death they became tenants under the plaintiff. The defendants have been doing business in the suit room under the name and style "M/S Sri Guru Nanak Engineering Works". The rent is Rs.750.00 per month. The defendants have not paid the monthly rent from the month of February, 1999, and so they are defaulters in payment of rent as per law. A lawyer's notice dated 7.9.2003 was sent by the plaintiff to the defendants asking them to vacate the suit room within 15 days. Admitting that they were tenants under the plaintiff and were not paying the monthly rent due to their financial hardships, the defendants replied that they wanted to pay the arrears of rent in installments. Further, the case of the plaintiff is that he *bona fide* requires the suit room for starting his own business. Hence this suit.

2. The defendants no. 1 and 2 contested the suit by filing written statement. The suit proceeded *ex parte* against the defendants no. 3 to 7. In their written statement, the defendants no. 1 and 2 stated that the suit is not maintainable and there is no cause of action. They also stated that (1) the defendants do not recognize the plaintiff as the owner of the suit room and their landlord; (2) the story of tenancy is false and concocted as the plaintiff has not brought to the notice of the Court when the so called tenancy commenced; (3) the answering defendants have been in possession of the suit room since 3.6.1990 and the same is being used for the business of the answering defendants by treating the same as their property; (4) the plaintiff never raised any voice against the exclusive possession

of the answering defendants since 3.6.1990, but slept over his so called right; (5) the answering defendants have right, title and interest over the suit room by way of adverse possession, and hence the suit is barred by law of limitation.

3. The following **issues** were framed in this suit:

- (1) Whether there is cause of action for this suit?
- (2) Whether the suit is bad for non-joinder of necessary party?
- (3) Whether the defendants are tenants and are under an obligation to pay the lawful rent whenever it falls due for payment?
- (4) Whether the defendants are defaulters in the eye of law?
- (5) Whether the defendants had violated the agreed terms of tenancy?
- (6) Whether the defendants are liable to be evicted from the suit premises?
- (7) Whether the plaintiff is entitled to get decree as prayed for?
- (8) What relief/reliefs are the parties entitled to?

4. In course of the hearing of this suit, the plaintiff examined himself as a witness and also examined Sri Dhiren Kumar Borah (Advocate) as his witness. When the suit was pending for evidence for the defendants' side, the defendants no. 1 and 2, on 8.9.2011, filed a petition bearing no. 1641/2011 under Order 12, rule 6 of the CPC praying for pronouncement of judgment on admission on the ground that they were admitting all the claims of the plaintiff made in the plaint.

5. Before I deal with the said petition here, let me mention the law as Judgment on Admission. Order 12, rule 6 of the CPC provides as follows:

"6. Judgment on admissions. – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

6. It is apparent from the said provision that the Court may pronounce judgment on admission of fact only and not of law. The admission may be made by the either party in the pleading or otherwise. The admission may also be made *de hors* the pleadings. The admission may even be made orally. Even if issues have been framed in the suit, the Court can pronounce judgment on admission as because that can be done "at any stage of the suit". The Court may pronounce judgment on admission even *suo motu*.

7. However, the word "may" used in the said provision explains that a judgment on admission is not a matter of right and rather is a matter of discretion of the Court which has to be exercised judiciously. For a judgment to be passed on admission, the admissions of fact must be clear, unambiguous and unconditional. Judgment cannot be pronounced if admission is subject to a condition.

8. On going through the said petition, it appears to me that the defendants no. 1 and 2 have very clearly stated that they *admit the title and claims of the plaintiff in the above case as mentioned in para 1 to 14 with prayer of the plaint by the plaintiff*. The said petition is duly supported by an affidavit. The contents of the petition reflect a clear and unconditional admission of all facts averred by the plaintiff in his plaint. That the

defendants no. 1 and 2 have filed written statement denying all the averments in the plaint, that issues have already been framed in this suit on the basis of the pleadings and that the plaintiff and his witness have already been cross-examined by the learned counsel for the defendants no. 1 and 2, cannot be the reasons for not accepting the said petition of the defendants no. 1 and 2 at this stage as because as per Order 12, rule 6, CPC, the Court may pronounce judgment on admission at any stage of the suit, and, therefore, it is open to the either party to make admissions of fact at any stage of the suit. Therefore, I do not think there is any justification on my part in not accepting the said petition of the defendants no. 1 and 2.

9. However, there is a difficulty which needs mention here. There are in all seven defendants in this suit. The suit has been proceeding *ex parte* as against defendants no. 3 to 7. In the petition referred to the above, admittedly only the defendants no. 1 and 2 have made the admissions of fact, but not the other defendants. As such, judgment on admission cannot, in my considered view, be pronounced as against the defendants no. 3 to 7. Judgment can only be pronounced as against them *ex parte*. Judgment on admission and judgment *ex parte* are not the same. Therefore, a question arises as to whether this is a valid ground for rejecting the petition of the defendants no. 1 and 2. Another question that arises before me is as to whether it is possible and practicable on my part to pronounce judgment on admission as against the defendants no. 1 and 2 and judgment *ex parte* as against the remaining defendants at one go. I am of a considered view that the petition of the defendants no. 1 and 2 cannot be rejected for the said reason. I am also of a considered view that it is very much possible and practicable to pronounce judgment on admission as against the defendants no. 1

and 2 and judgment *ex parte* as against the remaining defendants and dispose of this suit by a common single judgment. I say so as because I cannot reject the prayer of the defendants no. 1 and 2 that they admit all the claims of the plaintiffs, and, in turn, ask them to contest this suit just because the suit has been proceeding *ex parte* as against the remaining defendants. That approach does not seem to be reasonable from the point of view of a prudent person.

10. In view of the foregoing discussion, I accept the contents of the said petition and allow the prayer of the defendants no. 1 and 2. It is pertinent to state here that as I have allowed the prayer of the defendants no. 1 and 2 for pronouncing judgment on admission, it is not at all necessary for me to discuss or even refer to the evidence on record in this suit insofar as the defendants no. 1 and 2.

11. Coming to the case of the defendants no. 3 to 7, against whom the suit has been proceeding *ex parte*, it is necessary on my part to consider the evidence of the plaintiff's side tendered on record. In *Ramesh Chand Ardawatiya v. Anil Panjwani*, AIR 2003 SC 2508, it was held by the Hon'ble Supreme Court that in cases heard *ex parte* the burden of proof on the plaintiff is not very heavy. A *prima facie* proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled.

12. The plaintiff (PW1) has deposed in his evidence-on-affidavit that the suit room originally belonged to his father, late Darshan Singh, and after his death he (PW1) became the owner thereof. The defendants no. 1 and 2 along with late Raghubir Singh, predecessor-in-interest of defendants no. 5, 6 and 7, and late Prakash Kaur, predecessor-in-interest of defendants no. 3 and 4, were monthly tenants in respect of the suit room under

his father, late Darshan Singh, and after his father's death they became tenants under him. The defendants are in occupation of the suit premises as monthly tenants under oral agreement and carrying on their business under name and style "M/S Guru Nanak Engineering Works". The monthly rent payable is Rs.750/-. The defendants have not paid their monthly rent since the month of February, 1999. A lawyer's notice dated 7.9.2003 (Ext.6) was sent by the plaintiff to the defendants asking them to vacate the suit room within 15 days and to pay the arrears of rent due together with compensation. The defendants replied in writing (Ext.8) that they were monthly tenants under the plaintiff and were not paying the monthly rent for the last four years i.e. since the year 1999. The defendants have neither vacated the suit premises nor made any payment and they are out and out defaulters in respect of payment of rent. The suit room is also required by the plaintiff for his *bona fide* purpose to start his own business for livelihood of his family.

13. The plaintiff (PW1) has exhibited the Jamabandi in original (2 nos.) in respect of land covered by P.P. Nos. 93 and 143 on which the suit premises are situated. The said Jamabandis (Ext.2 and Ext.3) show the names of the plaintiff's father as one of the Pattadars. The plaintiff has also exhibited the legal heir certificate (Ext.5) showing his name therein. The testimony of PW1 (coupled with all the documents exhibited) discloses a *prima facie* case as alleged by the plaintiff. Therefore, the plaintiff is entitled to a decree in this suit against the defendants.

ORDER

In view of the foregoing discussion, *the suit is decreed on admission as against the defendants no. 1 and 2, and ex parte as against the defendants no. 3 to 7.*

The plaintiff is entitled to the following reliefs:

(1) eviction of the defendants from the suit premises and delivery of khas possession;

(2) arrears of rent with effect from October 2003 to August 2006 i.e. for 35 months @ Rs.750/- p.m., that is, Rs.26,250/- (arrears of rent of previous years are barred by limitation as per Article 52 of the Schedule to the Limitation Act, 1963);

(3) rent pendente lite @ Rs.750/- p.m. from the date of the suit till eviction of the defendants in due process of law;

(4) costs of the suit.

Prepare a decree accordingly.

Given under my hand and the seal of this Court on this the 23rd day of September, 2011, at Jorhat.