

Form No. (J) 2**HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE**

DISTRICT: JORHAT

IN THE CIVIL COURT OF THE MUNSIFF NO.2 AT JORHAT

Present: Sri Bhupen Kumar Nath

Munsiff no.2 at Jorhat

Friday, the 23rd day of December 2011**Suit/Case No. T.S. No.14/08**

1. National Telegraph Training and Commercial Institute
2. The Governing Body of the National Telegraph Training and Commercial Institute

Plaintiff(s)

Petitioner(s)

Versus

1. Shri Naren Deka

- 2.

Defendant(s)

Opposite Party (ies)

This suit/case coming on for final hearing on 28.11.2011
(give date or dates) in the presence of—

Mr. R.P. Dhar ----- learned Advocate/Pleader for the
Plaintiff(s)/Petitioner(s)

Mr. M. Dutta -----learned Advocate/Pleader for the
Defendants(s)/Opposite Party (ies)

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

JUDGMENT

Nature of the suit

1. This is a suit for khas possession, eviction, recovery of arrears of rent and compensation.

The plaintiffs' case in a nutshell as understood from the plaint:

2. The plaintiff no. 1 a public institution registered under the Societies Registration Act, 1860. The plaintiff no.2 is the Governing Body of the plaintiff no.1. The plaintiff no.1 is the owner of the suit premises, namely, two pucca rooms, bearing Municipal Holding No.145 of Ward No.10 of Jorhat Town, standing on the land covered by dag no.4570 of block no.2, Jorhat Town, District: Jorhat, Assam. The plaintiff no.1 has rented the suit premises to the defendant at the monthly rent of Rs 200/-(Rupees two hundred only) per month from June 1985. The plaintiffs filed a suit being T.S. No.69/88 in the Hon'ble court of Assistant District Judge, Jorhat for declaration of right, title and interest of the plaintiff over the present suit premises, eviction of the defendant there from and delivery of the possession of the same coupled with compensation. on conclusion of the trial, the said suit was dismissed. The plaintiffs preferred an appeal before the Hon'ble District Judge, Jorhat which was registered and numbered as TA.1/96. The Hon'ble District Judge, Jorhat allowed the appeal, set aside the impugned Judgment and decreed the suit in faovur of the plaintiff. Against the Judgment passed in TA.1/96, the

defendant preferred a second appeal being Second Appeal No.186/1996 before the Hon'ble Gauhati High Court. Vide the Judgment and Order dated 02.09.2003 passed in the Second Appeal No.186/1996, the Hon'ble Gauhati High Court was pleased to remand the T.S. No.69/88 to the Hon'ble Court of Assistant Judge with direction to frame issue as regard to bona fide requirement of the suit premises. In the said Judgment and Order dated 02.09.2003, the Hon'ble High Court was pleased to hold that the plaintiff has right, title and interest over the suit premises and the defendant is a tenant under him. On remand, the Hon'ble Court of Civil Judge (Senior Division), Jorhat framed two additional issues in the suit, namely, (i) Whether the defendant was a defaulter and (ii) Whether the plaintiff was in bona fide need of the suit premises. On conclusion of the trial, the Hon'ble Court of Civil Judge (Senior Division), Jorhat dismissed the suit holding that the plaintiff failed to prove the defendant as a defaulter and his bona fide requirement of the suit premises. The defendant has been occupying the suit premises for his business purposes without paying any rent to the plaintiff. Since final disposal of the T.S. No.69/88, the defendant has not paid any rent for the suit premises. Thus, he remained defaulter in payment of rent for the suit premises w.e.f. 02.09.2003. However, the plaintiffs have claimed arrears monthly rent for the suit premises from June 2005 to May 2008 amounting to Rs 7,200/- (Rupees seven thousand two hundred only)

The defendant's case in a nutshell as understood from the written statement:

3. There is no cause of action for the suit. The suit is false, baseless and concocted. The suit is not maintainable in law as well as on facts. The suit is hit by principles of estoppels, acquiescence and waiver. The suit is bad for non-joinder of necessary party. The plaintiff no.1 is not a legal entity and cannot sue against the defendant as a plaintiff. There is no tenancy between the plaintiff no.1 and the defendant and hence, the plaintiff no.1 has no right to claim any rent for the suit premises. The suit premises of T.S. No. 69/88 are not same as of the suit premises of the present case. The plaintiff no.1 has no right, title and interest over the suit premises. The Hon'ble High Court did not hold that the plaintiff no.1 has right, title and interest over the present suit premises. The present suit premises were no way involved in T.S. No.69/88. The defendant has been occupying the present suit land since 1984 constructing a pucca building over the same. There is no tenancy agreement between the plaintiff no.1 and the defendant. Since the defendant is not a tenant under the plaintiff no.1, the question of his being defaulter does not arise. The plaintiffs have no right to claim ownership over the suit premises, which belong to the defendant.

Issues:

4. On the basis of the pleadings, the following issues were framed in the suit.

I. Whether there is cause of action for the suit?

II. Whether the plaintiff has *locus standi* to sue against the defendant?

III. Whether the suit is hit by principles of estoppels, acquiescence and waiver?

IV. Whether the defendant is a tenant under the plaintiff in respect of the suit premises?

V. Whether the defendant is a defaulter?

VI. To what relief(s) the parties are entitled?

Apart from the above issues, the following additional issues were also framed in the suit:

I. Whether the plaintiff has any right, title and interest over the suit premises?

II. Whether the suit is bad for non-joinder of necessary parties?

Evidences brought forth by the parties:

5. The plaintiffs examined as many as 3 PWs and exhibited 3 documents. The defendant examined as many as 2 DWs including him and exhibited no document. I have heard arguments from the learned counsel for the plaintiffs and defendant and perused the materials on record in a meticulous manner.

DISCUSSION, DECISION AND REASONS THEREOF

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

6. It is settled position of law that cause of action is a bundle of facts on the basis of which the plaintiff prays the court to pass a decree in his favour; and such bundle of facts if not controverted entitles the plaintiff to a decree. In the case at hand, the plaintiffs have stated that the plaintiff no.1 is the owner of the suit premises

and the defendant is a tenant in respect of the same. The plaintiffs have alleged that the defendant defaulted in paying rent for the suit premise. Thus, in the present case, from the facts averred by the plaintiff in his plaint, it is pellucid that there is cause of action for the suit. Hence, this issue is decided in favour of the plaintiff.

Issue No.II. Whether the plaintiff has *locus standi* to sue against the defendant?:

7. The defendant has averred that the plaintiff is not a legal entity and cannot sue against the defendant as a plaintiff. However, the Ext.1, the Certificate of Registration of Societies, categorically shows that the plaintiff no.1 is registered under the Societies Registration Act, 1860. There is no legal bar for a society to sue in its name. Hence, I decide this issue in positive, i.e., in favour of the plaintiff.

Additional Issue No.II. Whether the suit is bad for non-joinder of necessary parties?:

8. The defendant has averred in his written statement that the suit is bad for non-joinder of necessary parties. Although the defendant is silent as to who would be the necessary party(ies) in the suit; in his examination-in chief, he has testified that the defendant has not made the government as a party to the suit. It is pertinent to mention here that barring the defendant, the plaintiff no.1 has not claimed any right to relief against anybody. The key contentions of the plaintiff no.1 are that the defendant is the tenant under it and he has defaulted in payment of rent. Thus, in the suit at hand, the

right to relief is claimed against defendant only. Hence, it has to be decided that the suit is not bad for non-joinder of necessary parties.

Issue No.III. Whether the suit is hit by principles of estoppels, acquiescence and waiver?:

9. The defendant has asserted this point. Hence, the burden of proving the present issue lies on the defendant. However, the defendant could not adduce any evidence to prove this issue. Hence, the issue is decided in negative.

Additional Issue No.I. Whether the plaintiff has any right, title and interest over the suit premises?:

10. The plaintiffs have stated in their plaint that vide the Judgment and Order dated 02.09.2003 passed in Second Appeal No.186/1996, the Hon'ble High Court was pleased to hold that the plaintiff has right, title and interest over the suit premises and the defendant is tenant under him. On the other hand, the defendant has stated in his written statement that the suit premises of T.S. No. 69/88 are not same as of the suit premises of the present case. The present suit premises were no way involved in T.S. No.69/88. The plaintiff has no right, title and interest over the suit premises. The Hon'ble High Court did not hold that the plaintiff has right, title and interest over the present suit premises. Thus, the defendant has not disputed the fact that the Hon'ble Gauhati High Court was pleased to hold that the plaintiff has right title and

interest over the suit premises of T.S. No.69/88 and the defendant was a tenant under the plaintiff in respect of the said premises. The contention of the defendant is that the present suit premises and the suit premises of the T.S. No.69/88 are different. The defendant has further stated that he has been occupying the present suit land since 1984 constructing a pucca (concrete) building over the same. Now, the central point before me is to see whether the present suit premises and the suit premises of T.S. No.69/88 are same or not.

11. In this regard, the PW1, Shri Deba Prasad Bharali has stated in his cross-examination that the suit land is in the name of the institute (the plaintiff no.1). The PW1 has stated that the dag no. of the suit land is 4570 and block no. is 2. The PW1 has stated that the suit land bears no patta no. as it is govt. reserved land. The PW1 has stated that, in respect of the suit house, T.S. No.69/88 was filed. The PW1 has stated that the said suit was filed by his father, Late Debendra Bharali. The PW1 has denied the suggestion that, the land and house of the previous suit is not similar to the present suit.

The PW2, Shri Paban Kumar Borbora has stated in his cross-examination that although the suit land is govt. land; the govt. has allowed them to use the same vide certificate. The PW2 has stated that about 2 bighas of land stand in the name of institute (the plaintiff no.1). The PW1 has denied the suggestion that, the land and house of the previous suit is not similar to the present suit.

The PW3, Shri Atul Chandra Bora (the Lat Mandal) has deposed before this court that in dag no.4570 there are 2 big 2 kotha govt. lands. The said PW3 has further deposed that

according to the chitha bahi, the said lands are in the name of the plaintiff no.1.

12. It is pertinent to mention here that on an application filed by the plaintiffs, the record of the T.S. No.69/88 was called for. Now I have proceeded to peruse the record of T.S. No.69/88. The suit properties of T.S. No.69/88 were described in the Schedule A and B of the plaint of the said suit as follows:

Schedule 'A': *Dag No.4570 of Block No.2, Jorhat*

Schedule 'B': *The rooms towards the side of Thana Road and Mahatma Gandhi Road being the part of the main R.C.C. building on Dag no.4570 of block no.2, Jorhat Town along with the structure and houses originally occupied by Shri Jogen Bora and taken possession from him by virtue of civil suit.*

Thus, the suit premises of T.S. No.69/88 stand on the land covered by dag no.4570 and block no.2, Jorhat. Likewise, the suit premises of the present suit also stand on the land covered by dag no.4570 of block no.2, Jorhat Town, District: Jorhat, Assam. Therefore, prima facie it appears that the suit premises of the T.S. No.69/88 are similar to the suit premises of the present suit. That apart, the PW3, Shri Atul Chandra Bora (the Lat Mandal) has deposed before this court that according to the chitha bahi, the lands of the dag no.4570 are in the name of the plaintiff no.1.

13. Now, I have proceeded to peruse the evidences adduced by the defendant to see whether he can rebut my prima facie finding that the suit premises of the T.S. No.69/88 are similar to the suit premises of the present suit. The defendant has stated in his examination-in-chief that he has been in possession of the suit

land since 1985 by constructing pucca (concrete) house. According to the defendant, during the pendency of this suit, in 2008, he applied before the District Land Advisory Committee to settle the suit land in his name; however, his proposal was rejected. Thus, the defendant himself has stated that his proposal for settlement of the suit land in his name was rejected.

In the cross-examination, the DW1 has stated that the boundaries of the previous suit premises, suit land are similar to the present suit premises, suit land. Thus, the defendant himself has supplemented my prima facie finding that the suit premises of the T.S. No.69/88 are similar to the suit premises of the present suit.

Since there is no dispute between the parties that the plaintiff no.1 has right, title and interest over the suit premises of T.S. No.69/88, having found the suit premises of the present suit similar to the same, this court has to hold this issue in positive; i.e., in favour of the plaintiffs.

Issue No. IV. Whether the defendant is a tenant under the plaintiff in respect of the suit premises?:

14. There is no dispute that the defendant was tenant under the plaintiff in respect of suit premises of the T.S. No69/88. Now while embarking on a discussion in the foregoing issue, I have found that the suit premises of the T.S. No.69/11 and the present suit are the same. Therefore, I have no hesitation to decide the present issue in positive, i.e., in favour of the plaintiffs.

Issue No.V. Whether the defendant is a defaulter?:

15. It is the contention of the plaintiffs that the defendant has not paid the rent for the suit premises since final disposal of the T.S. No.69/88. Thus, according to the plaintiffs, the defendant has remained defaulter in payment of rent for the suit premises w.e.f. 02.09.2003. Countering the said contentions of the plaintiffs, the defendant has stated that there is no tenancy agreement between the plaintiffs and the defendant and since the defendant is not a tenant under the plaintiffs; the question of his being defaulter does not arise at all. The defendant has further stated that the defendant has been occupying the present suit premises since 1984. Thus, although the defendant denied the right, title and interest of the plaintiffs over the suit premises and tenancy between him and the plaintiff in respect of the suit premises; he has not taken any specific defence to negate the claim of the plaintiffs that he is a defaulter in respect of payment of rent of the suit premises. In view of my decisions in the foregoing issues, the plaintiffs are found to have right, title and interest over the suit premises and the defendant is found to be a tenant under the plaintiffs. Therefore, it is implicit that the defendant should pay rent for the suit premises to the plaintiffs. However, he has not averred anywhere that he has paid rent for the suit premises. Therefore, the balance of probability suggests that the defendant is defaulter in respect of payment of rent for the suit premise. Accordingly, this issue is decided in positive, i.e., in favour of the plaintiffs.

Issue No.V. To what relief(s) the parties are entitled?

16. In view of my above decisions, I am of the considered opinion that the plaintiffs are entitled to the Decree for:

- (A) Eviction of the defendant from the suit premises,
- (B) Recovery of Khas possession of the suit premises and
- (C) Recovery of arrears rent for the suit premises from June 2005 to May 2008 amounting to Rs 7,200/- (Rupees seven thousand two hundred only)

ORDER

17. In result, the suit of the plaintiffs is decreed on contest with cost. The defendant shall be evicted from the suit premises and the plaintiff shall be put into khas possession of the same. The defendant is directed to make arrears rent for the suit premises amounting to Rs 7,200/- (Rupees seven thousand two hundred only) to the plaintiffs within two months from this order. Otherwise, he shall bear an interest @ 8% per annum on the said amount.

18. Draw up a decree accordingly.

19. Given under my hand and seal of this court on this 23rd day of December 2011.

(BHUPEN KUMAR NATH)

Munsiff No.2 at Jorhat

Appendix**Plaintiffs' Witness:**

PW1: Shri Deba Prasad Bharali

PW2: Shri Paban Kumar Borabora

PW3: Shri Atul Chandra Bora

Defendant's Witness:

DW1: Shri Naren Deka

DW2: Smt. Ranjita Saikia

Plaintiffs Exhibits:

Ext.1: Certificate of Registration of Societies

Ext.2: Certified copy of Judgment passed in T.S. No.69/11

Ext.3: Photograph

Defendants' Exhibits: None

(BHUPEN KUMAR NATH)

Munsiff No.2 at Jorhat