

**Form No. (J) 2**

## HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Jorhat

**IN THE COURT OF THE MUNSIFF NO.1, JORHAT***Present:* Shri Jaspal Singh, AJS.Thursday, the 8<sup>th</sup> day of December, 2011.**Title Suit No. 71 of 2006 (previously T.S. 21/95)**Sri Chittaranjan Sarma.....*Plaintiff**versus*Sri Nila Kanta Sarma.....*Defendant*

This suit coming on for final hearing on 23.5.2011, 1.7.2011, 29.8.11, 13.9.2011, 24.10.2011 and 18.11.2011 in presence of –

Advocate for the Plaintiff: Shri P. C. Borah.

Advocate for the Defendant: Shri M. C. Dutta

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

**J U D G M E N T**

1. The case of the plaintiff is that he had purchased a plot of land, measuring 1B-1K-6L covered by Dag No.5380 of P.P. No.83 of Block No.3 of Jorhat Town (described in the plaint in Schedule A and hereinafter referred to as “the suit land”), from his father, since deceased, in the year 1967. He has been residing with his family in his house standing on the suit land. To the north and the west of the plaintiff’s land is situated the land of the defendant where the defendant has his dwelling house. In February 1987, the defendant filled up the plaintiff’s northern boundary drain and made preparations to erect walls within the plaintiff’s

land. Despite protests made by the plaintiff, the defendant continued his preparation to erect the walls.

2. The plaintiff then filed a petition under Section 145, Cr.P.C., which was registered as Misc. Case No.86/87. In the said case the plaintiff was directed to seek his relief in the revenue Court. Thereafter the defendant dug the foundation drain and erected the plinth within the plaintiff's land and beyond the defendant's southern boundary. The defendant also started construction of a boundary wall which remained incomplete. The defendant again on 10.2.95 made further construction of the said walls. The plaintiff also filed a petition before the S.D.C., Jorhat East Circle, for identifying, specifying and demarcating the boundaries between the plot of land of the plaintiff and that of the defendant. The learned S.D.C. found that some portion of the plaintiff's land was in the occupation of the defendant. But the defendant refused to vacate the same and continued in his illegal occupation of the plaintiff's land measuring more or less 6-7 lessas beyond the defendant's southern and eastern boundary.

3. As such, the plaintiff has filed this suit seeking a decree for (a) identifying, locating, specifying, demarcating and separating the plaintiff's northern and western boundaries from that of the defendant's land, and (b) eviction of the defendant from the plaintiff's land found in his illegal possession after demolishing and removing all structures raised thereon by the defendant.

4. The defendant has contested this suit by filing written statement. Besides denying the averments of the plaint and asserting that he never encroached upon any land of the

plaintiff, the defendant has stated in his written statement *inter alia* that (a) the suit has got no cause of action, (b) the suit is bad for non-joinder of necessary parties, and (b) the suit is barred by limitation.

### **ISSUES**

5. On the basis of the pleadings, the following issues were framed in this suit:

- 1) Whether there is any cause of action for the suit?
- 2) Whether the suit is barred by the law of limitation?
- 3) Whether the suit is bad for non-joinder of necessary parties?
- 4) Whether the defendant filled up the plaintiff's northern boundary drain?
- 5) Whether the defendant started construction of his boundary wall within the plaintiff's land and thereby encroached over the plaintiff's land?
- 6) Whether the plaintiff filled up the boundary drain and raised bamboo wall within the defendant's land?
- 7) Whether the defendant is in occupation of the land measuring more or less 6/7 lessas of the plaintiff's land?
- 8) Whether the plaintiff is entitled to a decree for evicting the defendant and for recovery of possession of the suit land?
- 9) To what relief/reliefs are the parties entitled?

6. The plaintiff has examined himself and the Lat Mandal in support of his case. The defendant has examined only himself in this case.

## **DISCUSSION, DECISION AND REASONS THEREFOR**

7. I have gone through the pleadings of the parties and the evidence on record, and have perused the relevant documents and also considered the submissions made by the learned counsel.

### **Decision on Issue No.1 with reasons**

8. The averments made in the plaint *prima facie* disclose that there is a cause of action for the suit. It may be stated here that cause of action is nothing but a bundle of facts which a party has to prove to get a judgment in his favour. It is a different aspect altogether as to whether or not he succeeds in proving those facts. In the instant suit, the plaintiff has alleged that the defendant is in illegal occupation of about 6-7 lessas of his land. He has to prove this fact to get a judgment in this favour. So there is a cause of action for this suit. This issue is, accordingly, decided in the affirmative.

### **Decision on Issue No.2 with reasons**

9. The defendant has averred in his written statement that the suit is barred by limitation. But he has not raised any matter in his written statement which shows that the suit is barred by limitation, though it was incumbent on him to do so in view of the provision of Order VIII, Rule 2, CPC. Therefore, this issue is decided in the negative.

### **Decision on Issue No.3 with reasons**

10. Though the defendant has asserted in the written statement that the suit is bad for non-joinder of necessary parties, he has not raised any matter in the written statement which shows that the suit is bad for non-joinder

of necessary parties. Learned counsel for the defendant has, however, drawn my attention to an admission made by the plaintiff in his cross-examination that he has not impleaded the Pattadars of the suit Patta as parties in this suit. I would like to state here that the other Pattadars are by no means necessary parties in this suit as because the plaintiff, who is the absolute owner of the land in question, has grievance only against the defendant. Therefore, this issue is decided in the negative.

**Decisions on Issues No.4, 5, 6 and 7 with reasons**

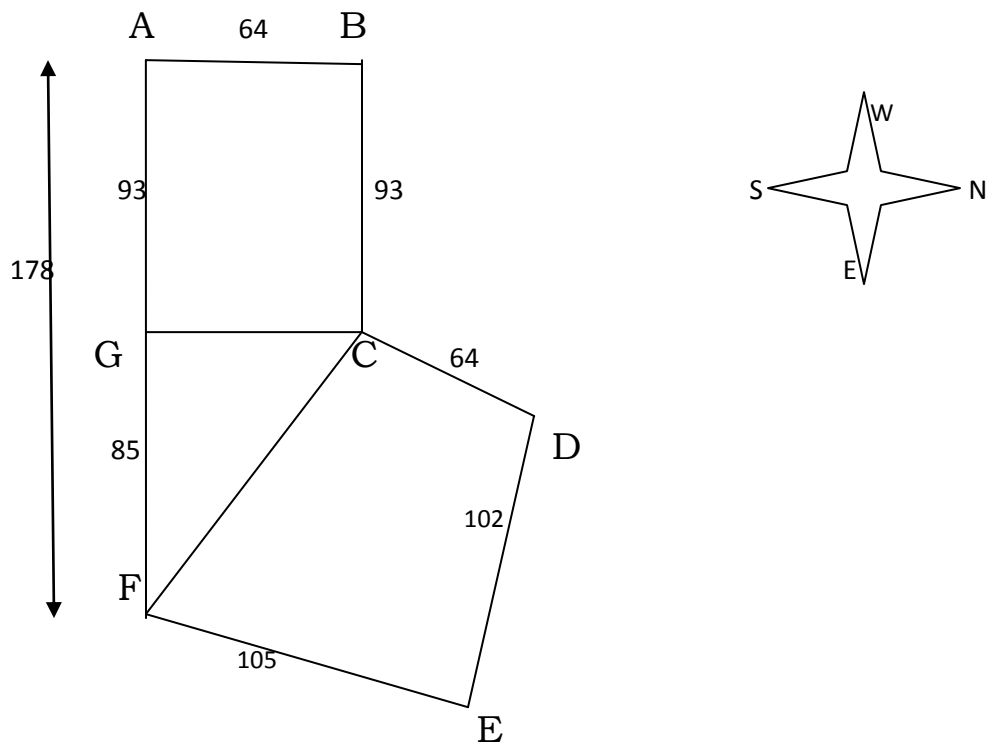
11. For the sake of convenience, all these issues are taken up together for discussion. The fate of all these issues is directly linked to the question as to whether the defendant is in illegal occupation of the plaintiff's land. The case of the plaintiff is that he is the owner of a plot of land measuring 1B-1K-6L covered by Dag No.5380 of P.P. No.83 of Block No.3 of Jorhat Town. His claim is that the defendant has been in illegal occupation of his (plaintiff's) land measuring more or less 6-7 lessas beyond the defendant's southern and eastern boundary. During the long pendency of this suit, local investigation of the spot was done on as many as three instances through survey commissions. On the first two instances, the reports of the survey commissions were not accepted by this Court on ground *inter alia* that the survey was not conducted as per procedure. The fate of the report of the third survey commission has not been decided as yet as because the survey commissioner could not be examined (owing to his death). As the proceedings relating to local investigation through survey commissions consumed as many as thirteen long years, this Court, vide order dated 7.4.2011, declined to proceed further with the

matters pertaining to local investigation and observed that it would be decided later as to whether the report of the survey commission dated 22.1.2010 should be accepted or rejected. This Court also categorically stated that in course of hearing of this suit if it would appear appropriate to this Court that local investigation by way of fresh survey commission is requisite for the purpose of elucidating any matter in dispute in this suit, this Court would definitely consider that aspect.

12. On all the three instances, the reports of the survey commissions were accompanied with sketch-maps of the land covered by Dag No.5380 (that is, the land of the plaintiff). The reports of the survey commissions dated 27.1.2003, 8.3.2004 and 22.1.2010, accompanied with sketch-maps, are found tagged in the case record. On carefully going through the reports of the survey commissions and the accompanying sketch-maps, I find that there are visible differences in the lengths of sides (boundaries) and, consequently, in the area of the land in occupation of the plaintiff. As such, I do not think issuance of fresh survey commission would serve any fruitful purpose in any manner. In the circumstances, I am left with no option but to decide the dispute in question on the basis of the evidence tendered on record and other available materials.

13. In his cross-examination, the plaintiff has deposed that in this suit his claim is in respect of 6L of land out of the total 1B-1K-6L. On being asked about the measurements of the four boundaries of his 1B-1K-6L of land during his cross-examination, the plaintiff has deposed that the length of the west boundary is 64 feet, the length of

the east boundary is 105 feet, the length of the south boundary is 178 feet and the length of the north boundary is 93 feet + 64 feet + 102 feet. He has further deposed that his land is L-shaped. On the basis of the said measurements given by the plaintiff and also the shape of the land as per the trace-map accompanying the report of the survey commission dated 22.1.2010, I have attempted to prepare a sketch of the land of the plaintiff which is as follows:



14. As stated by the plaintiff in his cross-examination, the lengths of the sides (boundaries) of his land are: AB = 64 feet, BC = 93 feet, CD = 64 feet, DE = 102 feet, EF = 105 feet and AF = 178 feet. It is very much possible on my part to calculate and determine the area of the said plot of land of the plaintiff by applying simple geometrical principles. For that, it is necessary for me to draw two imaginary lines, CF and CG. The line CG is drawn perpendicular to the side

AF. From the sketch-maps accompanying the three reports of survey commissions, it presumably appears to me that the line CG (not named as such in those sketch-maps) is perpendicular to the south boundary shown in the above sketch as AF. In the three sketch-maps accompanying the reports of the survey commissions, the length of this line is stated as 64,  $64\frac{1}{2}$  and 66 respectively. The mean of these three lengths comes to around 65 feet. Therefore, I am holding the length of the line CG as 65 feet. It appears from the sketch-maps accompanying the reports of survey commissions that there is Kakoti Gaon Path (road) to the west boundary of the land. For the sake of convenience in calculation, I presume that the angle BAG is a right angle, that is, the land is situated perpendicularly to the said road. It may be stated here that from the trace-map accompanying the report of the survey commission dated 22.1.2010, it clearly seems that the land is situated perpendicularly to the said road. Consequently, the length of AG = the length of BC = 93 feet. And, therefore, the length of GF =  $178 - 93 = 85$  feet.

15. The whole plot of land is, therefore, divided into two quadrilaterals, namely  $\square ABCG$  and  $\square CDEF$ , and one triangle, namely  $\triangle CGF$ . The lengths of all the four sides of each of the two quadrilaterals are available. But the length of the side CF of the said triangle  $\triangle CGF$  is not available. The said triangle is a right-angled triangle where angle  $CGF = 90$  degrees. The unknown side CF is, therefore, the hypotenuse of the said right-angled triangle. Applying the geometrical formula for calculating the length of hypotenuse of a right angled triangle, the length of the side  $CF = \sqrt{(CG^2 + GF^2)} =$

$\sqrt{(65^2 + 85^2)} = 107$  feet. Now, therefore, all the three sides of  $\triangle CGF$  are available.

16. Let me state here that the geometrical formula for calculating the area of any quadrilateral is  $\sqrt{[(s-a)(s-b)(s-c)(s-d)]}$  where a, b, c and d are the sides of the quadrilateral and s is the semiperimeter, that is, the sum of all the four sides divided by 2. Let me also state here that the geometrical formula for calculating the area of a right-angled triangle is  $\frac{1}{2} \times \text{base} \times \text{altitude}$ . Applying the said formulae, the area of the quadrilateral  $\square ABCG$  comes to 5998 square feet, the area of the quadrilateral  $\square CDEF$  comes to 8655 square feet and the area of the triangle  $\triangle CGF$  comes to 2763 square feet. Therefore, the area of the entire land is  $(5998 + 8655 + 2763)$  square feet = 17416 square feet = 1B-1K-1L. Therefore, as per the measurements of the boundaries of his land given by the plaintiff himself during his cross-examination, the area of his land comes to around 1B-1K-1L, that is, 5L less than the land which he claims to own.

17. Let me now refer to the report of the survey commission dated 22.1.2010 wherein it is stated *inter alia* that *as per office-records* the south boundary of the land of the plaintiff is 187 feet and the length of the north side (shown in the above sketch-map as DE) is 106 feet. But in his cross-examination the plaintiff has himself stated the measurements of these sides as 178 feet and 102 feet respectively. It is pertinent to mention here that it is stated in the reports of the survey commissions dated 8.3.2004 and 22.1.2010 that the plaintiff has left out (or abandoned) a small portion of land at the eastern boundary by erecting *bera* (bamboo fencing). As both these reports mention about the plaintiff's leaving out a small portion of land at the

eastern boundary by putting a *bera* across, this fact cannot be easily negated or ignored. It is, however, difficult for me to calculate the area of the left out portion of land. Yet, on rough calculation on the basis of the difference in lengths of the south side and north side (difference between the said lengths *as per office-records* as stated in the report dated 22.1.2010 and the lengths as stated by the plaintiff in his cross-examination), the area of the left out portion of land comes to around 4L or 5L. Therefore, the total area of the land of the plaintiff comes to around 1B-1K-5L or 1B-1K-6L. This goes to show that the defendant has not been encroaching upon any portion of the plaintiff's land.

18. In view of the above discussion, the issues at hand are decided in favour of the defendant.

**Decisions on Issues No.8 and 9 with reasons**

19. In view of the decisions on Issues No.4, 5, 6 and 7, the plaintiff is not entitled to any relief in this suit. These issues are decided accordingly.

**ORDER**

**The suit stands dismissed on contest with costs.**

A decree be prepared accordingly and the case record be consigned to the Record Room.

Given under my hand and the seal of this Court on this the 8<sup>th</sup> day of December, 2011, at Jorhat.

**APPENDIX**

**Witnesses examined by the Plaintiff:**

1. Shri Chittaranjan Sarma (PW1)
2. Shri Purnananda Das (PW2)

**Documents exhibited by the Plaintiff:**

1. Sale Deed (Ext.1)
2. Certified copy of Jamabandi (Ext.2)
3. Circle Officer's Report (Ext.3)

**Witnesses examined by the Defendant:**

1. Shri Nila Kanta Sarma (DW1)

**Documents exhibited by the Defendant:**

None

**(SHRI JASPAL SINGH)**

Munsiff No.1:: Jorhat