

Assam Schedule VII: Form No. 132

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: TINSUKIA

IN THE COURT OF MUNSIFF NO.1, TINSUKIA

Present- **Dhiren Pegu,**
B.P.Sc. (Hons.) LL.B. (Hons.), AJS
Munsiff No.1, Tinsukia.

Thursday, the 19th of January, 2023

T.S. No.14/2013

- 
- I. Sardar Abtar Singh,
Son of: Late Jagir Singh,
II. Smt. Mahindra Kaur,
Wife of Sardar Abtar Singh,
Both are residents of;
Hijuguri, P.O. Hijuguri,
P.S. Tinsukia,
District – Tinsukia, Assam.

.....*Plaintiffs*

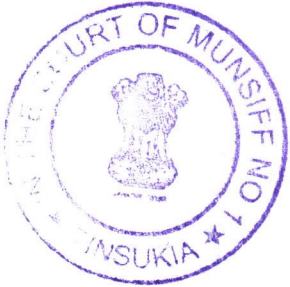
-Versus-

1. Sri Md. Salim Ali,
Son of Deoki Miya,
2. Md. Mehdi Ali,
3. Md. Sadab Ali,
4. Md. Seharabaj Ali,


MUNSIFF No.1
TINSUKIA, ASSAM

5. Md. Sahabaj,
All are sons of Akbar Ali,
6. (i) Md. Noor Alam
(ii) Md. Badre Alam
(iii) Md. Siraj Ali
7. Md. Asgar Ali,
8. Md. Hyder Ali,
9. Md. Anwar Ali,
All are sons of Late Md. Sarif,
All are residents of:
Hijuguri, P.O. Hijuguri,
P.S. Tinsukia,
District – Tinsukia, Assam

.....Defendants



This suit coming on for final hearing on 07/06/2022, 06/07/2022, 03/09/2022 and 30/11/2022 in the presence of the following learned Advocates:

For the plaintiff: Mr. P. K. Borah

For the defendants: Mr. N. Prasad

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

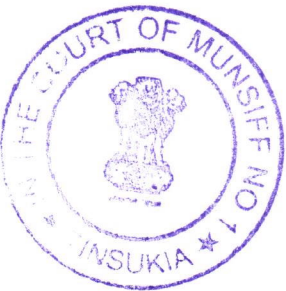
JUDGMENT

1. The plaintiffs have filed this suit for declaration, permanent injunction and other reliefs.

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PLAINTIFFS' CASE IN BRIEF

2. The case of the plaintiffs is that the plaintiffs became the lawful owners of a plot of land measuring about 8 Bighas 3 Kathas 11.66 Lessas by way of purchases such as; a plot of land measuring 1 Bigha 0 Katha 0 Lessa covered under part of Dag no. 7 of P.P. no. 34, purchased by the plaintiff no. 1 from original owner Dulari Noonla vide registered sale deed bearing no. 283 of 1977 dated 21/02/1977 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/118 dated 17/02/1977 (Schedule A land in short and hereinafter), a plot of land measuring 1 Bigha 0 Katha 0 Lessa covered under part of Dag no. 7 of P.P. no. 34, purchased by the plaintiff no. 2 from original owner Jagadish Prasad Mahatoo vide registered sale deed bearing no. 1157 of 1977 dated 15/07/1977 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/134 dated 15/07/1977 (Schedule B land in short and hereinafter), a plot of land measuring 2 Bighas 2 Kathas 10 Lessas covered under part of Dag no. 6 of P.P. no. 33, purchased by the plaintiff no. 2 from original owner Aboni Mohan Baruah vide registered sale deed bearing no. 46 of 1982 dated 12/01/1982 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/pt.1/53 (Schedule C land in short and hereinafter), a plot of land measuring 4 Bighas 0 Katha 0 Lessa covered under part of Dag no. 7 of P.P. no. 34, purchased by the plaintiff no. 1 from original owner Hiranya Kumar Baruah vide registered sale deed bearing



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no. 96 of 1982 dated 27/01/1982 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/pt.1/52 (Schedule D land in short and hereinafter) and another a plot of land measuring 0 Bigha 1 Katha 1.66 Lessas covered under part of Dag no. 6 of P.P. no. 33, purchased by the plaintiff no. 2 from original owner Rama Shankar Verma vide registered sale deed bearing no. 151 of 2005 dated 07/02/2005 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/05/2000/LS/pt.1/219 (Schedule E land in short and hereinafter). All the aforesaid Schedule A-E lands are situated at Hijuguri gaon, under Tinsukia Mouza, P.O. Hijuguri, P.S. Tinsukia, Dt. Tinsukia, Assam. The names of the plaintiffs have been duly mutated in their respective land records and have been enjoying possession over the same without any interference from any corner since the more than the last 30 years by paying land revenue to the government regularly. The plaintiffs also have fenced the boundaries, planted trees, erected garages, constructed building for rent purposes, constructed cow sheds and also do seasonal cultivation in the aforesaid scheduled lands. Moreover, the plaintiff no. 1, by investing a huge sum of money at the Schedule D land, planted betel nut trees, kadam trees at the boundary and started tea plantation business under the name and banner M/s Abtar Tea covering an area of 4 Bighas 0 Katha 0 Lessa by registering himself as a small tea grower vide Regd. No. TSK/AS/521/2011 issued by the All Assam Small Tea



Grower's Association, Tinsukia Anchalik and running his business of tea selling to the factory.

3. On 25/02/2013, at about 2-2:30 P.M., when the plaintiff no. 1 was going to daily bazaar, Tinsukia, the defendants stopped the plaintiff no.1 near Renuka Hall, Hijuguri and threatened the plaintiff no. 1 to vacate the Schedule D land on the ground that the same belongs to them or face consequences. Again on 16/03/2013, at about 8 A.M., the defendants along with some labourers trespassed into the land of the plaintiff no.1 and threatened the plaintiff no.1 to vacate the land or face consequences; however, with the timely intervention of the locals, the defendants left the place. The matter was informed to the police but without any result. Again on 23/03/2013, at about 8:45 A.M., the defendants along with 10-15 men came to the Schedule D land armed with dao and lathis and forcefully tried to grab the Schedule D land of the plaintiff no.1 by putting bamboo fence and also destroyed some of the tea bushes grown there. The plaintiff no.1 and his son tried to protest but were threatened with dire consequences. The matter was immediately informed to Officer-in-charge, Tinsukia P.S. and the Superintendent of Police, Tinsukia as well and upon the report so submitted to the Deputy Commissioner, Tinsukia, the Sub-divisional Magistrate, Tinsukia, as per order dated 24/03/2013 of the Deputy Commissioner, Tinsukia, on 24/03/2013 drew up a proceeding under section 145 CrPC bearing case no. 8/2013 and passed an ex-parte order of attachment of the Schedule D land and



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prohibited both the parties from entering into the Schedule D land and since then the Schedule D land has been under attachment.

4. On the basis of the ejahar dated 23/03/2013, Tinsukia P.S. case no. 180/2013 under section 143/447/506 IPC was also registered against the defendant nos. 1-5 which is pending trial before the Court of Chief Judicial Magistrate, Tinsukia.

5. The plaintiffs, when they came to know that the defendants, are planning to come back with greater force to occupy the Schedule D land, the plaintiffs have been compelled to file this instant suit for declaration that the plaintiffs have the right, title and interest over the land measuring about 8 Bighas 3 Kathas 11.66 Lessas covered under part of Dag no. 7 of P.P. nos. 33 & 34 including the M/s Abtar Tea, situated at Hijuguri gaon, Tinsukia along with declaration that the plaintiff no. 1 is the lawful owner of M/s Abtar Tea bearing Regd. No. TSK/AS/521/2011 along with prayer for permanent injunction restraining the defendants from encroaching/trespassing the Schedule D land.

SERVICE OF PROCESS

6. Upon admission of the plaint for hearing, summons were issued upon the defendants by the Court. The defendant nos. 6-9 appeared and filed their joint written statement. Later, during the trial of the suit, when the matter was



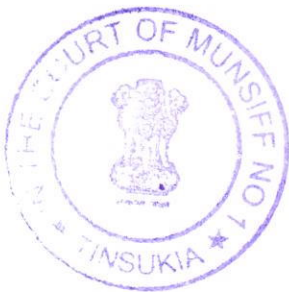
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posted for further cross-examination of the PW-2, the defendant no. 6 expired and vide order dated 22/10/2019 passed in Misc.(j) 62/2019, the names of the defendant nos. 6(i-iii) were substituted in place of deceased defendant no. 6. The defendant nos. 1-5 along with the newly impleaded defendant nos. 6(i-iii) did not file their written statement separately, however, submitted that the written statement already filed may be treated as their written statement.

PLEAS TAKEN BY THE DEFENDANTS IN THEIR JOINT WRITTEN STATEMENT

7. The answering defendants took some general pleas like the suit is not maintainable, suit undervalued, no cause of action, bad for non-joinder of necessary parties and mis-joinder of parties, plaint not presented in proper form and not verified in proper manner, suit barred by the doctrine of waiver, estoppels and acquiescence, Schedules improperly described, suit barred by limitation etc.

8. The answering defendants took the plea that the documents filed by the plaintiffs reveals that the plaintiffs are not the joint owners of the scheduled lands and as such they do not have any common right, title or interest to seek the reliefs. The answering defendants stated that as per the TDA map, the Schedule C land is covered under Dag nos. 6 & 7 and 5(O) and 6(N) as the same was not changed after the last settlement operation, however, the plaintiffs, by manipulating the sale deed no. 46 of 1982,



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have shown land falling under Dag nos. 20 and 21 to be on the southern boundary of the Schedule C land instead of land falling under Dag no. 10 and 8 as per the last settlement operation. The answering defendants also stated that since the said Hiranya Kumar Baruah did not have any title over the Schedule D land, the alleged sale permission and the TDA map have been intentionally withheld by the plaintiffs reason being untraceable and as such the plaintiff no.1 cannot derive any right, title and interest over the same vide the said sale.



9. The answering defendants also took the plea that the Schedule D land has been all along in possession of the defendant nos. 6-9 and not the plaintiffs as alleged, however, admitted to the fact of attachment of the Schedule D land prohibiting both the parties from entering into the Schedule D land.

10. The answering defendants stated that Late Md. Sharif i.e. the father of the defendants, during his lifetime, purchased total land measuring about 4 Bighas 4 Kathas 15 Lessas from Smt. Bhubu Bagoti vide a registered sale deed bearing no. 1653 of 1949 dated 09/12/1949; 1 Bigha 0 Katha 3 Lessas covered under Dag no. 5 and P.P. no. 36(O) and 32(N) and 3 Bighas 4 Kathas 15 Lessas covered under Dag no.7 and P.P. no.36(O) and 34(N) and the name of Md. Sharif (since deceased) was duly mutated in the land records, who was in possession of the same since then by paying the land revenue to the government

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regularly. After the death of Md. Sharif, the defendants, being the sons and legal heirs, became the joint owners of the aforesaid land and continued to remain in possession by cultivating in the said land. Later, the defendants sold out a plot of land measuring 0 Bigha 2 Kathas 7.92 Lessas falling under Dag no. 5 and P.P. no. 32(N) to Smt. Urmila Verma vide a registered sale deed.

11. The answering defendants stated that Late Md. Sharif during his life time, mortgaged the aforesaid plot of land in favour of one Sri Jagdish Verma vide a mortgage deed dated 18/12/1969 for a period of 02 (two) years in consideration of sum of Rs. 1500/- (Rupees fifteen hundred) with the condition that in the event of failure by the mortgagor to return the sum of Rs. 1500/- (Rupees fifteen hundred) to the mortgagee, the mortgagee would become the absolute owner of the said plot of land. It has been stated that when the mortgagee refused to return the land despite payment of the mortgaged sum of money within time, the mortgagor was compelled to file a misc. case before the Munsiff (Sadar), Dibrugarh being Misc. case no. 257/1972 and it was only when mortgaged sum was deposited through a treasury challan dated 31/05/1972 pursuant to the order passed in the Misc. case, the mortgagee returned the plot of land to Late Md. Sharif, however, the mortgagee failed to return the mortgage deed to the mortgagor. Thereafter, on Adhi basis and later on lease, the aforesaid plot of land was given to one Shiv Bhajan, by Md. Sharif (since deceased), who resided in the



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said land by constructing a house and by doing seasonal cultivation.

12. The answering defendants stated that Sri Jagdish Verma got his name illegally mutated in the record of rights in respect of the aforesaid plot of land and the same was challenged before the Deputy Commissioner, Tinsukia and subsequently before the Board of Revenue, Assam. While during the pendency of WP 8575/2005, which was filed by the answering defendants challenging the mutation order, the matter was compromised between the answering defendants and the mortgagee Sri Jagdish Verma wherein Sri Jagdish Verma admitted the title and actual possession of the answering defendants in respect of the plot of land. However, to the surprise of the answering defendants, on 24/03/2013, when the answering defendants were still in possession of the Schedule D land, the police came and attached the Schedule D land pursuant to the order dated 24/03/2013 passed by the Sub-divisional Magistrate, Tinsukia.

13. The answering defendants furthermore stated that in Title suit no. 25/2009, filed by one Sri Lalit Chouhan and 02 (two) others against Jagdish Verma (since deceased) and the answering defendants, pending trial before the Court of Learned Civil Judge, Tinsukia, in the pleadings, it has been clearly stated that 4 Bighas 4 Kathas 15 Lessas of land covered under Dag no.5 of P.P. no.32 and Dag no. 7 of P.P. no. 34 situated at Hijuguri gaon, mouza Tinsukia, Dt.



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Tinsukia, Assam has been under the possession of the answering defendants being the legal heirs of Late Md. Sarif.

14. The answering defendants also denied in toto all the remaining claims and averments made by the plaintiffs in their plaint and put the plaintiffs to strictest proof of the same. The answering defendants further took the plea that the plaintiffs have come up with an imaginary story to occupy the land of the answering defendants and as such the plaintiffs are not entitled to any of the reliefs as claimed for and the suit of the plaintiff is liable to be dismissed with cost.

ISSUES FRAMED IN THE SUIT

15. Upon going through the pleadings of the plaint as well as the written statement cum counter claim filed by the answering defendants, my learned predecessor in office framed 09 issues. However, upon going through the case record, it appeared to me that the issue no.(v) required some modification in the present context of the matter in hand and accordingly the same has been modified to the extent as below. Further, in my considered opinion, the issue no. (vi) was unnecessarily framed and accordingly, the same has been struck out. Hence, after modification of the issue no.(v) and striking out of issue no.(vi), the following issues remain to be adjudicated upon.

i. Whether the suit is maintainable?

- ii. Whether this Court have jurisdiction to try this suit?
- iii. Whether the suit is bad for non-joinder or mis-joinder of the parties?
- iv. Whether the plaintiffs are the absolute and lawful owner of the land mentioned in the Schedule A, B, C, D (suit land) and E of the plaint?
- v. Whether the plaintiff has been in physical possession of the land mentioned in Schedule A, B, C, D (suit land) and E of the plaint since the date of their respective purchases without any hindrance, disturbance and claim from any corner? [Modified]
- vi. [Striked out]
- vii. Whether the plaintiffs have right, title and interest over the suit land (Schedule D land mentioned in the plaint)?
- viii. Whether the plaintiffs are entitled to get a decree in this suit as claimed for?
- ix. To what other relief(s) the parties are entitled to?

EVIDENCE ADDUCED BY THE PLANTIFF SIDE

16. During the trial, the plaintiff filed the evidence-in-affidavit of 04 (four) nos. of PWs. 03 (three) of the PWs were cross-



examined by the defendants and discharged. The PW-4 was not cross-examined by the defendant side.

17. The plaintiff side has also exhibited the following documents in support of their claim.

- i. Exhibit 1 – Sale deed no. 283 of 1977.
- ii. Exhibit 2 – Land sale permission granted by TDA.
- iii. Exhibit 3 – Approved Map.
- iv. Exhibit 4 – Sale deed no. 1157 of 1977.
- v. Exhibit 5 – Land sale permission granted by TDA.
- vi. Exhibit 6 – Approved Map.
- vii. Exhibit 7 – Sale deed no. 46 of 1982.
- viii. Exhibit 8 – Land sale permission granted by TDA.
- ix. Exhibit 9 – Approved Map.
- x. Exhibit 10 – Sale deed no. 96 of 1982.
- xi. Exhibit 11 – Sale deed no. 151 of 2005.
- xii. Exhibit 12 – Land sale permission granted by TDA.
- xiii. Exhibit 13 – Approved Map.
- xiv. Exhibits 14 -15 – Certified copies of Jamabandi.
- xv. Exhibits 16 – 37 – Revenue receipts of P.P. nos. 22, 33 and 34.
- xvi. Exhibits 38 – Photocopy of registration certificate.
- xvii. Exhibits 39 – 51 – Copies of challans supplying green tea leaves.
- xviii. Exhibit 52 – Copy of Ejahar dated 16/03/2013.
- xix. Exhibits 53 – 54 – Certified copies of Tinsukia P.S. case no. 180/2013 FIR and Ejahar.



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- xx. Exhibit 55 – Certified copy of report u/s 145 CrPC Tinsukia P.S. non-FIR case no. 20/2013 & Hijuguri OP case no. 5/2013 dated 24/03/2013.
- xxi. Exhibit 56 – Cash memo of photography.
- xxii. Exhibit 57 – 02 (two) nos. of colored photographs.
- xxiii. Exhibit 58 – Periodic patta no. 36(O) 34 (N) of Dag no. 7 (O) 7 (N) of Hijuguri gaon, mouza Tinsukia wherein Sri Hiranya Kumar Baruah is the no. 5th pattadar, issued on 03/07/1971 by the Additional Settlement Officer, Tinsukia.
- xxiv. Exhibit 59 – Certified copy of jamabandi.
- xxv. Exhibit 60 – Certified copy of Judgment dated 25/11/2005 passed by the Court of Assam Board of Revenue, Guwahati in case no. 74(RA)(TIN)/03.
- xxvi. Exhibit 61 – Certified copy of Jamabandi issued by Revenue Sheristedar, Tinsukia of Dag no. 7 and P.P. no. 34, Hujuguri gaon, mouza and Dt. Tinsukia, Assam.
- xxvii. Exhibit 62 – Certified copy of sale deed bearing no. 326 dated 03/03/2013.

18. The defendants filed the evidence-on-affidavit of 01 (one) no. of witness as DW-1, who was cross-examined by the plaintiff side and discharged. 01 (one) no. of official witness was also examined-in-chief as DW-2, cross-examined and discharged.



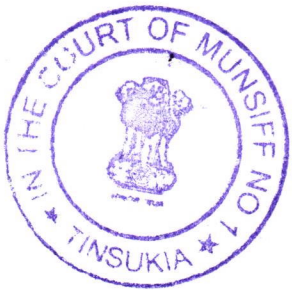
19. The defendant side has also exhibited the following documents in support of their claim.

- i. Exhibit A – Case record of Mutation case no. 77 of 2007-2008.
- ii. Exhibit B – Case record of Misc. case no. 43 of 1995-1996. (Akbar Ali & Ors. Vs. Sri Jagdish Verma)
- iii. Exhibit C – Case record of Revenue Appeal no. 3 of 1998. (Sri Jagdish Verma Vs. Akbar Ali & Ors.)
- iv. Exhibit D – Hath Citha of Dag no. 5 of P.P. no. 32 of Hijuguri gaon, Mouza and Dt. Tinsukia, Assam.
- v. Exhibit E – Hath Citha of Dag no. 7 of P.P. no. 34 of Hijuguri gaon, Mouza and Dt. Tinsukia, Assam.
- vi. Exhibit F – Registered sale deed bearing no. 1153 of 1949 executed by Smt. Bhubu Bagti in favour of Md. Sarif.
- vii. Exhibits F(1-3) – Thumb impressions of Smt. Bhubu Bagti taken by writer Md. Dirum Ali.
- viii. Exhibit G – Deed of Memorandum dated 09/07/2007.
- ix. Exhibit H – Trace map of land covered under Dag no. 5 of P.P. no. 32 of Hijuguri gaon, Mouza and Dt. Tinsukia, Assam.

DISCUSSIONS, DECISIONS AND REASONS THEREOF

20. I have carefully perused the pleadings in the plaint and the written statement submitted by the answering defendants.

I have also seen and perused the examinations-in-chief



filed in the form of affidavits by the PW-1, PW-2, PW-3 and PW-4, the cross-examinations of the PWs along with the examination-in-chief filed in the form of affidavit by the DW-1, his cross-examination and the evidence of the official witness as DW-2. I have also seen the synopsis of their written arguments submitted and also heard the arguments put forward by the learned counsels appearing for the both the sides. Having so heard and perused, I shall now discuss and decide the aforementioned issues accordingly.

ISSUE NOS.(I & II)

Whether the suit is maintainable?

And whether this Court have jurisdiction to try this suit?

21. For the sake of brevity, both the aforesaid issues are taken up together.
22. The answering defendants in their joint written statement contended that the instant suit is not maintainable. But the answering defendants failed to disclose as to how and why the suit is not maintainable. Order VIII Rule 2 of the CPC mandates that the defendant must raise by his pleading all matters which shows the suit to be not maintainable. However, there is no specific pleading in the written statement of the answering defendants to show how the suit is not maintainable. The present suit being declaratory in nature, is also found to be within the period of



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MUNSIFF No.1
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limitation. Hence, issue no. (i) is decided in affirmative in favour of the plaintiffs.

23. Regarding issue no. (ii), the learned counsel for the answering defendants argued that the PW-1, during his cross-examination specifically admitted that the value of the suit land is Rs. 2,00,00,000/- (Rupees two crores) and that the defendants, in their written statement, have specifically taken the plea that the suit is under-valued and no adequate and proper Court fee has been paid by the plaintiffs.

24. At this juncture, it may be relevant to refer to the provisions of Section 7(iv)(c-d) of the Court Fees Act, 1870.



Section 7: Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

.....

(iv) In suits—

for a declaratory decree and consequential relief.—(c) to obtain a declaratory decree or order, where consequential relief is prayed, for an injunction.—(d) to obtain an injunction

.....

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

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**MUNSIFF No.1
TINSUKIA, ASSAM**

In all such suits the plaintiff shall state the amount at which he values the relief sought."

26. In the instant suit, the plaintiffs have prayed for declaration of right, title and interest over the Schedule A, B, C, D and E land as mentioned in the plaint, declaration that the plaintiff no.1 is the lawful owner of the M/s Abtar Tea standing over Schedule D suit land along with relief of permanent injunction restraining the defendants and their representatives/men/agents etc. from trespassing into the suit land in whatsoever manner with a view to dispossess the plaintiffs from the same. The plaintiffs have valued the suit at Rs. 2,00,000/- (Rupees two lakhs) and for permanent injunction at Rs. 100/- (Rupees one hundred) and Court fee paid accordingly when the suit was filed in the year 2013.

27. The law on this aspect has been settled by the Hon'ble Apex Court in **Bharat Bhusan Gupta Vs. Pratap Narain Verma & Anr.** reported in **(2022) 8 SCC 333** wherein the Hon'ble Apex Court held that

"It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have

its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed."

28. Hence, in view of the aforesaid facts and circumstances and in view of the law laid down by the Hon'ble Apex Court in **Bharat Bhusan Gupta Vs. Pratap Narain Verma & Anr. (Supra)** and also in view of the provisions of law as laid down vide Section 7(iv)(c-d) of the Court Fees Act, the arguments advanced by the learned counsel appearing on behalf of the answering defendants, in relation to the statement made by the PW-1 during his cross-examination, that the present suit is undervalued is not tenable in the eyes of law and cannot be accepted by this Court. Consequently issue no. (ii) is decided in affirmative in favour of the plaintiffs.

ISSUE NO.(VII)

Whether the plaintiffs have right, title and interest over the suit land (Schedule D land mentioned in the plaint)?

29. It is the case of the plaintiffs that the Schedule D land i.e. a plot of land measuring 4 Bighas 0 Katha 0 Lessa covered under part of Dag no. 7 of P.P. no. 34 was purchased by the plaintiff no. 1 from original owner Hiranya Kumar Baruah vide registered sale deed bearing no. 96 of 1982 dated 27/01/1982 which was duly approved by Tinsukia



Development authority vide TDA(Tech)35/72/pt.1/52. It is further the case of the plaintiffs that after purchase of the Schedule D land from Hiranya Kumar Baruah, the names of the plaintiff no.1 has been duly mutated in the record of rights and since then the plaintiffs have been in possession of the same by paying revenue to the government regularly. It is also the case of the plaintiffs that the plaintiffs could not trace out the TDA permission and approved map despite best efforts.

30.To substantiate this fact, the plaintiffs have filed and exhibited the sale deed bearing no. 96 of 1982 as **EXHIBIT- 10**, relevant copy of jamabandi as **EXHIBIT- 14** and the land revenue payment receipts as **EXHIBIT Nos. 16-37**.

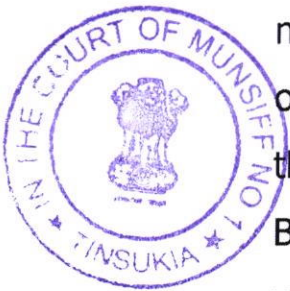
31.The plaintiff no.1 as the PW-1 in his evidence-in-affidavit reiterated the same set of facts and circumstances as stated in the plaint and as such the same is not reproduced here for the sake of brevity. The PW-1 during his cross examination stated that though he had handed over the sale deed in respect of Schedule D land along with TDA map and patta to his Advocate but cannot say whether those documents have been filed along with the suit or not. The plaintiffs in their plaint have clearly averred that the sale permission and the TDA approved map have not been filed along with the plaint. It is thus apparently clear that the plaintiffs have not filed the concerned sale permission and TDA approved map in respect of Schedule



D land. The PW-1 also admitted to the fact that he is not aware whether the dag no. mentioned in the **EXHIBIT-10** is the new or the old one.

32. A perusal of **EXHIBIT-14** reveals that against the dag no. 7, the total quantum of land is 7 Bighas 4 Kathas 12 Lessas. The quantum of land claimed under Schedule D land by the plaintiffs is 4 Bighas. It is thus clear that dag no. 7 includes land of other co-pattadars as well. A perusal of the remarks column of the **EXHIBIT No. 10** reveals that the name of the plaintiff no.1 has been mutated for 4 Bighas of land along with Hiranya Kumar Baruah, from whom the plaintiff no.1 apparently purchased the said schedule land. A perusal of the **EXHIBIT Nos. 17-37 & 39** reveals that land revenue payments were made from time to time in respect of the land under patta no. 34.

33. During his cross-examination the PW-1 denied the suggestion that the said Hiranya Kumar Baruah did not have any authority to execute the **EXHIBIT- 10** in favour of the plaintiff no.1. The PW-1 during his cross examination admitted to the fact that the land sale permission in respect of Schedule D land has not been filed along with the plaint. From a perusal of the excerpts of the cross-examination of the PW-1, no doubt it reveals that the PW-1 does not have any knowledge about the original pattadar of the land covered under dag no.7 and how the name of the seller Hiranya Kumar Baruah came to be incorporated in the land records but the answering



defendants have, except for disputing the name of the plaintiff no.1 in the record of rights, have neither challenged the same nor prayed for cancellation of the mutation order granted in favour of the plaintiff no.1 by the Circle Officer, Tinsukia Revenue Circle, Tinsukia.

34. The PW-2, who is one of the attesting witnesses of the EXHIBIT No. 10, during his cross-examination stated that the schedule D land was sold by Hiranya Kumar Baruah to the plaintiff no.1 and that he was one of the attesting witnesses to the aforesaid sale deed.

35. On the other hand, it is the case of the answering defendants that the schedule D land has been under their occupation since long and not under the plaintiffs as alleged. It is stated that the late grand-father of the answering defendants Md. Sarif, during his lifetime, became the lawful owner of the plot of land measuring 4 Bighas 4 Kathas 15 Lessas; i.e. 1 Bigha 0 Katha 3 Lessas covered under dag no. 5 of P.P. no. 32 and 3 Bighas 4 Kathas 15 Lessas covered under dag no. 7 of P.P. no. 34, by way of purchase from one Smt. Bhubu Bagoti vide a registered sale deed bearing no. 1653 of 1949 dated 09/12/1949. Thereafter, the name of Md. Sarif (since deceased) was duly mutated in the record of rights and after his death, the father of the answering defendants along with the other legal heirs, by virtue of inheritance and succession, became the joint owners of the aforesaid plot of land and continued to remain in possession of the

same by paying revenues to the government from time to time. It is stated that the legal heirs of Md. Sarif (since deceased) sold out a plot of land measuring 0 Bigha 2 Kathas 7.92 Lessas of dag no. 5 of P.P. no. 32 to Smt. Urmila Verma vide a registered sale deed. It is also stated that Md. Sarif (since deceased), during his lifetime, vide a mortgage deed dated 18/12/1969, mortgaged the aforesaid plot of land in favour of one Sri Jagadish Verma for a period of 2 years and for a consideration of Rs. 1,500/- (Rupees fifteen hundred) with the condition that in the event of failure of the mortgagor to pay the mortgaged sum of money within the time stipulated, the mortgagee would become the absolute owner of the said plot of land. Later, upon refusal of the mortgagee to accept the mortgaged sum of money and to return the possession of the plot of land, the mortgagor, vide treasury challan dated 31/05/1972; pursuant to the order passed by the Sadar Munsiff, Dibrugarh in Misc. case no. 257/1972, deposited the mortgaged sum of money and it was only then the mortgagee Jagadish Verma returned the possession of the plot of land. Though possession was handed over in the year 1973 but mortgagee Jagadish Verma neglected to hand over the original mortgage deed to Md. Sarif (since deceased).

36. It is also stated that Jagadish Verma, mischievously got his name mutated in the record of rights and the same was challenged before the Deputy Commissioner, Tinsukia and subsequently before the Board of Revenue, Assam. Also

one writ petition bearing no. 8575/2005 was filed before the Hon'ble Gauhati High Court challenging the order of mutation granted in favour of Jagadish Verma but during the pendency of the same, the matter was compromised between the parties wherein Jagadish Verma admitted the title and possession of Md. Sarif (since deceased) in respect of the aforesaid plot of land. And since then the answering defendants have been in peaceful possession of the same until 24/03/2013, when police visited the schedule D land and attached land measuring 2 Bigha 0 Katha 0 Lessa covered under dag nos. 5 and 7 of P.P. nos. 32 and 34. It is furthermore stated that in one title suit bearing no. 25/2009 by one Sri Lalit Chouhan and Ors. against the legal heirs of Late Jagadish Verma and Late Md. Sarif, pending before the Court of Learned Civil Judge, Tinsukia, in the pleadings it has been categorically stated that a plot of land measuring 4 Bighas 4 Kathas 15 Lessas; i.e. 1 Bigha 0 Katha 3 Lessas covered under dag no. 5 of P.P. no. 32 and 3 Bighas 4 Kathas 15 Lessas covered under dag no. 7 of P.P. no. 34, has been under the possession of the legal heirs of Md. Sarif.

37.A perusal of the excerpts of the cross-examination of the DW-1 along with orders dated 12/02/2014 and 12/03/2014 reveals that the relevant record of land sale permission in respect of the schedule D suit land was called for from the concerned office but the same was not found for reason not traceable. It thus appears that effort was made by the plaintiff side to call for the relevant document.

38. A careful perusal of the evidence-in-affidavit filed by the DW-1 reveals that on one hand the DW-1 stated that the aforesaid plot of land, after being handed over possession by Jagadish Verma in the year 1973, was handed over to one Shiv Bhajan Verma on adhi basis and subsequently on lease; where the said Shiv Bhajan Verma constructed a residential house in one part and did cultivation in the remaining part of the land and on the other hand, DW-1 stated that they have been in peaceful possession of the said land until 24/03/2013 when the police showed up and attached the same. A perusal of the excerpts of the cross-examination of the DW-1 reveals that the said DW-1 has categorically admitted that the schedule D land has been given to Shiv Bhajan Verma on adhi basis for cultivation and further that he has not narrated the set of events as to how he came into possession of the schedule D land. It thus appears that the answering defendants have failed to bring plausible explanation of the set of events as to how they came to be in possession of the schedule D land after the same was handed over to Shiv Bhajan Verma on adhi basis initially and subsequently on lease. The said Shiv Bhajan Verma would have been the best person to depose to as to whether the schedule D land is under his possession or not as stated by the DW-1, however, the answering defendants failed to bring Shiv Bhajan Verma as a witness in the instant suit. A perusal of the excerpts of the cross-examination of the DW-1 reveals that the said DW-1 has categorically admitted that they have not



challenged the sale deed vide which the plaintiff no.1 became the owner of the schedule D land.

39. Upon perusal of the case record as well as the examination-in-chief of the official witness as DW-2, it reveals that the jamabandis i.e. **EXHIBIT-L** is concerned with P.P. no. 34 and **EXHIBIT-M** with P.P. no. 36. The DW-2 in his examination-in-chief stated that vide order dated 25/02/1982 passed in field mutation, a plot of land measuring 4 Bighas has been mutated in the name of the plaintiff no.1 along with Hiranya Kumar Baruah but in the particular endorsement, there is no mention in which dag no. the name of the plaintiff no.1 is mutated. However, a perusal of the **EXHIBIT no.14** i.e. the computerized copy of the jamabandi of P.P. no. 34 clearly reveals that the name of the plaintiff no.1 has been mutated along with Hiranya Kumar Baruah in respect of the schedule D land covered under dag no. 7. Further, the official witness i.e. the DW-2, during his cross examination, clearly admitted that the name of Md. Sarif (since deceased) has been wrongly mutated in P.P.no. 34 in place of P.P. no. 36. The DW-2, during his cross-examination further stated that the note dated 25/04/1982 at serial no. 'Ga' of **EXHIBIT-L** mentioning the mutation granted in favour of the plaintiff no.1, till today, has not been deleted or corrected and accordingly, the concerned mutation still stands in the name of the plaintiff no.1.



40. Hence, from a perusal of the entire facts and circumstances of the case as narrated above in paragraph nos. 29-39, I have no hesitation in holding that the plaintiffs have been able to prove their case on the scale of preponderance of probabilities that the plaintiffs have right, title and interest over the Schedule D land. Issue no.(vii) accordingly stands decided in the affirmative in favour of the plaintiffs.

ISSUE NO.III

Whether the suit is bad for non-joinder or mis-joinder of the parties?

41. The answering defendants in their written statement merely stated that the suit is bad for mis-joinder of defendant nos. 1-5 and non-joinder of necessary parties. It is a trite in law that mere making of a statement that a suit is bad for non-joinder/mis-joinder of necessary party/proper party is not sufficient enough to render the suit bad in the eyes of law. Such answering defendants must specifically elucidate out the facts by leading cogent evidence as to under what circumstances the suit is bad for non-joinder/mis-joinder of necessary party/proper party, which the answering defendants have failed to do so in the instant case. Issue no. (III) accordingly stands decided in the negative in favour of the plaintiffs.

ISSUE NO.IV

Whether the plaintiffs are the absolute and lawful owner of the land mentioned in the Schedule A, B, C, D (suit land) and E of the plaint?

42. It is the case of the plaintiffs that the Schedule A land was purchased by the plaintiff no. 1 from original owner Dulari Noonia vide registered sale deed bearing no. 283 of 1977 dated 21/02/1977 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/118 dated 17/02/1977, that the Schedule B land was purchased by the plaintiff no. 2 from original owner Jagadish Prasad Mahatoo vide registered sale deed bearing no. 1157 of 1977 dated 15/07/1977 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/134 dated 15/07/1977, that the Schedule C land was purchased by the plaintiff no. 2 from original owner Aboni Mohan Baruah vide registered sale deed bearing no. 46 of 1982 dated 12/01/1982 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/pt.1/53, that the Schedule D land was purchased by the plaintiff no. 1 from original owner Hiranya Kumar Baruah vide registered sale deed bearing no. 96 of 1982 dated 27/01/1982 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/72/pt.1/52 and that the Schedule E land was purchased by the plaintiff no. 2 from original owner Rama Shankar Verma vide registered sale deed bearing no. 151 of 2005 dated 07/02/2005 which was duly approved by Tinsukia Development authority vide TDA(Tech)35/05/2000/LS/pt.1/219. It is also the case of



the plaintiffs that after the names of the plaintiffs have been duly mutated in their respective land records, they have been enjoying possession over the same without any interference from any corner since more than the last 30 years by paying land revenue to the government regularly.

43. The plaintiff side has exhibited the sale deed bearing no. 283 of 1977 as **EXHIBIT No.1**; the concerned TDA land sale permission as **EXHIBIT No.2** and the concerned approved sketch map of TDA as **EXHIBIT No.3**, sale deed bearing no. 1157 of 1977 as **EXHIBIT No.4**; concerned TDA land sale permission as **EXHIBIT No. 5** and the concerned approved sketch map of TDA as **EXHIBIT No.6**, sale deed bearing no. 46 of 1982 as **EXHIBIT No.7**; concerned TDA land sale permission as **EXHIBIT No. 8** and the concerned approved sketch map of TDA as **EXHIBIT No.9**, sale deed bearing no. 96 of 1982 as **EXHIBIT No.10**, sale deed bearing no. 151 of 2005 as **EXHIBIT No.11**; concerned TDA land sale permission as **EXHIBIT No. 12** and the concerned approved sketch map of TDA as **EXHIBIT No.13** respectively.

44. Upon a careful perusal of the written statement filed by the answering defendants, it appears that the answering defendants, except for Schedule D land; of which issue concerned has already been decided in the issue no. (VII), the answering defendants have not made any specific denials regarding the other suit property. A perusal of the written statement filed by the answering defendants

reveals that the denials have been made in a general manner.

45. The proposition of law on this is settled under Order VIII Rule 3 CPC that 'It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth except damages.' Order VIII Rule 5(1) further provides that 'Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.'

46. However, in the instant case, the answering defendants, except for the schedule D suit property, in respect of the other scheduled A, B, C and E suit properties, have not made the denials in a specific manner as envisaged under Order VIII Rule 3 and 5(1) of the CPC. As such, in the light and spirit of Order VIII Rule 5(1) of the CPC, the facts and contentions asserted by the plaintiffs in respect of the other scheduled A, B, C and E suit properties are deemed to be admitted by the use of the word "shall" at Order VIII Rule 5(1) of the CPC. Issue no. (iv) accordingly stands decided in the affirmative and against the defendants.

ISSUE NO.V

Whether the plaintiff has been in physical possession of the land mentioned in Schedule A, B,

C, D (suit land) and E of the plaint since the date of their respective purchases without any hindrance, disturbance and claim from any corner?

47. It is the case of the plaintiffs that they have been in continuous possession of the scheduled lands A, B, C, D and E since the date of their respective purchases. It is also the case of the plaintiffs that the scheduled D land has been under the occupation of the plaintiffs and used for tea cultivation by the plaintiffs under the banner M/s Abtar Tea.

48. In order to prove this contention, the plaintiffs have exhibited the certificate issued by the Assam Small Tea Growers' Association under which the plaintiff's tea estate is stated to have been registered as **EXHIBIT No. 38**. The plaintiffs also exhibited a bunch of tea supply challans issued by one Binod Kumar Kedia to the plaintiff no.1 as **EXHIBIT Nos. 39-52**.

49. The answering defendants have categorically denied and disputed in their written statement that the scheduled D suit land is not under the possession of the plaintiffs as alleged but under the possession of the defendants and further that no tea plants have been raised under the name M/s Abtar Tea. Since the **EXHIBIT Nos. 39-52** purportedly shows that the tea leaves have been supplied to the said Sri Binod Kumar Kedia, Sri Binod Kumar Kedia would have been the best person to depose whether the



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tea that was supplied to him by the plaintiff no.1 was grown at the schedule D land or not under the name M/s Abtar Tea. During his cross-examination, the PW-1 has categorically admitted that the said Sri Binod Kumar Kedia has not been made a witness in the instant case and that **EXHIBIT Nos. 40-52** have not been issued by Sri Binod Kumar Kedia. Even though the answering defendant while cross-examining the plaintiff no. (ii) have refuted the fact that in the **EXHIBIT No. 38** there is no mention of dag no., patta no. or the location of the land, however, upon a careful perusal of the **EXHIBIT No. 38**, the area of the garden i.e. 4 B 0 K 0 L matches perfectly with the size of the scheduled D land along with the name and registration no. of the tea estate of the plaintiffs as described in the plaint of the plaintiffs and answering defendant failed to controvert this fact of the plaintiffs while cross examining the PWs. Further, from the excerpts of the cross-examination of the DW-1 it clearly reveals that the answering defendants have failed to bring plausible explanation of the set of events as to how they came to be in possession of the schedule D land after the same was handed over to Shiv Bhajan Verma, on adhi basis initially and subsequently on lease, especially when Shiv Bhajan Verma was not brought before the witness box to testify.

50. Since the degree of proof in civil litigation is only on the scale of preponderance of probabilities and not beyond reasonable doubt unlike in criminal cases, in view of the above stated discussions, I have no hesitation in holding



that the plaintiffs have been engaged in tea cultivation under the name and banner M/s Abtar Tea at the scheduled D land since the year 2011.

51. As regard the other scheduled A, B, C and E land, since the answering defendants have not made any specific denials, the contention in respect of therein is deemed to be admitted in the light and spirit of the provisions of Order VIII Rule 5(1) of the CPC.

52. Accordingly, it is hereby held that the scheduled A, B, C, D and E lands have been under the continuous possession and occupation of the plaintiffs since the date of their respective purchases.

ISSUE NO.(VIII)

Whether the plaintiffs are entitled to get a decree in this suit as claimed for?

53. In view of the discussions made and decisions arrived at the foregoing issues, I have no hesitation in holding that the plaintiffs are entitled to the decree as prayed for in the instant suit. Issue no. (VIII) is accordingly decided in the affirmative against the answering defendants.

ISSUE NO.(IX)

To what other relief(s) the parties are entitled to?

54. Since all the issues framed have been favorably decided in favor of the plaintiffs after a full pledged trial between the

parties, either parties are not entitled to any other reliefs except to the extent of reliefs as granted below.

ORDER

55. Therefore, considering the above discussions and decisions arrived at the foregoing paragraphs, the instant suit is decreed on contest and the plaintiffs are granted the following reliefs.

- i. A declaration that the plaintiffs have the right, title and interest over the schedule A, B, C, D and E suit lands as described in the schedule of the plaint,
- ii. A declaration that the plaintiff no.1 is the lawful owner of the M/s Abtar Tea bearing registration no. TSK/AS/521 of 2011 situated over the schedule D land and
- iii. A declaration that the defendants and/or any other person(s) claiming under or through them, by way of a perpetual injunction, are hereby restrained from entering into the schedule A, B, C, D and E suit lands and from interfering/disturbing/creating any hindrance in use, enjoyment and peaceful possession and occupation of the plaintiffs over the same.

56. Parties to bear their own cost.



57. Prepare a decree accordingly within a period of one week.

58. Given under my hand and seal of this Court on this 19th day of January, 2023.

Typed and Corrected by me.



(Dhiren Pegu)
Munsiff no.1
Tinsukia

MUNSIFF No.1
TINSUKIA, ASSAM

APPENDIX

1. Plaintiff Witnesses:-

- a. PW-1 Sri Sardar Abtar Singh
- b. PW-2 Sri Pyarilal Chowhan
- c. PW-3 Sri Babul Shekh
- d. PW-4 Sri Prabhat Neog

2. Defendant Witnesses:-

- a. Md. Shahajada Hussain
- b. Sri Ranjan Kumar Roy [official witness]

3. Court Witnesses:- NIL

4. Plaintiff Exhibits:-

- i. Exhibit 1 – Sale deed no. 283 of 1977.
- ii. Exhibit 2 – Land sale permission granted by TDA.
- iii. Exhibit 3 – Approved Map.
- iv. Exhibit 4 – Sale deed no. 1157 of 1977.
- v. Exhibit 5 – Land sale permission granted by TDA.
- vi. Exhibit 6 – Approved Map.
- vii. Exhibit 7 – Sale deed no. 46 of 1982.
- viii. Exhibit 8 – Land sale permission granted by TDA.
- ix. Exhibit 9 – Approved Map.
- x. Exhibit 10 – Sale deed no. 96 of 1982.
- xi. Exhibit 11 – Sale deed no. 151 of 2005.
- xii. Exhibit 12 – Land sale permission granted by TDA.
- xiii. Exhibit 13 – Approved Map.




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- xiv. Exhibits 14 -15 – Certified copies of Jamabandi.
- xv. Exhibits 16 – 37 – Revenue receipts of P.P. nos. 22, 33 and 34.
- xvi. Exhibits 38 – Photocopy of registration certificate.
- xvii. Exhibits 39 – 51 – Copies of challans supplying green tea leaves.
- xviii. Exhibit 52 – Copy of Ejahar dated 16/03/2013.
- xix. Exhibits 53 – 54 – Certified copies of Tinsukia P.S. case no. 180/2013 FIR and Ejahar.
- xx. Exhibit 55 – Certified copy of report u/s 145 CrPC Tinsukia P.S. non-FIR case no. 20/2013 & Hijuguri OP case no. 5/2013 dated 24/03/2013.
- xxi. Exhibit 56 – Cash memo of photography.
- xxii. Exhibit 57 – 02 (two) nos. of colored photographs.
- xxiii. Exhibit 58 – Periodic patta no. 36(O) 34 (N) of Dag no. 7 (O) 7 (N) of Hijuguri gaon, mouza Tinsukia wherein Sri Hiranya Kumar Baruah is the no. 5th pattadar, issued on 03/07/1971 by the Additional Settlement Officer, Tinsukia.
- xxiv. Exhibit 59 – Certified copy of jamabandi.



- xxv. Exhibit 60 – Certified copy of Judgment dated 25/11/2005 passed by the Court of Assam Board of Revenue, Guwahati in case no. 74(RA)(TIN)/03.
- xxvi. Exhibit 61 – Certified copy of Jamabandi issued by Revenue Sheristedar, Tinsukia of Dag no. 7 and P.P. no. 34, Hujuguri gaon, mouza and Dt. Tinsukia, Assam.
- xxvii. Exhibit 62 – Certified copy of sale deed bearing no. 326 dated 03/03/2013.

5. Defendant Exhibits:-

- i. Exhibit A – Case record of Mutation case no. 77 of 2007-2008.
- ii. Exhibit B – Case record of Misc. case no. 43 of 1995-1996. (Akbar Ali & Ors. Vs. Sri Jagdish Verma)
- iii. Exhibit C – Case record of Revenue Appeal no. 3 of 1998. (Sri Jagdish Verma Vs. Akbar Ali & Ors.)
- iv. Exhibit D – Hath Citha of Dag no. 5 of P.P. no. 32 of Hijuguri gaon, Mouza and Dt. Tinsukia, Assam.
- v. Exhibit E – Hath Citha of Dag no. 7 of P.P. no. 34 of Hijuguri gaon, Mouza and Dt. Tinsukia, Assam.
- vi. Exhibit F – Registered sale deed bearing no. 1153 of 1949 executed by Smt. Bhubu Bagti in favour of Md. Sarif.



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- vii. Exhibits F(1-3) – Thumb impressions of Smt. Bhubu Bagti taken by writer Md. Dirum Ali.
- viii. Exhibit G – Deed of Memorandum dated 09/07/2007.
- ix. Exhibit H – Trace map of land covered under Dag no. 5 of P.P. no. 32 of Hijuguri gaon, Mouza and Dt. Tinsukia, Assam.

Typed and Corrected by me.



(Dhiren Pegu)
Munsiff no.1
Tinsukia

MUNSIFF No.1
TINSUKIA, ASSAM