



HIGH COURT FORM NO. (J) 2.
Heading of judgment in original suit
BEFORE THE COURT OF CIVIL JUDGE

(Junior Division),TITABAR.

Present : Lipika Roy, LL.M., A.J.S.

Wednesday, 5th August, 2026.

Title suit No. 11/2022.

1. Md. Tawheed Sharif Hazarika
2. Md. Basir A. Hazarika
3. Md. Fafi R. Hazarika

- All are of Indian Origin having status of N.R.I, S/O, Late S.M.S.H. Hazarika, Motijan, Titabar, Dist. Jorhat, Assam, presently residing in U.S.A.,

- Represented by their duly Constituted Attorney-Deepsikha, (A Trust) having its registered office at House No. 2, Ananda Path, Ambikagiri Nagar, Guwahati-781024 through its Honorary Secretary- Dr. Mrinmoyee Baruah.

.....Plaintiffs

Versus

Ashim Chandra Phukan,
S/O,Hem Chandra Phukan,



ASJR080000342022

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T.S.11/2022

R/O, Motijan, Titabar

Dist: Jorhat, Assam

.....**Defendant**

Final hearing of this suit is conducted on 30-07-26

in presence of the following counsels

Learned Counsels for the plaintiffs :Mr. Hasibur Rahman (Sr. Counsel) and Shri Amit Kr. Sahewalla.

Learned Counsel for the defendant : Shri Bhaba Goswami (Sr. Counsel), Shri Amit Agarwal, Smti. Ambika Agarwal, Smti. Arpita Saikia.

And having stood for consideration to this day 5th August, 2026, the Court delivered the following judgment.

JUDGMENT

1. The plaintiffs instituted this suit against the defendant for declaration of right, title, interest, recovery of possession and permanent injunction.

The plaintiffs' case:

2. The case of the plaintiffs in brief as stated in the plaint is that the plaintiffs are the sons of Late S.M.S.H. Hazarika and the plaintiffs have donated land to "Deepsikha" which is adjacent to the suit land for the purpose of establishing a Centre for Cancer Care to be run and operated as "Deepsikha at Motijan." It is further submitted that the plaintiffs are the owners of the suit land. It is



further stated that the plaintiffs have been residing in USA for not more than 20 (Twenty) years and the plaintiff no. 1 had come to the suit land on 19.11.2013 for the purpose of gifting a part of his land to his Attorney and he was shocked to see that the defendant had trespassed into the suit land and was in illegal possession thereof. Thereafter, on local enquiry plaintiff was informed that the defendant was occupying the suit land, however, the defendant somehow managed to get his name mutated in the revenue record. The plaintiffs further submitted that few members of the society from Titabar met the Defendant and requested him to vacate the suit land, but the defendant refused and claimed that he was in possession of the suit land since the year 2009. But the plaintiffs never sold the suit land to the defendant and. Hence, this suit.

Defendant's version :

3. The defendant appeared and submitted written statement. The defendant in his written statement denied all the allegations and contended that the suit is not maintainable and that the suit is barred by law of limitation, the suit is bad for non-joinder of necessary parties as the legal heir of Late Boo Hazarika are not made party in the present suit. The defendant also asserted that there is also no cause of action. The defendant contended that the institution namely Deepsikha has no legal capacity to represent the plaintiffs for improper representation. It is further submitted that originally the suit land along with other adjacent landed properties,



altogether the land measuring 30 Bighas 4Kathas-13Lochas, covered by several dag numbers was belonged to one Late Sharif Mohammad Shah Hazarika and after his death his legal heirs i.e. his wife namely Sona Nur Bahar Hazarika and his four sons i.e. Plaintiffs and Late Boo Hazarika inherited the said properties. That after the death of Late Boo Hazarika in 2005, the share of property of late Boo Hazarika was inherited by his legal heirs namely Farzana Rahman (Widow) and his only daughter namely Kamreen Hazarika (unmarried daughter). It is further stated that if the aforesaid land is divided equally amongst the 4 (four) sons of Late Sharif Mohammad Shah Hazarika i.e. (the Plaintiffs and the deceased Boo Hazarika), land measuring 7B-3K-10L would fall on each share of legal heir of late Sharif Mohammad Shah Hazarika. It is further submitted that the deceased Boo Hazarika and his legal heirs sold less than the land which fell on his/their share and the said land was in exclusive possession of the deceased Boo Hazarika. The defendant entered into a deed of agreement with late Boo Hazarika on 22.12.2003 in respect of land which was inherited by him from his deceased father and as per the contents of the said agreement dated 22.12.2003, the total consideration amount of Rs.2,99,000.00(Rupees two lakh ninety nine thousand) only was duly paid and physical possession of the suit land was delivered to the defendant on the date of execution of the said agreement with the knowledge of the Plaintiffs. The defendant also mutated his name in the revenue record on the basis of that agreement.

**Issues**

4. After going through the pleadings of the parties, issue no.(viii) has been stricken out vide order dated 30-07-26 and re-numbered the following issues which were framed on 24-09-2015 :

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

(ii) Whether the suit is barred by law of limitation?

(iii) Whether the suit is bad for non joinder of necessary party?

(iv) Whether the suit is properly valued and whether the court fee has been adequately paid?

(v) Whether the suit is maintainable in its present form and manner?

(vi) Whether the plaintiffs have acquired any valid right, title and interest over the suit land as described in the schedule of the plaint?

(vii) Whether the plaintiffs have lawfully appointed their attorney to institute this suit?



(viii) Whether the defendant is illegal occupier of the suit land and liable to be evicted?

(ix) Whether the defendant has acquired any right over the suit land?

(x) Whether the plaintiffs are entitled to get as prayed for?

(xi) To what relief/reliefs the plaintiffs are entitled for?

DISCUSSION, DECISION AND REASONS THEREOF

Evidence:

5. In order to support his pleadings, plaintiff adduced evidence of three witnesses and exhibited ten documents. The defendant side adduced evidence of six witnesses and exhibited three documents.

Argument

6. I have heard the argument and considered the submission put forwarded by the learned counsel appearing on behalf of the plaintiffs as well as the defendant. The learned counsel for the plaintiffs submitted that the plaintiffs are the owners of the suit land which they inherited from their predecessor but the defendant



trespassed into the suit land without having any right, title and interest which came to the knowledge of the plaintiffs when they came to visit the suit land for the purpose of gifting the suit land to "DEEPSHIKA". The learned Counsel submitted that the so called agreement exhibited by the defendant is not even an agreement as per Indian Contract Act as there are signatures of one party only. The learned Counsel for the plaintiffs relied upon, "*Tarsen Singh v. Sukhminder Singh, AIR 1998 SC 1400*", "*Kilburn Engineering Ltd. v. ONGC Ltd., AIR 2000 Bom 405*", "*Budhina Hazarika & Ors. v. Hira Payeng & Anr., 1989(2) GLR 430*", "*Manmatha Ranjan Tribedi v. Gopal Krishna T. E. Co. (Pvt.) Ltd., 2006(2) GLR 565*", "*Sankalchan Jaychandbhai Patel v. Vithalbhai Jaychandbhai Patel & Ors., 1996(6) SCC 433*", "*Simanta Jyoti Baruah v. Chairman, ASEB & Ors., 2016 GLR 741*", "*Kago Bungu v. Hibu Che Tulu Clan, 2019(1) GLT 190*", "*Rajendra Singh Kothari v. Lakhpat Raj Singhvi, 1999 (2) GLT 269*", "*B.K Narayan Pillai v. P. Pillai and Another 2000(1) SCC 712*", "*Jugal Kishore Kundu v. Narayan Chandra Kundu & Anr., AIR 1982 Cal 342.*"

7. The learned counsel for the defendant submitted that DEEPSHIKA has no legal capacity to file the present suit as the plaintiffs executed Power of Attorney in favour of Dr. Mrinmoyee Baruah and not in favour of "DEEPSHIKA". The learned Counsel for the defendants relied upon, "*Moreshar Yadaorao Mahajan vs Vyankatesh Sitaram Bhedi(D) Tr.Lrs. On 27 September, 2022*", "*Church of Christ Charitable Trust & Edu vs M/S. Ponniamman Educationa Trust Rep. on 3 July, 2012*", "*Ram Prasad vs Hari Narain*



And Ors. on 1 August, 1997, "Janki Vashdeo Bhojwani & Anr vs Indusind Bank Ltd. & Ors on 6 December, 2004", "Sankar Padam Thapa vs Vijaykumar Dineshchandra Agarwal on 9 October, 2025"

8. Having so heard and perused, now, the evidence on record as well as the aforementioned issues shall be discussed and decided accordingly.

Issue no. (i) Whether there is a cause of action for the suit? Issue no. (ii) Whether the suit is barred by law of limitation? And Issue no.(v) Whether the suit is maintainable in its present form and manner?

9. Issue no.(i), (ii) and (v) are clubbed together, for the purpose of discussion. The plaintiffs pleaded that they are the owners of the suit land and they have been residing in USA for more than 20 (Twenty) years and when the plaintiff no. 1 went to the suit land on 19.11.2013 to gift a part of his land to his Attorney, he found that the defendant illegally trespassed into the suit land. Further, the plaintiffs pleaded that they never sold any land to the defendant. On the other hand, the defendant stated that he entered into one deed of agreement with Boo Hazarika on 22.12.2003 in respect of the suit land and possession of the suit land was delivered to him as per the terms of the agreement. As per the section 34 of the Specific Relief Act, any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny, his title to



such character or right. From the claims of the plaintiffs and the denial of the defendant, it appears that there is cause of action for filing this suit. The defendant contended that the suit is barred by law of limitation. The plaintiffs pleaded that on 19.11.2013 they came to know about the trespass and the instant suit is instituted on 11-11-2014. In cross examination also, PW-1 deposed that he came to Titabar in November, 2013 and saw construction of house over the suit land. The defendant has not adduced any evidence to show that the plaintiffs had prior knowledge of the possession of the suit land by the defendant. As such, it is found that the instant suit is not barred by law of limitation. The further defendant contended that the suit is not maintainable but it is not mentioned as to under which provision of law the suit is not maintainable. Therefore, issue no.(i), (ii) and (v) are decided in affirmative and in favour of the plaintiffs.

Issue no. (iii) Whether the suit is bad for non joinder of necessary party?

10. The defendant asserted that the suit is bad for non-joinder of necessary parties as the legal heirs of Late Boo Hazarika are not made parties in this suit. The defendant submitted that original owner of the suit land along with other adjacent landed properties, altogether the land measuring 30 Bighas 4Kathas-13Lochas, was Late Sharif Mohammad Shah Hazarika and after his death his legal heirs i.e. his wife Sona Nur Bahar Hazarika and his four sons i.e. Plaintiffs and Late Boo Hazarika inherited the said properties. Then, after the death of Late Boo Hazarika in 2005, his share was inherited



by his legal heirs wife Farzana Rahman and his only daughter Kamreen Hazarika. Kamreen Hazarika adduced her evidence in this suit as PW-3 and in her evidence in chief on affidavit she deposed that her father had no right over the suit land as her father got his share of land at some other place. PW-3 further deposed that neither her nor her mother had any right over the suit property. Considering the evidence of Kamreen Hazarika, it appears that presence of the legal heirs of Late Boo Hazarika is not necessary in this suit to determine the real dispute of the suit. As such, it is found that the instant suit is not bad for non-joinder of necessary parties. Hence, issue no.(iii) is decided in affirmative and in favour of the plaintiffs.

Issue no.(iv)Whether the suit is properly valued and whether the court fee has been adequately paid?

11. The defendant asserted that the suit is not properly valued and the court fee has not been paid properly. As per section 7(iv)(c) of the Court Fees Act, when the suit is for to obtain a declaratory decree or order, where consequential relief is prayed, the amount of fee payable under the Act is according to the amount at which the relief sought is valued in the plaint. On perusal of the plaint, it appears that the plaintiff filled the instant suit for declaration, recovery of possession and permanent injunction. It is also on record that the instant suit is valued at Rs.2,50,000.00 as mentioned in the plaint and the plaintiffs paid five times land revenue i.e. total Rs.157.95 as court fees in this suit which is apparent on the case record. As per schedule- I of the Court Fees



(Assam Amended) Act, 1972, proper court fees is Rs.3969.1 when the amount is Rs.2,50,00.00. As, the plaintiffs paid Rs.157.95 only as court fees, it is found that there is deficit of court fee of Rs.3,811.15/-. Hence, it is found that the plaintiffs have not paid requisite court fee in this suit. Accordingly, issue no.(ii) is decided in negative and against of the plaintiffs.

Issue no (vi) Whether the plaintiffs have acquired any valid right, title and interest over the suit land as described in the schedule of the plaint? Issue no. (viii) Whether the defendant is illegal occupier of the suit land and liable to be evicted? And Issue no. (ix) Whether the defendant has acquired any right over the suit land?

12. Issue no.(vi), (ix) and (x) are interrelated and therefore, these issues are clubbed together for the purpose of discussion. The plaintiffs pleaded that they are the sons of Late Shariff M. Hazarika and they are the owners of the suit land. PW-1 deposed in his evidence in chief on affidavit that the suit land along with other analogous land covered by separate dags are owned by him along with his brothers namely M. Basir A. Hazarika and Md. Fafi R. Hazarika and they have been paying land revenue of the suit land. PW-1 exhibited one of the land revenue paying receipt as exhibit-9. The defendant also admitted in his written statement as well as deposed as DW-1 that the suit land along with other adjacent landed properties, altogether the land measuring 30B- 4K- 13L was belonged to Late Sharif Mohammad Shah Hazarika and



after his death his legal heirs i.e. his wife, his four sons i.e. Plaintiffs and Late Boo Hazarika inherited his properties. Facts admitted need not to be proved as per section 58 of the Indian evidence Act.

13. DW-5 deposed that the name of Tawheed Sharif Hazarika was not mutated in the revenue record. DW-5 further deposed that as per the record of jamabandi the original pattadar was Shariff Mohammad Sash Hazarika and after his death his legal heirs' name- Boo Hazarika, Kem Hazarika and Nimpe Hazarika were mutated. But in "***Suraj BhanV. Financial Commr.,(2007)6 SCC 186***", it was held by the Hon'ble Supreme Court of India that an entry in Revenue Record does not confer title on a person whose name appears in Record of Rights, entries in Revenue Records or Jamabandi have only fiscal purpose.

14. DW-1 deposed in his evidence in chief on affidavit that he never trespassed into the suit land rather he entered one deed of agreement with Boo Hazarika on 22-12-2003 for consideration of Rs.2,99,000/- with regard to land measuring 2K-12L only which was inherited by Boo Hazarika from his father. But, PW-3 is an heir of Boo Hazarika and she deposed in her evidence that that her father had no right over the suit land as her father got his share of land at some other place. In her cross examination also, PW-3 denied the suggestion that the entire suit land fell in the share of her father.



15. DW-1 exhibited the agreement dated 22-12-2003 as exhibit-A. DW-1 further deposed in his evidence that he paid the total consideration to Boo Hazarika and on the basis of the agreement dated 22-12-2003, the khas vacant and physical possession of the said land was delivered to him. DW-2, DW-3, and DW-4 also deposed in their evidence in chief on affidavit that Boo Hazarika entered into one agreement dated 22-12-2003 and the possession of the said land was delivered to the defendant. In his cross examination, DW-1 deposed that he requested Boo Hazarika to execute registered sale deed in his favour with regard to the suit land but Boo Hazarika used to tell him that power of attorney had not been received from Kem Hazarika and Nempe Hazarika. DW-1 further deposed in his cross examination that for that reason sale deed could not be executed in his favour. DW-2 deposed in his cross examination that an agreement was executed by Boo Hazarika to sell the suit land to the defendant. DW-4 deposed that the defendant purchased the suit land from Boo Hazarika.

16. Perusal of exhibit-"A" shows that the exhibit -"A" is not an agreement for sale. Perusal of exhibit-"A" shows that Boo Hazarika sold land measuring 2K-12L bearing dano.1436 of periodic patta no.91 of Amguri Kharikatia Mauza, Titabar Revenue circle to Sri Ashim Chandra Phukan at Rs.2,99,000/-only. But the exhibit-"A" is not a registered sale deed. As per section 54 of the Transfer of Property Act, sale of tangible immovable property of the value of one hundred rupees or upwards can only be made by a registered



instrument. But the consideration amount mentioned in exhibit "A" is more than rupees hundred. Therefore, it is found that exhibit "A" does not confer any right to the defendant to occupy the suit land.

17. In view of the above discussion, it is found that the plaintiffs have valid right, title and interest over the suit land. It is also found that the defendant has not acquired any right over the suit land and as such, the defendant is illegal occupier of the suit land and liable to be evicted. Accordingly, issue no.(vi) and (viii) are decided in affirmative and in favour of the plaintiffs and issue no.(ix) is decided in negative and in favour of the plaintiffs.

Issue no (vii) Whether the plaintiffs have lawfully appointed their attorney to institute this suit?

18. The defendant stated in the written statement as well as deposed in his evidence in chief as DW-1 that the trust "Deepsikha" has no legal capacity to the present suit as the plaintiffs for improper representation. PW-1 deposed in his evidence –in-chief on affidavit that he along with his other brothers appointed "Deepshika" as their attorney vide Exhibit-1,2,3 and 4. PW-1 further deposed that as per the Exhibit-1,2,3 and 4, he along with his brothers authorised the honorary secretary of "Deepshika" to represent them and to take all steps in suit and legal proceedings. In his cross examination, PW-1 deposed that the secretary of the trust is Dr. Mrinmoyee Baruah and the present suit was signed by her. Also, PW-1 denied the suggestion that Dr. Mrinmoyee Baruah filled the suit in her personal capacity. As per the Power of Attorney



Act, 1882, only a specified person can be empowered by Power of Attorney or simply speaking, a Power of attorney holder can only be a specified person. The plaintiffs pleaded that "Deepshika is a trust. Trust does not have separate legal entity of its own and the obligation to "maintain and defend" suit is placed on a trustee as per section 13 of the Indian Trust Act, 1882. Perusal of exhibit-1,2,3 and 4 shows that Dr. Mrinmoyee Baruah was appointed attorney by the plaintiffs and Dr. Mrinmoyee Baruah is the secretary of the trust "Deepshika" which is apparent in the evidence of PW-1. Moreover, one of the plaintiffs appeared and deposed before the court and he has not challenged the representation by Dr. Mrinmoyee Baruah to file the suit. Therefore, issue no.(vii) is decided in affirmative and in favour of the plaintiffs.

Issue no. (x) Whether the plaintiffs are entitled to get as prayed for ? and Issue no.(xi) To what relief/reliefs the plaintiffs are entitled for?

19. As the issue no. (i), (ii), (iii), (v), (vi), (vii), (viii) and (ix) are decided in favour of the plaintiffs, following reliefs are granted to the plaintiffs:

- (a) the plaintiffs have right, title and interest over the suit land,
- (b) the plaintiffs are entitled to recover the suit land,



(c) mutation order dated 12-05-2009 passed by the circle officer, Titabar Revenue Circle does not create any right, title or interest on the defendant with regard to the suit land.

(d) permanent injunction and

(e) cost of the suit.

ORDER

20. As a result of the forgoing discussions on evidence on record and decisions arrived on the abovementioned issues, the suit of the plaintiffs, is succeeded and the same is decreed on contest. Accordingly, following are the reliefs granted to the plaintiffs:

(a) The plaintiffs have right, title and interest over the suit land.

(b) The plaintiffs are entitled to recover the suit land.

(c) Mutation order dated 12-05-2009 passed by the circle officer, Titabar Revenue Circle does not create any right, title or interest on the defendant with regard to the suit land.

(c) The defendant, his men, family, agents, employees, attorneys and other claiming through him are permanently restrained from disturbing the possession of plaintiffs over the suit land after recover of possession.

(d) Cost of the suit.



21. Prepare a decree accordingly within fifteen days.
22. The plaintiffs are directed to pay the deficit court fee amounting to **Rs.3,811.15/-** only before preparation of the decree.
23. Given under my hand and seal of this court on this the 5th day of August, 2026.

Civil Judge (Jr. Div.)
Titabar, Jorhat.

Typed by

Juchika Sarma
Stenographer Grd-III

**APPENDIX****PLIANTIFF'S WITNESS:**

PW-1 --- Sri Md. Tawheed Sharif Hazarika

PW-2 ---Dr. Mrinmoyee Baruah

DEFENDANT'S WITNESS :

DW-1 --- Sri Ashim Chandra Phukan

DW-2 --- Sri Mahendra Saikia

DW-3 --- Sri Kula Shyam

DW-4 --- Hemen Chandra Gogoi

PLAINTIFF'S EXHIBIT :

Ext.-1 and 2 :- Two power of Attorneys executed by Mr. Basir A. Hazarika

Ext.-3 and 4 :- Two power of Attorneys executed by Mr. Fafi R. Hazarika.

Ext 5 and 6 :- Two power of Attorneys executed by Tawheed Sharif Hazarika.

Ext 7 :-Said Gift Deed bearing registered deed No. 2746.

Ext 8 :-Said Gift Deed bearing registered deed No. 2747.

Ext 9 :- Land revenue paid receipt.

Ext 10 :- Certified copy of the Jamabandi of the suit land.

DEFENDANT'S EXHIBIT :

Ext-A :- Original Deed of Agreement dated: 22.12.2003.

Ext-B :- Gaon Burha Certificate

Ext-C :- Certificate issued from Titabar Town Committee.

Ext- D :- legal notice.

Ext- E :- Postal receipt.

Ext- F :- certified copy of Jamabandi

Ext- G, H, I and J :- Land Revenue Receipts.

Civil Judge (Jr. Div.)
Titabar, Jorhat.