

West Bengal Form No.3701

HIGH COURT FORM No. (J) 2.

HEADING OF JUDGMENT IN THE ORIGINAL SUIT/CASE

DISTRICT: Paschim Medinipur.

**In the Civil Judge (Jr. Div.) Additional Court, Garhbeta,
Paschim Medinipur.**

Present :- Yesmin Ara Khatun.

TITLE SUIT NO. 59 of 2017.

(OLD T.S NO. 51 OF 2012)

CIS REGISTRATION NO. 09 OF 2014

Passed on the 10th day of May 2018

1. Sajahan Kha.....Plaintiff(s)/Petitioner(s)

Versus

1. State of West Bengal

2. B.L & L.R.O, Garhbeta-1

3. Nur Hussain Mallick.....Defendant(s)/Opposite party(s)

Give the date or dates This suit/case coming on for final hearing on
02.04.2018, 03.03.2018, and 06.04.2018 in the presence of

**Sri Jyotsna Nath MondalAdvocate(s) for Plaintiff(s)
Pleader(s)/ Petitioner(s)**

And

**Mr. Sher Afgan.....Advocate for the State Defendant
Pleader(s)/ Opposite party (s)**

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

JUDGMENT

This is a suit filed by the plaintiff for declaration of right, title and interest and possession over the suit schedule properties measuring about 35 decimal in plot no. 1 and measuring about 46 decimal of land in plot no. 4 (total area 81 decimal of land) in Mouza-Parbatipur, P.S- Garhbeta, Paschim Midnapore and also for permanent injunction against the defendants.

In order to bring home the rival and conflicting claims and allegations by each of the parties against the rest in the suit in our hand for consideration and

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

adjudication, it will be reasonable to reproduce here a brief account of the pleadings in ascertaining the real subject matter in dispute, to point out the grounds of dispute in between the parties.

PLAINTIFF'S CASE

The factual matrix of the case of the plaintiff in a nut shell is that the properties in Plot nos. 1 and 4 in Mouza- Parbatipur were originally the vested properties of the Govt as it was beyond the ceiling limit of the superior landlords and duly recorded in R.S. The plaintiff was a landless person and having regard to the prayer of taking settlement by him, 81 decimal of land by virtue of 'Patta' dated 21.03.1972 out of settlement case being no. 45/ 71-72 was settled to the plaintiff by the then J.L.R.O of Garhbeta and S.L.R.O of Midnapore and also gave possession to him by demarcating the land at locale by the aile. A naksha was attached to identify the suit properties of the plaintiff by mentioning '1/Ka' and '4/Ka'. The suit properties are possessed by the plaintiff by cultivating various crops like Paddy, Potato, til etc. The plaintiff also paid the rent to the Govt. but the rent receipts were destroyed.

The further case of the plaintiff is that at the time of L.R Survey, the plaintiff was quite ill and could not attain any stage of the L.R Survey. The suit properties are recorded in favour of State as vested land instead of recording the same in the name of plaintiff. The said record is erroneous and baseless. The defendant nos. 1 and 2 have no right, title and interest and possession in respect of the suit properties. As the suit properties are erroneously recorded, the Tahasildar on behalf of the defendant nos. 1 and 2 threatened the plaintiff to dispossess him from the suit properties and also threatened to give settlement to third parties on 15th Chaitra, 1418 B.S. Hence, the plaintiff filed this suit.

DEFENDANTS' CASE

It is worthwhile to mention that the suit was originally filed against defendant nos. 1 and 2 and during the pendency of the suit defendant no. 3 was added by virtue of an application filed by the plaintiff under Order 1 Rule 10. All the three defendant appeared in this suit. Subsequently, defendant no. 3 do not contest the suit. Defendant nos. 1 and 2 contest the suit by filing the written statement jointly and denied all the allegations made in the plaint and categorically challenged the suit, inter alia, that the suit is not maintainable in its presents form and with prayers and also due to having no cause of action to file the instant suit

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

against the defendants by narrating misleading and misconceived facts and circumstance and also due to hit by not giving notice under section 80 of CPC and insufficient Court fees amongst others.

The case of the defendant nos. 1 and 2(State defendant) in a nut shell is that the description of the suit land is vague and indefinite. It was contended that the suit land was out of ceiling limit of the landlords and it was the vested land of the Govt and also fellow land. The plaintiff has no title, right and possession over the suit land. The State has been taken possession legally over the suit plot. The suit land has been legally recorded in L.R proceeding in favour of the State. Hence, the defendants have prayed for dismissal of the suit.

On a close and careful scrutiny of the Pleadings presented by the parties and briefly narrated herein above and as has been reflected from the pleadings submitted by the respective parties, the Court has considered the actual, real and true points disputes prevailing between the parties over the subject matter in this suit and for the purpose of centralize the subject matters of trial, the court has framed the following issues for consideration and adjudication of the dispute over the subject matter of the suit. At the time of hearing argument, the Court felt that two additional issues (issue no. 10 and 11) must be framed for proper adjudication and therefore the issues are re-casted as follows :-

ISSUES

1. Is the suit maintainable in its present form and prayer?
2. Has the plaintiff any cause of action to file the suit?
3. Is the suit barred by section 34 of Specific Relief Act?
4. Is the suit barred by Law of Limitation?
5. Is the barred by section 57B of W.B.E.A act and 51C of W.B.L.R Act?
6. Are the patta, rent receipts mentioned in the plaint forged or not?
7. Has the plaintiff any right, title, interest and possession over suit property?
8. Whether the plaintiff is entitled to get decree as prayed for?
9. To what other relief or reliefs the plaintiff is entitled to get both in law and equity?
10. Whether the description of the suit property is vague and indefinite?
11. Whether the Notice u/s 80 C.P.C have been served upon the defendants?

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

It is pertinent to mention that the suit is transferred to the Court of Civil Judge (Jr. Div) Additional Court, Garhbeta by transfer through Ld. District Judge's Procedural Order 78 dated 02.05.2017 from the Court of Ld. Civil Judge (Jr. Div), Garhbeta for disposal.

The trial of the suit commenced by framing of the issue and the parties to the suit were asked to state their case and also adduce and produce evidence in support of the above issues they are bound to prove and on the basis of the pleadings reproduced herein above regarding contradictory claims and conflicting allegations made by the parties against each other and the parties to the suit are dueling over the subject matter of the suit that is the suit property, the plaintiff has adduced evidence, both oral and testamentary as well, with a view to substantiate his respective cases and with a further view to destroy the cases made by the adversary for the purpose of obtaining order as he has prayed for in his respective pleadings. Accordingly, recording of evidence commenced with the examination in chief in writing, filed by the plaintiff and the State defendant has adduced only documentary evidence.

In order to substantiate his case the plaintiff has examined the following witnesses.

- Sajahan Khan (plaintiff).....**P.W -1.**
- Ansuddin Khan.....**P.W – 2.**
- Ramgopal Chakrabarty.....**P.W – 3.**
- Khelapat Bhangi.....**P.W – 4.**
- Dinabondhu Mondal.....**P.W – 5.**

Further, the plaintiff has also filed the following documents before the Court for cementing his case:-

1. Original "Patta" dated 21.03.1972 in the name of Sajahan Khan (without objection) (Marking date 20.03.2014).....**Exhibit No. 1.**
2. Copy of of the notices given to Collector and B.L & L.R.O (without objection) (Marking date 14.09.2017).....**Exhibit No. 2 (series).**
3. Postal Receipts (without objection) (Marking date 14.09.2017)
.....**Exhibit No. 3 (series).**
4. Acknowledgement Due Cards (without objection) (Marking date 14.09.2017).....**Exhibit No. 4 (series).**

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

5. Certified copy of L.R Khatian no. 1 of Mouza- Parbatipur (without objection) (Marking date 07.12.2017).....**Exhibit No. 5.**
6. Certified copy of plot information of plot no. 1 of Mouza- Parbatipur (without objection) (Marking date 07.12.2017).....**Exhibit No. 6.**
7. Certified copy of plot information of plot no. 4 of Mouza- Parbatipur (without objection) (Marking date 07.12.2017).....**Exhibit No. 7.**

Whereas, the defendant nos. 1 and 2 while contesting the instant suit have filed the following documents for availing a complete dismissal of the suit filed by the plaintiff:-

1. Certified copy of R.S Khatian no. 2 of Mouza- Parbatipur (Marking date 19.01.2018).....**Exhibit No. A.**
2. Certified copy of plot information of L.R plot no. 1 of Mouza- Parbatipur (Marking date 07.12.2017).....**Exhibit No. B.**
3. Certified copy of plot information of L.R plot no. 4 of Mouza- Parbatipur (Marking date 07.12.2017).....**Exhibit No. C.**
4. Statement of facts marked as 'X' for identification.

:- Decision with Reasons:-

Issue No.1. Is the suit maintainable in its present form and prayer ?

And

Issue No.2. Has the plaintiff any cause of action to file the suit?

Both the issues are taken together for discussion for the sake of brevity and reasonableness and also for the purpose of avoiding unnecessary repetition.

Both the issues have not been pressed by Ld. Counsel for both the rival parties. This is a suit for declaration of Right, Title and Interest and consequential relief of permanent injunction. It has been filed in the civil court having jurisdiction to try the suits of civil nature. The defendant nos. 1 and 2 though took the plea of non-maintainability of the suit but failed to state specifically as to how the suit is not maintainable.

After perusal of the plaint, it is found that the suit plot is situated in L.R Khatian Nos. 1 of Dag nos. 1 and 4 of Mouza- Parbatipur, P.S- Garhbeta, Paschim

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

Midnapore, which is well within the territorial jurisdiction of this Court. The suit value is also well within the pecuniary jurisdiction of this Court.

In the instant case, in view of assertion in the plaint it appears that the plaintiff has alleged that the suit schedule properties were settled to him by the State by virtue of a 'Patta' and he has the title and possession in respect of the suit properties. On the other hand, the State alleged that the suit properties are vested land of the Govt. and the plaintiff has no right, title, interest and possession over the suit plots. The 'Patta' of the plaintiff is a false document.

Therefore, it appears from the rival contention of both the parties that there is clear denial of each other's right upon the suit schedule properties.

The suit is originally filed against defendant nos. 1 and 2 and subsequently by allowing the petition under **Order 1 rule 10 of Code of Civil Procedure** defendant no. 3 was added. It is surprising to see that the plaint was not amended by the plaintiff to incorporate a cause of action against him. The plaintiff rather filed the petition for temporary injunction only. The summons has served upon him and he appeared in this suit also. Therefore, he do not contest the suit. Hence, this Court is of the opinion that there is no cause of action disclosed against the defendant no. 03 in this suit and the suit is not maintainable against him.

Hence, I hold that there is cause of action for filing the suit only against defendant nos. 1 and 2 and accordingly the issue is decided in favour of plaintiff and against the defendant nos. 1 and 2.

Issue No.3. Is the suit barred by section 34 of Specific Relief Act?

And

Issue No.4. Is the suit barred by Law of Limitation?

Both the issues have taken together for discussion for the sake of brevity and unnecessary repetition. At the time of argument, these issues have not been pressed before the court by the Ld. Senior Counsel for the defendants.

As regards the allegation under Section 34 of the Specific Relief Act, against the suit, though the written statement does appear to have contained not a single sentence to explain or clarify any ground or reason to satisfy or in holding as to why the suit does suffer from the provisions of the Act and also barred by the law of limitation.

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

I think it would be reasonable and justified to look into the provisions of the Act in this regard as it is found that the suit is for declaration and guided by the provisions that contained-

“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, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

In order to ascertain the maintainability of suit in respect of the provisions underlying Section 34 of the Specific Relief Act the plaintiff is therefore to prove that the plaintiff is entitled to a legal character or a legal right to any property or that the defendant is denied or interested to deny his title to such character or right in the first hand. The proviso to this section has restricts the Court from making any such declaration in any case where the plaintiff does appear to the Court to be entitled to any further relief or more relief but have refrained in seeking for that relief along with the said relief.

A casual looking / glance at the relief the plaintiff has embodied in the prayer clause i.e deceleration and consequential relief of permanent injunction reveal that all the reliefs have properly been prayed for by the plaintiff. Therefore, it can safely hold that the instant suit is not barred by section 34 of Specific Relief Act.

Nothing transpires from the record that the suit is barred by the law of limitation. The suit is filed within three years of arising cause of action. Therefore, I find no hesitation to hold that the suit is not barred by the law of limitation in absence of any specific allegation.

Hence, these issues are decided in affirmative in favour of the plaintiff and against the defendant nos. 1 and 2.

Issue No.5. Is the barred by section 57B of W.B.E.A act and 51C of W.B.L.R Act?

This issue has also not been pressed by the Ld. Counsels of either party at the time of argument. **Section 51C of W.B L.R Act** and **57B of W.B E.A Act** bar the Jurisdiction of Civil Court in certain matters i.e. a Civil Court shall not

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

entertain any suit or application for the determination of revenue or the incidents of any tenancy to which the Record of Rights relates. A Civil Court has also no power to entertain any suit or application concerning any land if it relates to alteration of any entry in the Record of Rights finally published, revised, corrected or modified as per the provisions as laid down in the above mentioned Acts.

This is the suit for declaration of Title and for permanent injunction filed by the plaintiff against the defendants of this instant suit. It is mentioned in the nowhere within the four corners of the plaint that the plaintiff has prayed for correction of the entries in the Record of Rights. The plaintiff simply prayed for declaration of his Title and the Civil Court has wide amplitude of power to declare any legal Rights of any person entitled. Moreover, it is the settled principle of law that only the Civil Court has the power and jurisdiction to enquire into the title and make the declaration to that effect.

Hence, this issue is decided in favour of plaintiff and against the defendant nos. 1 and 2.

Issue No.11. Whether the Notice u/s 80 C.P.C have been served upon the defendants?

Section 80 of C.P.C specifically states that “**no suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or laid at the office**”.

One of the allegation of the State defendant is that the suit is not maintainable due to giving no prior notice. However, the State defendant has not adduced any evidence in their favour.

On the other hand, the Law Clerk Ram Gopal Chakraborty examined as P.W-3 to prove the genuineness of the Notices along with Plaint, Postal receipts and A/D cards produced by the plaintiff which are duly admitted in evidence without objection. It transpires from the Exhibit nos. 2, 3 and 4 (series) that the notices have been sent to the Collector, Paschim Medinipur and concerned B.L & L.R.O and they appeared in this suit and also contest. Therefore, I have no hesitation to hold that the notices as required u/s 80 C.P.C were duly served upon the State Government and the plaintiff has complied with the requirement of Section 80.

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

Thus, this issue is decided in affirmative and in favour of the plaintiff and against the defendant nos 1 and 2.

Issue No.6. Are the patta, rent receipts mentioned in the plaint are forged or not?

And

Issue No.7. Has the plaintiff any right, title, interest and possession over suit property?

And

Issue No.10. Whether the description of the suit property is vague and indefinite?

All these issues have taken together for discussion for the sake of brevity and unnecessary repetition and for their inter-dependency.

In brief, the plaintiff claimed the ownership of total 81 decimal of land in Plot Nos. 1 and 4, recorded in L.R Khatian No. 1 of Mouza- Parbatipur, P.S – Garhbeta. The plaintiff has received 'Patta' in respect of those plot from the Govt. The plaintiff annexed a sketch map with the plaint showing his possession over the suit plot. The defendant nos. 1 and 2 have no right, title and interest and possession upon the suit schedule properties.

On the other hand, the defendant nos. 1 and 2 alleged that the suit land is a vested land. The plaintiff has no right, title, interest and possession over the suit land. The State has been taken possession legally over the suit plot. The suit land has been legally recorded in L.R proceeding in favour of the State.

In order to substantiate the claim of the plaintiff of becoming the owner of the suit schedule properties, the plaintiff adduced both oral and documentary evidence. Plaintiff has produced the original 'Patta' in his name and the certified copies of L.R Record of Rights in respect of Khatian no.1 and also plot information in respect of plot nos.1 and 4 which are marked as Exhibits. It transpires from the original 'Patta' admitted in evidence without objection that the suit schedule properties were settled to the plaintiff by the State out of the settlement case being no. 45/71-72. It also appears from the record of rights, that the suit lands are not recorded in the name of the plaintiff as 'patta-holder'.

The defendant nos. 1 and 2 have adduced only documentary evidence in their favour. However, the Learned Counsel for the State has cross examined the witnesses adduced by the plaintiff. It appears from the oral evidence of PW-1 (plaintiff himself) that suit plot nos. is being plot nos. 1 and 4 and he has filed the

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

suit for 35 and 46 decimal of land respectively. He filed written application for granting 'patta' and which was wrote by Joynal Mallick. He got 'patta' in the year 1952. The other oral evidences adduced by the plaintiff has no knowledge regarding his title and only gave evidence in respect of his possession. He failed to state the plot of himself. P.W-3 and P.W-5 is merely the formal witnesses for proving the documents.

P.W-2 stated categorically in his cross-examination that the suit Dag nos. are 1 and 4 of Mouza- parbatipur and stated that Dag no. 1 is measuring about 35 decimal of land and failed to state the area of other plot. He also stated the total area of suit plot is 85 decimal of land. He also stated the butt and boundary of two suit plots. He also stated that he has no land in the suit Mouza. The Government gave the plaintiff the possession of the suit plot. P.W-4 stated in his cross-examination that the suit Mouza is Parbatipur and the suit Dag no. is 2. The total area of suit plots are 2 Bigha Approx.

In a suit for declaration of Title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. In **Maran Mar Basselios Catholicos Vs Thukalau Paulo Avira** [AIR 1959 SC 31], it has been held by our Hon'ble Supreme Court that in a suit for declaration, if the plaintiffs are to succeed, they must do so on the strength of their own title.

Considering all the material evidence both oral and documentary and in the light of the submissions made by Ld. Counsels namely Mr. J.N Mondal and Mr. Sher Afgan, it appears that it is admitted fact that the suit properties were originally vested property of the State. The plaintiff alleged the existence of 'patta' in his name and the State defendants alleged that the 'patta' is false. The 'patta' is before the Court for adjudication upon the same. It is the original copy of the 'Patta' which is 30 years old document. Therefore, this Court fully agrees with the contention of the Ld. Counsel for the plaintiff that the presumption under section 90 of Indian Evidence Act 1872 will arise.

Let me here to quote **sections 90 and 4 of the Indian Evidence Act, 1872:**

Section 90

Presumption as to documents thirty years old

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in particular case considers proper, the

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested.

Section 4

Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

Therefore, this Court is of the opinion that presumptions are the inferences which can be drawn by the Court with respect to the existence of certain facts. In case of 'may presume' it is the discretionary power of the Court either to presume or call for proof of it. Such a discretion should be exercised judicially and here the plaintiff has produced the original copy of the 'Patta' which certainly raises a presumption in favour of the plaintiff. The rule of evidence as laid down is that he who asserts must prove. The burden of proof lies upon the plaintiff which the plaintiff successfully discharges by adducing the original 'Patta' and now the burden shifts from the plaintiff to the defendants that the 'Patta' is a forged one and was not issued by the State. Therefore, the burden shifts upon the defendant to disprove it and the State defendant has produced only the R.S and L.R record of rights in support of their plea.

It is also settled principle of law that the revenue records is not a document of title but at best the evidence of possession only. The State has not mentioned specifically anything within the four corners of the written statement regarding the 'Pattas' issued to another persons and also did not mention out of which case such 'Pattas' were issues and in which year. Such records cannot prove upon whose name the 'patta' was issued and who are the title holder of such lands and such 'pattas' were issued whether before the institution of the suit or during the pendency. Therefore, the record of rights is not sufficient evidence to disprove the genuineness of 'patta'. The State has not produced any other documents to disprove the genuineness of the 'Patta' in spite of the fact that the documents are easily available with them as they are the custodian of those documents such as Register-8 etc. Therefore, withholding of such vital documents raise an adverse presumption against the State under **section 114 (g) of the Indian Evidence Act 1872**. therefore, it can be held that the 'Patta' is a genuine and original one and the plaintiff is a 'Patta-holder' of the suit properties.

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

It appears from the plaint that the plaintiff has prayed for title of the suit properties by virtue of 'Patta' issued by State. The plaintiff has successfully proved that he is the 'patta' holder of the suit plot. Now, the question is whether 'Patta' confers title or not. The Court is of the opinion that the feature of a 'Patta' issued under the WBLR Act is that the 'patta-holder' is a raiyat and has all the rights and obligations of raiyat under **section 4** except the right to transfer the same in contravention of **section 49(1A) of the said Act**. No demarcation has been mentioned in the 'patta'. However, it is the general rule that the property was demarcated at locale and given to the 'patta' holder after proper identification. Therefore, it is clear that the state of West Bengal is the absolute owner in respect of a 'Patta' land and retained the right to annul the 'Patta' if a 'Patta' holder contravenes any of the condition mentioned in the 'Patta'. The 'Patta' holder has not acquired any title but he has acquired the lawful right, interest and possession from the state as a settlee or 'patta-holder'. And such a right even cannot be infringed by the State without taking due course of law.

Therefore, it can safely be held that though the plaintiff having no absolute title but is the 'patta-holder/settlee' with **rights, interest and lawful possession** over the suit properties as enunciated in 'patta' subject to **section 49(1A) OF W.B.L.R Act, 1955**.

Therefore, the main question for adjudication is now that though the plaintiff has lawful right and interest in respect of 81 decimal of land in plot nos. 1 and 4 as appears from the 'patta' the plaintiff possesses which portion or share within plot nos. 1 and 4.

Ld. Counsel for the plaintiff pointed out the sketch map annexed with the plaint and argued that the suit plots are well described. He placed his reliance upon **Order 7 Rule 3 of Code of Civil procedure** and submitted that where he subject matter of the suit property is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record or settlement or survey, the plaint shall specify such boundaries or numbers.

Ld. Counsel for the State argued that the annexed map is itself vague and not even signed by the Surveyor. No investigation or inspection is made by the plaintiff. A suit cannot be decreed if the description of the suit property is vague.

After careful perusal of the record, it appears that plaintiff has annexed one

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

sketch map with the plaint but no cogent evidence has been produced by the plaintiff to authenticate the same. It also appears that the annexed sketch map is not even signed by the surveyor prepared the same. In such a situation, the annexed sketch map cannot be considered to be authentic. The plaintiff has not mentioned the total area of both plot nos. 1 and 4 within the four corners of the plaint. From the record of rights of Plot nos. 1 and 4, it appears that the plots are very big plots and the plaintiff claimed only a portion of the suit plots. The specific land which the plaintiff possesses in plot no. 1 and 4 has not been appeared either from the oral or from the documentary evidence. The specific boundary of the 35 and 46 decimal of land as claimed by the plaintiff has not mentioned within the four corners of the plaint including the suit schedule or even in the affidavit in chief of the plaintiff himself. Even both the PW-2 and PW-4 have failed to state correctly the quantum of the suit properties. Further, PW-2 stated the boundary of the suit plot but such boundary is self contradictory. If hospital is situated at the northern side of plot no. 4 and southern side of plot no. 1, then how plot no. 1 is situated at the eastern side of the plot no. 4.

This Court further is of the opinion that the description of suit plot by survey number only is not applicable in the fact of this suit as this suit is not related with the declaration in respect of entire suit plot but only a portion is claimed. In such a situation, the plaintiff must specifically state the boundary of the suit lands, otherwise a decree cannot be executed. It is usual that other persons possessed the rest of the land.

In this circumstances, I am of the reasoned view that the plaintiff has failed to state the specific area of his possession over the suit plots by adducing any cogent and direct evidence. Therefore, I am of the opinion that the description of the suit plots is vague and indefinite.

Hence, issue nos. 6 and 7 are decided in affirmative in favour of the plaintiff and against the defendant nos. 1 and 2 but issue no. 11 is decided against the plaintiff.

Issue No.8. Whether the plaintiff is entitled to get decree as prayed for?

And

Issue No.9. To what other relief or reliefs the plaintiff is entitled to get both in law and equity?

Title suit: 59 of 2017 (C.I.S No. 09 of 2014)

Both the issues are taken together for discussion for the sake of brevity and unnecessary repetition.

From the discussion of foregoing issues and the decisions thereof as contended in the body of judgment of mine, it appears that though the plaintiff has proved his right, interest and possession upon the suit plot nos. 1 and 4 to the extent of 81 decimal of land but could not get himself to be entitled to get the relief as prayed for on the ground that the description of the suit proeprty is vague and indefinite. The suit is also not maintainable against defendant no. 3 for having no cause of action against him. The plaintiff is further appeared to have failed to prove that he is entitled to any other relief as prayed for in the prayer clause of the plaint in any extent either in equity or in law. The instant suit thus appears to have not succeeded in a long run contest and the plaintiff is found **not to be entitled to the relief** as prayed for.

In the background of aforesaid findings, the plaintiff failed to prove the aforesaid issues. Thus the instant suit fails for the above mentioned lacuna. Accordingly, both these issues are answers in negative against the plaintiff.

The court fees paid appears to be correct.

Hence, it is

ORDERED

*That the suit for declaration and injunction be and the same is **dismissed** on contest against the defendants. Parties to bear their own costs.*

The suit is thus disposed off accordingly.

Interim order if any passed, stands vacated.

Decree be drawn up accordingly.

Note in the concerned Register.

C.I.S Clerk is directed to upload the judgment and order in the proper manner in PDF format.

File be consigned to Record Room after necessary compliance.

Typed by me.

*Civil Judge (Jr. Div), Addl. Court,
Garhbeta, Paschim Medinipur.*

*Civil Judge (Jr. Div), Addl. Court,
Garhbeta, Paschim Medinipur.*