THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

<u>Limited Departmental Competitive Examination for Promotion</u> To Grade-I of Assam Judicial Service

Date: 11.10.2020

Time: 9 am to 12 pm

Total Marks: 100

Duration: 3 Hours

[Instruction: The candidate is expected to refer to the relevant decisions of the Apex Court and the High Court while writing answers]

PAPER III

CONSTITUTIONAL LAW (40 Marks)

[Answer any three from Question Nos. 1 to 5]

 $3 \times 10 = 30 \text{ Marks}$

1. Write a brief note on Chapter VI of the Constitution of India pertaining to Subordinate Courts:

10 Marks

2. The Doctrine of Basic Structure of the Constitution is a dynamic principle. Please elaborate.

10 Marks

- 3. Which Article of the Constitution of India was referred to by Dr. B.R Ambedkar as the "Heart and Soul" of the Constitution and why? Elaborate.

 10 marks
- 4. The rights guaranteed under Article 19 of the Constitution of India are restrictive in nature both from the aspect of its availability as well as the expressed restrictions. Kindly elaborate.

10 Marks

5. Write an essay on Article 311 of the Constitution of India.

10 Marks

6. Write a brief note on any two of the following:

2 X 5= 10 Marks

- (i) Article 14 of the Constitution of India.
- (ii) Fundamental Duties under the Constitution of India.
- (iii) Article 21 of the Constitution of India.
- (iv) The Preamble of the Constitution of India.

JURISPRUDENCE (20 Marks)

7. Answer any two:

2 X 10= 20 Marks

- (i) Write a note on the Doctrine of Res Judicata read with the relevant statutory provisions- its applicability and objective.
- (ii) Write a note on 'Principles of Natural Justice'- an inbuilt principle of law.
- (iii) Write a note on the ingredients of Common Law Doctrine.
- (iv) Write a note on the principles to be followed in a case of exercise of discretion while discharging judicial duties.

JUDGMENT WRITING (40 Marks)

8. Write a judgment on the basis of materials available in the enclosed Paper Book:

40 Marks

PAPER BOOK

TITLE APPEAL NO: 01/05

DISTRICT: BARPETA

MAFIZUDDIN Appellant / Plaintiff

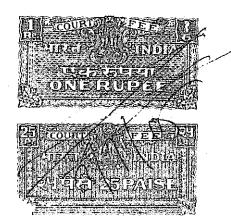
Vs

TAIMUDDIN Respondent / Defendant

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4	Written Statement and counterclaim in Title Suit No. 92/1999.				
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9	Evidence on Affidavit of PW-2 Md. Moksed Ali in Title Suit No. 92/1999.				
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IN THE COURT OF DESSIONS JUD E BARRETA.



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T. A. 2/05

IN THE MATTER OF

An appeal under order 41 rule 1 fead math section 151 of the Code of Civil prepedure.

- A N D -

A Judgement and decree atd. 4-12-04 and Civil ded passed by Judge Berpeth in T.S. No. 92/99 dismising the suit of the plaintiff and decreeing the counter claim of the def endant.

And

In the matter of

Mailzuddin S/O Nasimuddin, resident of Village Majorgeon, P.S.& Dist.Ba meta, Assam.

---- Appellant.

Contd-2.

In the matter of



_ 2 ~

- Versus -

1. Taimuddin S/O Sauta Mia,
resident of Village Majorgaon, P.S. &
Dis tict Barpe ta, Assam.

--- Respondent.

Valuation: The suit is valued at Rs 4,50,000 and court fee of Rs nes already paid accordingly!

The appellants begs to state -

with the Judgement and decree dtd. 4/12/04 passed by the learned Civil Judge Barpeta in commection with T.S. 92/99 dismissing the suit of the plaintiif and decreeing the counter claim of the defendent begs to prefer the appeal on the following amongst other grounds.

- GROUNDS -

1. For thet impunged Judgement & decree are illegal unjust and liable to be set aside.

Contd 3.

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- 2. That the learned trial judge failed to arrive at the decision wrongly about the decision of the issues the impunged judgement and decree are liable to be set aside.
- 3. For that the issue Ne.vi regarding registered sale deed No. 795/516 atd. 26/3/87 regarding purchase of the suit land by the plaintiff from one prankrishna Das ignored by the learned trial court and as such the imp unged judgement and degree are liable to be set aside.
- the suit land by regd. sale deed No. 8278/67 by the defendant from said Prankrishna Das and sub mission of only certified copy of the deed in the trial court does not prove the case of the defendant. The defendant without submitting the original sale deed, submitted the certified copy and view of the learned trial court regarding only certified copy is illegal, unfair and unjustified hence the decree of the counter claim so is liable to be set aside.

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- 5. That the issue No. iii, v, vii, viii regarding right, title, interest possession over the suit land, prayer for decree of the counter claim are wrongly decided by the trial court and as such the decision are liable to be set aside.
- 6. For that, all the issues the learned trial court arived that of wrong decision and as such the impunged judgement and decree are liable to be set aside.
- 7/ For that the impunged judgement and decree are baddin any view of law as such the impunged jud gdment and decree are liable to be set aside.

The is therefore prayed that your henour would be pleased to admit the ampeal, stay the imp unged judgement and decree of the counter claim call for the seconds of the case and on perusal thereof set aside the impunged judgement and decree allow the suit of the plaintiff/appe llant and make such other order or orders as may be deemed fit and proper under law and equity.

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- 7 -

= CERTIFICATE =

I have examined the records of the case, and in max my opinion there are good grounds of appeal and set forth above and I undertake to support them at the time of hearing.

Handan hus

Enclosure:

- 1. Certified coppes of Jangement and decree.
- 2. One vakaletnama.
- 3. Copies of Memo of Appeal.

(Harekrishna Das) Advocate, Barpeta. 8.12.04 - 16.12.04 - 16.12.04 - 28.1.05 - 29.1.05

Form No. (J)2.

Heading of Judgment in Original Suit District:- Barpeta.

IN THE COURT OF CIVIL JUDGE

:: BARPETA :

Present : -

ajs,

Civil Judge

Saturday, the 4th day of December, 2004.

Title Suit No. 92 of 1999

Mafijuddin .

Plaintiff .

- Vs. -

Taimuddin .

Defendant .

The Suit coming on for final hearing on 30.11.2004 in the presence of Mr Kh.N. Ahmed and Mr A.K. Das , advocates for the Plaintiff.

Mr. A.A. Khan and
Mr. R. Das , idvocates for
the Defendant .

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

This is a suit for declaration of right, title and interest, Khas possession and permanent injunction.

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Admenti

1. Plaintiff's suit in brief is that a plot of lard measuring 1B(bigha) 2K(Katha) 5L (lechas) covered by Dag No. 158 under Patta No. 91(it ought to have dag No.91

contd...2

Patta No.158 as per sale deed and patta) of Village -Majorgaon under Barpeta Mouza, more particularly described in the schedule of the plaint is the subject matter of the suit and is hereinafter referred as the "suit land". The plaintiff purchased the suit land from the original patta-dar Prankrishna Das by a registered sale deed No. 795/516 dated 26.03.1987 and took formal and physical possession over the same . Plaintiff's name was mutated in the records of rights on 4.02.88 vide the order of mutation case No. 380/86-87. Plaintiff also paid the land revenue regularly On 15.12.2998, the defendant armed with deadly weapon dispossessed the plaintiff from the suit land by destroying the thatched dwelling houses . Lastly, on 15.05.99 the Plaintiff unsuccessfully requested the defendant to deliver the vacant possession. Hence the suit for declaration of right, title and interest, recovery of khas possession and permanent injunction .

W/s. both in law and in facts. His case in brief is, apart from the pleas of no cause of action for the suit, barred by limitation, non-joinder of necessary parties, that the suit is false and based on concocted facts.

It is pleaded that the suit land originally belonged to Prankrishna Das who sold the suit land which was under annual patta with other periodic patta land measuring 6 bighas on 14.12.1967 to the Defendant vide registered sale deed no. 8278 /67 and the defendant took delivery of possession of the entire 7B 2K 5L including the suit land. The original sale deed was found missing. It is

was agreed between the defendant and the Prankrishna Das that after conversion of the land into periodic, the defendant will allow mutation in the name of the defendant The suit land was converted to periodic patta in the year 1987 and the defendant made several requests to his vendor who is now serving at Guwahati . In the meantime , the plaintiff filed a false case U/s. 145 Cr.P.C. vide No. 81^m/94 claiming his possession over the suit land but failed to get a favour able order . After this , the plaintiff filed the present suit, which was also dismissed by subsequently restored. The defendant only after getting the summons of the suit after restoration came to know that the plaintiff purchased the lamd on 26.03.87. The vendor prankrishna Das already sold the suit land on 14.12.1967 and hence he had no saleable right on 26.03.87 to execute the sale deed No. 795/516 . The sale deed No. 795/516 dated 26.03.87 is illegal and is liable to be cancelled . The plaintiff has not acquired any right, title and interest under the sale deed and he never in possession of the suit land . Hence , the allegation of dispossession by the defendant never arose. In view of the above, the defendant preferred a counter claim for declaration of their right, title and interest . Confirmation of possession over the suit land . correction of record of right and to dismiss the suit with costs.

3. The plaintiff filed U/s against the counter claim of the defendant with similar pleadings of the plaint. It is further pleaded that the vendor Prankrishna Das never sold the suit land to the defendant vide sale deed No. 8278/67. The defendant filed a title suit vide

No. 112/87 against the pattadar Prankrishna Das which was dismissed and hence the plaintiff has no right to file the counter claim and the same is barred by resjudicate.

The defendant has no right, title and interest over the suit land. In view of the above, the he prayed f dismissal of the counter claim with costs.

- 4. On the above pleadings my learned predecessor framed the following issues:-
 - 1. Whether the suit is barred by limitation?
 - 2. Whether the suit of the plaintiff is bad for non-joinder of necessary parties?
 - 3. Whether the Plaintiff have right, title interest over the suit land and the plaintiff was dispossessed by the defendant on15.12.98 from the suit land?
 - 4. Whether defermant purchased the suit land from Prankrishna Das alongwith other land vide registered sale deed No. 8278/67?
 - 5. If so, the defendant has right, title and interest over the land described in the counter claim?
 - 6. Whether the registered sale deed no. 795/
 516 dated 26.03.87 is illegal and inoperative
 in the eye of law?
 - 7. Whether the plaintiff is entitled to get decree as prayed for ?
 - 8. Whether the defendant is entitled to get

- 9. What other relief or reliefs the parties are entitled to?
- oral and documentary evidences . Plaintiff sides exidences witnesses and the defendant side examined 2 witnesses in support of their respective case .
- 6. I have heard oral arguments of learned counsels for both the sides at length, gone through the casesecord, the evidence and the documents.
- Before going into detail, it may be noted 7. here that there is no dispute in respect of the identity of the suit land of the suit and counter claim . Both the sides claiming their title over the some plot of land by way of purchase from the same vendor . On careful scrutiny of the record, it appears that the only dispute is resarding the date of purchase . The defendant claimed to have purchased the suit land in the year 1967 when it was under annual patta and the plaintiff claimed to have purchase the same in the year 1987 after conversion of the same into periodoc patta. Both the sides claimed their long standing possession over the suit land and the plaintiff alleged of dispossession by the defendant just before filing of the suit . In view of the above let us decide the suit and the counter claim .

8. Issue No. (iv) & (v):

Both the issues are co-related and are the crux point of the suit land the counter claim and hence

they are taken up for discussion prior to all other issues . The defendant claimed that , he has purchased the suit land in the year 1967 vide registered sale deed No. 8278/67 (vide Ext. A) from the original Pattadar Pran Krishma Das . It is an admitted fact that pronkrishna Das was the owner of the suit land . On soing through the the Ext. A, the Certified copy of the sale deed No.8278/67 it appears that on 14.12.67 , Prankrishna Das sold 6 bishas land from the periodic patta No. 73 and 1B 2K 5L of land from dag No. 91 under annual Patta No.43 . The defendant in his W/s pleaded that the original sale deed was missing and hence proved the C/copy . The sale deed was executed more than 30 years back and was proved into evidence by the D.W.1 without any objection from the Plaintiff side. The Plaintiff also did not challenge the validity of the above sale deed in his plaint . In the course of oral evidence, the D.W. 1 was consistent enough to depose that after purchase of the suit land he got possession over the same and is in continuous possession since then . The P.W. 2 in his cross - examination admitted that the defendant possesses the suit land with his other purchased land since 1967 . From this part of oral evidence, it appears that the defendant purchased the suit land in the year 1967 from prankrishna Das with delivery of possession . Now let us consider whether the defendant acquired right, title and interest by dint of that purchase as the suit land was under annual patta at that time and subsequently it was converted to periodic patta in the name of original pattadar Prankrishna Das . In the reported case law of 2000(3) GLJ 159

(Gobinda Chandra Das - Vs. - Boloram Bora and others),

Hon'ble Gauhati Migh Court by following the earlier

Division Bench Judgment (AIR) 1951 Assam 20, Joynur Ali

- Vs. - Sofia Bibi) held that:-

"This Division Bench Judgment is an authority for the proposition that the sale of an annual Patta land is a valid sale. That can be enforced against the transfer or and as against his heirs. He will acquire good title even when it is converted into periodic in the name of the Vemtor."

From the decision of the above Judgment, it is clear that the defendant has acquired good title over the suit land on the strength of his purchase. The subsequent conversion of the annual patta as periodic in the name of the vendor prankrishna Das shall not affect the right, title and interest of the defendant. The defendant in his w/s specifically pleaded that after conversion of the suit land into periodic patta, he asked the vendor to get his name mutated but the said Prankrishna Das did nothing. Hence, in spite of the fact that the defendant name was not mutated, the he has acquired good and valid title over the suit land. Accordingly, both the issues are answered in affirmative and in favour of the defendant.

9. Issue No. (VI):-

This issue relates to validity of the plaintiff's sale deed . In view of the decision of the issue Nos.(IV)

and (V), the Vendor the Plaintiff, Sri Prankrishna Das had no right, title and interest over the suit land to transfer sale to the Plaintiff by executing the sale deed No. 795/516 dated 26.3.87 (Ext.1). The defendant's purchase deed (Ext. A) is earlier in time and hence the Plaintiff's sale deed (Ext.1) carry no title and inoperative in law. This issue is answered affirmative.

10. Issue No.(III):-

This issue relates to Plaintiff's right, title and interest over the suit land and the allegation of forcible dispossession on 15.12.98 from the suit land by the defermant . as I have already decided that the Plaintiff's sale deed is illegal and inoperative, the Plaintiff cannot acquire any title over the suit land by dint of the Ext.1. The plaintiff also claimed that since the day of purchase he possessed the suit land until 15.12.98, the date on which the defendant farcibly dispossessed him . Let us consider the oral evidence on this paint . The Plaintiff as P.W. 1 in his cross-examination deposed that on the day of purchase he took possession over the suit land and constructed house over the same . After 2 days of taking possession, the defendant dispossessed him by removing his house and since then they possess the suit land . The P.W.2 in his cross-examination deposed that Taimuddin the defendant, possesses his purchased land from the Prankrishna Das since 1967 which includes the suit land and the other purchased land . He further deposed that

after purchase, the Plaintiff constructed his house over the suit land on the day of sale deed but after 3-4 days, the defendant dispossed the plaintiff from the suit land . The P.W. 3 in his cross-examination deposed that there was no quarrel between the plaintiff and the defendant in last 4-5 years (deposing on 28.5.04) rather, a quarrel took place about 15/16 years back. From the above evidence of the Plaintiff side , it is loud and clear that the alleged dispossession on 15.12.98 is on after thought story and is for from reality . The Plaintiff purchased the suit land vide Ext. 1 on 26.3.87 and as per the Plaintiff's own admission, he was dispossessed after two days of his purchase i.e. on 28.03.1987 Plaintiff filed the suit only on 2.8.99 i.e. after 12 years from the alleged dispossession . On this court of previous possession also the Plaintiff failed to establish his right, title and interest over the suit land by way of hostile, title. The regular payment of land revenue for the suit land (Ext. 3 to 3(II) will not help the Plaintiff in his claim of long possession and acquiring title over the suit land . This issue is answered in negative .

11. Issue No.(I):-

This issue relates to applicability of the law limitation in the suit. As I have already decided that the Plaintiff had not acquired any title over the suit land, the suit shall be governed by the art.64 of limitation act. The plaintiff shown the cause of action for suit on 15.12.98, being the date of forcible dispossession

particularly, the issue No.(iv) and (v) the defendant is entitled to get the relief of declaration of his right, title and interest over the suit land as well as the declaration for confirmation of possession over the suit land . Defendant is also entitled to get that records of rights corrected in his name so far it relates to the suit land . It may be noted here that the Plaintiff in his W/S pleaded that the a previous suit was filed in respect of the suit land against Prankrishna Das but no iota of evidence was led by the Plaintiff side in his evidence. No record was proved in this regard. The admission of the defendant in his evidence regarding the filing of the T.S. 112/87 is not conclusive to held the fate of the counter claim is barred by resjudicata . This issue is answered accordingly in favour of the defendant.

15. Issue No.(IX):-

parties. In the W/S the defendant though challenged the validity of the sale deed of the plaintiff and pleaded for cancellation of the same after declaring the same as illegal but made no specific prayer was made in the prayer portion. While deciding the issue No.(vi) it is held that the sale deed No.795/516 dated 26.3.87 (Ext.1) is illegal and inoperative in law and hence it will be lawful to declared the said deed as illegal inspite of absence of specific prayer of the defendant side in their counter claim. An illegal document should not be allowed to stand or remain in force . accordingly

the sale deed of the Plaintiff i.e. Ext.1 (sale deed No. 795/516 dated 26.3.87) is hereby declared as illegal as inoperative in law. Necessary precept be issued to the Sub-Registrar, Barpeta for cancellation of the above sale deed.

noted here that the Plaintiff valued the suit at & 450.000 for the purpose of jurisdiction but for the purpose of court fees he valued the suit at & 9.05 only and paid court fees of & 1.10 only inspite of seeking declaration of right, title and interest and recovery of khas possession. According to Sec.8 of the suit valuation act plaintiff cannot put two separate values for the purpose of jurisdiction and court fees. As such, plaintiff is liable to pay the deficit court fees on the suit valuation of & 5000.00 on ad-volerum basis.

ORDER

Ounter claim of the defendant is decreed on contest with cost by declaring his right, title and interest over the suit land. The sale deed of the Plaintiff is declared as illegal and inoperative in law and is liable to be cancelled. Defendant is entitled to get the records of rights corrected in his name. Issue precepts accordingly.

Plaintiff is liable to pay the ad-volerun deficit court fees on the suit valuation of Rs. 5000.00 within next 15 (fifteen) days or within such time as extended by the Sourt.

Draw up a decree .

Given under the hand and seal of this Court on this 4th day of December, 2004 .

4.12.04 Civil Judge No.1, Barpeta

ANNEXURE

- 1. Plaintiff's witnesses :
 - P.W.1 :- Mafijuddin
 - P.W.2 :- Mokshed Ali
 - P.W.3 :- Azimuddin .
 - 2. Defendant's witnesses:
 - D.W.1 :- Taimuddin
 - B.W.2 :- Tomser Mullah
 - 3. Court witnesses :- None
 - 4. Plaintiff's Exhibits :-
 - Ext. 1:- Registered sale deed No. 516 dtd. 26.3.87
 - Ext. 2:- C/copy of order dated 4.2.88 passed in Mutation case No. 381/86-87.

contd....14

Ext. 3:- Revenue payment recipts . to 3(11)

Ext. 4:- C/copy of Jamabandi of patta No.47/158

5. Defendant's Exhibits :-

Ext. A :- C/copy sale deed No. 8274/67 dated 14.12.67

6. Witnesses' Exhibits :- Nil .

Sd/- S.K. Poddar, 4.12.2004 Civil Judge

Barpeta .

8.12.04 - 16.12.04 - 16.12.04 - 28.1.05 - 29.1.05

High Court Form No.(J) 25

Decree in Original Sult

District :- Barpeta .

In the Civil Court of Civil Judge

, Barpeta

T. Suit No. 92/99

Plaintiff :- Mofizuddin ,

S/o. Nasimuddin,

Village - Majorgaon,

P.S. & District - Barpeta .

- Versus -

Defendant:- Jaimuddin

S/o. Santa Mia ,

Vill .- Majorgaon,

Mouza - P.S. & Dist .- Barpeta .

This is a suit for declaration of right, title and interest khas possession and permanant injunction.

Claim for :- (a) a decree for Plaintiff's right, title interest possession over the suit land (b) a decree for Khas possession by evicting the defendant by delivering khas possession of the Plaintiffs over the suit land. (c) a decree for permanent injunction restraining the defendant not to reenter not to dispossess, not to put any obstracts disturbances and in conveniences in the

Letitied to be then laply Advocate

contd...16

future peaceful possession of the Plaintiff over the suit land (4) a decree for all cost of the suit (e) a decree for any other relief or reliefs that the plaintiffs is entitled to get / under law and equity.

Counter claim for the defendant :-

Tt is therefore, prayed that your honour would be pleased to declare the right, title, interest and confirmation of possession in favour of the scheduled suit land in favour of the Plaintiff, direct the Revenue authority for mutation of the defendant in the schedule suit land decree costs of the counter claim in favour of the defendant and dismiss the suit of the plaintiff with costs and pass such other order or orders as may be deemed fit and proper under law and equity.

This suit coming on this 4.22.2004 day for final disposal before Sri S.K. Poddar, Civil Judge (J.D.) No.1, Barpeta.

In the presence of :- Mr Kh. N. Ahmed and Mr A.K. Das for the Plaintiff . and of Mr A.A. Khan , Mrs R Das , Advocates for the defendants.

It is ordered and decreed that Plaintiff's suit is dismissed on contest, counter claim of the defendant is decreed on contest with cost by declaring his right, title and interest over the suit land. The sale deed of the plaintiff is declared as illegal and inoperative in law and is liable to be cancelled.

Defendant is entitled to get the record of rights corrected in his name. Issue precepts accordingly.

Plaintiff is liable to pay the ad-volerem deficit court fees on the sult valuation of Rs. 4,50,000 within next 15(fifteem) days or within such time as extended by the Court .

SCHEDULE

Land measuring 1 bigha 2 Kathas and 5 Lechas covered by dag No. 91 under K.P. Patta No. 158 situated at Majorgaon, Mouza, P.S. and District - Barpeta, Assam.

Schedule of the suit land of Defendant:

1 B 2 K 5 Ls of land under dag No.91 K.P.

Patta No.158 at Village Mazorgaon under Mouza Barpeta

District Barpeta, and that the sum of Rs. be paid

by ...

On account of the costs of this suit, with interest thereon at the rate of percent per annum from this date of realisation.

Given under my hand and seal of this Court, this 4th December, 2004.

8.12.04 1st Ciwil Judge Barpeta.

cont4...18

COST OF THE SUIT

P.	1.	ai	n	ti	Í	f	;

nt -	Rs. 500.00
r -	Rs. 1.10
s & -	Rs. 7.70
on – ()	Rs. 500.00
	Rs. 4.00
-	Rs. 6.00
Total	. Rs. 1018.80
er -	Rs. 1.10
ns	Rs. 11.00
on -	Rs. 500.00
	r - s & - () - 6_ Total

Total 8s. 523.10

8.12.04
1st Civil Judge
Barpeta.

BARPETA

IN THE COURT OF TST CIVIL JUDGE

T. S. No. 92 /22.

Plaintiff:- Mofizuddin ,S/o Nasimuddin Village- Majerçaen, P.S. & Listrict- Barpeta.

- Vs-

Defendant:- Taimuddin S/o Sauta Mia,

Village- Majorgaon, Mouze- P.S. &

District- Barpeta.

Suit for declaration of plaintiffs right, title, in to rest, possession and for khas possession by evicting the defendant by evicting the defendant even the suit land and for permanent injunction.

Suit valuation 4,50,000

only but for court fees upon the five times of revenue 1.81 multiplied by 5=9.05 upon which court fee of 1.10 is paid.

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contd. .. 2

The plaintiff is states as follows :-

That, a plot of land 1 Bigha 2 Katha and 5 Lessas of land covered by dag No. 158 and K.P.P.

No. 91 situated at Majorgaon, Mouza Barpeta P.S.

and District Barpeta, which is the subject matter of this suit and revenue is separately assiseed at 8,1.81.

That, the suit land had purchased by the plaintiff from original pattadar Prankrishma Das by a recd deed No. 795/516 dt. 26. 2.87 on payment of consideration of %,5000/- and took the formal as well as physical passession covered the suit land. The plaintiff got mutation on 4. 2.88 by the order of S. P. C. Barpeta inconnection with M. C. Case No. 380/86-87. The plaintiff accordingly paid the land revenue to the Govt. and contineous to passess the same.

That, the defendant with malafide metive on 15.12.98 with appear with deadly weapons had dispensed the plaintiff from the suit land by destroying the thatched dwalling house. The plaintiff lastly request the defendant to deliver vacant possession on 15.5.99 to the plaintiff but the defendant request to do so. The plaintiff is entitled to

get a decree for permanent injunction in the decree of the suit. Hence the necessity of the plaintiff to file this suit for the reliefs as prayed for in the prayer column.

on 15.12.98 being the date of dispossession and 15.10.99 being the date of request the defendant to deliver the possession and on 15.5.99 being the date of last request arose at Majorgaon which is within the jurisdiction of this Court.

That for purposes of jurisdiction the suit is valued at 450,000 but for court fee upon the 5 times of the revenue such as 1.81 x5=9.05 and the Court fee of B, 1.10 is paid.

The plaintiff therefore prayed that-

- a) a decree for plaintiffs right, title interest passession over the suit lands
- b) a decree for khas possession by evicting the defendant by delivering khas possession of the plaintiffs over the suit land.
- c) a decree for parmanent injunction restraining the defendant not to reenter, not to dispossess,

net to put any obstracts disturbances and in conveniences in the future peaceful pessession of the plaintiff over the sait land.

- a) a decree for all cost of the suit.
- a decree for any other relief or reliefs that the plaintiffs is entitled to get under law and equity.

-SCHEDULE-

Band measuring 1 Bigha 2 Kathas and 5 Lechas covered by Dag No. 158 under K. P. Patta No. 91 situated at Majergaen, Meuza, P. S. and District Barpeta, Assam, which is bounded in the following boundaries-

Nerth - Salimuddin

South - Tuta Mia

East - Iman Ali

West -Road

VERIFICATION

I, Mofizuddin , S/e Masimuddin village Majergeen,
P. S. Meuza and District-Barpeta, do hereby verify that the
statements made above are true and correct to the best of
my knowledge and belief and hence I put my signature here
unto it on this th day of

IN THE COURT OF CIVIL JUDGE

BARPETA.

T. S. 92/99.

Plaintiff

aMafizuddin

-Ve

Defendant

Jainuddin

Written statement and counter claim by the defendant as follows:-

- That there is no cause of action for the Suit. Îs
- That the suit is barred by law of limitation. 2.
- That the suit is false based in concected stories. 3.
- That the suit is bad for non joinder of necessary parties.
- 5, That statement in para 1 of the plaint such as that a plet of land # 1 Bigha 2K.5 Ls. of land covered by dag No. 158 covered by K. P. patta No. 91 situated at Majorgaen, Mouza Barpeta, P.S. and District Barpeta which is the subject matter of this suit and revenue is separately assessed at &, 1,81 stc. are matters of record and the defendant has nothing to say about this, in next para the statement saying asthat the suit land had purchased by the plaintiff from original petdadar prankrishna Das by a registered deed No. 795/516 dt. 26. 3.87 on payment of consideration of %, 5000/- and took the formal

Certified to be the lopey

contd. .. 2

as well as physical possession covered the suit land, that the plaintiff get mutation on 4.2.88 by the order of S. D. O. , Barpeta with M. C. case No. 380/86-87, the plaintiff accordingly paid the land revenue to the Covt. and continues to possess the same, in next para that the defendant with malafide motive on 15, 12, 98 armed with deadly are weapons had dispessessed the plaintiff from the suit land by distroying the thatched dwelling house, the plaintiff lastly request the defendants to deliver vacant possession on 15.5.99 to the plaintiff but the defendants request not to do so, the plaintiff is entitled to get a decree of for permanent injunction in the decree of for permanent injunction in the decree of the suit, Hence the necessity of the plaintiff to file this suit for the reliefs as prayed for in prayer column, the defendant denies all these averments in the plaint and the plaintiff is bound to prove them.

6. The facts of the counter claim are. The sait land was formerly annual belonged to one Prankrishna Das S/o late Jiban Chandra Das of village Kahibari under Barpeta Mouza of Barpeta district. The said pattadar have land of village Majorgoan under Barpeta, Mouza .

He sold the suit land 18, 2K .5 Lessa of annual land along with other 6 bighas of periodic land on 14, 12, 67

centa. . . 3

total land being 7B, 2K. 5 Ls. of land sold to the defendant under registered sale deed No.8278/67. The defendant after taking possession of the entire purchased land 7 B. 2 K. 5 Ls. (including the suit land) started possession since the purchase on 14.12.67 . That there was an oral agreement between Prankrishna Das and the defendant that after conversion of land under annual lesse the vendor would allow mutation to be in the name of the defendant . Thus the suit land was converted into periodic before 1987. The defendant informed the vendor Prankrishna Das to come to Barpeta on several dates after 1987 but he did not come to his house at Kalikani from Guwahati. He is in service now . In the meantime the plaintiff filed a false case No.81 M/94 under section 145 Cr. P.C. by the plaintiff falsely claiming his possession, being he could not be successful in selling declaration of possession in respect of the land in favour of the plaintiff. The plaintiff, thereafter filed T.S. 92/99 against the defendant for declaration of right, title , interest and decree of khas possession in favour of the plaintiff against the defendant .But the suit was dismissed on 11.12.99 and a misc Case No.46/99 was filed by the plaintiff for revival of the said suit . The plaintiff got notice of the Nisc case No.46/99 and appeared in the Court on 22.9.2000 and filed objection on

on 4.1.2001 .After the revival of the main suit, the defendant got summons of the main suit appear in the court on 13.11.2002 and could know that the plaintiff purchased the suit land on 26.3.87 under deed No.795/516 .The vendor pattadar prankrishna Das already sold the suit land on 14.12.67 under registered deed no.8278/67 and the vendor had no saleable right on 26.3.87 under deed no.795/516.

- as illegal and liable to cancelled. The plainiff has not acquired any right, title and interest under the said deed on the other hand through the plaintiff has claimed that he was dispossessed on the date of cause action for the suit, but he was never in possession and the question dispossession of the plaintiff by the defendant does not arises the defendant has been in possession of the suit land since 14.12.67.
- 8. That the defendant has right, title, interest and possession over the suit land and the defendant is liable to get declaration of right, title, interest and confirmation of possession over the suit land.
- 9. That the cause of action for counter claim arose on 13.11.2002 the knowledge about the illegal deed of the plaintiff dated 26.3.87 at Barpeta.

contd...

10. That the counter claim is calued at Rs.5000/- for the jurisdiction of the court and for declaration the declaratory court fees of Rs.22.50 are paid.

It is therefore, prayed that
your honour would be pleased to
declare the right, title, interest and
confirmation of possession in favour
of the scheduled suit land in favour
of the plaintiff, direct the Revenue
authority for mutation of the defendant in the schedule suit land decree
costs of the counter claim in favour
of the defendant and dismiss the
suit of the plaintiff with costs and
pass such other order or orders as
may be deemed fit and proper under law
and equity.

SCHEDULE OF THE SUIT LAND

1 B 2K 5 Ls. of land under dag No.158 K.P. patta no.91 at village Mazorgaon under Mouza Barpeta dist. Barpeta.

contd..

VERIFICATION

I. Taimuddin s/o late Tota Mia,

Vill Nangalkur, Mouza Barpetam P.S. & Dist.

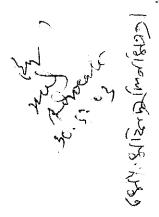
Barpeta, aged about 50 years so hereby solemnly

declare that the statements in this counter claim

are true to my knowledge and belief.

In the court of 1st Civil Judge,

. Barpeta.



Case No. T.S. 92/99.

Date fixed: 30/5/03.

plaintiff : Mafizuddin.

_VS ~

Defendant : Taimuddin.

written objection against counter claim of the defendant are as follows:

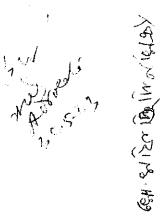
That, there is no cause of action of the counter claim and as such the same is liable to be dismissed.

That, the pleadings in the counter claim of the defendant are based on false statements and the same are not acceptable in the eye of law.

That, the statements of the counter claim i.e. subject column, prayer column, pares from 1 to 10, verification are not true and the plaintiff totally, wholly and specifically denied.

That, the statements made in the para No.6 in the counter claim that the suit land 18 bighas 2 Kathas and 5 leches of annual land alongwith other 6 bighas of periodic land, total land being 7bighas 2 Kathas and

Contd- 2.



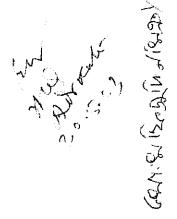
and 5 lechas were sold to the defendant by original pattadar prankrishna Das under regd.sale deed No. 8278/67° are not based on real facts.

That, the Statements made in the para No.6 in the counter claim that, 'after taking possession of the entire purch sed land 7bigha 2Katha and 5 lechas started possession since the purchase on 14/12/67, there was oral agreement between Prankrishma Das and the defendant that after conversion of the land under annual lease the vendor would allow mutation to be in the name of the defendant, after conversion of the land into periodic the defendant informed the vendor Prangrishma Das to come to Barpeta, but he did not come are nothing but a created story made by the defendant. That, the vendor pattadar prankrishms Das never sold the Suit land 1 bigha 2 Kathas and 5 lechas of land to the defendant on 14/12/67 under regd.sale deed No. 8278/67.

SN.SISON MAINS

The real fact is that the plaintiff purch sed the suit land 1 bighs 2 Kathas and 5 lechas from said Prankrishna Das under regd.sale deed No.795/516 dated 26-3-87 and acquired formal and physical possession over the land and paying land revenue contineously, The defendant dispossess the plaintiff by force on 15/12/98. Prior to the dispossession the plaintiff was peacefully possessing the suit land and got mutation on 4/2/88 by order of the S.D.C. Barpeta, in connection with M.A.C.Case No.380/8687. The plaintiff is still paying land revenue to the Govt.regularly.

That, the defendant had clear knowledge that the plaintiff purch sed the suit land from Original pattadar Sri Prankrishna Das by way of regd.sale deed No.795/516. But the defendant with malafide motive and with deadly weapons dispossessing the plaintiff from the suit land and filed a declaratory suit No.T.S. 112/87 against the defendant and



against the original Pattadar Sri Prankrishna

Das, in the court of Munsiff No.1 Barpeta, but

the same was dismissed by the homograble court

and hence the defendant had no right to file

this counter claim and the same is bad for resjudicata under Sec- 11 C.P.C.

That, the defendant has no right, title and interest over the suit land and the defendant is not liable to get declaration of right, title, interest and confirmation of possession over the suit land.

Under the circumstances it is prayed that
your honour will be pleased to dismiss the counter
claim of the defendant and pass decree for plaintiffs right, title, interest and possession and for
Khas possession by evicting the defendant by delivering khas possession of the plaintiff and decree
for permanent injunction restraining the defendant
Not to enter, not to put any obstruction, disturbance
and in convenience in the future peaceful possession



decree for all cost and any other relief or reliefs that the plaintiff is entitled to get under law and equity.

_ Schedu le-

Land measuring 18-2K-and 5 Ls. under dag No .158 and K.P Patta No. 91 at vill. Majorgaon under Mouza P.S. & Dist.Barpeta, Assam.

- verification -

I, Mofizuddin S/c Nasimuddin village Majorgaon, P.S. Mouza & Dist Barpeta, do hereby verify that the statements made in this written objection are true and correct to the best of my knowledge and belief and hence I put my signature hereunto it on this 30th day of May, 2003.

CENICAIS DIMARDY

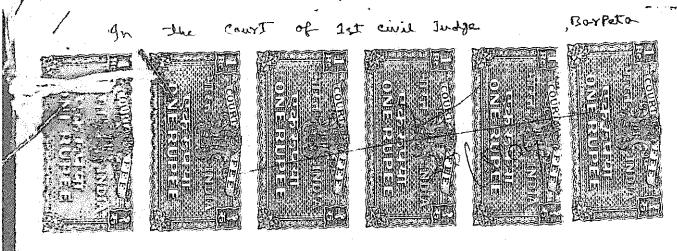
T.S. No 92 / 1999

ISSUES

- 1. Whether the suit is barred by limitation?
- 2. Whether the suit of the plaintiff is bad for non-joinder of necessary parties?
- 3. Whether the Plaintiff have right, title interest over the suit land and the plaintiff was dispossessed by the defendant on15.12.98 from the suit land?
- 4. Whether defendant purchased the suit lam from Prankrishna Das alongwith other land vide registered sale deed No. 8278/67?
- 5. If so, the defendant has right, title and interest over the land described in the counter claim?
- 6. Whether the registered sale deed no. 795/
 516 dated 26.03.87 is illeral and inoperative
 in the eye of law?
- 7. Whether the plaintiff is entitled to get decree as prayed for ?
- 8. Whether the defendant is entitled to get

decree as claimed in the counter claim ?

9. What other relief or reliefs the parties are entitled to?



Me John a dentified by Both A. A. Advista.

Civil Shortstade. 2015/04

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T.S. 92 (99)

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Plaintiff: mofiguddies at la civil Judgo in m. 5 192/99

-Vs.

Dt. 20.5.04

Defendant: Jainuddin

क्यानेट विभाष अध्य १८ विभाष

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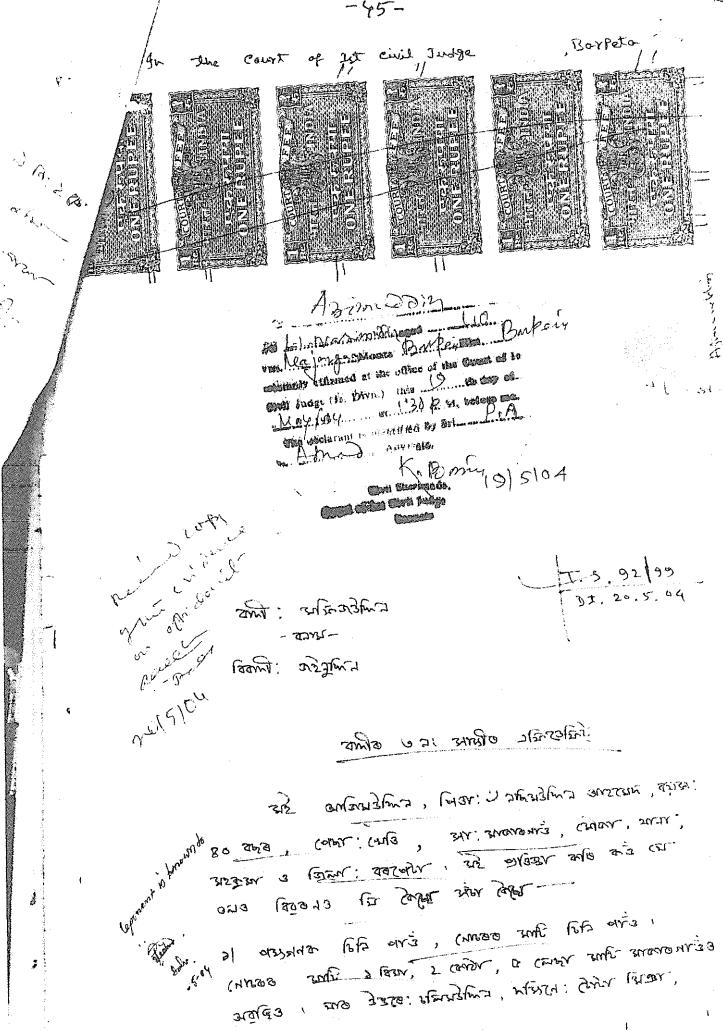
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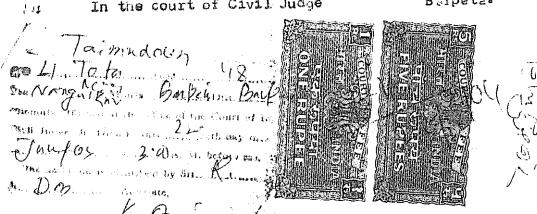
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28/5/1

In the court of Civil Judge

Barpeta.



Ref. Case No.T.S. 92/99 Dt.fixed 21/2/04

Dowo 1

Plaintiff : Mafizuddin

Derendant : Taimuddin.

AFFIDAVII.

1. Sri Taimuddin S/o Late Tota Mla aged about 48 years, by profession cultivator, by caste Muslim at villeNangalkur Mouza Berpeta, P.S. & Disto Barpeta , do hereby declare and affirm as follows :=

I have riled written statement cum counter claim of the above mentioned case,

This is true to the best of my knowledge and belief

That the suit land was formerly annual land belon, ed to one Prankrishna Das S/o LateI Jiban Chandra Das of Vill. Kaniberi. The said pattadar have land at vill. Majorgoan one sold the suit land 1 B. 2kg.5 Is of annual land alongwith other 6 bighas of Periodic land on 14.12.67 total Land being 7 B. 2k. 5 Ls. of land sold to the defendant under registered deed No.8274/67. This is true to the best of my knowledgelo

cord



- 3) That the defendant after purchasing taking possession of the entire purchased land 7 B. 2k. 5 Ls. since 14.12.67. This is true to the best of my knowledge & belief.
- Das and the decendant that after conversion of land under annual lease the vendor would allow mutation to be in the name of decendant. The suit land was converted into periodic before 1987.

 This is trueto the best of my knowledge to belief.
- 5) That the de endant informed Prankrishna Das to come to Barpeta on several dates after 1987 but Prankrishna did not come to Barpeta at Kanibari from Guwahati.

 This is true to the best of my knowledge.
- over the entire land but the plaintiff's possession over the entire land but the plaintiff ould not successful to declaring the plaintiff's possession over the land. That, the plaintiff, thereafter filed this T.S. case against me for declaration of right, title, and interest and decree of khass possession in favour of the plaintiff.

 This is true to the best of my knowledge.

& destricted by the state of

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7) That the defendant have pieceful possession over the land since 1967 after purchased the land sine plaintift never possession over the suit land and the question dispossesion of the plaintif by the derendants does not arise.

This is true to the best of my knowled, a belief.

- on 11,12,99 and filled a revive suit No. 46/99. After the revival of the main suit the defendant got summon of the ain suit appear in the court on 13,11,02 and defendant could know that the plaintiff sure sed the suit land on 26,3,67 under register sale dead.

 This is true to the best of my knowledge & belief.
 - 9) That the prankrishna Das already sold the suit land to defendant in the year 1967 under registered days 110.8272/67.

 This is true to the best of my knowledge.
 - 10) That the sale dead No. 795/516 dt. 260-3087 is illegal and liable to be cancelled.
 This is true to the best of my knowledge.

Administration of the state of

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11) That, therefore prayed to declare the right, title, interest and confirmation of possession in favour of the defendant and direct the revenue authority for mutation of the defendant to declare the sale deed No. 795/516 dt. 26.3.87 is illegal and liable to be cancelled.

This is true to the best of my knowledge & belief.

12) That is this affidavit will be used as a evidence of the defendant in support of the counter claim.

This is true to the best of my knowledge, d buliet

13) That the statement made in this affidavit para No.1 = 12 are true to the best of my knowledge & belief.

Ext.(A) A certified copy of registered sale deed No. 8278467.

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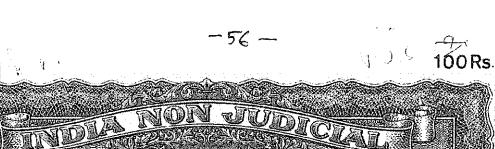
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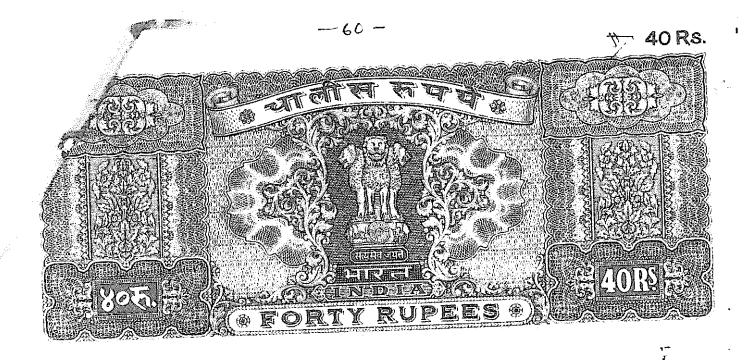
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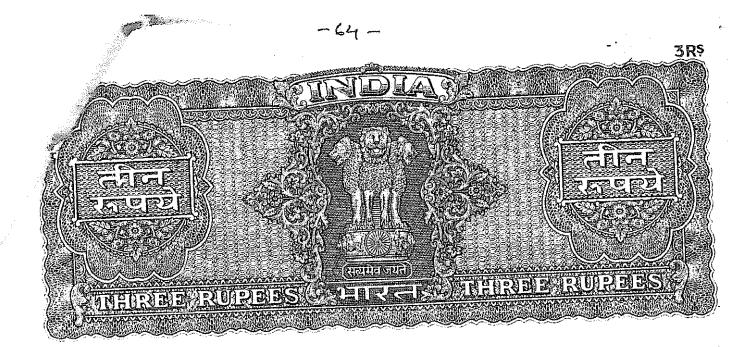


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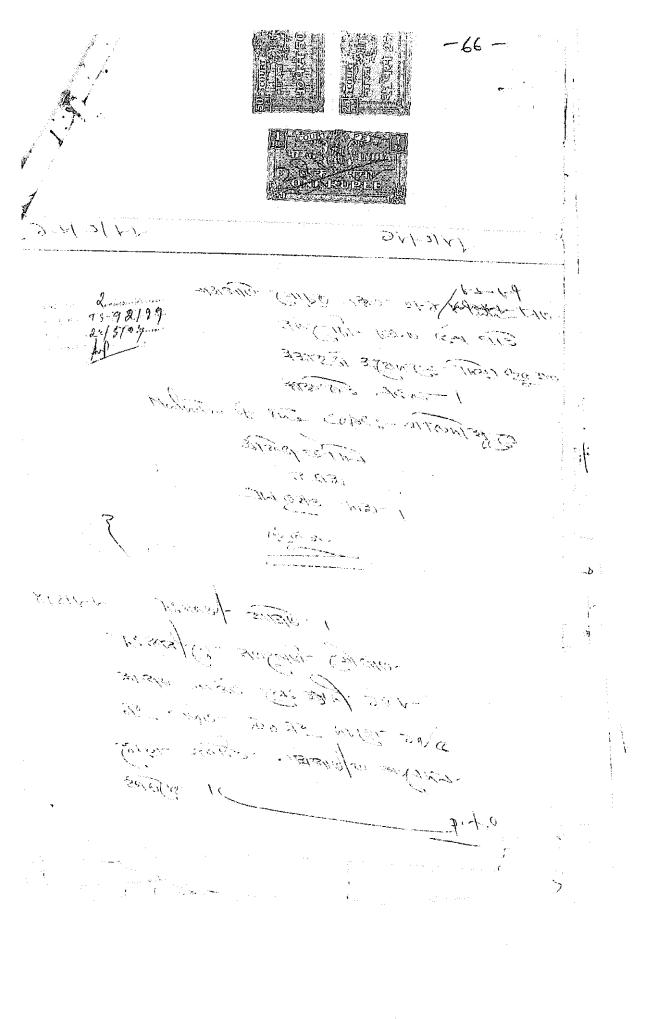
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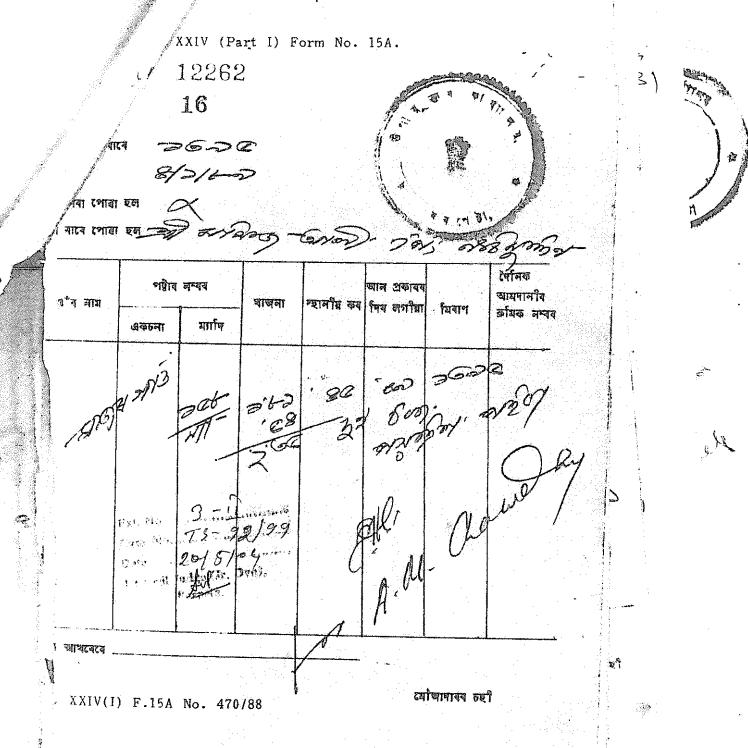
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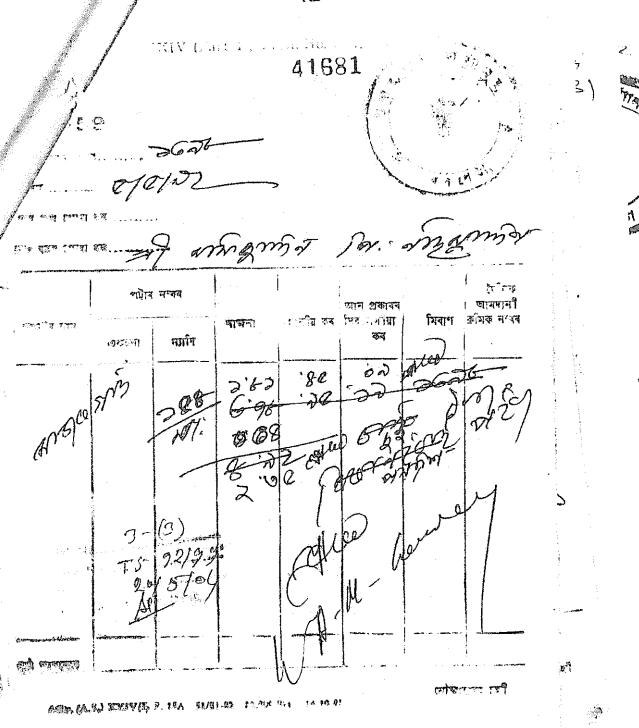
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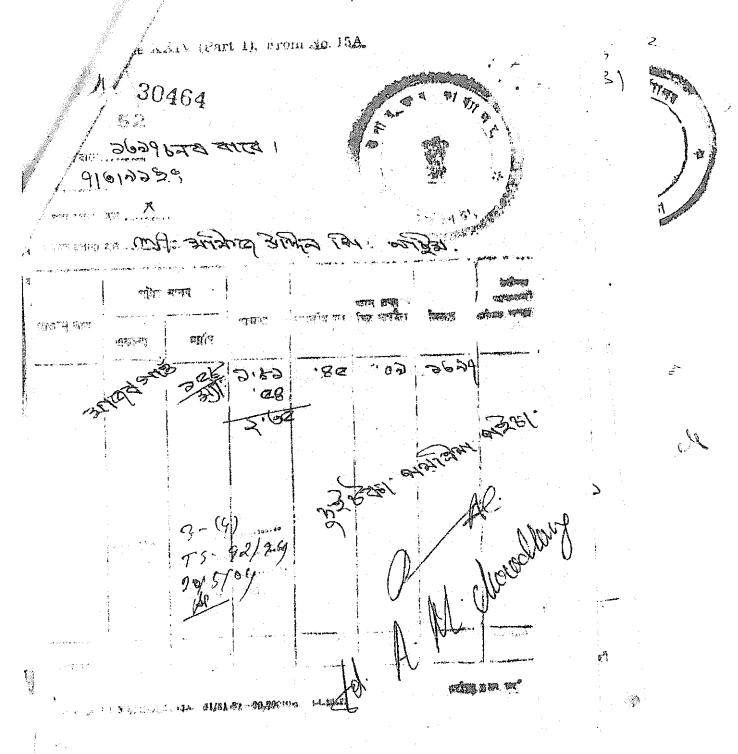
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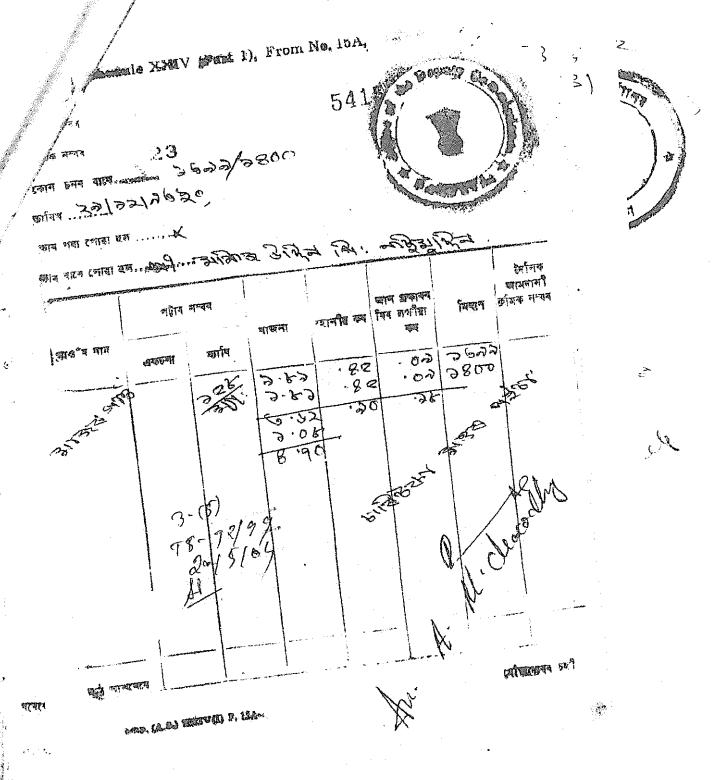
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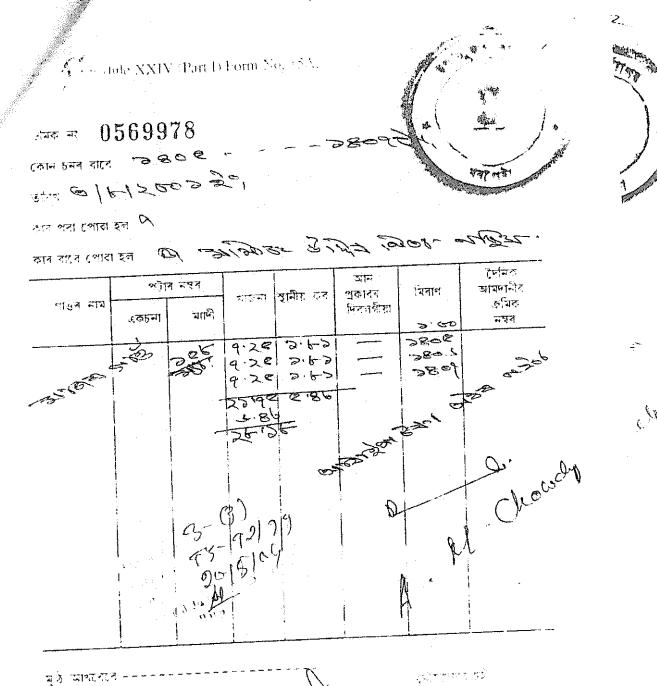
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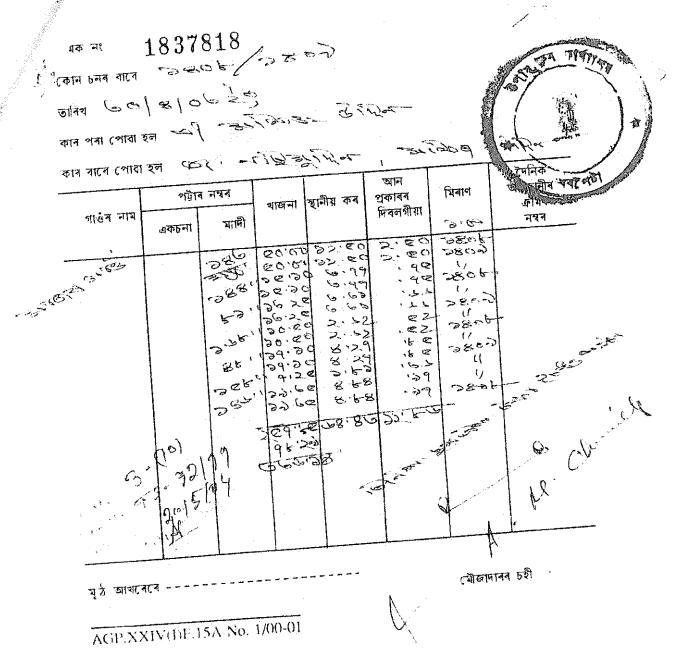
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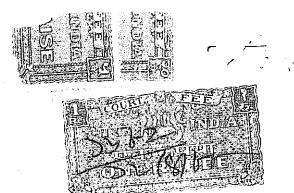
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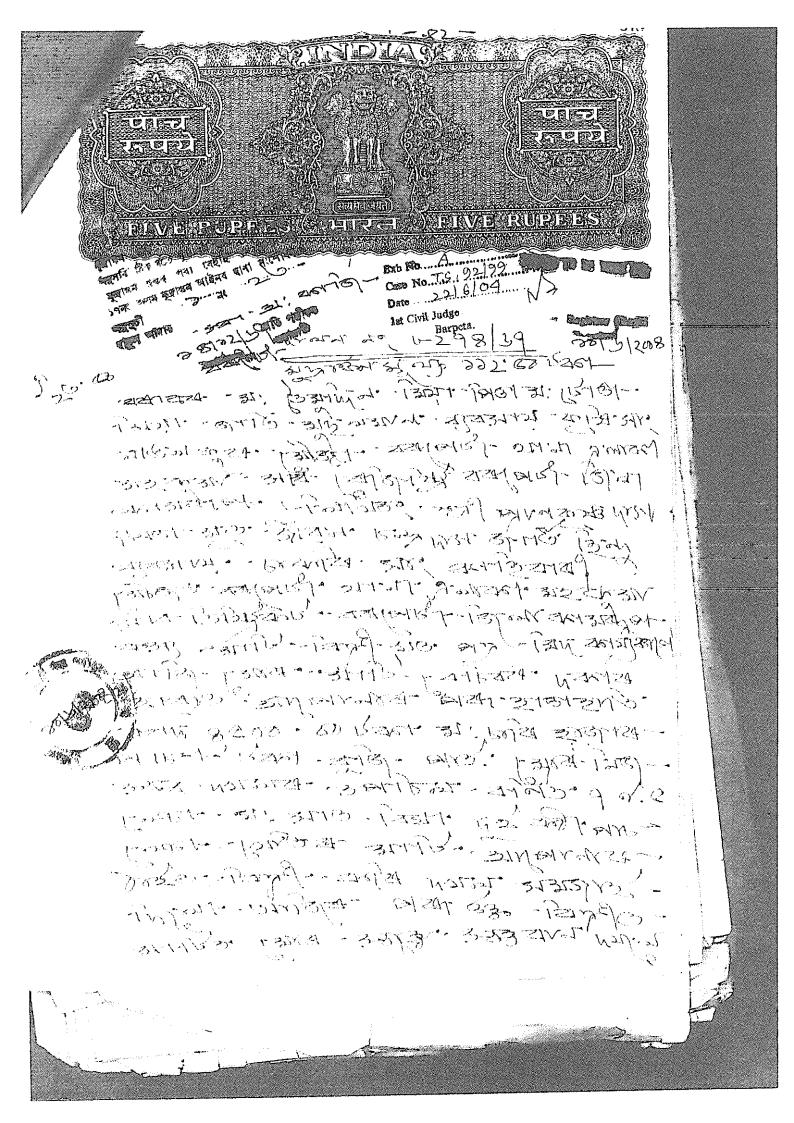
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