

*Sri Karuna Kanta Kalita*

**Money Suit 5 of 2016**

*Vs.*

*Sri Simanta Barman*

HIGH COURT FORM NO. J (2)

HEADING OF JUDGEMENT IN ORIGINAL SUIT

District : Nalbari

**IN THE COURT OF MUNSIFF NO. 1::::::NALBARI**

PRESENT : - Dr. Nabanita Kalita, AJS.

**Money Suit No- 5 of 2016**

On this 11<sup>th</sup> day of January, 2022

Sri Karuna Kanta Barman

..... Plaintiff

Versus

Sri Simanta Barman

..... Defendants

This suit/case coming on for final hearing 15.12.21  
in the presence of :

Mr. Girish Kalita, Advocate for the Plaintiff; and

None appeared for the Defendants.

and having stood for consideration to this 11<sup>th</sup> day  
of January, 2022, the Court delivered the following  
Judgment

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

This suit is a suit for realization of Rs.  
1,50,000/- (Rupees one lakh fifty thousand) only.

*Vs.*

*Sri Simanta Barman*

**Plaintiff's Case in brief**

1. The defendant made an agreement with the plaintiff to sell a plot of land and for that purpose, the plaintiff paid an amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only as advanced money and the defendant acknowledged the receipt of the same. It is stated that the defendant was unable to sell the plot of land to the plaintiff as agreed between them. The defendant promised to return the said amount with interest to the plaintiff. The plaintiff requested repeatedly to the defendant to return the entire amount. After requesting by the plaintiff to return the said amount, the defendant issued a cheque to the same amount of Assam Gramin Vikash Bank, Nalbari Branch A/C No. 124868 bearing cheque no. 0469571 dtd. 06.01.2014 in the name of the plaintiff and returned back the agreement from the plaintiff made between them. It is stated that the plaintiff deposited the said cheque in his account of Assam Gramin Vikash Bank, Nalbari Branch, but the bank authority returned back the said cheque due to insufficient fund in the account of the defendant on 25.03.2014. It is also stated that the plaintiff served a demand notice through advocate upon the defendant and demanded to return the entire amount to the plaintiff within 15 days from the date of receipt of

Vs.

*Sri Simanta Barman*

the notice on 23.04.2014 and the said notice has been returned to the engaged advocate without being served informing about absent of the addressee. Later on, two same notices have also been sent to the defendant respectively on 21.05.2014 and 14.07.2014, but these two notices have also been returned without serving and informing the defendant was absent or unclaimed. It is contended that the defendant was well knownnn about the notices sent to him by the advocate in favour of the plaintiff and he wilfully avoided the same. It is further stated that the defendant met the plaintiff for several times and requested not to file any suit against him and promised to return the entire amount with interest to the plaintiff. It is further stated that on 10.06.2016 the plaintiff physically met the defendant and again requested to return the said amount, but on that day the defendant declared that he would not pay the said amount to the plaintiff. Hence, this suit.

**Defendant's Case in brief:**

2. Pursuant to receipt of summons defendant appeared and submitted his written statement stating inter-alia that there is no any cause of action for the suit of the plaintiff. The suit of the plaintiff is

Vs.

*Sri Simanta Barman*

not tenable in law and facts and hence the suit is liable to be dismissed. The suit of the plaintiff is not maintainable in its present form. It is stated that the plaintiff filed the suit by suppressing the actual facts, as there was no agreement for sell of a plot of land with the defendant and the defendant has not any landed property in this name. It is further averred that the defendant did not execute any agreement for sale of land and no cheque has been issued in the name of the plaintiff, so the plaintiff is not entitled to get any relief as claimed by him. Hence, defendant prayed to dismiss the suit of the plaintiff.

3. On two consecutive dates defendant was absent without any step, hence vide order dtd. 27.01.2020 court proceeded ex-parte against him.

4. . For determination of this suit, following points have been formulated by my Learned Predecessor-

(i) Whether there is any cause of action?

(ii) Whether the suit is maintainable?

(iii) Whether the defendant entered into an agreement with the plaintiff to sell a plot of land and received Rs. 1,50,000/- (one lakh fifty thousand) as earnest money from the plaintiff?

Vs.

*Sri Simanta Barman*

(iv) Whether the defendant issued a cheque of Rs. 1,50,000/- of Assam Gramin Vikash Bank, Nalbari Branch under A/C no. 124868 and cheque no. 0469571 dtd. 6.1.14 to the plaintiff?

(v) Whether defendant is bound to return Rs. 1,50,000/- along with interest to the plaintiff?

(vi) Whether the plaintiff is entitled to the relief(s) as prayed for?

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

5. I have heard the argument put forward by the plaintiff. Let me discuss the evidence on record and try to arrive at a definite finding as regards the issues in the suit.

6. The plaintiff in support of his case has examined 4 PW. The Plaintiff himself submitted his evidence-on-affidavit as PW 1 and exhibited the following relevant documents to the suit ---

i) Exhibit- 1 : Cheque bearing cheque No. 0469571 dtd. 06.01.2014

ii) Exhibit- 2: Returned Memo

iii) Exhibit-3 : Pleader notice

iv) Exhibit-3(1) : Postal receipt

Vs.

*Sri Simanta Barman*

v) Exhibit- 3 (2): Pleader notice in closed envelope with A/D card

vi) Exhibit 4 : Postal receipt dtd. 21.05.2014

vii) Exhibit 4(1) : Pleader notice in closed envelope dtd. 21.05.2014 with A/D card

viii) Exhibit 5 : Postal receipt dtd. 14.07.2014

ix) Exhibit 5(1) :Pleader notice in closed envelope dtd. 14.07.2014 with A/D card

**DISCUSSION, DECISION AND REASONS FOR THE DECISION-**

**Issue No. i:** Whether there is any cause of action?

7. As regard this issue plaintiff in the plaint has asserted that the defendant made an agreement with the plaintiff to sell a plot of land and for that purpose, the plaintiff paid an amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only as advanced money and the defendant acknowledged the receipt of the same. It is stated that the defendant was unable to sell the plot of land to the plaintiff as agreed between them. The defendant promised to return the said amount with interest to the plaintiff. The plaintiff requested repeatedly to the defendant to return the entire amount. But defendant refused to pay the same. On the contrary

Vs.

*Sri Simanta Barman*

defendant averred that the defendant did not execute any agreement for sale of land and no cheque has been issued in the name of the plaintiff, so the plaintiff is not entitled to get any relief as claimed by him. Hence, defendant prayed to dismiss the suit of the plaintiff. On-going through the facts as asserted and denied by parties, it can be held that there is cause of action to be adjudicated by competent court.

**Issue No. ii:** Whether the suit is maintainable?

8. Although the defendants in their written statement have pleaded the suit of the plaintiff is not maintainable but perusal of the written statement reveals that defendant has not specifically stated as to why the suit is not legally maintainable and under what provision. In this respect, Order VIII rule 2 provides that the defendants must raise all the pleadings specifically regarding the non-maintainability of the suit. Further, upon perusal of the case record, I do not find anything apparent to show that the suit is not maintainable in the present form and manner. Hence, this suit is maintainable.

**Issue No. iii & iv :** Whether the defendant entered into an agreement with the plaintiff to sell a plot of

Vs.

*Sri Simanta Barman*

land and received Rs. 1,50,000/- (one lakh fifty thousand) as earnest money from the plaintiff? Whether the defendant issued a cheque of Rs. 1,50,000/- of Assam Gramin Vikash Bank, Nalbari Branch under A/C no. 124868 and cheque no. 0469571 dtd. 6.1.14 to the plaintiff?

9. For the sake of convenience and as because the issue nos. iii and iv are interconnected, hence they are taken up herein together for discussion & decision. As regards these point for determination, the plaintiff Karuna Kanta Kalita as PW1 in his evidence in chief on affidavit has reiterated the contents of the plaint as narrated above. PW1 exhibited the cheque bearing cheque no. 0469571 dated 06/01/2014 issued by defendant no. 1 in the name of the plaintiff as exhibit 1. Perusal of exhibit 1 reveals that defendant signed the cheque for payment of rupees one lakhs fifty thousand to Karuna Kanta Kalita i.e., the plaintiff. Exhibit 2 is the returning memo which shows that the cheque was returned by bank authority due to insufficient fund in the account of the defendant on 25/03/2014. Exhibit 3, 4 and 5 are the demand notices sent by plaintiff to defendant through advocate. Exhibit 3(ii) 4(ii) and 5(ii) shows that all notices have been returned showing defendant absent. From perusal of the address of the defendant given on the pleader's

Vs.

*Sri Simanta Barman*

notices appears to be same which is given in the plaint. The statement of PW2 Atul Baishya, PW3 Girish Barman and PW4 Mahananda Baishya also in their evidence in chief on affidavit are consistent with the statement made by the plaintiff in his plaint. PW2, PW3 and PW4 have deposed that each of them were present at the time of making the agreement and paying money by the plaintiff to the defendant. Thereby it appears that PW2, PW3 and PW4 are not hearsay witnesses but direct witnesses. Though the defendant in his written statement had contended that defendant did not execute any agreement for sale of land and no cheque has been issued in the name of the plaintiff as alleged, but PW1 has exhibited the cheque allegedly issued by defendant in favour of the plaintiff. At this juncture, it is important to mention that defendant after filing the written statement has not appeared to contest the suit for which the suit proceeded ex-parte against the defendant. Defendant neither cross-examined the plaintiff's witnesses nor adduced any evidence to substantiate his plea. Resultantly, the evidence adduced by the PWs remained unrebutted and uncontroverted. Since the PWs have corroborated the averments made in the plaint, the allegations and claims made against the defendant stand

Vs.

*Sri Simanta Barman*

proved. Therefore, considering the foregoing discussion, I find no impediment in relying upon the version stated by PWs as regards the defendant entered into an agreement with the plaintiff to sell a plot of land and received Rs. 1,50,000/- (one lakh fifty thousand) as earnest money from the plaintiff and the defendant having failed to sell the plot of land promised to return the said amount. Thereafter on repeated request of the plaintiff, defendant issued a cheque of Rs. 1,50,000/- of Assam Gramin Vikash Bank, Nalbari Branch under A/C no. 124868 and cheque no. 0469571 dtd. 6.1.14 to the plaintiff but same was returned from the bank authority due to insufficient fund in the account of the defendant.

10. In view of the above findings and discussion issue nos iii and iv are decided in affirmative and in favour of the plaintiff.

**Issue Nos v, vi and vii:** Whether defendant is bound to return Rs. 1,50,000/- along with interest to the plaintiff? Whether the plaintiff is entitled to the relief(s) as prayed for? To what other relief(s) the parties are entitled to

11. To ensure brevity and for convenience, these issues are taken together. From the foregoing discussion and decision arrived in issue no. iii and iv, it is evident that defendant is liable to return Rs.

*Vs.*

*Sri Simanta Barman*

1,50,000 to the plaintiff. However, from the averment in the plaint and evidence on record it appears that the amount was not borrowed by the defendant rather it was given as earnest money for an agreement for sale. Moreover neither in the plaint nor in the evidence on record any rate of interest is stipulated. This court is of the considered opinion that that the plaintiff is entitled to a decree with the following reliefs:

- A. A decree for recovery of Rs.1,50,000 from the defendant .
- B. Plaintiff is entitled to the cost of the suit from the defendant.

### **ORDER**

12. In view of above discussion and the decision reached in the foregoing issues, the suit of the plaintiff is decreed ex-parte with cost. It is hereby decreed and directed that the plaintiff is entitled to receive a sum of Rs. 1,50,000( Rupees one lakh fifty thousand ) from the defendant. The defendant is directed to pay the decretal amount to the plaintiff within 6(six) months from the date of this order.

13. Draw up a decree accordingly within next 15 days from today.

*Sri Karuna Kanta Kalita*

**Money Suit 5 of 2016**

*Vs.*

*Sri Simanta Barman*

14. Judgment is pronounced in open court. Suit is disposed of.

Given under my hand and seal of this court on the 11<sup>th</sup> day of January, 2022.

Dictated & Corrected by  
Munsiff 1, Nalbari

Munsiff No. 1,  
Nalbari

Vs.

*Sri Simanta Barman*

**Appendix**

**Plaintiff's Witness :**

PW 1- Karuna Kanta Kalita

PW 2- Atual Baishay

PW 3- Girish Barman

PW 4- Mahananda Baishay

**Plaintiff's Exhibits :**

i) Exhibit- 1 : Cheque bearing cheque No. 0469571  
dtd. 06.01.2014

ii) Exhibit- 2: Returned Memo

iii) Exhibit-3 : Pleader notice

iv) Exhibit-3(1) : Postal receipt

v) Exhibit- 3 (2): Pleader notice in closed envelope  
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*Sri Karuna Kanta Kalita*

**Money Suit 5 of 2016**

*Vs.*

*Sri Simanta Barman*

**Defendant witness**

Nil

**Defendant Exhibits**

Nil

Munsiff No. 1

Nalbari