

Sri Nayanmani Deka
Vs.
Gita Jewellery represented by
Sri Ramesh Kr. Prasad

TS No- 14 of 2020

Assam Schedule VII, Form No- 132

HIGH COURT FORM NO (j) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT

IN THE COURT OF MUNSIFF NO- 1 AT NALBARI

DISTRICT- NALBARI

Present: Dr. Nabanita Kalita

Munsiff No- 1, Nalbari

Title Suit case No- 14 of 2020

On this 3rd day of January, 2022

1. Sri Nayanmani Deka

.....Plaintiff

-Versus-

1. Gita Jewellery represented by

Sri Ramesh Kr. Prasad

..... Defendant

This suit coming on for final hearing on
01/11/2021 in the presence of:

Mr. Rinku Lahkar, Advocate for the plaintiff(s)

None appeared for the defendant(s)

And having stood for consideration on this day,
the court delivered the following judgment:-

JUDGMENT

This is suit for eviction of the defendant from schedule room and vacant possession of the schedule room removing all materials attached inside and outside of the schedule room.

The case of the plaintiff

1. Plaintiff's case in brief is that the plaintiff is having his commercial room no. 1 open area measuring 25 X 9 sq ft. of the C.I. sheet roofing house fully described in the schedule below and the defendant intended to take the 25'x9' area for running Jewellery work on mothly rental basis which is the subject matter of this suit and the identity of which has been given in detail in the schedule. It is stated that the mother of the plaintiff Putul Deka was the owner of the plot of land measuring 2 kathas 10 lechas covered by dag no. 1207 KP no. 472 situated at LNB Road, Nalbari, PS & Dist.-

Nalbari who died on 07.06.2011. After the death of Putul Deka, the plaintiff as only legal heir of the deceased entered into agreement of the commercial rooms situated on this plot of land. The plaintiff built the commercial room with due permission from the authority and paying the Municipal taxes for the same. The plaintiff has been paying land revenue regularly. The plaintiff stated that the defendant approached the plaintiff to let out the schedule room for the purpose of running a shop namely Gita Jewellery which is proprietorial firm and exclusively owned by the defendant. It is further stated that the defendant dealt with the sale and manufacture of gold ornaments and its repairing work. He required the room for maintaining his business of Jewellery in the schedule shop room. The plaintiff accepted the defendant's proposal and executed an agreement on 1st January, 2018 with him whereby he has been let out the schedule premises on monthly rental basis and handed over the possession of the same for the use of and occupation the said room as tenant. The lease period was 3 years i.e. from 1st January, 2018 to 31st December, 2020, the rent for

room was fixed at Rs. 3,500/- only per month. The plaintiff further stated that the defendant has been paying the rent each month as per the terms and conditions of the agreement until January, 2019. But on 7th April the plaintiff could come to know that the defendant along with his family fled away by closing the schedule room under lock and key. It is also heard that he fled away with money of different people which he had received as advance for ornaments. The contention of the plaintiff is that the defendant is defaulter of rent since February, 2019 of the monthly tenancy as per agreement stated above. Accordingly, in such situation, the plaintiff is entitled to vacant possession of the schedule room by evicting the defendant from the same. Hence, this suit.

2. Pursuant to the receipt of summons defendant did not appear before the court and not submitted written statement on his behalf. Hence, vide order dtd. 10.01.2021 case proceeded ex-parte against the defendant.

3. As there is no WS on record so no issues were framed. The only point to be determined is to see

whether the plaintiff is entitled to a decree as per the claims made by him.

4. Plaintiff side examined 1 PW and exhibited documents in support of his claim.

5. I have also heard arguments for plaintiff side.

6. The Plaintiff has examined the plaintiff Nayanmani Deka himself as PW1 and adduced his examination in chief on affidavit wherein he has reiterated the facts averred in the plaint. PW1 deposed that he is having his commercial room no. 1 open area measuring 25 X 9 sq ft. of the C.I. sheet roofing house fully described in the schedule and the defendant intended to take the 25'x9' area for running Jewellery work on monthly rental basis which is the subject matter of this suit and the identity of which has been given in detail in the schedule. It is stated that the mother of the plaintiff Putul Deka was the owner of the plot of land measuring 2 kathas 10 lechas covered by dag no. 1207 KP no. 472 situated at LNB Road, Nalbari, PS & Dist.- Nalbari who died on 07.06.2011. After the death of Putul Deka, the PW1 as only legal heir of the deceased entered into agreement of the commercial rooms situated on this plot of land. PW1

built the commercial room with due permission from the authority and paying the Municipal taxes for the same. It is stated that PW1 has been paying land revenue regularly. PW1 Exhibited the jamabandi of K.P. Patta No.472 Dag no.1207 as exhibit 1 and municipal tax receipt as exhibit 2, revenue paying receipt is exhibited as exhibit 3 and death certificate of Putul Deka as exhibit 4. PW1 further stated that the defendant approached him to let out the schedule room for the purpose of running a shop namely Gita Jewellery which is proprietorial firm and exclusively owned by the defendant. The defendant dealt with the sale and manufacture of gold ornaments and its repairing work. He required the room for maintaining his business of Jewellery in the schedule shop room. PW1 deposed that he accepted the defendant's proposal and executed an agreement on 1st January, 2018 with him whereby he has been let out the schedule premises on monthly rental basis and handed over the possession of the same for the use of and occupation the said room as tenant. The lease period was 3 years i.e. from 1st January, 2018 to 31st December, 2020, the rent for room was fixed at Rs.

3,500/- only per month. PW1 exhibited copy of agreement dated 1st day of January 2018 as exhibit 5. PW1 further stated that the defendant has been paying the rent each month as per the terms and conditions of the agreement until January, 2019. But on 7th April the PW1 came to know that the defendant along with his family fled away by closing the schedule room under lock and key. It is also heard that he fled away with money of different people which he had received as advance for ornaments. PW1 deposed that the defendant is defaulter of rent since February, 2019 of the monthly tenancy as per agreement stated above.

7. Now coming to the appreciation of the evidence on record and trying to arrive at a definite finding it is found that the defendant has not contested the claim of the plaintiff by filing written statement, neither cross-examined the witness of the plaintiff. It is well settled that if a pleading is not denied by the defendant, then the same is deemed to be admitted. In the facts of this case as the defendant has not filed any written statement, as such the pleading of the plaintiff is

deemed to be admitted. In such a situation, the evidence adduced by the plaintiff side has remained unrebutted, unchallenged and unshaken.

8. I would like to mention here that Hon'ble Supreme Court in a case, Ramesh chand Ardawatiya v. Anil Panjwani, reported in AIR 2003 held that even if the suit proceeds ex parte and in the absence of written statement, unless the applicability of order VIII Rule 10 of the CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff relief as to which he may in law be found entitled.

9. In view of the above this court is satisfied that the plaintiff by adducing the above mentioned evidences has been able to discharge his burden of proof in this suit. Since the testimony of PW-1 has corroborated the averments made in the

plaint, the allegations and claims made against the defendant stand proved. Accordingly, the plaintiff is entitled to the reliefs as prayed for.

ORDER

The suit of the Plaintiff is decreed ex-party with cost. As such, Plaintiff is entitled to the following reliefs:

1. Plaintiff is entitled to a decree for eviction of the defendant from the schedule room by removing all materials attached inside the room.
2. Plaintiff is entitled to a decree for vacant possession of the schedule room by removing all obstruction.
3. Plaintiff is entitled to a decree against the defendant for realization of rent of Rs. 45,500/-

Prepare a decree accordingly

Sri Nayanmani Deka
Vs.
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Sri Ramesh Kr. Prasad

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The judgment is written, signed, sealed, tagged with the case record, pronounced and delivered in the Open Court on this the 3rd day of January, 2022.

Dr. Nabanita Kalita
Munsiff No- 1, Nalbari

APPENDIX

Witnesses examined by the Plaintiff:

1. PW 1-Nayanmani Deka

Documents exhibited by the Plaintiff:

1. Ext. 1- Copy of Jamabandi of KP patta no. 472 dag no. 1207
2. Ext. 2- Municipal tax receipt.
3. Ext. 3- Revenue paying receipt'
4. Ext. 4- Death certificate of Putul Deka.
5. Ext. 5- Agreement dated 1st January 2018

Witnesses examined by the Defendant:

NIL

Documents exhibited by the Defendant:

NIL

Dr. Nabanita Kalita
Munsiff No- 1, Nalbari
