

M.S.17 of 13.

02.04.14.

The suit was taken up for hearing on 26.3.14, but on that date, Ld.counsels for both sides were not present. So, the suit was posted today for hearing on admission.

In this suit, defendant filed his written statement on 30.11.13 and in his written statement, he has admitted that at the time of execution of the agreement for sale, he fixed the price of the suit land at Rs.16,40,000/-only and on various occasion, plaintiff paid an amount of Rs.10,00,000/- out of the total amount. But, after expiry of the stipulated period as mentioned in the said agreement, he repeatedly requested the plaintiff to pay the balance amount due to his urgent need of money. Instead of paying the remaining amount, the plaintiff willfully avoided to pay the amount. Defendant has stated that he is ready to execute the sale deed in favour of the plaintiff on payment of the balance amount as agreed between them. At present, as he is facing great financial hardship, he is not in a position to pay the interest as claimed by the plaintiff and the value of the stamp paper purchased by the plaintiff.

Plaintiff's case is that on 8th September, 12, he and the defendant entered into an agreement for sale in respect of a sale of land

measuring 2 katha 13 Lechas covered by Dag No.1638 of P.P.No.473 located at Bohotia gaon under Sarucharai Mouza, Jorhat. Before entering into the agreement for sale, plaintiff asked for the documents of the property to confirm the title of the defendant over the said land and accordingly, defendant shown him two Nos. of sale deed and the land revenue paying receipt and one mutation order stands in his name. Both the plaintiff and defendants are residing in the same village. The defendant fixed the worth of the land proposed to be sold to the plaintiff an amount of Rs.16,40,000/-and on 18.9.12, the defendant received Rs.4,00,000/- as advance out of the total consideration, Rs.5,00,000/- on 18.12.12 and Rs.1,00,000/- on 28.1.13 from the plaintiff and the defendant acknowledged to have receipt of the said amount by putting his signature on the body of the agreement for sale dtd.18.9.12. both the plaintiff and the defendant obtained necessary permission for sale from the District Revenue Authority vide order dtd.15.10.12 bearing No.JRS 7/2011/9329 and from the Jorhat Development Authority vide order dtd.12.11.12,bearingNo.JDA/LT/2012/84/168/697. After getting permission for sale of the land, plaintiff purchased non-judicial stamp paper worth Rs.23,220/- as required for

registration of the deed of sale on 6.12.12. Plaintiff informed the defendant about his readiness and requested to fix a date for registration of the sale deed. But, the defendant on various pretext, avoided to execute the sale deed in favour of the plaintiff. As per terms and conditions stipulated in the agreement for sale dtd.18.9.12, a passage measuring 100 ft in length and 14 ft in breadth on the southern side of the adjoining land belongs to the defendant , originating from the private road popularly and commonly known as Pragati path towards the land proposed to be sold to the plaintiff, for his exclusive use in respect of his ingress and egress to the land. But, the defendant did not agree to provide the said passage to the plaintiff. Plaintiff further stated that when the Lat Mandal made visit to the land for survey as required for accord permission by the District Revenue Authority, it was found that the name of the defendant was not recorded in the Chitha Book. As such, defendant finally informed the plaintiff not to proceed towards the proposed sale of the land for which the defendant expressed to return the advance amount taken from the plaintiff. But the defendant has miserably failed to make repayment of the advance amount and other expenses incurred by the plaintiff in the said deal. The

plaintiff having no other alternative, instituted the suit against the defendant for recovery of Rs.10,00,000/- from the date of institution of the suit together with the costs of the non-judicial stamp paper purchased by him amounting to Rs.23,220/-.

On the date of hearing U/O.10, R.1 of C.P.C, Ld.counsel for the plaintiff has submitted that there is a scope for amicable settlement. As such, she prayed to refer the matter to the Mediation Centre. Submission was accepted and suit was referred to the Mediation Centre with a direction to submit report within 90 days. Report of the Ld.Mediator was received. In the report dtd.10.3.14, Ld.Mediator mentioned that *both the parties appeared before the Mediation Centre. Defendant admitted the claim of the plaintiff, but needed one year's time to return the amount as claimed by the plaintiff. But, the plaintiff did not allow time as he paid the said amount by taking loan from his Company @ 10% interest p.a. and at that point, Mediation failed. As such, finding no other alternative, matter was sent back to the Court. The report was read over to both the parties and after going through the report, parties put their respective signatures accordingly.*

Ld.counsel for the defendant has submitted that he wanted to sell the land as he was in urgent need of money for investing in some other business and defendant has already invested the money in his business. As such, defendant is not in a position to refund the money at a time and also submitted that plaintiff is not entitled to get back the cost of the Non-judicial stamp paper purchased by him. On the other hand, Ld.counsel for the plaintiff has submitted that plaintiff is a service holder and he took loan from his authority at an interest of 10% p.a. . so, he is entitled to get interest and the cost of the non-judicial stamp paper.

Upon hearing both sides, I find that the defendant has not denied the execution of the agreement for sale and taking an amount of Rs.10,00,000/- and after execution of the agreement, permission was also obtained ,but due to some technical difficulties, plaintiff changed his mind and not inclined to purchase the said land.

Upon hearing both sides and going through the plaint as well as report of the Ld.Mediator, I am constrained to hold that the plaintiff is entitled to get a decree for recovery of *Rs.10,00,000/-*,i.e.,the advance amount paid to the defendant and *Rs.23,220/-*

as being the cost of the Non-Judicial Stamp Paper, the total amount of Rs.10,23,220/-. Plaintiff is entitled to get interest @ 10% p.a. on Rs.10,00,000/- but not entitled to get interest on Rs.23,220/- i.e.,the value of purchasing Non-Judicial Stamp Paper.

The plaintiff's suit is decreed for recovery of Rs.10,23,220/-.

From the averments made in the plaint, it appears that plaintiff has paid total amount of Rs.10,00,000/- in three installments and last installment of Rs.1,00,000/- was paid on 28.01.13, as such, he is not entitled to get interest from the date of execution of the agreement, but he is entitled to get interest on Rs.10,00,000/- from the date of payment of last installment, i.e., on 28.01.2013. Hence, Plaintiff is entitled to get interest on Rs.10,00,000/- only from 28.01.13 @ 10% p.a. till the date of realization of the same and not on total decretal amount.

Civil Judge, Jorhat.