

GAHC010007372011



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : RSA/153/2011

MUSTT. MOYMONA KHATUN AND 7 ORS
W/O LATE BAHEJ ALI, ON THE DEATH OF BAHEJ ALI HIS LEGAL HEIRS

2: MD ZAKIR HUSSAIN
SON OF LATE BAHEJ ALI

3: MD ZAHANGIR ALAM
SON OF LATE BAHEJ ALI

4: MD MIJANUR RAHMAN
SON OF LATE BAHEJ ALI

5: MUSTT. ANAWARA KHATUN
DAUGHTER OF LATE BAHEJ ALI

6: MUSTT. NOOR NEHAR
DAUGHTER OF LATE BAHEJ ALI

7: MD ABDUL BAREK
SON OF LATE ABESH ALI

8: MD SUMED ALI
SON OF LATE ABESH ALI
ALL ARE RESIDENT OF VILLAGE- RAMPUR
MOUZA-TITAPANI
P.S. BAGHBAR
BARPETA
ASSA

VERSUS

MUSSTT. OCHIKA KHATUN AND ORS
W/O LATE ABDUL JABBAR, HEIRS OF LATE ABDUL JABBAR

1.2:KHUSBAR ALI
SON OF LATE ABDUL JABBAR

1.3:ON THE DEATH OF JAYNAL ABDIN
HIS LEGAL HEIRS
NAMELY

1.3.1:SABIRAN NESSA
W/O LATE JAYNAL ABDIN
R/O VILLAGE RAMPUR
MOUZA TITAPANI
PS NIJ RAMPUR
DISTRICT BARPETA
ASSAM
PIN 781319

1.3.2:JAMIRAN NESSA
D/O LATE JAYNAL ABDIN
R/O VILLAGE RAMPUR
MOUZA TITAPANI
PS NIJ RAMPUR
DISTRICT BARPETA
ASSAM
PIN 781319

1.3.3:JAHIDA KHATON
D/O LATE JAYNAL ABDIN
R/O VILLAGE RAMPUR
MOUZA TITAPANI
PS NIJ RAMPUR
DISTRICT BARPETA
ASSAM
PIN 781319

1.3.4:ROFIKUL ISLAM
S/O LATE JAYNAL ABDIN
R/O VILLAGE RAMPUR
MOUZA TITAPANI
PS NIJ RAMPUR
DISTRICT BARPETA
ASSAM
PIN 781319

1.3.5:SOFIKUL ISLAM
S/O LATE JAYNAL ABDIN
R/O VILLAGE RAMPUR
MOUZA TITAPANI
PS NIJ RAMPUR

DISTRICT BARPETA
ASSAM
PIN 781319

1.3.6:BOBUDUL ISLAM
S/O LATE JAYNAL ABDIN
R/O VILLAGE RAMPUR
MOUZA TITAPANI
PS NIJ RAMPUR
DISTRICT BARPETA
ASSAM
PIN 781319

1.4:ACHIMUDDIN
SON OF LATE ABDUL JABBAR

1.5:ON THE DEATH OF SUNPHOOL NESSA
HER LEGAL HEIRS
NAMELY-

1.5.1:MR MUNNAF ALI
H/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.2:SHARIF UDDIN
S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.3:ASHAN ALI
S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.4:ANOWAR HUSSAIN

S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.5:SANOWAR HUSSAIN
S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.6:BAHARUL ISLAM
S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.7:BAHARUL ISLAM
S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.8:MISS MUNJAN KHATUN
D/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.9:ABIDA KHATUN
D/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM

P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.10:CHANDRA BHANU
S/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.5.11:MISS HAWSHI BHANU
D/O MUSTT. SUNPHOOL NESSA

R/O VILLAGE GARALIPAM
P.S.- BONGUGRI
DISTRICT BARPETA
ASSAM
PIN CODE 781321

1.6:MANIKJAN
DAUGHTER OF LATE ABDUL JABBAR
WIFE OF A. BAREK

1.7:RUPBHANU
DAUGHTER OF LATE ABDUL JABBAR
WIFE OF MAJAR ALI

1.8:SABIRAN NESSA
DAUGHTER OF LATE ABDUL JABBAR
WIFE OF SOLEMAN

2:ON THE DEATH OF AFAZUDDIN
HIS LEGAL HEIRS
NAMELY

2.1:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 16.11.2022 PASSED IN I.A.(C) NO.
2183/2022

2.2:SHONA BANU
D/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR

DISTRICT BARPETA
ASSAM.

2.3:JAMAL UDDIN
S/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR
DISTRICT BARPETA
ASSAM.

2.4:MORTU BANU
D/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR
DISTRICT BARPETA
ASSAM.

2.5:SHORJU BANU
D/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR
DISTRICT BARPETA
ASSAM.

2.6:TOBAHED ALI
S/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR
DISTRICT BARPETA
ASSAM.

2.7:SHOKJAN KHATUN
D/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR
DISTRICT BARPETA
ASSAM.

2.8:FUL BANU
D/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR

DISTRICT BARPETA
ASSAM.

2.9:SAIFUL ISLAM
D/O LATE AFAZUDDIN
RESIDENT OF VILLAGE RAMPUR
MOUZA TITAPANI
P.S. BAGHBAR
DISTRICT BARPETA
ASSAM

Advocate for the appellants : Mr. N Dhar
Mr. S Chakraborty

Advocate for the respondents : Mr. N Haque
Mr. SK Deori

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

09.05.2024

Heard Mr. N Dhar, the learned counsel appearing on behalf of the appellant and Mr. N Haque, the learned counsel appearing on behalf of the respondents.

2. This is an appeal under Section 100 of the Code of Civil Procedure 1908 (for short, the Code) challenging the judgment and decree dated 30.09.2010 passed by the Court of the learned Civil Judge Barpeta (hereinafter to be referred to as the 'learned First Appellate Court') in Title Appeal No.22/2008,

whereby the appeal was allowed thereby setting aside the judgment and decree dated 28.05.2008 passed by the learned Munsiff No.1, Barpeta (hereinafter to be referred to as the 'learned Trial Court) in Title Suit No.1/2007.

3. This Court vide the order dated 17.11.2011 admitted the instant appeal by formulating the following substantial question of law:

“Whether the impugned judgment passed by the learned Appellate Court ignoring the evidence of the witnesses, namely, PW2, PW3 and PW5 and the documentary evidence, exhibit K in the case record, consequent thereto, a decree passed in favour of the respondent-plaintiffs on the basis of a perverse finding is unsustainable in law?

4. The question, therefore, arises in the instant proceeding is as to whether the substantial question of law so formulated by this Court on 17.11.2011 is duly involved in the instant appeal. For ascertaining the said aspect of the matter, this Court finds it very relevant to take note of the facts leading to the filing of the instant appeal in brief:

The respondents herein as a plaintiffs instituted a suit being Title Suit No.1/2007 in the Court of the learned Munsiff No.1, Barpeta. The claim of the plaintiff in the said suit is that one Harendra Nath Deva Adhikari , Late Abdul Zabbar and Afazuddin were the pattadars and possesors of various plots of land which have been described in Schedules A, B, C and D. It was stated in the plaint that during the last settlement operation, the Government of Assam had issued the annual patta over the Schudule A, B, C and D lands in the names of Harendra Nath Deva Adhikari , Late Abdul Zabbar and Afazuddin. During the

continuation of the annual patta, application was filed before the SDC, Kalgachia for converting the Schedule A land into a periodic patta. In terms with the said application, the SDC Kalgachia passed the order dated 13.05.1967 converting the A Schedule land into periodic in the name of Harendra Nath Deva Adhikari, Late Abdul Zaffar and Afajuddin. However, the Schedule B, C and D lands remained as annual patta lands. It was also mentioned that the shares of Harendra Nath Deva Adhikari in respect of the Schedule A land was sold in favour of Late Abdul Zabbar and Afajuddin by a registered deed of sale No.4330/67 dated 01.06.1967 and possession was duly delivered to them. However, in respect to the Schedule B, C and D lands orally the shares of Harendra Nath Deva Adhikari was transferred for an amount of Rs.90/- in favour of Late Abdul Zabbar and Afajuddin along with delivery of possession. The plaintiffs claimed that during the lifetime, Abdul Zabbar and Afajuddin were the absolute owners of Schedule A, B, C and D lands. Upon their death, the plaintiffs continued to exercise such rights. It was mentioned that on 08.10.2006, the defendants, who had lands adjacent to the plaintiffs, dispossessed the plaintiffs from the Schedule B, C and D lands and also a portion of the Schedule A land. This portion of the Schedule A land has been specifically described in Schedule A(1). It is under such circumstances, the suit was filed claiming declaration of right, title and interest over the Schedule A, B, C and D lands; for declaration that the defendants did not have title over the Schedule A, B, C and D lands; for recovery of khas possession in respect of Schedule A(1), B, C and D lands and for declaration that the order passed by the Circle Officer Kalgachia dated 27.09.1995 in connection with Misc.Petition No.134/95-96 and the order dated 18.04.1995-96, in connection with Misc.Petition No.790/95-96 was illegal, null and void, and not sustainable in law

and, accordingly, for issuance of a precept. This Court at this stage finds it pertinent to take note of that the order of the Circle Officer Kalgachia was challenged. However, neither the State of Assam, nor the Circle Officer was made a party to the said suit.

5. Upon filing of the suit, the defendants filed a joint written statement, stating *inter alia* that the suit land stood in the name of Harendra Nath Deva Adhikari and possession was transferred in favour of the defendant's father Abesh Ali about 40 years ago. It was also mentioned that the suit land was mutated in the name of defendants on 19.08.1996 with reference to Misc. Petition No.790/95-96 passed by the order of the Circle Officer Kalgachia for a plot of land measuring 1 bigha 3 kahta 4 lessas under dag No.295, KP Patta No.61 of A(1) Schedule land of the suit. On the other hand, annual Dag Nos.296, 297, 298 which are Schedule B, C and D lands were in the name of Harendra Nath Deva Adhikari and he transferred the land to the possession of the defendants about 40 years ago and the defendants thereupon mutated their names in the record of rights. It was also mentioned that before filing of the suit, the dags in the annual patta was converted into a kheraj patta in terms with the Order No.C.P.No.5/06-07 by the Circle Officer Kalgachia dated 20.07.2006 in favour of the defendants after receiving the premium (value of the land) from the defendants with local verification of the suit land and mutated the land records in the name of the defendants and at present the said annual patta dags were converted into Kheraj Patta No.356 Village Rampur, Mouza -Titapani in the District of Barpeta, Assam. It is relevant to take note of that this Kheraj Patta No.376 so issued in favour of the defendants has been exhibited as Ext.K. The defendants completely denied the case of the plaintiffs

and contended that the plaintiffs were never in possession of the Schedule B, C and D lands.

6. On the basis of the said pleadings, the learned Trial Court framed as many as 5(five) issues. Issue No.2 related to as to whether the suit was barred by limitation; Issue No.3 related to as to whether the plaintiffs had right, title and interest over the suit land and issue No.4 was as to whether the plaintiffs are entitled to a decree for khas possession over Schedule A(1), B, C and D lands. While deciding the issues No.3, the learned Trial Court came to an opinion that the defendants had right, title and interest over the Schedule B, C, D lands, in view of the issuance of the patta in their names and the plaintiff had right, title and interest over the Schedule A land, including the Schedule A(1) land, which is a part of the Schedule A land. In view of the discussion in respect to issue No.3, the issue No.4 was decided holding that the plaintiffs were entitled to recovery of possession of Schedule A(1) land and not in respect of Schedule B, C and D lands. The said judgment and decree was passed on 28.05.2008.

7. Being aggrieved, an appeal was preferred by the plaintiffs, before the Court of the learned Civil Judge, Barpeta which was registered and numbered as Title Appeal No.22/2008. The learned First Appellate Court reversed the decision in issue No.3 and decided it in favour of the plaintiffs, however, in doing so, did not take into account that the periodic patta was issued in favour of the defendants which is the Ext. K. Under such circumstances, the appeal was decided in favour of the plaintiffs.

8. Being aggrieved the instant appeal has been filed which has been admitted by this Court vide the order dated 17.11.2011 by formulating the substantial question of law as noted above.

9. This Court has duly heard Mr. N Dhar, the learned counsel appearing on behalf of the appellants and also Mr. N Haque, the learned counsel appearing on behalf of the respondents and has given due consideration of their respective submissions.

10. During the course of the hearing, it transpires that the Kheraj Patta which had been issued in favour of the defendants had not been put to challenge. Certain orders of the Circle Officer had been put to challenge. However, neither the State of Assam nor the Circle Officer were made parties to the suit.

11. It is also relevant at this stage to take note of a recent judgment of the Supreme Court in the case of ***Ram Balak Singh Vs. State of Bihar and another***, reported in ***2024 SCC OnLine SC 725***, wherein the Supreme Court while dealing with the rights recognized by the Consolidation Authority in terms with Consolidation Act observed that under the Scheme of Consolidation Act, the Consolidation Authorities are fully competent to deal with the issue of title, over the land under Consolidation, except under certain contingencies. It was further observed that the Consolidation Authorities have the powers of the Civil Court to decide the question of title, subject to judicial review by the High Court under Articles 32, 226 and 227 of the Constitution of India. The Supreme Court most pertinently observed in the said judgment that revenue entries are not

documents of title and do not ordinarily confer or extinguish title in the land, but, nonetheless, where the Revenue Authorities or the Consolidation Authorities are competent to determine the rights of the parties, by exercising powers akin to the Civil Courts, any order or entry made by such authorities, which attains finality, has to be respected and given effect to.

12. In the instant case, it would be seen that pursuant to the order passed in C.P.No.5/06-07 dated 20.07.2006, the State Revenue authorities had accepted the premium from the defendants and granted Kheraj Patta No.356 in favour of the defendants in respect to Schedule B, C, and D lands.

13. This Court further finds it very pertinent to observe that although the plaintiffs claimed that they had rights over the Schedule B, C and D lands on the basis of some annual patta being issued, but with the issuance of the periodic patta, in respect to same land in favour of the defendants by the Revenue Authorities of the State of Assam and the same not being challenged in accordance with law, the rights, if any, in terms of the annual patta had ceased to exist.

14. Under such circumstances, the learned First Appellate Court was not justified in deciding the issue No.3 in favour of the plaintiffs, in so far as the Schedule B, C and D lands, that too, without taking into account the Ext. K. In that view of the matter, the judgment and decree passed by the learned First Appellate Court suffers from perversity, *inasmuch as*, the learned First Appellate Court had failed to take into account the said aspect of the matter, which, if

taken into account would have changed the course of the proceedings. Consequently, the question of law which has been formulated by this Court by the order dated 17.11.2011 is involved in the instant appeal. Accordingly, the judgment and decree dated 30.09.2010 passed by the learned First Appellate Court in Title Appeal No.22/2008 is set aside and quashed and the judgment and decree dated 28.05.2008 passed by the learned Trial Court in Title Suit No.1/2007 is restored.

15. The instant appeal stands allowed with costs quantified @ Rs.20,000/- for the instant proceedings. In addition to that, the appellants herein would be entitled to the costs in the First Appeal only.

16. Registry shall return the LCR forthwith.

JUDGE

Comparing Assistant