

GAHC010009632014



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

Case No. : WP(C)/2456/2014

JITENDRANATH BORAH and 2 ORS.
S/O LT. LAKHIDHAR BORAH, R/O DOHA BORAH CHOOK, MITRADHAR
BORAH LANE, K.B. ROAD, DIST- JORHAT, ASSAM

2: ROBIN CH. BORAH
S/O LT. MURALIDHAR BORAH
R/O DOHA BORAH CHOK
MITRADHAR BORAH LANE
K.B. ROAD
DIST- JORHAT
ASSAM

3: MRIGANKA DHAR DORAH
S/O LT. MURULIDHAR DOARAH
R/O DOHA BORAH CHOK
MITRADHAR BORAH LANE
K.B. ROAD
DIST- JORHAT
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
ASSAM, REVENUE DEPARTMENT, DISPUR, GHY-6

2: THE DY. COMMISSIONER
JORHAT
DIST- JORHAT
ASSAM

3:THE CIRCLE OFFICER
JORHAT EAST REVENUE CIRCLE
DIST- JORHAT
ASSAM

4:RANU BORAH
W/O LT. PRAFULLA CH. BORAH
R/O WEST MILAN NAGAR
LANE NO.K
P.O.C.R. BUILDING
DIBRUGARH
ASSAM
PIN-78600

Advocate for the Petitioner : MS.P HANDIQUE

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. D Baruah, Advocate.

For the Respondents : Mr. B Kaushik, Advocate

Ms. S Baruah, GA

Mr. A Bhatta, Advocate

Date of Hearing : 14.03.2024

Date of Order : 14.03.2024

JUDGMENT AND ORDER(ORAL)

1. Heard Mr. D Baruah, learned counsel for the petitioners. Heard Mr. B Kaushik, learned counsel for the respondent No. 4.
2. The petitioners challenge judgment dated 14.06.2013 passed in Case No. 69 RA (J)/2010, whereby an appeal preferred by the respondent No. 4 was allowed and perfect partition of land sought by the respondent was granted.

3. Earlier to that, the Additional Deputy Commissioner, Jorhat dismissed PP Case No. 181/2005-06 under order dated 10.05.2010, which was preferred by the respondent No. 4 and rejected the claim of the respondent No. 4 for partition on the ground that she was not in possession of the land covered by Dag No. 4795 PP No. 253 measuring 1 Kath in block No. 2, Jorhat.
4. The challenge to the decision of the Board of Revenue is primarily on two counts. Firstly, on the ground that the petitioners were not properly served notice and the decision taken was an ex-parte decision. Secondly, on merit it is contended that the Board of Revenue could not have concluded that the respondent No. 4 was in possession and also that possession is not a pre-requisite for grant of partition inasmuch as Section 97 of the Assam Land and Revenue Regulation prescribes a condition of possession to grant of partition.
5. The certified copy of the memo of appeal preferred by the respondent No. 4 is produced before this court. It is the case of the respondent No. 4 that the respondent No. 4 after death of her husband namely Prafulla Chandra Bora took absolute possession and inherited the land in question and she got her name mutated. However, such order of mutation was challenged by the present petitioner before the Additional Deputy Commissioner, which was dismissed by the Additional Deputy Commissioner. Such fact is not under dispute. Therefore, the Board of Revenue rightly concluded that respondent no.4 was in possession .
6. In the order dated 10.05.2010 by which the learned Additional Deputy Commissioner, Jorhat while declining to grant partition to the respondent No. 4 has recorded that the respondent No. 4 had no possession over the

land in question and in want of possession the partition cannot be granted.

7. While dealing with such order the learned Board of Revenue concluded that as the appellant got mutation in respect of her inherited property and respondent No. 4's mutation order was confirmed by the learned Additional Deputy Commissioner, the respondent No. 4/ appellant was entitled for partition of her mutated land.
8. In terms of Section 97 of the Assam Land and Revenue Regulation, 1886 to grant partition the following conditions are required to be considered and also required to be established:
 - I. The person seeking mutation must be a recorded settlement holder and land holder.
 - II. The applicant must be in actual possession of the interest in respect of which the partition is sought for.
 - III. Such partition is result in formation of a separation estate.
 - IV. When such partition results in formation of a separate estate the resultant payment of revenue shall be within certain limits.
 - V. A person is also not entitled to apply for imperfect partition of an estate unless consent of the recorded co-sharers holding in the aggregate more than 1 ½ of the estate are given.
9. It is also seen from the record that though the respondent No. 4 is claiming the partition on the basis of inheritance and possession, however, the right of the respondent No. 4 itself is denied by the petitioners which is clearly reflected from the order dated 10.05.2010 passed by the learned

Additional Deputy Commissioner in PP Case No. 181/2005-06.

10. During the course of argument also both the learned counsels for the parties have asserted their possession over the land. Though the learned Board of Revenue has concluded that since there is already order of mutation for which there is presumption in favour of the respondent No. 4 that he/she is having the possession, at the same time, from the order of the Additional Deputy Commissioner dated 10.05.2010 it is reflected that the report of the Circle Officer discloses that the respondent No. 4 is not in possession of the disputed land.
11. From the record, it is seen that basic objection of the petitioners who were respondents before the learned Additional Deputy Commissioner as to the entitlement and ownership over the disputed land.
12. That being the position, this Court is of the view that neither the Board of Revenue nor the Additional Deputy Commissioner while granting /rejecting prayer of partition did not determine the parameter/conclusion as prescribed under Section 97 of the Assam the best course of action would be to relegate the aggrieved parties to the competent civil court to determine their ownership as well as possession, best course of action would be to relegate the aggrieved parties to the learned Additional Deputy Commissioner to determine claim of partition as per law .
13. Accordingly , the order dated 14.06.2013 and 10.05.2010 are set aside and parties are relegated to the Additional Deputy Commissioner Court or competent authorities under the Assam Land and Revenue Regulation to determine the claim of the respondent no.4 for

partition. The said authority shall determine the issue as per law by giving opportunity of hearing to both the parties.

JUDGE

Comparing Assistant