

GAHC010005822009



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

Case No. : RSA/138/2009

AM NARAYAN UPADHAYA and ANR,
S/O LATE JAYANARAYAN UPADHYAY.

2: SMTI. GANGA DEVI

W/O LATE JAYANARAYAN UPADHYAY
BOTH ARE RESIDING AT VILL. KANYAGHAT
MOUZA BALIPARA
P.S. RANGAPARA
DIST. SONITPUR
ASSAM

VERSUS

ON THE DEATH OF MAYA DEVI BAMUNI HER LEGAL HEIRS SMT.
BHAGIRATHI DEVI DAU.
AS PER HON'BLE COURT'S ORDER DTD. 07.02.2012 IN MC. NO. 3689/2011

Advocate for the Petitioner : D MAZUMDAR

Advocate for the Respondent : MR.S CHAKRABARTY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28-03-2024

JUDGMENT AND ORDER

(CAV)

Heard Mr. D. Mozumder, learned senior advocate, assisted by Mr. P. Borah, learned counsel for the appellant in both the appeals and also heard Mr. A. Dasgupta, learned senior counsel, assisted by Ms. B. Das, learned counsel for the respondents.

Facts of the case:

2) The plaintiff in Title Suit No. 55/2002 is Smt. Maya Debi Bamuni and the defendants are (1) Sri Am Narayan Upadhyay, and (2) Smt. Ganga Debi. The said suit was filed for declaration, eviction and permanent injunction.

3) The plaintiff in TS No. 55/2002, namely, Maya Debi Bamuni is the mother and predecessor-in-interest of the Smt. Bhagirathi Devi, who is substituted as respondent in this appeal on the death of Late Maya Debi Bamuni.

4) In brief, the case of the respondent- plaintiff was that in the year 1950, Dambar Singh Basnet, the father of Maya Debi Bamuni (respondent) had purchased possession of Government land measuring 8 bigha- 4 katha- 10 lessa, morefully described in the plaint from one Bedanidhi Sarmah, in the name of Maya Debi Bamuni. She had filed a petition for settlement of the said annual *patta* land in her name and on payment of premium the said land was settled and converted to a periodic *patta* land on 23.05.1973, in the name of Maya Debi Bamuni, since deceased, the mother of the substituted respondent. Accordingly, the annual *patta* land was converted into a periodic *patta* land, covered by periodic *patta* no. 1, bearing dag nos. 36, 131, 132, 134 (old), corresponding to dag nos. 95, 96, 102 and 104 (new). Thus, the original respondent had acquired

right, title, and interest over the suit land and started to pay land revenue for the said land and planted several varieties of trees and plants thereon. In the year 1986, Maya Debi Bamuni, the mother of the substituted respondent had constructed one *chang-ghar* comprising of three rooms as well as another house on the suit land. It was claimed that Maya Debi Bamuni, the mother of the substituted respondent had married Jay Narayan Upadhyay (also written as Jaynarayan Upadhyay) in the year 1942. In the year 1960, her husband had brought Smt. Ganga Debi (appellant no. 2) without solemnizing marriage and cohabited with her and they had a child, namely, Am Narayan Upadhyay (appellant no.1). On 02.02.1989, Jay Narayan Upadhyay had died, leaving behind the respondent and her daughter, namely, Smt. Bhagirathi Devi (substituted respondent) as his heirs. It was projected that Maya Debi Bamuni (respondent) with her daughter (substituted respondent) were cultivating and managing the suit land and that the appellants were also residing on the suit land. It is claimed that on 20.01.2002, the respondent had requested the appellants to construct their house on the portion of land covered by dag no.271 of P.P. no. 9 (old)/7 (new) of Village- Kekokoli Nepali, which is just in front of the suit land. It was pleaded that the appellants had initially agreed to vacate the house of the respondent within 20.04.2002. But instead of vacating, on 10.02.2002, the appellants had illegally cut down trees, stole betel nuts and on 15.04.2002, they had demolished the house of the respondent and on 20.04.2002, they had started construction of an Assam Type house on the suit land and when the substituted respondent and her mother i.e. respondent tried to obstruct them, they threatened to kill them. The appellants had denied that the respondent had any right, title and interest over the suit land. It was also claimed that the appellants had illegally got their names mutated in respect of

the suit land. Therefore, the suit was filed with the following prayers, viz., for (i) declaration of her right, title, interest in respect of the suit land; (ii) declaration of mutation in the name of the appellants in respect of the suit land as null, void, illegal and cancellation thereof; (iii) eviction of the appellants with their men and materials by demolishing their houses and structures from the suit land and for recovery of possession thereof; (iv) permanent and perpetual injunction restraining the appellants, their men, etc. from entering into the suit land; (v) cost of the suit; and for (vi) any other relief(s).

5) The suit was contested by the appellants, namely, (1) Am Narayan Upadhyay, and (2) Smt. Ganga Debi by filing their written statement. The stand of the appellants was that the respondent was not the legally married wife of Jay Narayan Upadhyay and that she had fled away with Jay Narayan Upadhyay after leaving her former husband. It was claimed that as the respondent could not bear any child, Jay Narayan Upadhyay had married Smt. Ganga Debi (appellant no.2) in the year 1955 according to Hindu rites and out of their marriage, two daughters and one son were born. It was claimed that the suit land was an annual *patta* land and in the year 1946, its possessory right was purchased by Jay Narayan Upadhyay from one Bedanidhi Sarmah and paid land revenue in respect of the land on behalf of the said vendor. It was claimed that after the death of Jay Narayan Upadhyay, without knowledge of the appellants, the respondent had filed Periodic Case No. 282/1971-72 and got the said annual *patta* land converted to periodic *patta* land in her name, but the premium amount was paid from the estate of Jay Narayan Upadhyay. It was claimed that the respondent was not the sole owner of the suit land but the respondent, substituted respondent and the appellants are the co-owners and *co-pattadars* of the suit land. It was claimed that they were living jointly under

the same roof and same kitchen till the year 1998. Thereafter, they got separated and were living in the same house, but in two separate parts. It was also claimed that the appellant no. 1 was cultivating the land and the products of the suit land was divided. It was projected that the substituted respondent got married to Sri Gopal Chetry in the month of February, 2001 and is residing with her husband at Burhathagi (Kanyaghat). It was alleged that in order to deprive the appellants, the land was mutated in the name of Smt. Maya Debi Bamuni (respondent) and thereafter, the substituted respondent got her name illegally recorded in the revenue records on 16.09.1996 by deleting the name of the respondent without the knowledge of the appellants. It was claimed that as per the advice of the respondent, the names of the appellants, respondent and the substituted respondent were entered as co-owners of the said land. The appellants claim that they are also the legal heirs of Late Joy Narayan Upadhyay and they are the co-owners and *co-pattadars* of the suit land. Accordingly, the appellants had prayed to dismiss the suit.

6) The following issues were framed by the learned Trial Court for trial:-

1. *Whether the suit is maintainable and tenable against the defendants?*
2. *Whether there are any cause of action against the defendants?*
3. *Whether the suit is barred by limitation, estoppel, waiver and acquiescence?*
4. *Whether the suit is bad for non joinder of necessary party?*
5. *Whether the suit is properly valued?*
6. *Whether the father of the plaintiff purchased possession of the suit land in favour of the plaintiff and whether the plaintiff has been possessing and cultivating the same from the year 1950 continuously?*
7. *Whether the plaintiff is the owner of the suit land?*
8. *Whether the plaintiff is entitled to any relief as claimed?*
9. *To what other relief or reliefs the parties are entitled to?*

7) During trial, the respondent- plaintiff had examined 4 (four)

PWs, viz., (i) Maya Debi Bamuni (PW-1), (ii) Bhagirathi Debi (PW-2), (iii) Hasta Bahadur Chetry (PW-3), and (iv) Lakhi Prasad Sarma (PW-4), and exhibited the following documents, viz., (i) certified copy of *jamabandi* of P.P. No.1 (Ext.1), (ii) land revenue receipts Ext.2(1) to Ext.2(3). The appellants- defendants had examined 4 (four) DWs, viz., (i) Am Narayan Upadhyay; (ii) Smt. Ganga Debi (DW-2); (iii) Uma Kanta Chetry (DW-3); and (iv) Ganesh Chetry (DW-4), and exhibited the following documents, viz., (i) annual *patta* no.24 (Ext.A), (ii) land revenue paid receipt by Jay Narayan in favour of Bedanidhi (Ext.B), (iii) land revenue paid receipt after annual *patta* no. 24 was changed to 21 (Ext.C), (iv) land revenue paid receipt dated 08.04.1982 (Ext.D), (v) land revenue paid receipt dated 18.09.2002 (Ext.E), (vi) Certificate issued by the Circle Officer in respect of mutation of names of the appellants- defendants in respect of suit land (Ext.F), (vii) certificate dated 03.12.2002 by Govt. *Gaonbura* of Lot No. 10 (Ext.G), (ix) *jamabandi* showing the names of the respondent, substituted respondent and appellants in respect of the suit land (Ext.H).

Finding and decision of the learned Trial Court:

8) In respect of issue no. 6, the learned Trial Court had discussed the evidence of the witnesses. As the original respondent- plaintiff claimed that her father had purchased the possessory right over the suit land in her name and she was in possession the same and cultivating it continuously since 1950, therefore, it was held that it was her burden to prove the same. The learned Trial Court had referred to the cross-examination of PW-1, wherein she had admitted that the suit land previously belonged to her husband and it was held that she had not proved any document and had admitted that the premium amount for the land was paid from the earnings of the suit land and construction of house was made from the earning of the suit land. The learned

Trial Court had considered that both the plaintiff and the defendants were residing on the suit land till 5-6 years ago and that even after separation they had continued to reside in the same house. The learned Trial Court did not find the evidence of PW-2 as reliable as she could not say the reason or cause of action for which the suit was filed. It was held that PW-2 did not have any personal knowledge as to who had purchased the suit land and from whom and she could not state the four boundaries of the suit land which she was cultivating. Though PW-2 had denied that she had mutated her name by deleting her mother's name, but it was held that Ext.H shows that the name of PW-2 was mutated in the land revenue record by deleting her mother's name. Moreover, the Court had found the evidence of PW-2 and PW-4 unreliable and it was held that their evidence did not support the plaintiff's case. The learned Trial Court had placed reliance on the evidence of PW-4 who had stated in his cross-examination that in the year 1942, Dombar Singh Mahajan gave 1 bigha land to Jay Narayan, who had sold the same and had purchased 28 bigha land, and that PW-4 did not know about the happenings at Kanyaghat since 1980. It was held that the DW nos. 1, 2 and 4 had stated that defendant no.1 had been cultivating the suit land on death of Jay Narayan and gave half share of produce of the said land to the plaintiff. It was also held that the substituted respondent i.e. daughter of original respondent- plaintiff was residing with her husband after marriage. Thus, it was held that the respondent-plaintiff had failed to prove that she had been cultivating and possessing the suit land since 1950. Accordingly, it was held that the respondent- plaintiff had failed to prove the issue.

9) In respect of issue no. 7, the learned Trial Court had held that the PW-1 had admitted that the suit property was of Jay Narayan, and the

amount of premium for settlement of land was paid out of the income from Jay Narayan's property. Moreover, the learned Trial Court had referred to the cross-examination of PW-1, where she had admitted that her husband had married Ganga Debi about 50 years ago and they had three daughters and one son, out of which Sita Devi, Tankeswari and defendant no. 1, namely, Am Narayan were alive and that they lived together with the respondent in the same house till 5-6 years back; and that even after separation they had lived in same house but separately. It was also held that after the death of husband of the respondent, the suit land was mutated in her name and it was held that the respondent-plaintiff and the appellant/ defendant no.2 could not prove who was the legitimate wife of Late Jay Narayan Upadhyay. The learned Trial Court took note of the decision of the Supreme Court of India in the case of *Navalshankar Ishwarlal Dave v. State of Gujarat*, AIR 1994 SC 1496, wherein it was held that mutation of names in the revenue record was evidence of title. Moreover, the learned Trial Court had also referred to the decision of the Division Bench of this Court in the case of *Goya Prasad Khemani v. Assam Board of Revenue & Ors.*, (1982) 1 GLR 130, wherein it was held that mutation was permissible on the strength of possession. Accordingly, it was held that as the suit land originally belonged to Jay Narayan Upadhyay and therefore, all his legal heirs became entitled to the said land. Hence, the said issue was decided in the negative and in favour of the appellants- defendants.

10) In respect of issue no. 1, it was held that there is no reason to hold that the suit was not maintainable and hence, the issue was decided in the affirmative and in favour of the respondent- plaintiff. In respect of issue nos. 2 and 5, both the said issues were decided in the affirmative and in favour of the respondent- plaintiff. In respect of issue no. 3, the learned Trial Court had held

that the suit was not barred by limitation, waiver, estoppel and acquiescence and thus, the issue was decided in the affirmative and in favour of the respondent- plaintiff. In respect of issue no. 4, it was held that as the respondent-plaintiff had instituted by claiming to be the *patta* holder, the issue of ownership over suit land can be decided in the absence of the daughters of Jay Narayan Upadhyay and accordingly, it was held that the suit was not bad for non-joinder of necessary parties. Hence, the issue was decided in the negative and in favour of the respondent- plaintiff. In respect of issue nos. 8 and 9, it was held that in view of finding on issue nos. 6 and 7, the respondent- plaintiff was not entitled to any relief in the suit.

First appeal by the respondent herein:

11) Aggrieved by the dismissal of the suit, Smt. Maya Debi Bamuni, the respondent- plaintiff had filed an appeal, which was registered as Title Appeal No. 10/2005. The said T.A. No. 10/2005 was heard and decided by the learned Civil Judge, Sonitpur, Tezpur by judgment and decree dated 07.12.2006. By the said first appellate judgment, the appeal was allowed on contest by holding that the respondent- plaintiff had the right, title and interest over the suit land. It was also declared that the mutation of the name of the appellants in respect of the suit land was null, void, illegal. Accordingly, the appeal was allowed and decree was passed for delivery of possession of the suit land by evicting the appellants with their men and materials by demolishing their house and structures from there and decree of permanent injunction was passed to restrain the appellants herein, their men, servants, agents and associates from entering into the schedule land after eviction.

12) It may be mentioned that the learned First Appellate Court did not frame any point of determination as per the requirement of the provisions of

Order XLI, Rule 31(a) CPC. However, it is seen that the learned Trial Court had revisited all the issues framed for trial.

13) In respect of issue nos. 6 and 7, the learned First Appellate Court had observed that on going through Ext.H issued on 20.12.2002 showing correction by which the suit land was mutated in the name of the appellants-defendants and reasons why correction was made. However, the Court did not find any supporting evidence on the plea of the appellants- defendants. Thus, it was held that the respondent- plaintiff was the absolute owner of the suit land. Moreover, on the ground that the respondent- plaintiff was the owner of the suit land, the learned First Appellate Court also did not find merit in the evidence of the appellants- defendants wherein it was stated to the effect that premium of Rs.45.00 for the suit land was paid from the joint property. Accordingly, it was held that the respondent- plaintiff was the owner and possessor of the suit land and was also paying the land revenue till the correction of the land revenue records on 15.02.1979 by mutating the suit land in the name of the appellants-defendants. Resultantly, the decision of the learned Trial Court was reversed by holding that the said judgment and decree was not sustainable. Resultantly, the appeal was allowed.

Second Appeal by the appellants- defendants:

14) The present appeal has been presented on 9 (nine) grounds.

Submissions by the learned senior counsel for the appellant:

15) The learned senior counsel for the appellant had referred to the grounds of appeal and it was submitted that the name of the appellants were also included in the *patta* and therefore, the learned first appellate court ought not to have accepted that the respondent, since deceased, alone was the owner

of the suit land.

16) It was submitted that the original annual *patta* holder of the suit land was Jay Narayan Upadhyay and therefore, the appellants were also the co-owners of the suit land. However, the land was surreptitiously mutated in the name of the respondent by keeping the appellants in the dark. In the said context, it was also submitted that the appellants, in their written statement, had challenged the capacity of the respondent to pay the premium amount for obtaining settlement and therefore, the burden was on the respondent to prove that she had the capacity to pay the premium amount. It was further submitted that as the respondent had failed to discharge her burden, her plea would fail and thus, the property was liable to be held to be the family property of the parties.

17) It was submitted that the case of the respondent in the plaint was that the possession of the annual *patta* land was purchased by Dambar Singh Basnet, father of the respondent had failed because in her cross-examination, the respondent, who had examined herself as PW-1 had admitted that the suit land belonged to Jay Narayan Upadhyay. Accordingly, it was submitted that if the suit land belonged to Jay Narayan Upadhyay, the said land should have been mutated in the names of all his legal heirs. Accordingly, the insertion of the names of the appellants in the land revenue records by way of correction was sought to be justified.

18) It was submitted that although the suit land was originally an annual *patta* and/or Government land, but it was owned and possessed by Jay Narayan Upadhyay, which was later on converted into a periodic *patta* land by paying premium amount. However, the land was surreptitiously settled in the sole name of the original respondent although the premium amount was paid

out of the joint family earning. Therefore, to undo the wrong, the respondent herself came before the Circle Officer and at her instance, the name of respondent was deleted and the names of four persons were entered in the land revenue records, viz., respondent, substituted respondent, appellant no.1 and appellant no.2. Hence, it was submitted that after correction of the land revenue records, the status of all the parties were that of co-owners of the suit land.

19) It was submitted that the learned first appellate Court had committed grave error in reversing the finding of the learned trial court on issue no. 6 and 7. It was also submitted that as the appellants were in continuous possession of the suit land, the learned first appellate Court had committed grave illegality in deciding that the respondent was in possession of the suit land. In this regard, it was also submitted that the learned first appellate Court had misinterpreted the entries reflected in the certified copy of the *jamabandi* (Ext.H) issued on 20.12.2002, which disclosed correction of the names of the *pattadars* pursuant to the inclusion of the names of the appellants in the land revenue records.

20) It was submitted that the plea of the appellants- defendants was that the right of possession over the suit land was purchased by Jay Narayan Upadhyay, the predecessor-in-interest of the parties in the year 1946. However, by illegally showing as if the premium amount was paid by the respondent, the suit land was surreptitiously, mutated in the name of the respondent. Therefore, with consent of the parties, the correction of land revenue records was made at the behest of the respondent- plaintiff by inclusion of the names of all the legal heirs of Late Jay Narayan Upadhyay including the appellants.

21) It was submitted that the mutation of the names of all the legal heirs of Late Jay Narayan Upadhyay, including that of the appellants-

defendants, was not assailed by the respondent. Moreover, by referring to the cross-examination of PW-1, it was submitted that the plaintiff, Smt. Maya Debi Bamuni had admitted that the land belonged to Jay Narayan Upadhyay and thus, it was submitted that after Jay Narayan Upadhyay died in the year 1989, the suit land could not have been mutated in the name of the respondent-plaintiff alone, but the appellants- defendants also had a right to have their names mutated in the land revenue records. It was also submitted that the plaintiff, Smt. Maya Debi Bamuni had accompanied the appellants- defendants before the Circle Office and she had given her consent to the entry of the name of the appellants- respondents in the land revenue records. It was further submitted that in recording the names of the appellants- defendants in the land revenue records, the provisions of section 50 to 53 of Chapter-IV, Part-B of the Assam Land and Revenue Regulation, 1886 was duly followed.

22) Hence, it was submitted that the declaration of ownership of the respondent over the suit land was liable to be set aside and reversed.

Submission made by the learned senior counsel for the respondent:

23) Per contra, the learned senior counsel for the respondent- plaintiff had submitted that the plea of the respondent was that the suit land was purchased by Dambar Singh Basnet, father of the respondent. Thereafter, the settlement of the suit land was made in favour of the respondent, who had paid the premium amount to the Government for settlement of the suit land. Accordingly, the land was mutated in the name of the respondent.

24) It was submitted that in their written statement, the pleaded case of the appellants- defendants was that in the year 1946, the right of possession was purchased by Jay Narayan Upadhyay, but the respondent had collusively

and without their knowledge filed Periodic *Patta* Case No. 282/1971-72. However, it was submitted that the appellants had failed to prove their pleaded case. Moreover, it was submitted that the competent authority had passed the order granting *patta* in favour of the original respondent vide order dated 23.05.1972 in Periodic *Patta* Case No. 282/1971-72, which is evident from the copy of *jamabandi* (Ext.1), and that the said order was never assailed. Moreover, it was submitted that the learned first appellate Court had examined the copy of *jamabandi* (Ext.H) exhibited by the appellants, which was issued on 20.12.2002, wherein their names were entered in respect of the suit land, but no supporting evidence was found. Hence, it was held by the learned First Appellate Court that the respondent- plaintiff was the owner of the suit land.

25) By citing the case of *State of Nagaland & Anr. v. Avio Naleo, 2023 (1) GLT 634*, it was submitted that the Division Bench of this Court had discussed various provisions of Chapter-VII of the Assam Land and Revenue Regulation, 1886. Accordingly, it was submitted that there is nothing on record to show that the settlement order in respect of the suit land in favour of the respondent was vitiated in any manner whatsoever.

26) In this regard, it was also submitted that while dealing with issue nos. 6 and 7, the learned First Appellate Court had examined whether or not the entry of the names of the appellants in the land revenue record was duly made and arrived at a conclusion that the entries were not duly made. Thus, it was submitted that in exercise of power under section 100 CPC, the finding of fact ought not to be examined.

27) Thus, it was reiterated that the declaration of ownership of the respondent over the suit land was liable to be set aside and reversed.

Substantial question of law on which this appeal was admitted for hearing:

28) By filing this appeal under section 100 CPC, the appellants-defendants have assailed the first appellate Courts judgment and decree dated 07.12.2006, passed by the learned Civil Judge, Sonitpur, Tezpur in T.A. No. 10/2005, thereby reversing the judgment and decree dated 06.10.2005, passed by the learned Civil Judge (Junior Division), Sonitpur, Tezpur in T.S. No. 55/2002 by which the suit was dismissed.

29) This appeal was admitted for hearing by order dated 07.12.2009, on the following substantial question of law:-

Whether in view of the joint patta held by the plaintiff and the defendant, the finding of the learned First Appellate Court that the plaintiff was the absolute owner of the suit property was perverse and illegal?

Reasons and decision:

30) It is seen that both sides have pleaded that the suit land was originally an annual *patta* land. While the respondent- plaintiff alleges that the possessory right of the suit land was purchased by Dambar Singh Basnet, the father of Maya Debi Bamuni (respondent), the case of the appellants-defendants was that the possessory right over the suit land was purchased by Jay Narayan Upadhyay, the predecessor-in-interest of the parties. However, both sides have failed to produce and prove (i) the copy of the annual *patta*; (ii) the copy of settlement order by the Government by which settlement of land was made by order dated 23.05.1972 passed by the competent authority in Periodic *Patta* Case No. 282/1971-72; and (iii) document showing payment of premium amount paid to the Government.

31) Thus, the copy of *jamabandi* (Ext.1) is the only document from which it is proved that the settlement of land was made in favour of Maya Debi

Bamuni, the respondent- plaintiff. Therefore, it is immaterial if the possessory right over the suit land was purchased either by Dambar Singh Basnet allegedly in the name of the respondent- plaintiff or by Jay Narayan Upadhyay. Such purchase of possessory right, if any, by any of these two above named persons does not adversely impact and/or affect on the settlement order dated 23.05.1972 passed by competent authority in Periodic *Patta* Case No. 282/1971-72 in favour of the respondent- plaintiff. The said order was not challenged and thus, has attained finality.

32) Thus, owing to the settlement order in favour of the respondent and consequent payment of the premium amount to the Government, it cannot be negated that by operation of the provisions of section 8(b) of the Assam Land and Revenue Regulation, 1886, the respondent- plaintiff has acquired the status of a "land-holder". Therefore, when from the *jamabandi* (Ext.1), the respondent had proved that she had acquired the status of the land-holder, she had discharged the initial burden to prove her ownership over the suit land. Thereafter, the onus had shifted to the appellants- defendants to disprove the case of the respondent and to establish or prove their case.

33) It is not in dispute that Jay Narayan Upadhyay, the predecessor-in-interest of the parties had died on 02.02.1989. For the time being, assuming that he had purchased possessory right over the suit land as alleged by the appellants, he is deemed to have notice as envisaged in section 3 of the Transfer of Property Act, 1882, which is quoted below:-

"A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.— Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any

person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,*
- (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and*
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.*

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

34) Thus, assuming that Jay Narayan Upadhyay had allegedly purchased the possessory rights over the suit land in the year 1946, but he is deemed to have notice of the fact that by dint of settlement order in favour of Maya Debi Bamuni, the suit land was settled in her favour. Nonetheless, there is nothing on record to show that during his lifetime till he died on 02.02.1989, Jay Narayan Upadhyay had raised any objection before the Government for settlement of the suit land in favour of Maya Debi Bamuni, the respondent-plaintiff. Therefore, when Jay Narayan Upadhyay, during his lifetime, had acquiesced to the settlement order dated 23.05.1972, passed in Periodic *Patta*

Case No. 282/1971-72 in favour of the respondent- plaintiff for about 27 (twenty seven) years from the settlement order dated 23.05.1972. Thus, it is too late in the day for the appellants- defendants to question the settlement of the suit land in favour of the respondent, namely, Maya Debi Bamuni.

35) To discharge their onus, the appellants had proved copy of *jamabandi* issued on 20.12.2002 (Ext.H). However, the learned First Appellate Court had returned a specific finding that it did not find any evidence as to why the Circle Officer had passed the order dated 115(sic).02.1997, for insertion of the name of respondent-plaintiff and the appellants along with the name of Bhagirathi Debi, the substituted respondent in the record of rights (i.e. land revenue records). Accordingly, it was held that the respondent- plaintiff was the owner of the suit land. We are inclined to concur with the said finding. The said finding of fact is found to be well reasoned and cannot be held to be flawed under any provision of law.

36) It would be appropriate to refer to the case of *Amiya Bala Dutta & Ors. v. Mukul Adhikari & Ors., 1998 (4) GLT 137*. In the said case, this Court had referred to the case of *Major Pakhar Singh Atwal & Ors. v. State of Punjab & Ors., AIR 1995 SC 2185*, *Guru Amarjit Singh vs. Ratan Chand, AIR 1994 SC 227*, and *State of Himachal Pradesh v. Keshav Ram & Ors. AIR 1997 SC 2181*, and those cases were distinguished because in those decisions, the provisions of Assam Land and Revenue Regulation, 1886 was not under consideration. In the context of the provisions of Assam Land and Revenue Regulation, 1886, the following was observed by this Court in para-9 case of *Amiya Bala Dutta & Ors. (supra)*, which is quoted below:-

9. Under the Assam Land and Revenue Regulation a person who is a patta holder is deemed to be a land holder and he has permanent, heritable and transferable right of use and occupancy in his land subject to section 9 of the

Assam Land and Revenue Regulation and if a persons in order to establish his title produces a patta that must be given due weightage inasmuch as a patta is issued in accordance with the provisions of section 17 read with the Rules and that must be considered to be a document of title and this is always considered to be a document of title. Further the record of rights as provided under section 40 and 41 of the Assam Land and Revenue Regulation shall always be deemed to be the correct unless the contrary is proved and that presumption which is attached to the record of rights under section 40 and 41 must be given due weightage and that is what was done by the learned lower appellate Court. Regarding mutation entries it can be said that though the mutation entries may not be the basis of title yet that mutation entries cannot be brushed aside and it must receive due consideration at the hand of the Court. Of course, it must be ascertained that the mutation entries were done properly. If it is found that the mutation entries was not done properly and/or if it is collusive and fraudulent, that mutation entries will not create any right.

37) Thus, the ratio of the said case of *Amiya Bala Dutta (supra)* is found to help the respondent- plaintiff.

38) One of the points strenuously urged by the learned senior counsel for the appellants was that the respondent did not have the capacity to pay premium amount to the Government and that the premium amount was paid from the joint family income. The Court is unable to accept the said contention. On 14.11.2011, the appellant no.1 had sworn an affidavit in support of M.C. 3139/2011, disclosing his age to be 45 years. Therefore, his year of birth would be 1966. Thus, in the year 1972, when the settlement order dated 23.05.1972 was passed, he would be about 6 years of age and therefore, it would be difficult to accept that in the year 1972, the appellant no. 1 had made any financial contribution to joint family. Be that as it may, during his lifetime, Jay Narayan Upadhyay did not raise any objection that the respondent had no capacity to pay the premium amount. Nonetheless, even if it is assumed that the respondent- plaintiff did not have the capacity to pay the premium amount

to the Government for settling the suit land to her and that the appellants had contributed money to the respondent, such contribution would not bestow proprietary right to the appellants and at best, the only remedy open for the appellants was to recover money given to the respondent. The appellants did not lead any positive evidence to prove that money to make payment of government premium was given on the condition that the suit land shall be owned by all the members of the family of Jay Narayan Upadhyay, including both his wives. The appellants also could not demonstrate that there is any law in force that if someone provided money to another for purchasing immovable property, the provider of money acquires the status of co-owner of such immovable property. Therefore, the said plea miserably fails.

39) Therefore, in light of the discussions above, the Court is inclined to hold as follows:-

- a. The learned first appellate Court had correctly appreciated the pleadings and evidence on record and had rightly held that the respondent- plaintiff was the absolute owner of the suit property.
- b. The mere entry of the names of the appellants in the land revenue records in respect of the suit land would not create or confer any right, title or interest in favour of the appellants in the absence of lawful title flowing in favour of the appellants.
- c. It is also held that as the settlement order dated 23.05.1972, passed in favour of the respondent, namely, Maya Debi Bamuni had attained finality, without setting aside such settlement order, the deletion of the name of the respondent and subsequent insertion of the names of (i) the respondent- plaintiff, (ii) the substituted respondent, (iii) the

appellant no.1- defendant no.1, and (iv) the appellant no.2- defendant no.2 in the land revenue records is held to be not sustainable on facts and in law.

- d. The plea of the appellants that being the legal heirs of Late Jay Narayan Upadhyay, the suit land has to devolve on all his legal heirs is not an acceptable submission because after deleting the name of Maya Debi Bamuni (respondent), the suit land was not mutated in the name of Jay Narayan Upadhyay (since deceased). Therefore, the names of (i) Smt. Bhagirathi Devi (substituted respondent), (ii) Am Narayan Upadhyay (appellant no.1), and (iii) Ganga Debi (appellant no.2) could not have been entered in the land revenue records.
- e. It is not in dispute that the two wives of Jay Narayan Upadhyay, namely, Maya Debi Bamuni, and Smt. Ganga Debi had separated. However, the appellant could not show that on death of Maya Debi Bamuni, any right has accrued upon the appellants to have their names mutated in respect of the suit land along with Smt. Bhagirathi Devi, daughter of Maya Debi Bamuni.
- f. Therefore, the mere entry of the names of the appellants in the land revenue record and/or record of rights, without any right, title or interest is held to not confer any right, title or interest in favour of the appellants as per the provisions of section 8(a) of the Assam Land and Revenue Regulations, 1886.
- g. Therefore, the finding of fact as decided by the learned first appellate Court on issue nos. 6 and 7 is held to be correct and is affirmed.

40) Resultantly, the substantial question of law is answered in the

negative and against the appellants by holding notwithstanding that as per the entry made in the *jamabandi* (Ext.H), although (i) Maya Debi Bamuni (respondent- plaintiff), (ii) Smt. Bhagirathi Devi (substituted respondent), (iii) Am Narayan Upadhyay (appellant no.1), and (iv) Ganga Debi (appellant no.2) were shown as co-*pattadars*, the finding of the learned first appellate Court that the respondent-plaintiff was the absolute owner of the suit property is not perverse and illegal and in this regard, it is reiterated that in the context of the Assam Land and Revenue Regulation, 1886, the mutation entries alone do not confer any title. In this case, the appellants have failed to show that how and in what manner they have acquired land-holder's right, which must be shown to be in accordance with the scheme of section 8 of the Assam Land and Revenue Regulation, 1886.

41) Now coming to the fact that the learned First Appellate Court had not complied with the requirement of Order XLI, Rule 31(a) CPC as the point of determination was not framed and that except for discussion on issue nos. 6 and 7, no other issues were examined and discussed, the Court is of the considered opinion that both the errors in the first appellate Court's judgment cannot be justified. However, the Court takes note of the fact that the first appellate Court's judgment was passed on 07.12.2006 and this appeal was presented on 17.08.2007, but the appeal was registered in the year 2009 because delay in filing the appeal was condoned by order dated 21.08.2009, passed in M.C. No. 3493/2007. Therefore, to relegate the parties to the First Appellate Court for a re-hearing after about 18 years cannot be justified. It may be stated that the issues framed by the learned Trial Court for trial have been reproduced herein before. Out of the 9 (nine) issues framed for trial, except for the issue nos. 6 and 7, the issue nos. 1 to 5 were all answered in favour of the

respondents, but that part of the decision was not assailed and/or questioned by the appellants. Moreover, it is seen that the decision on issue nos. 8 and 9 are dependent on the decision on issue nos. 6 and 7. Therefore, in view of the inordinate delay in termination of this */is* arising out of T.S. No. 55/2002, i.e. about 22 years of institution, under such peculiar situation, without intending this to be a precedent, the Court is not inclined to disturb the first appellate Court's judgment and decree only on the score that all issues were not discussed or that point of determination was not framed by the learned First Appellate Court.

42) Therefore, this appeal fails and the same is dismissed with cost.

43) Let the LCR be returned back.

JUDGE

Comparing Assistant