

GAHC010021062017



2025:GAU-AS:4811

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

Case No. : RSA/140/2017

ON THE DEATH OF MISSION DAS HIS LEGAL HEIRS AND ORS
NAMELY-

1.1: NAMITA TUMUNG (WIDOW)
W/O LATE MISSION DAS

1.2: PURUSHOTTAM DAS
S/O LATE MISSION DAS

2: SRI ASHU DAS
S/O LATE JAYANTA KR. DAS

3: SMRITIKONA DAS
W/O SWAPAN CHOUDHURY
ALL RESIDENTS OF VILLAGE KAMRANGI
P.O. MARJATKANDI
P.S. BADARPUR
DISTRICT KARIMGANJ

VERSUS

ON THE DEATH OF SUBODH KUMAR ROY, HIS LEGAL HEIRS and 11 ORS,
NAMELY-

1.1:SMT ALPANA ROY

W/O LATE SUBODH KUMAR ROY
R/O LONGAI ROAD
WARD NO.3
KARIMGANJ TOW
P.O. SETTLEMENT ROAD
P.S. AND DIST. KARIMGANJ

1.2:SAMRAT ROY

S/O LATE SUBODH KUMAR ROY
R/O LONGAI ROAD
WARD NO.3
KARIMGANJ TOW
P.O. SETTLEMENT ROAD
P.S. AND DIST. KARIMGANJ

1.3:SAIKAT ROY
S/O LATE SUBODH KUMAR ROY
R/O LONGAI ROAD
WARD NO.3
KARIMGANJ TOW
P.O. SETTLEMENT ROAD
P.S. AND DIST. KARIMGANJ

2:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

3:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

4:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

5:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

6:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

7:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

8:SIDHARTHA SANKAR ROY
S/O LATE SATYENDRA KR. ROY

R/O VILLAGE MARJATKANDI
PO MARJATKANDI
P.S. BADARPUR
DISTRICT KARIMGANJ

ASSAM
PIN 788710

9:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

10:SUDIP ROY
S/O LATE SATYENDRA KR ROY
R/O VILLAGE MARJATKANDI
PO MARJATKANDI
P.S. BADARPUR
DISTRICT KARIMGANJ
ASSAM
PIN 788710

11:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 4.12.2020 PASSED IN RSA NO
140/2017

12:SANJUKTA ROY
W/O LATE SATYENDRA KR ROY

R/O VILLAGE MARJATKANDI
PO MARJATKANDI
P.S. BADARPUR
DISTRICT KARIMGANJ
ASSAM
PIN 78871

For the Appellant(s) : Mr. S. P. Choudhury, Advocate
For the Respondent(s) : Ms. R. Choudhury, Advocate

Date of Hearing : 22.04.2025
Date of Judgment : 22.04.2025

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. P. Choudhury, the learned counsel appearing on behalf of the appellants and Ms. R. Choudhury, 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 07.04.2015 passed by the learned Court of the Civil Judge, Karimganj (for short 'the learned First Appellate Court') in Title Appeal No.7/2014 whereby the suit of the plaintiff was decreed to the extent of declaring the possessory title of the plaintiff over the suit land thereby setting aside the judgment and decree dated 17.12.2013 passed by the learned Munsiff No.2, Karimganj (for short 'the learned Trial Court') in Title Suit No.453/2006.

3. It is seen from the records that vide order dated 22.05.2017, the instant appeal was admitted by formulating a substantial question of law which reads as under:

“(1) *Whether the impugned lower appellate Court judgment and decree is based on misappreciation of evidence on record and Section 17 and 49 of the Registration Act, 1908 and resulting in erroneous finding?*”

4. The question which arises before this Court is as to whether the said substantial question of law so formulated by this Court is involved in the instant appeal.

5. For ascertaining the same, this Court finds it relevant to take note of

the brief facts which led to the filing of the instant proceedings.

6. For the sake of convenience, the parties herein are referred to in the same status as they stood before the learned Trial Court.

7. One Shri Subodh Kumar Roy (since deceased), the predecessor-in-interest of the respondents herein had instituted a suit being Title Suit No.453/2006. In the said suit, it is the case of the plaintiff that the suit land described in the schedule to the plaint belonged to one Dr. Bhupesh Chandra Deb Choudhury. The said Bhupesh Chandra Deb Choudhury was a doctor by profession who used the shop house standing over the suit land as pharmacy for giving treatment and for examining the patients. Due to his old age, Dr. Bhupesh Chandra Deb Choudhury wound up his medical practice and sold the suit land and the shop house standing thereon to the plaintiff by executing an unregistered Deed of Sale on 30.01.1967 and handed over the possession. Thereupon the plaintiff continued to possess the said land. Subsequent thereto, after the death of Dr. Bhupesh Chandra Deb Choudhury, his son one Shri Subhrandu Deb Choudhury who is the proforma defendant No.4 executed a registered deed bearing No.5240 dated 27.10.2003 thereby relinquishing his right over the suit land in favour of the plaintiff. It is also the case of the plaintiff that the proforma defendant Nos. 5 to 7 also orally relinquished their rights in favour of the plaintiff.

8. The further case of the plaintiff is that the principal defendants who have no right, title and interest or possession over the suit land with a mala fide intention and an illegal motive tried to grab the suit land from the plaintiff which resulted in initiation of proceedings under Section 145 and 146 of the Code of Criminal Procedure, 1973. The action on the part of the

defendants to grab the said suit land have necessitated the plaintiff to institute the suit seeking declaration of the plaintiffs' right, title and possession over the suit land; for declaration that if any document collusively created by the principal defendants in respect of the suit land, the same shall be treated as void, inoperative and illegal; for confirmation of possession of the plaintiff over the land described in the schedule to the plaint; for permanent injunction restraining the principal defendants from interfering in peaceful use, occupation and enjoyment of the plaintiff over the land described in the schedule to the plaint etc.

9. The defendants Nos. 1, 2 and 3 filed their written statement wherein various preliminary objections were taken. It was mentioned in the written statement that neither Dr. Bhupesh Chandra Deb Choudhury nor his legal heirs were owners of the suit land. It was also mentioned that the plaintiff had no right, title and interest over the suit land and even there is no interest of the plaintiff over the suit land. It was also mentioned that recording the name of Dr. Bhupesh Chandra Deb Choudhury in the revenue records could not prove the ownership until and unless the source of title was proved. It was also mentioned in paragraph No.19 of the written statement that the suit land is under the exclusive ownership and possession of the answering defendants and as such the question of grabbing the suit land does not arise. Further to that, the defendants have also refuted the entire case of the plaintiff.

10. On the basis of the pleadings, as many as six issues were framed by the learned Trial Court. The said issues are reproduced herein under:

“1. *Whether there is any cause of action for the suit?*

2. *Whether the suit is maintainable in its present form and manner?*
3. *Whether the suit is time barred?*
4. *Whether the suit is bad for non-joinder of necessary parties?*
5. *Whether the plaintiff has any right, title, interest and possession over the suit land?*
6. *Whether the plaintiff is entitled for any relief as per prayer made in the plaint?"*

11. On behalf of the plaintiff side, four witnesses were examined and twelve documents were exhibited. On the other hand, the defendants did not adduce any documentary or oral evidence but only cross-examined the plaintiff witnesses. The learned Trial Court vide the judgment and decree dated 17.12.2013 dismissed the suit on the ground that the plaintiff side have not been able to prove the issues for determination. It is relevant to take note of that while deciding the Issue No.5, which is of vital importance i.e. as to whether the plaintiff had right, title, interest and possession over the suit land, the learned Trial Court decided that the plaintiff did not have right, title and interest over the suit land. However, it is relevant to mention that the learned Trial Court while deciding the Issue No.5 did not decide as regards the possession of the parties.

12. The plaintiff being aggrieved preferred an appeal before the learned Court of the Civil Judge, Karimganj which was registered and numbered as Title Appeal No.7/2014. The learned First Appellate Court vide the judgment and decree dated 07.04.2015 decreed the suit in favour of the plaintiff only to the extent of declaring the possessory title of the plaintiff over the suit

land. The other relief so sought for in the suit was not granted.

13. In the backdrop of the above, let this Court now consider as to whether the substantial question of law so formulated by this Court is involved in the instant appeal.

14. The substantial question of law so formulated is on the question of as to whether the learned First Appellate Court has misappreciated the evidence on record as well as Sections 17 and 49 of the Registration Act, 1908 resulting in erroneous finding. From a perusal of the plaint, it is seen that the plaintiff claimed right, title and interest over the suit land on the basis of an unregistered Deed of Sale dated 30.01.1967 and have also sought for confirmation of possession on the basis of being in possession of the suit land. From Exhibit-2, which is the unregistered Deed of Sale dated 30.01.1967, it is seen that the said document is of a value of Rs.500/-.

15. Considering the above, in view of Section 17 and Section 49 of the Registration Act, 1908, the suit land could not have been effected without the Deed of Sale dated 30.01.1967 being registered. This Court also finds it relevant to take note of that the learned First Appellate Court did not grant any declaration of right, title and interest of the plaintiff over the suit land, in fact, the learned First Appellate Court had only decreed that the plaintiff is in possession of the suit land.

16. This Court further finds it relevant to take note of the judgment relied upon by the learned First Appellate Court in the case of ***Bondar Singh and Others Vs. Nihal Singh and Others*** reported in (2003) 4 SCC 161, wherein the Supreme Court dealt with Section 17 and the effect of an unstamped and

unregistered Sale Deed. In the said judgment, at paragraph No.5, the Supreme Court observed that a Sale Deed is required to be properly stamped and registered before it can convey title to the vendee. It was also observed that a document like the Sale Deed which is unstamped and unregistered even though not admissible in evidence, can be looked into for the collateral purposes. In the said case, the collateral purpose which the Supreme Court duly took note of was the nature of possession of the plaintiffs over the suit land.

17. In the instant case, it is seen that on the basis of the Deed of Sale dated 30.01.1967, which was an unregistered Deed of Sale, possession was handed over. Only for the purpose of handing over the possession in favour of the plaintiff, the said unregistered Deed of Sale dated 30.01.1967 could have been taken note of. It is also relevant to take note of that the defendants though have made high claims as regards their right, title and interest over the suit land as well as for being in possession but there is no evidence adduced. It is a settled principle of law that pleadings are not proof.

18. Considering the above, it is the opinion of this Court that the substantial question of law so framed is not involved in the instant appeal. Accordingly, this Court does not find any merit in the instant proceedings for which the instant appeal stands dismissed.

19. Before parting with the records, this Court however finds it necessary to clarify that the decree which have been passed in favour of the plaintiff should only be construed as a decree acknowledging that the plaintiff is in possession of the suit land and nothing more. The question of granting

possessory title in favour of the plaintiff does not arise as there was no relief even sought for.

20. The Registry is directed to forthwith return the LCR to the learned Court below.

JUDGE

Comparing Assistant