

GAHC010010202012



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

Case No. : RSA/233/2012

ON THE DEATH OF APPELLANT NO.1 (SAFIRUN BIBI LASKAR) HER LEGAL
HEIRS and ORS,
Represented By-

1.1: MAJAMIL ALI LASKAR
(SON)
R/O VILL-GOSAIPUR PART-III
P.S.-UDHARBOND
DIST-CACHAR
ASSAM

1.2: ABDUL MANAF LASKAR
(SON)
R/O VILL-GOSAIPUR PART-III
P.S.-UDHARBOND
DIST-CACHAR
ASSAM

1.3: ANGURUN NESSA LASKAR
(DAUGHTER) W/O SHAFIQUE UDDIN LASKAR
R/O VILL-PANGRAM
P.O. AND P.S.-UDHARBOND
DIST-CACHAR
ASSAM

1.4: SUREJA BEGUM LASKAR
(DAUGHTER) W/O SHAFIQUE UDDIN LASKAR
R/O VILL-PANGRAM
P.O. AND P.S.-UDHARBOND
DIST-CACHAR
ASSAM

1.5: KAMRUL ISLAM LASKAR
(SON)

R/O VILL-GOSAIPUR PART-III
P.S.-UDHARBOND
DIST-CACHAR
ASSAM

1.6: AMRUL ISLAM LASKAR
SON)
R/O VILL-GOSAIPUR PART-III
P.S.-UDHARBOND
DIST-CACHAR
ASSAM

1.7: ANE LASKAR
(GRAND DAUGHTER) D/O LATE PATA MIYA LASKAR
R/O VILL-GOSAIPUR PART-III
P.S.-UDHARBOND
DIST-CACHAR
ASSAM

2: STRUCK OFF
STRUCK OF

VERSUS

MD. SIRAJ ALI and 4 ORS,
ON THE DEATH OF MAKHMUD ALI HIS HEIRS AND LEGAL
REPRESENTATIVES-

2:MD. CHERAG ALI

3:MD. FOZEN ALI

4:MUSTT. SARGUL NESSA

5:MUSTT CHAMAROON NESSA

NO. 1
2 AND 3 ARE THE SONS AND NO. 4 AND 5 ARE THE DAUGHTER OF LATE
MUKHMAD ALI
ALL ARE RESIDENT OF VILL.GOSAIPUR PART-3
P.O. GOSAIPUR-7880-0
PARGANA and P.S. UDHARBOND SADAR
SUB-DIVISION and DIST. CACHAR
ASSAM

Advocate for the Petitioner : Mr. S.K. Ghosh
Advocate for the Respondent : Ms. R. Choudhury

Date of Hearing and **Judgment** : 20.06.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGEMENT AND ORDER (ORAL)

Date : 20-06-2024

The instant appeal is directed against the judgment and decree dated 07.01.2012 passed in Title Appeal No. 33/2006, whereby the appeal was dismissed and the judgment and decree dated 09.06.2006 in Title Suit No. 107/2003 was affirmed. This Court vide an order dated 05.11.2014 framed a substantial question of law which reads as under:-

” Whether in view of the judgement passed by this Court vide Exhibit-N, the learned Courts below committed error in declaring the title of the plaintiff over the suit land? ”

2. In view of that specific substantial question of law formulated by this Court heard the learned counsels appearing on behalf of both the parties and also have gone through the judgment and order dated 22.08.1989 passed in S.A No. 10/1980. Upon hearing the parties, it appears that the judgment and order so passed in Second Appeal No. 10/1980 was in respect to a different portion of the land which had nothing to do with the suit land.

3. Under such circumstances, the said substantial question of law so formulated by this Court is not involved in the instant appeal. Be that it may, the learned counsel appearing on behalf of the appellants submitted that there are substantial questions of law which arises in the instant appeal, which requires to be formulated. For the purpose of deciding the proposed questions of law as submitted by Mr. S. K. Ghosh, the learned counsel for the appellants, this Court

finds it relevant to deal with the facts leading to the filing of the instant appeal.

4. The respondent herein as plaintiff filed the suit before the Court of the learned Civil Judge, Junior Division No.1, Cachar, Silchar seeking declaration of his right, title and interest in respect to the Schedule I land. The plaintiff's case is that the Schedule I land belonged to the plaintiff and the defendants have dispossessed the plaintiff from the Schedule 2 land and as such, have sought for recovery of Khas possession from the Schedule 2 land and as the plaintiff was in of possession of Schedule 3 land have sought for confirmation of possession. In addition to the plaintiff had also sought for permanent and temporary injunction and also issuance of a percept to the Revenue Authorities.

5. The defendant filed a written statement. In the written statement, it was admitted that 1 Katha 11 Lechas was sold to the defendant by the plaintiff and after the sale 6 Kathas 4 Chattaks of land remained. It was however denied that the plaintiff was enjoying the land in as inasmuch as, the plaintiff as per the defendants has sold the land in question to the defendant No. 1 with delivery of possession. It was specifically stated in paragraph No. 18 of the written statement that it is the plaintiff's son who had taken over 3 Kathas of land in another patta in Jogajugi which is described in Schedule 2. The defendants further denied the claim of the plaintiff.

6. On the basis of the pleadings as many as seven issues were framed, of which Issue No. 4 was as to whether the plaintiff had any right, title and interest over the Schedule land and Issue No. 5 was as to whether the defendants have dispossessed the plaintiff from the Schedule I land. For the sake of clarity, this Court observes that Schedule I land comprises of Schedule 2 and Schedule 3 land.

7. The learned Trial Court vide judgment and decree dated 09.06.2006 decreed the suit in favour of the plaintiff holding that the plaintiff had right, title and interest over the Schedule I land and the plaintiff be restored possession in respect of the Schedule 2 land by removing the possession and or obstruction or any person claiming through them. The possession of the plaintiff in respect of Schedule 3 was confirmed. In addition to that, the defendants were restrained from disposing the plaintiff in respect of Schedule I land and also from interfering with the peaceful possession thereof. The plaintiffs name was also to be restored by the Revenue Authority and for which a percept was duly issued.

8. Being aggrieved, an appeal was preferred before the learned First Appellate Court which was registered and numbered as Title Appeal No. 33/2006. The appeal was, however dismissed thereby affirming the judgment and decree passed by the learned Trial Court and it is under such circumstances, the present appeal has been filed.

9. In the previous segments of the instant judgment this Court have duly taken note of that the substantial question of law which was formulated by this Court on 05.11.2014 is not involved in the instant appeal in view of the fact nothing could be shown to the effect that the suit land had any relation with the land which was the subject matter of the dispute in S.A. No. 10/1980 for which, this Court has also held herein above that the said substantial question of law framed on 05.11.2014 is not involved in the instant appeal.

10. In the backdrop of the above the learned counsel appearing on behalf of the appellants submitted that a substantial question of law arises inasmuch as, the findings arrived at by both the Courts below that the defendants have disposed the plaintiff suffers from perversity.

11. In view of the said submission, this Court has also heard Ms. R. Choudhury, the learned counsel appearing on behalf of the respondents. The issue as to whether the defendants had disposed the plaintiff is actually Issue No. 5.

12. The learned Trial Court after taking into account the evidence on record came to a finding that the plaintiff had duly corroborated the stand taking that the defendant had dispossessed the plaintiff and this evidence which was tendered by the plaintiff witnesses remained consistent and un rebutted. It was also observed by the learned First Appellate Court that the defendant witness No. 1 also did not deny that the defendants did not disposes the plaintiff from the Schedule 2 land. It was also observed that the plaintiff have right, title and interest over the Schedule I land and his name was deleted showing that the plaintiff sold the land. However nothing was shown to prove that the plaintiff in fact sold the entire share of the suit patta.

13. Under such circumstances, the learned Trial Court came to a finding that the defendants have disposed the plaintiff from the Schedule 2 land. The Issue No. 5 was also decided in favour of the plaintiff by the learned

First Appellate Court in a more elaborate manner, though it was inadvertently mentioned as Issue No. 6. It is also seen from the judgment of the learned First Appellate Court that the learned First Appellate Court had duly taken note of the evidence which has been placed on record and came to a finding on the basis of preponderance of probabilities that the plaintiff was dispossessed by the defendants.

14. From the materials on record as well as the judgment passed by the learned Courts below, this Court does not find the discussion in respect to the Issue No. 5 to be a case of perversity for which, this Court is of the opinion that the question of law so submitted to be formulated by this Court at the stage of hearing cannot be formulated. In that view of the matter this Court finds no merit in the instant appeal, for which, the appeal stands dismissed with quantified Costs at Rs. 11,000/- for present appeal proceedings.

15. Registry to return back the LCR forthwith.

JUDGE

Comparing Assistant