

GAHC010006512017



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

Case No. : WA/23/2018

MOHINI GOHAIN BARUAH and ANR
R/O KAKARI NAGAR, WARD NO. 3, P.O. AND P.S. NORTH LAKHIMPUR,
DIST. LAKHIMPUR, ASSAM.

2: TROILUKYA GOHAIN BARUAH
R/O NAKARI NAGAR
WARD NO. 3
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM.

3: SRI AJANTA GOHAIN BARUAH
SON OF LATE RUDRA KANTA GOHAIN BARUAH
RESIDENT OF NAKARI NAGAR
WARD NO. 3
P.O. AND P.S. NORTH LAKHIMPUR
DISTRICT - LAKHIMPUR
ASSAM
PIN 787001

VERSUS

DHEBAR GOHAIN BARUAH and 5 ORS
R/O NAKARI NAGAR, WARD NO. 2, P.O. AND P.S. NORTH LAKHIMPUR,
DIST. LAKHIMPUR, ASSAM.

2: ASSAM BOARD OF REVENUE
P.O. AND P.S. PANBAZAR
GAUHATI-1
DIST. KAMRUP (M)
ASSAM.

3: ON THE DEATH OF DIGAMBAR GOHAIN BARUAH HIS LEGAL HEIRS SRI
MANASH GOHAIN BARUAH

C/O SRI RUKMA GOHAIN BARUAH
R/O NAKARI NAGAR
WARD NO. 3
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN 787001

4:NABA KRISHNA GOHAIN BARUAH
R/O T.D.A. BUILDING
UNIT-5
TINSUKIA
DIST. TINSUKIA
ASSAM.

5:SANJIB GOHAIN BARUAH
R/O SUBANSIRI APARTMENT
GOVT. PRESS ROAD
BAMUNIMAIDAM
GUWAHATI-21
KAMRUP (M)
ASSAM.

6:(ii) SRI ANIL BARUAH
S/O LATE KUNWARI BARUAH AND LT. LAKHENESWAR BARUAH
R/O GANAKPATY
SIVASAGAR
P.S. SIVASAGAR
DIST. SIVASAGAR
ASSAM

6:(i) SRI SUNIL BARUAH
S/O LATE KUNWARI BARUAH AND LT. LAKHENESWAR BARUAH
R/O BELTOLA
BHAGADATTAPUR
NEAR AMARNATH MANDIR
HOUSE NO.19
P.O. BELTOLA
GUWAHATI-28
DIST. KAMRUP(M)
ASSAM

6:ON THE DEATH OF SMTI KUNWARI BARUAH

HER LEGAL HEIR

For the Appellants : Mr. B.J. Ghosh, Advocate

For the Respondents : Mr. A. Sattar, Advocate
 Mr. Z. Mukit, Advocate
 Mr. N. Das, Govt. Advocate

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 13-03-2024

(Vijay Bishnoi, CJ)

The *intra-court* appeal is filed by the appellants being aggrieved with the judgment dated 02-11-2017 passed by the learned Single Judge in W.P.(C) No. 338/2012 whereby the learned Single Judge has allowed the writ petition and has set aside the order dated 20-10-2011 passed the Board of Revenue.

2. The brief facts of the case are that the respondents Nos. 2, 3 and 4, in the writ petition, has preferred an appeal before the Board of Revenue at Guwahati under Section 151 of the Assam Land and Revenue Regulation, 1886 being aggrieved with the order dated 07-07-1988 passed by the Circle Officer, North Lakhimpur in Mutation Case No. 173/87-88 whereby the Circle Officer has directed to include the name of one Shri Gopal Singh Gohain Baruah in the concerned revenue record along with the other legal heirs of original land holder.

3. The Board of Revenue has allowed the appeal filed on behalf of the respondent Nos. 2, 3 and 4 of the writ petition simply relying on an affidavit filed on behalf of one Smti. Kunwari

Baruah stating that Shri Gopal Singh Gohain Baruah has gifted his share in the property to her and her husband in the year 1962.

4. The learned Single Judge on considering the facts and circumstances of the case has come to a conclusion that the so called gift made in the year 1962 in favour of Smti. Kunwari Baruah and her husband by Shri Gopal Singh Gohain Baruah was never legally proved but the Revenue Board accepted the gift to be *fait accompli* only on the basis of the affidavit sworn by the gift receiver.

5. It is also observed by the learned Single Judge that no right on the immovable property get transferred without a registered document but the Revenue Board has overlooked this and has interfered in the mutation order under challenge. The learned Single Judge has also observed that the presumption about the *bonafide* of the gift by the Board of Revenue was not based upon legal acceptable document and therefore, the impugned decision dated 20-10-2011 passed by the Revenue Board was found to be unwarranted, particularly on account of the irregular and belated application.

6. The learned Single Judge was of the opinion that the Board of Revenue has not taken pain to verify the alleged gift deed through a legal process and therefore, the impugned judgment passed by the Board of Revenue cannot be sustained. The learned Single Judge has granted liberty to the aggrieved party to take recourse to the competent forum in accordance with law.

7. The learned counsel for the appellants has submitted that the learned Single Judge has not taken into consideration the fact that Shri Gopal Singh Gohain Baruah has gifted his share of the property in favour of Smti. Kunwari Baruah and her husband in the year 1962. It is also

submitted that at the time of passing of the order by the Circle Officer on 07-07-1988, his two brothers, namely, Shri Rudra Kanta Gohain Baruah and Shri Mihir Kanta Gohain Baruah were not alive but the Circle Officer, without providing any opportunity to the legal heirs of those two brothers, has illegally recorded the name of Shri Gopal Singh Gohain Baruah in the revenue record.

8. The learned counsel has further submitted that the learned Single Judge has not taken into consideration the fact that there was no illegality in recording the name of Smti. Kunwari Baruah and her husband in the revenue record. It is also submitted that the learned Single Judge has erred in observing that against the mutation order only an appeal under Section 147 of the Regulations can be filed and no appeal under Section 151 can be filed before the Board of Revenue. It is submitted that the Full Bench of this Court has already held that an appeal against the mutation entry is maintainable under Section 151 of the Regulations.

9. *Per-contra*, learned counsel appearing for the respondents have supported the impugned judgment passed by the learned Single Judge.

10. Having heard the learned counsel for the parties and after going through the impugned judgment as well as the materials available on record, we are of the view that the learned Single Judge has not committed any illegality in observing that the Board of Revenue, without verifying the gift deed, has cancelled the mutation entry recorded way back in the year 1988. The learned Single Judge has also rightly observed that the gift deed executed allegedly in the year 1962 was never legally proved before the Board of Revenue and the Board of Revenue has erred in relying only on the affidavit filed by the alleged beneficiaries. It is also to be noticed that the learned Single Judge has kept it open for the aggrieved party

to take recourse to the competent forum in accordance with law while allowing the writ petition.

11. So far as the contention of the learned counsel for the appellants that at the time of recording the name of Shri Gopal Singh Gohain Baruah in the revenue record, no opportunity was granted to the legal heirs of two deceased brothers of Shri Gopal Singh Gohain Baruah, it is sufficient to say that this contention was not raised by the appellants either before the Revenue Board or before the learned Single Judge. In other words, it was not the case of the appellant at any stage that the Circle Officer has passed the order against dead persons. Therefore, this stand of the appellants cannot be considered at this stage and is rejected.

12. Taking into consideration of overall facts and circumstances of the case, we do not find any illegality in the impugned order. Hence, no case for interference is made out.

The writ appeal is dismissed.

The original records obtained from the District Administration, North Lakhimpur at Lakhimpur be returned back forthwith.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant