

GAHC010019312014



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

Case No. : RSA/300/2014

SRI DEBABRATA CHOUDHURY
S/O LATE KAMINI KUMAR CHOUDHURY, R/O DREAMLAND APARTMENT,
ADABARI, GUWAHATI 781014, DIST. KAMRUPM, ASSAM.

VERSUS

SMTI MALA CHOUDHURY and 13 ORS
W/O LATE BHASKAR CHOUDHURY

2:SRI BARUN CHOUDHURY

S/O LATE BHASKAR CHOUDHURY

3:SMTI BARNALI CHOUDHURY

D/O LATE BHASKAR CHOUDHURY
ALL ARE R/O HOUSE NO. 25
HILL SIDE COLONY
GATE NO. 1
P.O. MALIGAON
GUWAHATI 781011
DIST. KAMRUP M
ASSAM.

4:SHRI BIKASH ROY CHOUDHURY

S/O LATE BINODE BIHARI TALUKDAR

5:SHRI BIBHAS ROY CHOUDHURY

S/O LATE BINODE BIHAR TALUKDAR

6:SHRI BIJIT ROY CHOUDHURY

S/O LATE BINODE BIHARI TALUKDAR

7:SMTI SURAMA ROY CHOUDHURY
D/O LATE BINODE BIHARI TALUKDAR

8:SMTI NILIMA ROY CHOUDHURY

D/O LATE BINODE BIHARI TALUKDAR

9:SMTI GOPA ROY CHOUDHURY

D/O LATE BINODE BIHARI TALUKDAR

10:SMTI JOYA ROY CHOUDHURY

DAUGHTER IN LAW OF LATE BINODE BIHARI TALUKDAR W/O LATE
BIRENDRA ROY CHOUDHURY

11:JAYADRATH ROY CHOUDHURY

GRAND SON OF LATE BINODE BIHARI TALUKDAR S/O LATE BIRENDRA
ROY CHOUDHURY

12:SANJUKTA ROY CHOUDHURY

GRAND D/O LATE BINODE BIHARI TALUKDAR
D/OLATE BIRENDRA ROY CHOUDHURY SL. NO. 4 TO 12 ARE THE R/O
THANA ROAD
KARIMGANJ TOWN
P.O.
P.S. and DIST. KARIMGANJ
PIN-

13:SHRI BASANTA KUMAR ROY TALUKDAR
S/O LATE INDU BHUSAN TALUKDAR
R/O 58/C
PANCHANANTALA LANE
BEHALA
KOLKATA 700034 NOTICE TO BE SERVED THROUGH C.T. CIVIL JUDEGE
KOLKATA

14:THE SETTLEMENT OFFICER

KARIMGANJ
P.O.
P.S. and DIST. KARIMGANJ

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Advocate for the appellant : Ms. D Chowdhury

Advocate for the respondents : Mr. BD Deka
Mr. N Dhar

JUDGMENT & ORDER(ORAL)

Date : 25-04-2024

This appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code) is directed against the judgment and decree dated 28.08.2014 passed by the Court of the learned Civil Judge, Karimganj in Title Appeal No.43/2013 whereby the appeal was dismissed thereby confirming the judgment and decree dated 25.09.2013 passed by the learned Munsiff No.1 at Guwahati in Title Suit No.213/2007.

2. This Court vide order dated 08.12.2014 admitted the instant appeal by formulating four substantial questions of law which are enumerated hereunder:

1. Whether a Decree of confirmation of (physical) possession can be passed in respect of any unspecified and unidentified share of immovable property of a joint owner without proof of his part therein merely on the

basis of purported documents of joint ownership?

2. Whether a legally executed and registered deed could be held as fraudulent, collusive, void or inoperative on the basis of contradictory statements as to the alleged death of the executants prior to making of the document?

3. Whether a decree can be passed in favour of proforma defendants who have neither authorized the plaintiffs to represent their cause nor participated in the suit staking their claim, if any, merely because the plaintiffs alluded something about such defendants' interest and made no claim against them?

4. Whether to decide the point of limitation in respect of filing of a suit for every cause of action/issue is the duty of the Court or a matter to be left by Court upto the parties to plead and press before it?

3. The instant appeal thereupon was heard at length by this Court on 02.04.2024 and upon hearing, two additional substantial questions of law were formulated which reads as under:

(i) Whether the learned Courts below were justified in taking into account various evidence which were beyond the pleadings in coming to a finding as regards the Issue No.6?

(ii) Whether the learned Courts below were justified in decreeing the suit thereby granting rights to the defendants as well as the proforma defendants in spite of the defendant No.2 to 11 having filed a counter claim and then abandoning their claim in terms with Order XXIII Rule 1 of the Code of Civil Procedure, 1908?

4. Upon framing the said additional substantial questions of law, this Court adjourned the matter to be listed today so that the counsels appearing on behalf of the respondents are given the opportunity to address on the said additional substantial questions of law so formulated.

5. For deciding as to whether the above substantial questions of law so formulated by this Court initially on 08.12.2014 and subsequently on 02.04.2024 arises or for that matter are involved in the instant appeal, this Court finds it relevant to take note of the facts leading to the filing of the instant appeal which are briefly noted hereinbelow:

The respondent Nos. 1, 2 and 3 in the instant appeal proceedings as plaintiffs had instituted a suit being Title Suit No.213/2007. The case set out in the plaint of the said suit is that the original owner and possessor of the suit land which has been specifically described in the Schedule to the plaint was one Dhirendra Chandra Sarma. The said Dhirendra Chandra Sarma had two wives, namely, Malati Devi and Mira Devi. The father of the Defendant No.1 i.e. Late Kamini Kumar Choudhury; the predecessor-in-interest of Defendant Nos.2 to 10, Late Binode Behari Talukdar; the predecessor in interest of the Defendant No. 11 namely Late Indu Bhusan Talukdar and the predecessor in interest of the Plaintiffs namely Kiron Chandra Choudhury had taken a permanent tenure holder right and possession of the suit land from its proprietor Dhirendra Chandra Sarma, Malati Devi and Mira Devi through the registered deed Nos.2400 dated 29.03.1948, 1118 dated 29.03.1948 and 2401 dated 29.03.1948. The said right of permanent tenure holder and possession was acquired with the condition of payment of revenue and taxes regularly. The

plaintiffs and the proforma Defendants claimed to be successors-in-interest of the permanent tenure holder Late Kiron Chandra Choudhury and the principal Defendant Nos.2 to 10 as already stated above were the successors-in-interest of the permanent tenure holder Late Binode Behari Talukdar and the principal Defendant No.11 is the successor-in-interest of the permanent tenure holder Late Indu Bhusan Talukdar. It was further mentioned in the plaint that Late Kiron Chandra Choudhury had two sons i.e. Satya Brata Choudhury and Bhaskar Choudhury and two daughters i.e. Nibedita Choudhury and Gita Rani Choudhury. Subsequently, Satya Brata Choudhury died leaving behind his wife Krishna Choudhury i.e. proforma Defendant No.14 and his daughter Baishali Choudhury. The said Gita Rani Choudhury also died subsequently leaving behind her two sons viz., Bindu Bhusan Choudhury and Tipu Sultan Choudhury, who were also the proforma Defendants in the suit. The son of Late Kiron Chandra Choudhury namely Bhaskar Choudhury also died leaving behind his wife, son and daughter, who are the plaintiffs No.1, 2 and 3 respectively. It was claimed in the suit that the plaintiffs and the proforma Defendants were heirs and successors of Late Kiron Chandra Choudhury in respect of 1/4th share over the suit land in ejmali. Further to that, it was mentioned that the tenure holder namely, Late Kamini Kumar Choudhury also expired leaving behind his only heir, the Defendant No.1.

6. Taking into account, the substantial question of law, so formulated, this Court finds it relevant to take note in detail the pleadings of the parties in the suit and particularly the contents of the Plaint. The case of the plaintiffs as would transpire from the reading of the Plaint was that Late Kamini Kumar Choudhury, Late Kiron Chandra Choudhury, Late Binode Behari Talukdar and

Late Indu Bhusan Talukdar took permanent tenure holder rights and possession over the suit land from its proprietors. The successor-in-interest of the said four tenure holders inherited the rights over the suit land to the extent of 1/4th share each. It was further mentioned in the plaint that Late Kamini Kumar Choudhury and Late Kiron Chandra Choudhury were both brothers and Late Binode Behari Talukdar and Late Indu Bhusan Talukdar were cousins. At the time of taking the permanent tenure holder over the suit land, Late Kamini Kumar Choudhury and Late Kiron Chandra Choudhury were residents of village Hiyala and Late Binode Behari Talukdar and Late Indu Bhusan Talukdar were residents of village Masimpur and these villages were within the Sylhet district which now falls within the territory of Bangladesh.

7. After the partition of India, Late Kamini Kumar Choudhury first came to India along with his nephew Bhaskar Choudhury, who was the predecessor-in-interest of the plaintiffs. Late Kiron Chandra Choudhury and his family members came thereafter to India. It was alleged that both Kamini Kumar Choudhury and Kiron Chandra Choudhury constructed a dwelling house made out of wooden posts, bamboo fencing and C.I. Sheet roof in the suit land and started living there with their family members. It was alleged that even at the time of filing of the suit, the said house stood over the suit land in a dilapidated condition. It was also alleged that both Late Kamini Kumar Choudhury and Late Kiron Chandra Choudhury dug a pond on the east of said residential house and planted mango trees and other trees over the suit land. Subsequent thereto, Late Binode Behari Talukdar and Late Indu Bhusan Talukdar and their successor, who are the principal Defendant Nos.2 to 11 also came and remained in the possession of the suit land as per their right of tenure holdership over the suit

land as ejmali.

8. It was further alleged that Late Bhaskar Choudhury, who was the predecessor-in-interest of the plaintiffs resided in the suit land and they paid the panchayat tax in respect of the house standing upon the suit land. As late Bhaskar Choudhury was working in the banking service, he also purchased a plot of land measuring 2881 Sq.ft. lying southwest of the suit land from one Gurupada Choudhury through a registered deed No.8460 dated 01.09.1983. It was further mentioned that the principal Defendant No.1 was the elder cousin of the predecessor of the plaintiffs and the father of the principal Defendant No.1 Late Kamini Kumar Choudhury was working as Sub-Registrar and as such, the plaintiffs and their predecessor Bhaskar Choudhury were completely dependant upon the principal Defendant No.1 and his father for payment of revenue, taxes etc., and recording names of the owners in settlement record in respect of the suit land. It was further claimed in the suit that the plaintiffs as well as their predecessor Bhaskar Choudhury and the Defendant No.1 had cordial terms and the plaintiffs were enjoying the 1/4th share of the suit land.

9. The plaintiffs further alleged that the Defendant No.1 in connivance with others was claiming the entire suit land by denying and depriving the rights of the plaintiffs and proforma defendants over the suit land. Thereupon the plaintiff No.2 went to Karimganj and could come to learn after that the principal Defendant No.3 had filed a case being Case No.257(M)/2007 under Section 145/146 Cr.P.C., against the principal Defendant No.1 in the Court of the learned SDM Karimganj. The plaintiff No.2 after going through the papers could come to

learn that the principal Defendant No.3 as petitioner of the said proceedings under Section 145 and 146 of the CrPC claimed half of the suit land i.e. the northern part of the suit land and the principal Defendant No.1 claimed the entire suit land.

10. It was alleged in the Plaint that the principal Defendant No.1 by practicing illegality, fraud and misrepresentation had inserted his name in the khatian and the katcha patta in respect to the suit land and obtained an order by practicing fraud from the Settlement Officer in Misc. Case No.113 of 1994-95 dated 16.10.1995 to which the plaintiff and the proforma Defendants had no knowledge. On coming to learn, the plaintiff No.2 had submitted petition in the office of the principal Defendant No.12 praying to include the name of the plaintiffs and the proforma Defendants in the records of rights in respect of the suit land. However, on account of the actions on the part of the principal Defendant No.1 to claim entire suit land and the principal Defendant Nos.2 to 11 to claim half of the suit land and thereby denying the entire title of the plaintiffs as well as the proforma Defendants over the suit land, the suit was filed seeking declaration that the plaintiffs and the proforma Defendants had right, title, interest and possession in the land holder right over 1(one) kedar of land within the suit land and $1/4^{\text{th}}$ share in the house standing over the suit land as Maliki right through inheritance in ejmali; for declaration that the plaintiffs and proforma Defendants are entitled to include their names in the record of rights in respect of the suit land and to direct the principal Defendant No.12 for correction of records of right in respect of the suit land in the said manner; for declaration that during trial, if the principal Defendant Nos.1 to 11 bring with jointly or severally any document denying right, title of the plaintiffs and the

proforma Defendants over the suit land, same shall be treated as illegal, inoperative, collusive and cancelled; for perpetual injunction restraining the principal Defendant Nos.1 to 11 from interfering in the peaceful use, occupation and enjoyment of 1(one) kedar of land within the suit land and 1/4th share in the house standing over the suit land by the plaintiffs and the proforma Defendants in the ejmali; and for other reliefs.

11. Pursuant to the filing of the said suit which was registered and numbered as Title Suit No 213/2007, the Defendant No.1 appeared and filed a detailed written statement wherein various preliminary objections were taken as regards the maintainability of the suit. In the said written statement, it was mentioned that Late Kiron Chandra Choudhury, Late Binode Behari Talukdar and Late Indu Bhusan Talukdar had no right, title and possession over the suit land and as such the question of succession by the plaintiffs, principal Defendant Nos 2 to 11 and proforma Defendants any right over the suit land did not arise. It was stated that Late Kiron Kumar Choudhury, Late Binode Behari Talukdar and Late Indu Bhusan Talukdar did not take settlement of the suit land from the ex-landlord and hence the statement made by the plaintiffs were totally denied. It was also mentioned that at the time of partition of India, Late Kamini Kumar Choudhury, father of the principal Defendant No.1 opted for service under the Government of Assam as a Sub-Registrar. It was denied that Late Bhaskar Choudhury accompanied Late Kamini Kumar Choudhury. It was also denied that Late Kiron Chandra Choudhury left East Pakistan (now Bangladesh) for good and shifted to Karimganj. It was denied that family members of Kiron Chandra Choudhury shifted to the suit house at Karimganj. It was stated that Late Kiron Chandra Choudhury, Late Binode Behar Talukdar and Late Indu Bhusan Talukdar

never possessed the suit land. Late Kamini Kumar Choudhury, the father of the plaintiff resided in the suit land till his death in the year 1967. Thereafter, Surabala Choudhury, the mother of the Defendant No.1 resided in the suit house and at that time Sri Debabrata Choudhury, the Defendant No.1 was in service under the NF Railway and he used to come to the suit house to reside there occasionally. After the death of his father and mother, the Defendant No.1 used to reside with his family members in N.F. Railway Quarters at Maligaon, Guwahati and started to continue his exclusive possession of the suit land and the suit house through his care taker and also through his tenants.

12. The allegations of fraud as made in the plaint in so far as insertion of the name of the Defendant No.1 in records of rights were categorically denied in the written statement. In paragraph 14 of the written statement, the facts as per the Defendant No. 1 which actually happened were mentioned. It was categorically stated that Late Kamini Kumar Choudhury i.e. the father of the Defendant No.1 took settlement of the entire suit land measuring 1.13 acres, equivalent to 3 bighas 8 kathas and 6 chataks of homestead land appertaining to cadastral survey Dag No.209 (old), Khatian No.99, corresponding to cadastral survey Dag No.223(New) of periodic patta No.71(Revenue Kutcha Patta No.108) in Mouza Chandsreekona Chak, Pargana Kushiarkul under Police Station Karimganj from the ex-landlord i.e. Dhirendra Chandra Sarma, Malati Devi, Mira Devi vide registered deed Nos.1070 of 1948, 2401 of 1948 and 1118 of 1948. Late Kamini Kumar Choudhury as 100% owner of the suit land with the knowledge of the predecessors of the plaintiffs and the principal Defendant Nos. 2 to 11 and the proforma Defendants, possessed the same from 1948 by constructing his dwelling house on a portion of the suit land. He had excavated

a pond on a portion thereof and had also planted various trees and bamboo plants. On the basis of the title and possession of Late Kamini Kumar Choudhury over the suit land, the same was recorded in his name by the Government in the first survey and the settlement operation started in the year 1964 as cadastral survey Dag No.209 under Khatian No.99 of Mouza Chandsreekona Chak, Pargana Kushiarkul under Police Station Karimganj. Subsequently on 23.12.1968 after due publication, the Khatian 99 was prepared in the name of Late Kamini Kumar Choudhury and was finally published by the Government.

13. At this stage, this Court finds it very pertinent to observe that three documents i.e. registered deed Nos.1070 of 1948, 2401 of 1948 and 1118 of 1948. which were mentioned in the written statement by which the permanent tenure holder rights were conferred shows that the said documents were made in favour of Late Kamini Kumar Choudhury, Late Kiron Chandra Choudhury, Late Indu Bhusan Talukdar and Late Binode Behari Talukdar. It was further specifically mentioned that Late Kiron Chandra Choudhury the predecessor-in-interest of the plaintiffs and the proforma Defendants relinquished his claim over the suit land i.e. 1.13 acres of land by executing a registered Deed of Release No.1186 dated 04.03.1952 (registered by the Sub-Registrar, Karimganj), wherein it has been mentioned by the said Late Kiron Chandra Choudhury that Late Kamini Kumar Choudhury took settlement of the suit land and Late Kamini Kumar Choudhury constructed the suit house and excavated a pond on a portion of the suit land and admitted exclusive possession of the said Late Kamini Kumar Choudhury over the suit land. It was alleged in the written statement that the predecessor of the Plaintiffs knew about the Deed of Release but the plaintiffs for their own benefit had suppressed this material fact.

14. In addition to that in the written statement filed by the Defendant No.1, it was explained as to how the names of the other three persons featured in the registered deed Nos.1070 of 1948, 2401 of 1948 and 1118 of 1948. It was stated that Late Kiran Chandra Choudhury was the brother of Late Kamini Kumar Choudhury. Late Indu Bhushan Talukdar and Late Binde Bihari Talukdar were the husband of the sister of Late Kamini Kumar Choudhury and the cousin respectively. Out of love and affection, the names of the said three persons along with Late Kamini Kumar Choudhury were inserted in registered deed Nos.1070 of 1948, 2401 of 1948 and 1118 of 1948. However, none of the three persons paid any revenue or were in possession of the suit land. It was mentioned that by practising fraud the names of Late Binode Bihari Talukdar and Late Indu Bhushan Talukdar were inserted at the time of final publication of the Khatian No.99 that too behind the back of the Defendant No. 1. Under such circumstances, Misc. Case No. 113 of 1994 - 95 was filed before the Settlement Officer and vide order dated 16.10. 1995, the learned Settlement Officer held that the entire suit land belonged to the mother of the Defendant No. 1 and the Defendant No. 1 and accordingly directed issuance of Patta. It was further stated that the order dated 16.10.1995 still held the field.

15. The Defendant Nos.2 to 11 filed their written statement alongwith a counter claim. From a perusal of the written statement and the counter claim, it reveals that the Defendant Nos.2 to 11 supported the case of the plaintiffs. By the counter claim so filed along with the written statement, the said principal Defendant Nos. 2 to 11 claimed declaration of their rights, confirmation of possession in respect to the Schedule 2 and Schedule 3 lands as mentioned in

the counter claim, *inasmuch as*, the Defendant Nos.2 to 10 sought for the land specifically described in Schedule 2 and defendant No.11 sought for his rights in respect to the Schedule 3 land.

16. The records further reveals that an additional written statement was filed by the Defendant No.1 to the counter claim. It is further relevant to mention that on 18.12.2007 the Defendant Nos.2 to 11 have filed an application being Order XXIII Rule 1 for withdrawal of the counter claim, with liberty to file an independent suit in order to determine the real question in controversy. The learned Trial Court thereupon allowed the said withdrawal of the said counter claim with a liberty to file an independent suit vide an order dated 10.01.2008.

17. The records reveals that on 18.08.2008, an application was filed under Order VI Rule 17 of the Code sought amendment of the plaint on two aspects. Although there were various statements being made in the said application about the illegalities in respect of the Registered Deed of Release No.1186 dated 04.03.1952, but the first amendment which was sought for was only seeking amendment of the relief in paragraph 16(iv) of the Plaint thereby to include the declaration that the alleged deed of release No.1186 dated 04.03.1952 of the Karimganj Sub-Registrar office was fraudulent, illegal, ab initio void, inoperative, collusive and cancelled.

In addition to that, vide the amendment application, the second amendment sought for was as regards the correction to the numbering in the paragraphs to the Plaint i.e. the paragraphs 8, 9, 10, 11, 12, 13, 14, 15 and 16 should be read

as paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15.

At this stage, it is apposite to observe that the Defendant No. 1 duly filed written objection to the application seeking amendment of the Plaint stating *inter alia* that the amendment sought for was not at all maintainable. In great details, it was mentioned that the Deed of Release which was sought to be challenged was executed and registered by following the due procedure. It was mentioned that the challenge to the registered release was barred by limitation. It was denied that the Deed of Release was fraudulent, collusive or illegal etc. It is specifically stated that no reasons were assigned by the Plaintiffs why the Deed of Release was fraudulent inoperative, illegal etc. Additionally, it was also mentioned that Late Bhaskar Choudhury was aware about the said Deed of Release during his lifetime.

The amendment application was allowed thereby the amendment which was only sought for i.e. insertion of the additional relief in Paragraph 16(iv) and the correction of the numbering was permitted. Correction to the Plaint accordingly was done by hand as would be apparent from the records

18. On the basis of the above pleadings, it is seen that the learned Trial Court framed as many as 7(seven) issues. Issue No.VI related to whether the registered deed of release No.1186 dated 04.03.1952 is fraudulent, collusive, illegal, void and inoperative document and Issue No.VII was whether the plaintiffs and the proforma Defendants have their right, title, interest and possession in land holder rights over one kedar of land within the suit land and 1/4th share in the house standing over the suit land as Maliki right through inheritance in ejmali.

19. The records reveal that on behalf of the plaintiff, two witnesses were examined and various documents were exhibited and on behalf of the Defendant No.1 he examined himself and exhibited various documents. The Defendant No. 11 also adduced himself as Defendant witness No. 2.

20. The learned Trial Court vide judgment and decree dated 25.09.2013 decreed the suit in favour of the plaintiffs and the proforma Defendants thereby holding that the plaintiffs and the proforma Defendants have right, title, interest and possession in land holder right over 1 kedar of land within the suit land and 1/4th share in the house standing over the suit land as Maliki right through inheritance in ejmali and that the Registered Deed of Release No.1186 dated 04.03.1952 was fraudulent, collusive, illegal, void and inoperative document. In passing the said judgment and decree dated 25.09.2013, the learned Trial Court decided the issue No.VI and VII in favour of the plaintiff. The learned Trial Court held that the Exhibit-B which is a Registered Deed of Release dated 04.03.1952 was fraudulent, collusive, illegal, void and inoperative document by arriving at a conclusion on the basis of the contentions of the plaintiff's side that Late Kiron Chandra Choudhury died in the year 1950. It was also opined that the DW-2 i.e. the Defendant No.11 had also stated in his evidence that Late Kiron Chandra Choudhury died in the year 1950. It was further observed that no party could produce any document when Late Kiron Chandra Choudhury had expired. The evidence so produced by the Defendant No. 1 i.e. two numbers of account sheets in respect to the shradha ceremony of Late Kiron Chandra Choudhury was rejected as they were weak pieces of evidence. Further to that, the learned Trial Court took into consideration the provision of Section 34(3) of the

Registration Act, 1908 and observed that as nobody identified Late Kiron Chandra Choudhury and the Sub-Registrar having observed that Late Kiron Chandra Choudhury was known to him was not sufficient and accordingly concluded that the registration of the alleged Deed of Release dated 04.03.1952 was not in accordance with law. On the basis of the decision primarily in respect to the legality and validity of the Registered Deed of Release No.1186 dated 04.03.1952, the issue No.VII was also decided thereby granting the plaintiffs the reliefs as sought for.

At this stage, this court finds it relevant to observe that the learned Trial Court duly observed at Paragraph No. 11 of its judgment that the predecessor of the Plaintiffs i.e. Late Bhaskar Choudhury duly paid land revenue vide Exhibit 4 and 4(1) in respect to the suit land on behalf of the father of the Defendant No.1 which clearly shows that the predecessor of the Plaintiffs, Late Bhaskar Choudhary duly acknowledged that the suit land was solely in the name of the father of the Defendant No. 1 as far back as in the year 1970.

21. Being aggrieved, an appeal was preferred by the Defendant No.1 before the Court of the learned Civil Judge, Karimganj which was registered and numbered as Title Appeal No.43/2013. The learned First Appellate Court dismissed the said appeal by confirming the findings of the learned Trial Court in respect to Exhibit - B by placing reliance on Exhibit-13 and came to an opinion that if Late Kiron Chandra Choudhury had expired in the year 1950 and how could he could execute Exhibit B after two years. The learned First Appellate Court held on the basis of Exhibit 13 that the DW-1, had admitted that Late Kiron Chandra Choudhury expired in the year 1950. It was further observed by the learned First Appellate Court that the Exhibit- B was not identified by any independent

witnesses and the Sub-Registrar had mentioned that he knew the executant personally, however, there was no explanation as to how the Sub- Registrar was acquainted with Late Kiron Chandra Choudhury who was an inhabitant of Sylhet. On the basis thereof, the learned First Appellate Court came to an opinion that there was no illegality and or error on the part of the learned Munsiff while answering the said Issue No VI in favour of the plaintiffs and affirmed the decision of the learned Munsiff. This Court further takes note of that the learned First Appellate Court while dealing with the Issue No.III which was an issue pertaining to limitation and held that the suit was governed by Article 58 and 59 of the Limitation Act,1963, *inasmuch as*, the PW-1 in his evidence had stated that they came to know about the existence of Exhibit B after getting Exhibit 13.

22. Being aggrieved the instant appeal has been filed under Section 100 of the Code. As already noted above, this Court had already admitted the appeal and framed various substantial questions of law.

23. In the backdrop of the above, let this Court, therefore, decide as to whether the substantial questions of law so formulated by this Court are involved in the instant appeal. Although there are six substantial questions of law formulated by this Court, it is the opinion of this Court that a decision in respect to the additional substantial of law No.(i) as framed on 02.04.2024 would have necessary bearing on the other substantial questions of law, so formulated, for which, this Court takes up the additional substantial question of law No.(i) for adjudication. The additional substantial question of law No.(i) so formulated was as to whether the learned Courts below were justified in taking

into account various evidence which were beyond the pleadings in coming to a finding as regards the Issue No.VI?

24. In the previous segments of the instant judgment, this Court had in detail recorded the stand of the plaintiffs in the plaint as well as also the amendment which was sought for to the plaint. In the plaint, there is not a single whisper as to when Late Kiron Chandra Choudhury expired. On the other hand, it has been categorically stated in paragraph 6 of the plaint that Late Kamini Kumar Choudhury and Late Kiron Chandra Choudhury were own brothers and they resided at village Hiyala presently in Bangladesh. It was further stated that after partition of India during independence, Late Kamini Kumar Choudhury first came to India along with his nephew i.e. the predecessor-in-interest of the plaintiffs. Thereupon, Late Kiron Chandra Choudhury along with his family members came and constructed a dwelling house made of wooden posts, bamboo fencing and C.I. Sheet roof at the middle of the suit land and started living thereon with their family members. It was further mentioned that Late Binode Behari Talukdar and Late Indu Bhusan Talukdar and their successors i.e. the principal Defendants also came over and remained in possession of the suit land as per their rights of tenure holder over the suit land in ejmali. It was categorically stated that after the death of Late Kiron Chandra Choudhury and his wife their sons and daughters i.e. the predecessor of the plaintiffs and the proforma Defendant No.16 and the predecessor of all other proforma Defendants were in possession of the suit land. There is not a single whisper in the plaint that Late Kiron Chandra Choudhury went back to Bangladesh or had expired in the year 1950. A further perusal of the plaint clearly shows that the plaintiffs filed the suit after the plaintiff No.2 made enquiry and came to learn

about the proceedings in Case No.257(M) of 2007 wherein the Defendant No.1 had claimed rights over the entire suit land.

25. This Court further finds it very relevant to take note of that even in the amendment application so filed on 18.08.2008, pursuant to the written statement filed by the principal Defendant No.1, wherein it was categorically mentioned about the deed of release and the date of execution of the deed of release there was no mention, whatsoever, that at the time of execution of the said registered deed of release, Late Kiron Chandra Choudhury was not alive. Further to that, the amendment which was sought for in respect was only for the amendment of the relief in paragraph 16(iv) and in view of the amendment, it became paragraph 15(iv). However, in the evidence on affidavit filed by the PW-1, he portrayed a completely different picture to what was stated in paragraph 6 of the Plaint and stated that after coming to India, Late Kiron Chandra Choudhury and his family members had constructed a dwelling house by digging a pond and planted various kinds of trees and thereupon went back to the original homestead at village Hiyala then East Pakistan for looking at the property and died there in the year 1950. There is no document whatsoever brought on record to show that Late Kiron Chandra Choudhury expired prior to the execution of the Registered Deed of Release that too at East Pakistan, except laying emphasis on Exhibit 13 i.e. the written statement filed by the principal Defendant No. 1 in the proceedings in Case No.257(M) of 2007 under Section 145 & 146 of the Cr.P.C., wherein the principal Defendant No. 1 had stated in his written statement in those proceedings that Late Kiron Chandra Choudhury expired in the year 1950 in East Pakistan.

26. Now, if this Court duly takes note of the provisions of Order VI Rule 4 of the Code, it would be seen that the said provisions makes a departure from the normal law of pleadings which is stipulated under Order VI Rule 2 of the Code. A perusal of Order VI Rule 2 of the Code stipulates that the pleadings shall contain a concise statement of material facts on which the party pleading relies his claims or defence as the case may be, but not the evidence by which they are to be proved. On the other hand a reading of Order VI Rule 4 of the Code stipulates that in all cases in which the party pleading relief on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms mentioned in terms with Order VI Rule 3 particulars (with dates and items if necessary) shall be stated in the pleading.

27. The Constitution Bench of the Supreme Court in the case of *Ladli Prasad Jaiswal vs Karnal Distillery Co., Ltd., & Ors* reported in *AIR 1963 SC 1279* observed that Order VI, Rule 4 of the Code provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix, particulars (with dates and items if necessary) shall be stated in the pleading. The Constitution Bench further observed that the reason of the rule is obvious. A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence, and by exercising such influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow

the controversy to precise issues and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. The Supreme Court was categorical in observing that a vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other. This Rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. Therefore, it was also observed that a plea of undue influence must, to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading; if the particulars stated in the pleading are not sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particulars, which gives adequate notice to the other side of the case intended to be set up. Paragraph 19 of the said Judgement is reproduced herein below.

"19. Order 6, Rule 4 of the Code of Civil Procedure provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix, particulars (with dates and items if necessary) shall be stated in the pleading. The reason of the rule is obvious. A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence, and by exercising such influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained

by the other. This rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must, to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading; if the particulars stated in the pleading are not sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particulars, which give adequate notice to the other side of the case intended to be set up."

28. The Constitution Bench in the said judgment placed reliance to another Constitution Bench judgment of the Supreme Court in the case of *Bishundeo Narain & Another Vs. Seogeni Rai & Ors*, reported in 1951 SCC 447 wherein it was observed that if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. It was further observed that there can be no departure from them in evidence and general allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. Paragraph 22 of the said judgment is reproduced herein below:

"22. We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no

departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code.”

29. Coming back to the instant case, it would be seen that there is no pleadings whatsoever as regard any fraud, undue influence or coercion. There is not even a whisper in the pleadings that Late Kiron Chandra Choudhury went back to East Pakistan and died in the year 1950. There is no allegation in the plaint that the Registered Deed of Release so executed by Late Kiron Chandra Choudhury was executed by some other person as an imposter. There is no allegation in the plaint that Late Kiron Chandra Choudhury could not have been identified by the Sub-Registrar alone and as such, the registration if any, without following the procedure was bad. This Court also finds it very pertinent to mention that the Registered Deed of Release which was executed on 04.03.1952 was exhibited as Exhibit B and at the time of being exhibited was much more than 30 years old, and therefore, there a statutory presumption in favour of the Deed of Release in so far as its execution as well as registration.

30. In the backdrop of the above, this Court finds another very pertinent aspect which touches on the additional substantial question of law presently dealt with. The question is sans any pleadings and more specifically in respect to fraud, undue influence or coercion, can evidence if tendered can be looked into.

31. In the case of *Union of India Vs. Ibrahim Uddin & Another reported in (2012) 8 SCC 148*, the Supreme Court categorically observed upon making a copious details of the various other earlier precedents that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. The Supreme Court further went ahead to observe that no party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it and where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon. Paragraph 77 of the said judgment being relevant is reproduced hereinunder:

"77. This Court while dealing with an issue in Kalyan Singh Chouhan v. C.P. Joshi, after placing reliance on a very large number of its earlier judgments including Trojan & Co. v. Nagappa Chettiar, Om Prakash Gupta v. Ranbir B. Goyal, Ishwar Dutt v. Collector (LA) and State of Maharashtra v. Hindustan Construction Co. Ltd., held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon."

32. In the said judgment further at paragraph 85.6, it was observed that the

court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored. The said paragraph is reproduced herein below:

"85.6. The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the court, it is just to be ignored. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and the parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it".

33. At this stage, this Court finds it very relevant to take note of the judgment of the Supreme Court referred to by Mr. B.D. Deka, the learned counsel appearing on behalf of the Respondents/Plaintiffs i.e. *Bhagwati Prasad Vs. Shri Chandramaul*, reported in *AIR 1966 SC 735* to bring home his submission that the plea was duly raised as regards the fraud by seeking the relief at Paragraph 15(iv) of the Plaint that the Registered Deed of Release as fraudulent, illegal, ab-initio void, inoperative, collusive and cancelled. This Court had duly perused the said Judgment and it transpires that the dispute in the said case was in respect to a landlord - tenant dispute. In the said case, the issue before the Supreme Court was whether the decree of the learned trial Court for ejectment of the defendant could have been confirmed by the Learned First Appellate Court when the Plaintiff had failed to prove the tenancy. It was specifically urged before the Supreme Court that a decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It is under such circumstances the Supreme Court made the observations in paragraph 10 which is reproduced herein below

"10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

34. The above principles were recently summarised by the Supreme Court in the case of *V. Prabhakara Vs. Basavaraj K (Dead)* reported in (2022) 1 SCC 115 by observing that the above principle is an exception to the general norms .

"21. A relief can only be on the basis of the pleadings alone. Evidence is also to be based on such pleadings. The only exception would be when the parties know each other's case very well and such a pleading is implicit in an issue. Additionally, a court can take judicial note of a fact when it is so apparent on the face of the record. A useful reference can be made to the following passage in Bachhaj Nahar v. Nilima Mandal [Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927] : (SCC pp. 497 & 500, paras 15 & 23)"

"15. The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in Bhagwati Prasad v. Chandramaul [Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735] : (AIR p. 738, para 10)."

"10. ... If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another."

"23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc. which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property "A", court cannot grant possession of property "B". In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

35. This Court further finds it very relevant to take into consideration another very recent judgment of the Supreme Court in the case of *Srinivas Raghavendra Rao Desai (Dead) Versus Vs. Kumar Vamanrao @ Alok* reported in 2024 SCC Online SC 226 wherein the case involved was relating to whether the partition of 1965 could have been taken into consideration and there was a specific submission being made on the basis of the judgment in the case of ***Bhagwati Prasad(supra)*** that the parties going to Trial knew the issues involved, the evidence led even without pleadings can be well appreciated. The Supreme Court in the said judgement categorically observed that there was no quarrel with the proposition of law that no evidence could be led beyond the pleadings. The Supreme Court further observed that in the said case that it was not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with the evidence. In the said case, specific amendment were sought for in the pleadings with reference to the 1965 partition, but the same was rejected and as such, it was observed that in such a situation, the evidence with reference to the 1965 partition could not have been considered.

36. In the backdrop of the said opinions rendered by the Supreme Court, the question arises as to whether the proposition as set out in Paragraph 10 of the Judgment in the case of ***Bhagwati Prasad (supra)*** can at all be applied to the present case. In the opinion of this Court the said proposition cannot be applied to the case simply for the reason that a plea of fraud has to be based on material facts which have to be incorporated in the pleadings as per the mandate of Order VI Rule 4 of the Code. Merely seeking a relief for cancellation of the Deed

of Release as fraudulent would not be sufficient. Secondly the judgment in the case of ***Bhagwati Prasad (supra)*** was not in respect to whether materials facts are required to be pleaded in the case when fraud is alleged. As stated above, the issue involved therein was whether the Learned First Appellate Court was justified in confirming the decree for ejectment when the plaintiff failed to prove tenancy. It is further apposite to mention that the law laid down by the Constitution Benches of the Supreme Court in the cases of ***Bishundeo Narain (supra)*** and ***Ladli Prasad Jaiswal (supra)*** still hold the field as regards the requirement of pleadings in terms with Order VI Rule 4 of the Code when there is case of fraud set up.

37. At the cost of repetition, it would be seen that there is no pleadings whatsoever as regard any fraud, undue influence or coercion in the Plaint of the present suit. There is not even a whisper in the pleadings that Late Kiron Chandra Choudhury went back to East Pakistan and died in the year 1950. There is no allegation in the plaint that the Registered Deed of Release so executed by Late Kiron Chandra Choudhury was executed by some other person as an imposter. There is no allegation in the plaint that Late Kiron Chandra Choudhury could not have been identified by the Sub-Registrar alone and as such, the registration if any, was without following the procedure and as such illegal. Not only that, a perusal of the Plaint would also show that the Plaintiff No. 2 made enquiries in respect to the Section 145/146 of the Cr.P.C. proceedings. Exhibit 13 was the written statement filed in the said proceedings by the Defendant No. 1 wherein he claimed the entire suit land. The cause of action for the suit arose on account of the stand taken by the Defendant No.1 in those proceedings, as would be apparent from the Plaint. Then also, the

Plaintiffs failed to make necessary pleadings in the Plaint or even seek amendment to the Plaint after the filing of the written statement by the Defendant No. 1 to incorporate the material facts as regards the illegality of the Deed of Release.

38. In the backdrop of the above proposition of law and the analysis if this Court now takes up the judgment passed by both the learned Trial Court as well the First Appellate Court, it would be seen that the learned Trial Court as well as the learned First Appellate Court took into consideration certain evidences which had no basis in the pleadings to nullify the registered deed of release dated 04.03.1952, i.e. the Ext.B. Both the learned Courts below further went to the question of Section 34 of Registration Act, 1908 without there being any pleadings to that effect that Late Kiron Chandra Choudhury never appeared before the Sub-Registrar to execute the registered Deed of Release. There is no allegation in the plaint that Late Kiron Chandra Choudhury could not have been identified by the Sub-Registrar as he was a resident of East Pakistan. In fact, the stand taken in paragraph 6 of the plaint of the plaintiffs is the other way round in as much as it was stated that Late Kiron Chandra Choudhury was residing at Karimganj. Under such circumstances, in the opinion of this Court, the learned Trial Court as well as the learned First Appellate Court were not justified in arriving at the conclusion in respect to Issue No VI on the basis of the evidence taken into consideration sans any allegation made in the pleadings as regards fraudulent execution of the Registered Deed of Release. Considering the above, this Court, therefore, is of the opinion that the additional substantial question of law No.(i) is duly involved in the instant appeal.

39. This Court further finds it very relevant to take note of another very important aspect of the matter as would be apparent from a perusal of the judgments of both the learned Trial Court as well as the learned First Appellate Court, inasmuch as, a perusal of the judgment of the learned Trial Court, it was opined that the DW-2 who was the Defendant No.11 had admitted that Late Kiron Chandra Choudhury expired in the year 1950. A perusal of the evidence in chief as well the cross examination of the DW-2 does not show that the said witness stated so. On the other hand, the learned First Appellate Court opined that the DW-1 had admitted that Late Kiron Chandra Choudhury expired in the year 1950. There was no admission in the oral testimony of the DW-1 before the learned Trial Court. Most likely, the learned Appellate Court based its observations upon Exhibit -13 which was the written statement filed by the Defendant No. 1 in the proceedings under Section 145/146 of the Cr.P.C. The Defendant No. 1 in his evidence duly explained that the year of death of Late Kiron Chandra Choudhury mentioned in the written statement was a typographical error and steps were taken for correction by filing application (Exhibit - M). It was also mentioned that immediately thereupon the said Section 145/146 of the Cr.P.C. proceedings was dropped in view of the pendency of the present suit (Exhibit -K). At this stage, this Court finds it relevant to mention that there was no other evidence placed by the Plaintiffs to show that Late Kiron Kumar Choudhury expired in the year 1950 or any other document to show when Late Kiron Kumar Choudhury actually expired. The Learned Trial Court duly observed the said aspect of the matter in its Judgment. This touches on the second substantial question of law as to whether a legally executed and registered deed could be held as fraudulent, collusive, void or inoperative on the basis of contradictory statements as to the alleged death of the executants prior

to making of the document. In the opinion of this Court the said substantial question of law is involved in the instant appeal in as much as the learned Courts below could not held the Deed of Release as fraudulent, collusive, void ab-initio on the basis of the contradictory evidence on record and that to when the Plaintiffs failed to plead the material facts as regards the plea of fraud and also could not substantiate the relief against the Deed of Release. Consequently, the impugned judgment and decree passed by this learned Court below is required to be interfered with.

40. This Court further finds it relevant to observe that Exhibit 4 and Exhibit 4(1) are documents adduced by the Plaintiffs to show that their predecessor in interest had paid land revenue in respect to the Suit land. The learned Trial Court at Paragraph No.11 duly observed that a perusal of the said Exhibits shows that Plaintiffs' Predecessor-in-interest Late Bhaskar Choudhury duly deposited the land revenue in respect to the Suit land for and on behalf of the Late Kamini Kumar Choudhury. These documents were very vital documents and the Learned Courts below failed to consider the same in the proper perspective. The Learned Court below appreciated the said documents on the touchstone that Late Bhaskar Choudhury had also paid land Revenue but completely failed to take into consideration that the Plaintiffs' predecessor-in-interest duly admitted the title of the entire suit land in favour of Late Kamini Kumar Choudhury, father of the Defendant No. 1 as far back as in the year 1970. The said aspect of the matter not only touches on the Issue No VII but also the Issue No III.(the issue pertaining to limitation).

41. This Court further finds it pertinent to take note of another very important

aspect of the matter which touches on Issue No VII in as much as the Revenue Authorities i.e. the Settlement Officer had vide an order dated 16.10.1995 in Misc Case No. 113 of 1994-95 had held that the entire suit land belonged to the Defendant No. 1 and his mother and directed issuance of Patta. Accordingly, Patta was duly issued in favour of the Defendant No. 1 and his mother (Exhibit-F). The order dated 16.10.1995 as well as the grant of Patta have not been challenged in the Forums available under law. This Court is mindful of the fact that revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, when the revenue authorities who are competent to determine the rights of the parties by exercising powers akin to the Civil Courts and there is a bar to challenge the same before the Civil Courts in view of Section 154 of the Assam Land and Revenue Regulations, 1886, any order or entry made by such authorities which attains finality has to be respected and given effect to. These aspect of the matter were not taken into consideration by the learned courts below though specific pleadings and evidence in that regards was duly available.

42. In the backdrop of the above, let this Court now take up the additional substantial question of law No.(ii) as to whether the same is involved in the instant appeal. This Court in the previous segments of the instant judgment had categorically observed that the Defendant Nos.2 to 11 had filed the written statement-cum-counter claim. Subsequent thereto, on 18.12.2007, the said counter claim was withdrawn with liberty to file an independent suit in order to determine the real question in controversy. The records further reveal that on 10.01.2008, the learned Trial Court permitted withdrawal of the said counter claim with liberty to file an independent suit.

43. In the above context, if this Court now takes up the additional substantial question of law No (ii) framed on 02.04.2024, in the opinion of this Court, the same is not involved in the instant appeal inasmuch as, the counter claim so filed by the Defendant Nos. 2 to 11 was withdrawn with liberty which was duly granted and as such the same would not amount to abandoning the claim subject to permissibility in filing an independent suit in accordance with law. In addition to that, this Court also finds that the decree which has been passed by the learned Courts below was a decree only in respect to the rights of the plaintiff and the proforma Defendants and not the Defendant Nos.2 to 11. Consequently, this Court, therefore, is of the opinion that the additional substantial question of law No (ii) is not involved in the instant appeal.

44. The learned counsel appearing on behalf of the Appellant submitted during the course of the dictation of the instant Judgment in the Court that the substantial question of law Nos. 1, 3 and 4 so formulated on 08.12.2004 had lost significance in view of the decision of this Court in the other substantial questions of law so formulated. This Court is also of the opinion that the said Substantial Questions of law No 1,3 & 4 have lost its importance and do not survive in view of the above adjudication.

45. Consequently, this Court, therefore, sets aside the judgment and decree dated 28.08.2014 passed in Title Appeal No.43/2013 passed by the Court of the learned Civil Judge, Karimganj and consequently in view of the merger of the judgment and decree dated 25.09.2013 passed in Title Suit No.213/2007 in the

judgment and decree dated 28.08.2014 in Title Appeal No.43/2013, the judgment and decree of the learned Trial Court also does not survive.

46. The Appeal is allowed with costs quantified @Rs.25000/- for the instant proceedings. Further the Appellant would be entitled to costs throughout the proceedings.

47. Return back the LCR.

JUDGE

Comparing Assistant