

**Serial No. 02**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

SA No. 1 of 2019

Date of Order: 30.01.2023

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Smti. Salima Begum & Ors.

Vs.

Smti. Hamida Sheikh & Ors.

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**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

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**Appearance:**

For the Petitioner/Appellant(s) : Mr. A.S. Siddiqui, Sr. Adv. with  
Ms. A. Kharmyndai, Adv.

For the Respondent(s) : Mr. K.S. Kynjing, Sr. Adv. with  
Ms. A.D. Syiem, Adv.

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**JUDGMENT AND ORDER**

1. This Second Appeal is directed against the judgment and order dated 10.06.2019, passed in RFA No. 1(H) of 2016, wherein, a common judgment and decree dated 19.02.2016, passed in Title Suit No. 20(H) of 2006 and Title Suit No. 15(H) of 2007, by the learned Assistant District Judge, has been upheld.

2. This Court on considering the matter for admission, on the suggestions provided by the appellant, which were objected to by the respondents had framed the following substantial questions of law;

- i) Whether a statement made in the written statement can be construed as evidence against the Plaintiff without any evidence being recorded to substantiate the same?
- ii) Whether an immovable property can be transferred from one living person to another without any registered Deed of Conveyance as mandated under Indian Registration Act and Transfer of Property Act?
- iii) Whether mere mutation of immovable property would confer any title and ownership on the person in whose name the mutation is made and that too without following the procedure as laid down under law?
- iv) Whether a government land can be transferred without prior sanction and following the procedure as mandated under Assam Land and Revenue Regulation, 1889 as adopted in Meghalaya?

3. The main dispute in this case, concerns claim of ownership over a plot of land measuring approximately 4000 sq. ft. with a three storied RCC building standing thereon, which stood in the name of one (L) Tahirun Nisa, the first wife of (L) Bashiruddin Sheikh. The plaintiff No. 1, in the

title suits, is the second wife and the widow of (L) Bashiruddin Sheikh, and plaintiffs No. 2-4, are the children of plaintiff No. 1. The defendants No. 1-3, are the daughters of (L) Bashiruddin Sheikh, from his first wife (L) Tahirun Nisa, who pre-deceased him. The main plank of the claim of the plaintiffs in T.S No. 20(H) of 2006 is that, as (L) Bashiruddin Sheikh had inherited about 1000 sq. ft. of the said plot, and had bequeathed verbally a 1/3 share to the plaintiff No. 1, which would be approximately 333 sq. ft., the remaining 666 sq. ft. which he had inherited from his first wife, should devolve upon the plaintiffs and defendants as per Mohammedan Law. However, when the respondents/defendants filed the written statement, disclosing that the suit property had already been mutated in their name by the Deputy Commissioner, East Khasi Hills, and that during the lifetime of their mother (L) Tahirun Nisa itself, the names were already entered in the Patta(Lease document), the appellants, instituted another suit, being Title Suit No. 15(H) of 2007, for a declaration that, the inclusion of the names was illegal and done without due process of law. These two suits, then came to be tried together and the learned Trial Court, by a common judgment and decree dated 19.02.2016, came to a finding that, the appellants are not entitled to any share of the suit property, except for the income derived from the Jackpot business of their late father, and it was further held that, there

was no illegality in the transfer for the suit property and inclusion of the names of the respondents in the Patta, during the lifetime of their mother.

4. As noted earlier, the judgment and decree dated 19.02.2016, was then upheld by the Learned First Appellate Court by the judgment dated 10.06.2019.

5. Mr. A. S. Siddiqui, learned Senior counsel assisted by Ms. A. Kharmyndai, learned counsel for the appellants on the substantial questions of law raised, has argued that, both the learned Courts below had erred in law, in deciding that, (L) Tahirun Nisa had bequeathed the entire suit property in favour of the defendants No. 1, 2 and 3, without any documentary evidence on record. It is also contended that, both the learned Courts below had erred in law, in ignoring the fact that, no names can be included in a Patta/Lease as co-lessees, unless the same was on an application based on a registered instrument of conveyance. It has also been argued that, the learned Courts below ignored the established legal position that a mutation does not give title, but is merely a revenue record.

6. In support of his arguments, the learned Senior counsel has relied upon the following judgments;

- i) ***Balwant Singh and Anr vs Daulat Singh (1997) 7 SCC 137***
- ii) ***Suraj Bhan and Ors vs Financial Commissioner and Ors (2007) 6 SCC 186***

*iii) Jitendra Singh vs The State of Madhya Pradesh (2021) SCC*

*OnLine SC 802*

*iv) State Bank of India and Ors vs S.N. Goyal (2008) 8 SCC 92*

*v) Banwarilal Sharma vs Kamala Devi Ajitsaria (2022) SCC*

*OnLine Gau 800.*

7. On behalf of the respondents, Mr. K. S. Kynjing, learned Senior counsel assisted by Ms. A.D. Syiem, has submitted that, there is no substantial questions of law involved in the present Appeal. On the aspect of the Pattas/Lease and entries of names therein, learned Senior counsel submits that, from the facts on record, it is clearly seen that, (L) Tahirun Nisa died on 21<sup>st</sup> January, 1998, and that on 27<sup>th</sup> May, 1998, applications had been made by the defendants, for renewal of the Lease/Patta in respect of the suit property, with a prayer to omit the name of their mother (L) Tahirun Nisa, since she had expired, and in the said application, (L) Bashiruddin Sheikh, was the witness. The learned Senior counsel then submits that this application was allowed and necessary entries made and (L) Bashiruddin Sheikh who died on 25.01.2005, had at no point of time before that, ever claimed his share over the suit property. The mutation he argues, was taken note of by the learned Courts below, who had taken full consideration of the evidence on record that the suit property was in the name of (L) Tahirun Nisa

and the three daughters, since 22.08.1996. Learned Senior counsel has also taken the Court to the relevant portions of the judgment wherein, this issue has been conclusively decided.

8. The learned Senior counsel has also highlighted the most important issues that had been framed by the Trial Court and the findings thereon, coupled with the evidence that had been led. On Issue No. 20, which deals with; whether (L) Bashiruddin Sheikh had confirmed the right of defendants as joint owners of the suit property; and whether the Lease Deed was mutated in the name of the defendants, after observance of due procedure, the learned Senior counsel submits that, from the evidence on record, it is clearly reflected that, no objections were raised by (L) Bashiruddin Sheikh, at the time when (L) Tahirun Nisa included her name along with her daughters as joint owners. The same he submits, was acknowledged by the plaintiffs, as also the fact that, the Lease Agreement was based on the Sale Deed, in the name of (L) Tahirun Nisa. He submits that, it is an admitted fact that, the suit property had been purchased by (L) Tahirun Nisa and the said three storied RCC building was constructed thereon. The learned Senior counsel has also placed the relevant portions of the evidence to substantiate the case of the defendants and has submitted that, besides the clear ownership of (L) Tahirun Nisa, over the suit property, the Revenue Authorities that is, the Deputy Commissioner, had also issued

a Patta in her favour for the plot, which was numbered as Plot No. 118, covered by Lease Agreement dated 01.04.1978, which had been exhibited as Paper Mark III. It is further submitted that, it is only after the death of (L) Tahirun Nisa and (L) Bashiruddin Sheikh, that the plaintiffs started laying their claims over the suit property.

9. The learned Senior counsel submits that from the evidence on record, there is nothing to show that, (L) Bashiruddin Sheikh was entitled to any share of the suit property, and at no point of time, were the Revenue Authorities ever approached by the plaintiffs to make any claim for mutation of their alleged share in the suit property. The learned Senior counsel submits that, in view of the admitted facts and evidence on record, there has been no error, or has settled law been ignored by the learned Courts below in passing the impugned judgments. In support of his arguments on the scope of Second Appeal, and on the right of step-children to inherit and on the point of devolution and succession, the learned Senior counsel has placed the following authorities;

- i) B.R. Verma Mohammedan Law 11<sup>th</sup> Edition Page 399*
- ii) Mulla Principles of Mohammedan Law by Sir Dinshaw Fardunji Mulla Page 109*
- iii) Mulla Mohammedan Law Digest with Basic Principles Page 558 Disqualification of Legal Heir*
- iv) Meghalaya Transfer of Land (Regulation) Act, 1971 Page 223*

*v) (2011) 12 SCC 220 Rangammal vs Kuppuswami and Another*

*vi) (2020) 3 SCC 786 Mangayakarasi vs M. Yuvaraj.*

10. Before embarking on discussing the matter on the substantial questions of law that have been framed, it is to be kept in mind that, this instant Second Appeal has been preferred against concurrent findings by both the learned Courts below. The general settled position is that, the High Court does not normally interfere with the concurrent findings of the Courts below, but the same is subject to some exceptions, such as, material evidence being ignored by the Courts below, or findings that have been rendered on no evidence being present, or wrong inferences from proven facts being drawn by applying the law erroneously.

11. In the instant appeal, the issues framed revolve around the contention that, the learned Courts below have ignored the settled position of law in rendering the judgments. This Court therefore, is to examine whether the same has been occasioned and the impact, if any on the outcome of the matter, and whether though there is a clear enunciation of law, the Lower Courts had misinterpreted or misapplied the same. Heavy emphasis has been made on the point of transfer of an immovable property and whether mutation would confer title and ownership on the person, on whose name the mutation is made. The other, ancillary issues are whether statements made in the written statements can be construed as evidence and

whether transfer of government land can be affected without prior sanction of Revenue Authorities under the relevant Regulation.

12. On the issues concerning the transfer and mutation of the suit property, it is correct as put up by the appellant that mutation, that is, entries in the government records do not confer title on a person, but are for the purpose of records with the Revenue Authorities, especially with regard to, payment of land revenue. It is necessary therefore, to consider the materials and evidence on record, as to whether the claim of title of the defendants stem from the mutation as alleged by the plaintiffs/appellants. The facts as narrated and evidence recorded, reflect that, (L) Tahirun Nisa had purchased the said suit property measuring about 4000 sq. ft. in 1962, and a Lease Agreement/Patta of the said plot was granted by the Deputy Commissioner (Revenue) in her favour on 01.04.1978. It is relevant to note herein that, the appellant No. 1, in her cross examination in T.S. No. 20(H) of 2006, had deposed that, *the suit property was in the name of (L) Tahirun Nisa right from the beginning* and in T.S. No. 15(H) of 2007, had stated that, *it is a fact that, the suit property was purchased in the year 1962, in the name of (L) Tahirun Nisa* and she had gone further on to state that, *it is a fact that I know very well, that the name of the suit property stands in the name of (L) Tahirun Nisa since 1962*. Further, the statements of the appellant No. 1 (PW 2) were corroborated by PW 4 and PW 1, were it was

stated that .....it is a fact, that my father told me that the suit property was in the name of my step-mother..... She further stated, I agree that ownership stands in the name of the person in whose name the property is recorded.

13. Though mutation does not confer title, the fact that, the appellants/plaintiffs never raised any objections to the mutation during the life time of (L) Tahirun Nisa and (L) Bashiruddin Sheikh, is a clear pointer that, the plaintiffs acknowledged that, (L) Tahirun Nisa was the owner of the suit property. The Trial Court on this aspect, has also gone into the written statement filed by the Revenue Authorities that, apart from admitting that, (L) Tahirun Nisa was the original owner of the suit property being Plot No. 118, had also added therein that, the said plot had been mutated in the name of her three daughters on her application dated 22.08.1996, which on her demise was followed by an application dated 27.05.1998, by the said daughters together with their father, (L) Bashiruddin Sheikh. It has also been noted by the Trial Court that, no interest was created in favour of the plaintiffs, during the life time of (L) Bashiruddin Sheikh, as per Mohammedan Law, and that no evidence had been adduced by the plaintiffs, with regard to, non-compliance of the provisions of the Assam Land and Revenue Regulation, 1889, at the time of effecting mutation.

14. From the discussions above, it can be concluded that, the learned Courts below on the facts and materials as presented, cannot be said to have ignored the settled position of law, as the mutation was never objected to during the life time of (L) Bashiruddin Sheikh and no evidence has been led in this regard, to counter this position. Further, no evidence has been adduced by the plaintiffs/appellants to establish that, the mutation of the suit property was not as per laid down procedure. The fact that, the property was purchased in the name of (L) Tahirun Nisa in 1962, was itself established and corroborated by the evidence which has been tendered by the parties. The entire sequence of facts and evidence recorded, therefore clearly reveal that, the title of (L) Tahirun Nisa being clear, the succession to the same by the defendants cannot be said to be a transfer without a Deed of Conveyance, as the same was by devolution, as per Mohammedan Law, and further, the mutation was but, an entry of their names in the Lease Agreement, and not that the title has been derived from the said mutation. The other question of law, that is, whether a statement made in the statement can be construed as evidence, in view of the discussions above, has no relevance, as the main issue and questions have been considered by looking into the entire materials and evidence on record.

15. In view of the above, there arising no substantial questions of law in this Appeal, the same is accordingly dismissed and no interference

is called for with the concurrent findings and judgments of the Lower Courts.

16. Lower Court records to be transmitted back immediately.
17. There shall be no order as to costs.

**Judge**

Meghalaya  
30.01.2023  
"D.Thabab-PS"

