

GAHC010002652006



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

Case No. : RSA/179/2006

NAZIM UDDIN and ORS
S/O LATE SANSHER ALI.

2: MUKIBUR RAHMAN

S/O LATE SANSHER ALI

3: IMRAN HUSSAIN
S/O LATE SANSHER ALI.

4: MUSTT. JAHURA KHATUN
D/O LATE SANSHER ALI.

5: MUSTT. TANI NESSA
D/O LATE SANSHER ALI.

6: SMT. SURYA BANU

W/O LATE SANSHER ALI

7: RUSTAM ALI
S/O LATE USMAN ALI
ALL ARE R/O VILL-ROUMARI PATHAR
MOUZA-CHENGA
DIST - BARPETA
ASSAM

VERSUS

SAHAJAN ALI and ORS
S/O LATE SAHAR ALI.

2:MISS. MOMTAZ BEGUM

D/O LATE SAHAR ALI

3:TAIZ UDDIN
S/O LATE SAHAR ALI

4:TARABANU
W/O LATE SAHAR ALI
ALL ARE R/O VILL-CHENGLIRDIA
MOUZA-BAGARIBARI
PS-TARABARI
DIST - BARPETA
ASSAM

Advocate for the Petitioner : S K DEORI

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 13-12-2023

Heard Mr. S. Biswas, learned counsel for the appellants. There is no representation from the respondents.

2. This appeal under section 100 CPC is directed against the appellate judgment and decree dated 30.05.2005 passed by the learned Civil Judge (Senior Division) Barpeta in TA no.39/2004. By the said appellate judgment, the said appeal filed by the appellant-defendant was dismissed and the judgment and decree dated 18.06.2004 passed by the learned Civil Judge (Junior division) No.1, Barpeta in TS no.78/1999, thereby decreeing the suit, was affirmed.

3. The facts in brief is that the respondent nos.1 to 4 had filed a suit for declaration of right, title and interest, decree of recovery of khas possession by

evicting the appellants from the suit land and another consequential reliefs. It was claimed that out of the Schedule-A land, the father of the respondent nos.1, 2, 3, who was also the husband of the respondent no.4, had purchased 2B-1K-5L land vide registered sale deed no.6892/77 dated 08.09.1977 from Sanser Ali (since deceased). The said vendor was the father of the appellant nos.1 to 5, who was also the husband of the appellant no.6 and the father of the respondent no.7, proforma defendant no.1 and proforma defendant no.2.

4. The said land is described in Schedule B of the plaint. It is claimed that the predecessor-in-interest of the respondents was dispossessed from the schedule B land on 03.07.1996 and accordingly, the respondents-plaintiffs had filed said suit. The appellants had contested the suit by filing the written statement, wherein a plea of denial was taken without setting out their own case, save and except stating that the predecessor-in-interest of the respondents and the respondents were not in possession of the suit land in any point of time and that no steps were taken for mutating their respective names in the revenue records. Two sets of written statements were filed, one by the defendant nos.1, 2, 4, 5, 6 and 7 and the other by the defendant no.3. In course of trial, the following five issues were framed by the learned trial Court:

1. *Whether there is cause of action for this suit?*
2. *Whether the suit is barred by limitation?*
3. *Whether the plaintiffs have right, title and interest over the suit land and the defendants dispossessed the plaintiffs from the suit land on 3-7-96?*
4. *Whether the plaintiffs are entitled to get decree as prayed for?*

5. What other relief or reliefs the parties are entitled to?

5. The respondent-plaintiff had examined 5 witnesses and had exhibited three documents, being registered Sale Deed dated 08.09.1997 (Ext.1), certified copy of the said Sale Deed (Ext.2) and certified copy of the current chitha of Dag no.14 (Ext.3). The appellants-defendants had examined four witnesses but did not exhibit any document.

6. In respect of issue no.1, the learned trial Court had held that there was cause of action in the suit and in respect of issue no.2 it was held that the suit was not barred by limitation as suit for recovery of khas-possession based on title is governed by Article 65 of the Limitation Act. In respect of issue no.3, the learned trial Court, on the strength of Ext.1, had held that the respondents-plaintiffs had purchased the suit land described in Schedule B of the plaint and found the evidence of the PWs of being in possession of the suit land reliable and it was further held that the appellants-defendants had failed to adduce better evidence than the respondents to discredit their case and accordingly, it was held that on the death of their predecessor-in-interest, the respondents had inherited his title over the suit land. It was also held that the appellants though in wrongful possession of the suit land, were merely trespassers and accordingly, the issue was decided in the affirmative and in favour of the respondents. Resultantly, the issue nos.4 and 5 were decided in favour of the respondents by holding that they were entitled to get the decree of right, title and interest and recovery of possession, and consequently precept was issued to Revenue authorities for issuance of a separate patta in the name of the

respondents.

7. The appellants preferred an appeal before the learned first appellate Court which was registered as TA no.39/2004. On the basis of the materials available on record, the learned first appellate Court formulated a point of determination to the effect that as to whether the learned Court below had failed to decide the suit rightly and whether the impugned judgment and decree is liable to be set aside.

8. In respect of the said point of determination, the issues as framed and decided by the learned trial Court was revisited. It would suffice to mention herein that the learned first Appellate Court had given its own reasoning and had affirmed the decision of the learned trial Court on all the issues and accordingly, arrived at a finding that although the appellants had denied the execution and registration of the sale by the predecessor-in-interest, but they did not challenge its validity, and the plea that he had no knowledge of the execution of the registered sale deed, did not find any favour from the learned first appellate Court and accordingly, the appeal was dismissed by affirming the findings of the learned trial Court.

9. The present appeal was admitted for hearing by order dated 10.08.2007 on the following four substantial questions of law:

"1. Whether alleged sale of the suit property is complete in the instant case without

delivery of possession within the meaning of Section 54 of the Transfer of Property Act?

2. Whether non entries of the name in the record of rights provided in Section 40 of the Assam Land and Regulation Act will prove the actual possession of the Respondent/Purchaser in the suit land?

3. Whether the impugned judgment and decree passed by the learned court below without discussing the evidence of witnesses examined in the case are sustainable in law?

4. Whether the impugned judgment and decree passed by the lower courts deciding the issue No.3 in the suit without taking consideration of the evidence of D.W.1, D.W. 2, D.W. 3 and D.W. 4 regarding the possession of the suit land is sustainable in law?"

10. The learned counsel for the appellants has pressed into service all the ground for appeal and it was asserted that without delivery of possession, the sale could not be completed and therefore a valid title did not pass over to the predecessor-in-interest of the respondents. It was also asserted that the respondents had not got their respective names mutated in respect of the Schedule B land and therefore the respondents had not been able to prove their actual possession of the suit land and accordingly, it was prayed that the appeal be allowed by setting aside the concurrent finding of the learned Courts below.

11. Considered the submission made by the learned counsel for the appellant. Having regard to the substantial question of law as framed by this Court while admitting the appeal, the Court would be inclined to refer to the observation of the Supreme Court of India in the case of *Sawarni Vs. Inder Kaur & Ors.*, AIR 1996 SC 2823 wherein at paragraph-7 it was observed to the effect that mutation of a property in a revenue record does not create or extinguish title/ ownership nor has it any presumptive value of title. It only enables the

person in whose favour mutation is ordered to pay the land revenue in question. The said view was also reiterated by this Court in the case of *Manmatha Rajan Tribedi Vs. Gopal Krishna T.E. Co. (P) Ltd. and ors., (2006) 2 GLR 565: 2006 Supp GLT 718*. In the said case, the Court had also held that in order to acquire a valid right, title and interest over any immovable property valued at Rs.100.00 or above by way of purchase it should be affected by a registered instrument by payment or promising to pay the consideration money. It was also held that the Transfer of Property Act, 1882 does not lay down any condition that in order to acquire title over a property purchased by executing registered sale deed, the delivery of possession is a condition precedent.

12. In the present case in hand, there is nothing on record to show that the sale deed contained any condition which would deny right, title and interest to the respondents in the event they are unable to take possession of the suit land. The appellants have not challenged the sale deed (Ext.1) which was otherwise duly proved during trial. It is not the pleaded case of the appellants that in the sale deed there was no mention of the possession of the suit land having been transferred. Therefore, even assuming that possession of the suit land was not delivered to the respondents, but the alleged non-delivery of possession would have no bearing against the lawful transfer of title to the respondents by virtue of registered sale deed no.6892/77 dated 08.09.1977.

13. In respect of another point raised by the learned counsel for the appellant that there is no notice for the transfer of the suit land described in Schedule B, it would be appropriate to refer to section 3 of the Transfer of

Property Act which is the interpretation clause wherein it is provided that:

....."a person is said to have notice" of a fact when he actually knows that fact or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation 1- Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, [where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]

Provided that--

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian. Registration Act, 1908 (16 of 1908) and the rules made thereunder,

(2) the instrument [or memorandum] has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.--Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.--A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.].

14. In view of the said position of the law, the Court is inclined to hold that the transfer of the suit land was made by virtue of a sale deed, the appellants would have deemed notice of the said transaction and accordingly, the Court is unable to accept that the appellants had no notice of transfer of the suit land described in Schedule-B of the plaint.

15. In view of the discussions above, the substantial question of law no.1 is answered in the affirmative and against the appellant by holding that the sale of a suit property by virtue of a sale deed would be complete in all respects to transfer valid right, title and interest of the suit land to the purchaser who was the predecessor-in-interest of the respondents and that the alleged non-transfer of the possession of the suit land would not be sufficient to deny right, title and interest of the respondents over the suit land who had inherited the land jointly from the deceased purchaser and accordingly, the sale of the said suit land by the sale deed no.6892/77 is otherwise a valid transaction within the meaning of the section 54 of the Transfer of Property Act.

16. In so far as the second substantial question of law is concerned, the same is also decided in the negative by reiterating the decision rendered in the case of *Sawarni (supra)* as well as *Manmatha Rajan Tribedi (supra)* by holding that the lack of mutation in the revenue records would not be sufficient to extinguish title of the lawful purchaser of the suit land. In respect of the substantial question of law no.3, the same is answered against the appellant by holding that the appellant could not point out that there is any contradiction which is worthwhile in respect of evidence of the PWs examined by the

plaintiff's side before the learned trial Court so as to disprove the fact that the sale and transfer of lawful right, title and interest from the possession of the suit land to the respondents was otherwise lawful and made by their predecessor-in-interest. Therefore, when the fact of execution of sale deed is admitted without a specific denial and without challenging the execution and registration of the said sale deed, the discussion on the issues by both the learned Courts below are sufficient for the Court to decree the suit as was done in the present case and accordingly, the Court does not find any infirmity in the decision of the learned trial Court and the learned first appellate Court notwithstanding that the entire evidence made by the parties have not been discussed.

17. The learned counsel for the appellant has referred to the order of this Court dated 06.02.2020 and it was submitted that the Court had found discrepancy in the original sale deed (Ext.1) and the certified copy of the said sale deed (Ext.2) and accordingly, by referring to the discrepancy of affixing of serial number in the back page of the sale deed, the matter was send back to the learned trial Court for recording of additional evidence by invoking Order XLI Rule 27(b) CPC with regard to decide a question as to whether Ext.2 was a fraudulent or manipulated document. Pursuant to the said order, the learned trial Court on receipt of the records had recorded the additional evidence of PW-5 namely, Jamal Ali, PW-6 namely, Sajahan Ali and additional evidence of DW-1, namely, Mohar Ali, DW-2, namely, Mohibuddin, DW-3, namely, Imran Hussain.

18. On a perusal of the exhibits it is noted that in the back page of the original sale deed (Ext.1), the thumb impressions given by the vendor and the

witnesses have been given specific serial number by the Sub-Registry, bearing serial no.10720, 10721, 10722, 10723 and 10724. In the certified copy (Ext.2), there is an overwriting in respect of serial no.10723. But on a comparison of the person whose thumb impression is recorded, the Court finds that there is no fraudulent manipulation and only the incorrect writing of serial number appears to have been corrected. Along with the additional evidence of Sajahan Ali (PW-6), he has exhibited a fresh certified copy of the sale deed dated 08.09.1977, it is seen that the fresh certified copy, which has been marked as Ext.3 dated 01.03.2021, tallies with the reference serial numbers given to thumb impressions which exist in the original sale deed (Ext.1) and tallies with the serial number given in the back page of Ext.2. Therefore, the mere correction made by the Sub-Registry of Office in respect of entry marked as Sl. No.10720 is not found to be a manipulation or tampering of the document. Moreover, as the original exhibits has already been produced before the Court and marked as Ext.1, a mere correction appearing in the entry of serial number by the Sub-Registry in respect of serial no. 10720 cannot be said to be so fatal so as to disbelieve the execution and the registration of the sale deed, which is a fact not denied by the appellants or the respondents. Therefore taking note of the additional evidence which has come into record which was recorded pursuant to order of this Court dated 06.02.2020, the Court is inclined to hold that the sale deed (Ext.1) is otherwise a valid document and that based on the said piece of evidence, the decree passed by the learned trial Court, as affirmed by the learned first Appellate Court, is reiterated to be a valid sale deed.

19. In light of the decision of the substantial question of law no.3, the

substantial question of law no.4 is also answered against the appellant by holding that the evidence of the DW no.1 to DW no.4 regarding possession of the suit land cannot be held to be sufficient to negate the transfer of valid right, title and interest of the land described in Schedule-B of the plaint to the respondents. Therefore, the discussion of the evidence of the said DWs would not be relevant for this order in view of the fact that save and except the averments made in the plaint, the only defence set out by the appellants was that after the death of Late Samser Ali, the defendant nos.1 to 5 had inherited in the Schedule B land and paid land revenue regularly and by possessing the suit land continuously without any interruptions, it is claimed that the respondents and their predecessor-in-interest late Sahar Ali did not possess the suit land at any point of time and had not taken any steps for obtaining mutation. Therefore, it is apparent that the appellants, in their two sets of written statement had not denied the registration of the sale deed. Hence, in so far as the transfer of right, title and interest of the suit land to the respondents is concerned, by virtue of doctrine of non-traverse the execution and registration of the same becomes an admitted fact, not being specifically denied. Accordingly, all the substantial questions of law are answered against the appellants. Resultantly, this appeal deserves to be and is accordingly dismissed.

20. Under the said circumstances, the parties are left to bear their own cost in respect of this present appeal.

21. Let the LCR be returned along with a copy of the judgment.

22. Let a decree be drawn up in due course and thereafter, let a copy thereof be transmitted it to the learned trial Court as well as to the learned First Appellate Court.

JUDGE

Comparing Assistant