

GAHC010004012009



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

Case No. : RSA/38/2009

ON THE DEATH OF BIMALENDU SAHA, HIS LEGAL HEIRS AND ORS
Represented By-

1.1: SMTI KAJARI SAHA
W/O Late Bimalendu Saha

R/O Roy Patty
Ward No. 20
Karimganj Town
P.O Karimganj Bazar

District - Karimganj
Assam

1.2: SMTI MOUMITA SAHA
D/O Late Bimalendu Saha

R/O Roy Patty
Ward No. 20
Karimganj Town
P.O Karimganj Bazar

District - Karimganj
Assam

2: DIBYENDU SAHA

S/O-LATE NARENDRA CHANDRA SAHA.

3: ON THE DEATH OF AMIYA SAHA
HIS LEGAL HEIRS
NAMELY-AMIYA SAHA

Represented By-

3.1: SRI BIJAY BALLAV SAHA
Husband of Late Amiya Saha
RO Jadavpur
Kolkata
West Bengal

3.2: SRI AJAY SAHA
RO Jadavpur
Kolkata
West Bengal

5: SUMITA SAHA

D/O-LATE NARENDRA CHANDRA SAHA.

7: CHAYA SAHA

W/O-LATE NARENDRA CHANDRA SAHA.

8: NILADRI SAHA

S/O-LATE NARENDRA CHANDRA SAHA.

10: ON THE DEATH OF NIRUPAM SAHA
HIS LEGAL HEIRS
NAMELY-
Represented By-.

10.1: SMTI SOMA DEB SAHA
W/O NIRUPAM SAHA
ROY PATTY
WORD NO. 20
KARIMGANJ TOWN
P.O. KARIMGANJ BAZAR
DIST-KARIMGANJ
ASSAM.

10.2: SMTI APARUPA SAHA
D/O NIRUPAM SAHA
ROY PATTY
WORD NO. 20
KARIMGANJ TOWN
P.O. KARIMGANJ BAZAR
DIST-KARIMGANJ
ASSAM.

10.3: SMTI NIKITA SAHA

D/O NIRUPAM SAHA
ROY PATTY
WORD NO. 20
KARIMGANJ TOWN
P.O. KARIMGANJ BAZAR
DIST-KARIMGANJ
ASSAM

VERSUS

SAKSHIGOPAL DUTTA and ORS
S/O-LATE MADHUMANGAL DUTTA

3:JOYGOPAL DUTTA

S/O-LATE MADHU MANGAL DUTTA.

4:KONIKA DUTTA

D/O-LATE MADHU MANGAL DUTTA.-ALL RESIDENTS OF ROY NAGAR
KARIMGANJ TOWN
WORD NO.25
POST OFFICE KARIMGANJ BAZAR
PIN-788711
DIST-KARIMGANJ
ASSAM.

5:MONIKA NANDY DUTTA

W/O-APARESH KUMAR NANDI
R/O-QR.NO.9-C
STREET NO.41A
P.O. CHITTARANJAN
CHATTARANJAN TOWNSHIP
PIN NO.713365
DIST-BURDWAN
WEST BENGAL.NOTICE TO BE SERVED THROUGH THE COURT OF
LEARNED DISTRICT JUDGE
BURDWAN.

6:THE STATE OF ASSAM

NOTICE TO BE SERVED THROUGH THE DEPUTY COMMISSIONER
KARIMGANJ DISTRICT
KARIMGANJ.

7:TEH DEPUTY COMMISSIONER

KARIMGANJ DISTRICT
KARIMGANJ
ASSAM.

8:THE SETTLEMENT OFFICER

KARIMGANJ DISTRICT
KARIMGANJ
ASSAM

Advocate for the Petitioner :

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

20.06.2023

Heard Mr. N. Dhar, the learned counsel for the appellants and Mr. P. K. Roy, the learned senior counsel assisted by Mr. S. K. Chakraborty, the learned counsel appearing on behalf of the respondent Nos.1 to 5 as well as Ms. U. Das, the learned counsel appearing on behalf of the respondent Nos.6 to 8.

2. The instant appeal was admitted by this Court vide an order dated 29.05.2009 by formulating the following substantial questions of law:-

1. *Whether the learned court below is right in decreeing the suit of the plaintiff without recording any finding as to whether the plaintiff's vendor had right, title and interest over the land in question after the promulgation of the Assam State Acquisition of Zamindari Act, 1951?*

2. *Whether the suit of the plaintiff for declaration of right, title and interest without praying for the consequential relief is maintainable?*

3. From the above two substantial questions of law so formulated, it

transpires that the first substantial question of law pertains to as to whether the court below is justified in decreeing the suit of the plaintiff without recording any finding as to whether the plaintiff's vendor had right, title and interest over the land in question after the promulgation of the Assam State Acquisition of Zamindari Act, 1951.

4. At this stage, it may be relevant herein to mention that the respondent Nos.1, 2 & 3 in their written statement have categorically stated that as per the revenue records, Sri Jyotis Chandra Das, son of Jogendra Chandra Das and six others were the recorded owners. Though a written statement was filed by the appellants herein, but the same was not accepted. I have also perused the Memo of Appeal before the First Appellate Court. In the said Memo of Appeal there is also no ground of objection taken as regards the extinguishment of the rights of vendors of the plaintiffs in view of the promulgation of the Assam State Acquisition of Zamindari Act, 1951. It being a well settled principle of law that for being a substantial question of law involved in an appeal under Section 100 of the Code of Civil Procedure, 1908, there has to be foundation laid down in the pleadings. In that view of the matter, as there is no foundation laid down in the pleadings or even in the Memo of Appeal in the First Appellate Court, it is the opinion of this Court that the said substantial question of law so formulated is not a substantial question of law involved in the instant appeal.

5. The second substantial question of law pertains to as to whether the suit of the plaintiff for declaration of right, title and interest without praying for the consequential relief was maintainable. This substantial question of law has its foundation in the proviso to Section 34 of the

Specific Relief Act, 1963. This Court finds it relevant at this stage to take note of the judgment of the Supreme Court in the case of ***Rukhmabai vs. Lala Laxminarayan And Others***, reported in ***AIR 1960 SC 335*** wherein the paramateria provision under the Specific Relief Act, 1877 being proviso to Section 42 was taken into consideration. It was observed by the Supreme Court in paragraph No.31 that it is a well-settled rule of practice not to dismiss suits automatically but to allow the plaintiff to make necessary amendment if he seeks to do so. In the said case before the Supreme Court, the appellants who were the defendants in the suit neither took the plea in the written statement nor there was any issue in respect thereof framed. The said issue as regards the proviso to Section 42 of the Specific Relief Act, 1877 was raised for the first time before the High Court. The High Court had rejected the said contention. When the matter was carried to the Supreme Court, it was observed that the question pertaining to proviso to Section 42 should have been raised at the earliest point of time, in which event the plaintiff could have been asked for necessary amendment to comply with the proviso to Section 42 of the Specific Relief Act and as such the said plea was not allowed to be raised. Paragraph No.31 of the said judgment is reproduced herein under:-

“31. The next question raised by the learned counsel for the appellant is that the suit should have been dismissed in limine as the plaintiff asked for a bare declaration though he was in a position to ask for further relief within the meaning of Section 42 of the Specific Relief Act. The proviso to Section 42 of the said Act enacts that "no Court shall make any such declaration when the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so". It is a well-settled rule of practice not to dismiss suits automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

The learned Counsel for the appellant contends that in the plaint the cause of action for the relief of declaration was given as the execution of the partition decree through the Commissioner appointed by the Court and, therefore, the plaintiff should have asked for a permanent injunction restraining the appellant from interfering with his possession. The appellant did not take this plea in the written statement; nor was there any issue in respect thereof, though as many as 12 issues were raised on the pleadings; nor does the judgment of the learned District Judge disclose that the appellant raised any such plea. For the first time the plea based on Section 42 of the Specific Relief Act was raised before the High Court, and even then the argument advanced was that the consequential relief should have been one for partition: the High Court rejected the contention on the ground that the plaintiff, being in possession of the joint family property, was not bound to ask for partition if he did not have the intention to separate himself from the other members of the family. It is not necessary in this case to express our opinion on the question whether the consequential relief should have been asked for; for, this question should have been raised at the earliest point of time, in which event the plaintiff could have asked for necessary amendment to comply with the provisions of Section 42 of the Specific Relief Act. In the circumstance, we are not justified in allowing the appellant to raise the plea before us."

6. This Court further finds it relevant to take note of the relief sought in the suit wherein amongst other, the plaintiff sought for the declaration of right, title and interest along with confirmation of possession. The relief of confirmation of possession, in the opinion of this Court would also come within ambit of proviso to Section 34 of the Specific Relief Act. In that view of the matter, this Court is of the opinion that the second substantial question of law so formulated is not a substantial question of law involved in the instant appeal.

7. Mr. N. Dhar, the learned counsel for the appellants further suggested

that two more additional substantial questions of law while hearing the appeal, i.e.:-

1) Whether the impugned judgment and decree passed by the learned courts below decreeing the suit filed by the respondents/plaintiffs without discussing the evidence of PW1 and PW2 and ignoring Exhibit-E in the case record and accordingly without any proof of title of the vendor of the respondents/plaintiffs over the suit land are perverse and unsustainable in law?

2) Whether the impugned judgment and decree passed by the learned courts below rejecting the written statement filed by the appellants i.e. added defendants in the suit and accordingly without affording an opportunity to the added defendants to adduce their evidence in the case are perverse and unsustainable in law?

8. Mr. P. K. Roy, the learned senior counsel appearing on behalf of the respondent Nos.1 to 5, after taking notice of the said substantial questions of law so suggested, has also made his submission.

9. In the backdrop of the above, let this Court therefore take into consideration as to whether the above quoted two additional substantial questions of law so suggested arises in the instant appeal. The additional substantial question of law No.1 pertains to as to whether the learned courts below were justified in decreeing the suit of the plaintiffs without discussing the evidence of PW1 and PW2 and ignoring Exhibit-E in the case record.

10. From a perusal of the judgment of the learned Trial Court as well as the judgment of the First Appellate Court, it transpires that the evidence of PW1 and PW2 were duly taken note of while deciding the Issue No.3. At the cost of repetition, it is reiterated herein that the appellants' written

statement was not accepted and as such there was no denial of the title of the vendors of the plaintiffs. On the other hand, the defendant Nos.1, 2, & 3 who are the respondent Nos.6, 7 & 8 herein had also admitted in their written statement the ownership in the Revenue records of the vendors of the plaintiffs. Exhibit-E, the reference of which the learned counsel for the appellants has made is an order passed by the Settlement Officer holding that the plaintiffs did not have title over the land. Taking into account that the Settlement Officer is a revenue authority, in the opinion of this Court, such observation and findings of the said Settlement Officer has to be restricted only for the purpose of conferring of mutation and not for declaration of right, title and interest which is exclusively reserved for the Civil Courts to decide. In the instant case, the Civil Courts upon appreciation of evidence have decided that it is the plaintiffs who have the right, title and interest over the suit land and the said determination, in the opinion of this Court, would overshadow Exhibit-E.

11. Under such circumstances, this Court is of the opinion that the first additional substantial question of law so suggested as discussed above during the course of hearing, is not a substantial question of law involved in the instant appeal.

12. The second additional substantial question of law is in relation to the Trial Court not accepting the written statement filed by the appellants. This court upon perusal of the Memo of Appeal wherein various grounds of objections were taken before the First Appellate Court, it finds that there was no ground of objection taken against the order passed rejecting the written statement, though the appellants were at liberty to take such ground in terms with Section 105 of the Code of Civil Procedure, 1908.

Under such circumstances, this Court is therefore of the opinion that the second additional substantial question of law so suggested is not a substantial question of law involved in the instant appeal.

13. In that view of the matter as the instant appeal is devoid of any substantial question of law, the same stands dismissed.

14. Registry is directed to prepare the decree accordingly.

15. Return the LCR.

JUDGE

Comparing Assistant