

GAHC010004182021



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

Case No. : RSA/1/2021

BHULANATH MISHRA AND ANR.
S/O- LATE SABARDEO MISHRA, R/O- SONARI TOWN, WARD NO. 3, P.O.
AND P.S. SONARI, DIST.- SIVSAGAR, ASSAM, PIN- 795690.

2: SHIPRA DEVI MISHRA @ SMTI KRISHNA MISHRA
W/O- SRI BHULANATH MISHRA
R/O- SONARI TOWN
WARD NO. 3
P.O. AND P.S. SONARI
DIST.- SIVSAGAR
ASSAM
PIN- 795690

VERSUS

KRIPANATH MISHRA
S/O- LATE SABAEDeo MISHRA, R/O- SONARI TOWN, WARD NO. 3, P.O.
AND P.S. SONARI, DIST.- SIVSAGAR, ASSAM, PIN- 785690.

Advocate for the Petitioner : MR J U AHMED

Advocate for the Respondent : MR. S P CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17-10-2023

Heard Mr. J.U. Ahmed, learned counsel for the appellants. None appears on

call for the respondents.

2. Aggrieved by the First Appellate judgment and decree dated 24.01.2019 passed by the learned Civil Judge, Sivasagar in TA 6/2017 by which the judgment and decree dated 09.03.2017 passed by the learned Munsif, Charaideo, Sonari in TS 4/2009, decreeing the suit was affirmed.

3. The appellants are the defendants in the suit.

4. In brief, the case of the respondents-plaintiffs is that he is the owner of the suit land described in the plaint by virtue of registered sale deed dated 03.01.1997 over which a house was constructed in the year 1998 and since then he and his family were residing in it. It was projected that in the month of September 2001, the respondent had to go to Delhi and accordingly he requested his brother, the appellant no.1 who was residing in the rented house at that time to look after his mother. Taking advantage of the absence of the respondents, the appellants had trespassed the suit premises and started to reside there from the month of October, 2001. The respondents returned from Delhi in the month of November, 2001 and as the appellants did not vacate the suit premises, the suit was filed for eviction after serving advocate's notice dated 23.04.2008.

5. The appellants by filing written statement denied the allegations and it was stated that the suit land was purchased by the deceased father in the year 1993 by executing an agreement with the real owner and the house was

constructed by their father. It was stated that the deceased father had allowed the respondents and the appellant no.1 to reside in the said house but in the year 1996, the respondent had left for Delhi with his family and that the appellant no.1 was paying municipal taxes in the name of Radheshyam Mishra (respondent) since 1996. It was claimed that as the appellants had been staying in the suit premises for last 12 years, their possession against the real owner and accordingly, prayer was made to dismiss the plaint. The following issues were framed for trial:

- i) Whether there is cause of action for the suit?*
- ii) Whether the suit is maintainable in law as well as fact?*
- iii) Whether the suit is barred by the law of limitation?*
- iv) Whether the plaintiff has right, title and interest over the suit property?*
- v) Whether plaintiff is bonafide purchaser of the suit land vide Registered Sale Deed dated 3.1.97?*
- vi) Whether the plaintiff is entitled to a decree for eviction of the defendants on the strength of the registered sale deed dated 3.1.97 and for Khas possession of the suit premises?*
- vii) Whether the registered sale deed dated 3.1.97 is enforceable in law?*
- viii) To what other relief or reliefs the plaintiff is entitled to?*

6. The plaintiff adduced evidence of two witnesses and adduced the following evidence as exhibits, viz., Registered sale deed dated 3.1.1997 (Ext.1), Revenue receipts for both the pattas (Ext.2, 3, 4 and 5), Cash memo dated 14/2/1998 (Ext.6), Certified copy registered sale deed of Radheshyam Mishra (Ext.7), Copy of legal notice (Ext.8), Postal receipt (Ext.9), AD card of postal department (Ext.10). The defendant side adduced evidence of two witnesses and has adduced the following documents as exhibits, viz., Electricity bills [Ext.A(1) to A(101)], Municipal Tax bills [Ext.B(102) to B(108)], Extract copy of

Assessment Register (Ext.C), Signatures [Ext.C(1), (9), (12)], Holding tax revenue receipt [Ext.C(3)], Urban Property Tax receipt [Ext.(5)], Signatures [Ext.C(2), (6), (8), (11)], Bill register [Ext.C(7)], Urban Property Tax Bill Register [Ext.C(10)].

7. The issue nos.1, 2 and 3 were decided in favour of the respondents by holding that there was cause of action for the suit and the suit was maintainable and that the suit was not barred by limitation. In respect of issue no.4, the learned trial Court relied on Ext.1, being the Registered sale deed dated 03.01.1997 as well as the admission made by the appellants that the respondents was the real owner, and it was held that the ownership of the respondent over the suit land on the basis of sale deed was established. Therefore, it was held that the respondent was having ownership over the suit land and was having right, title and interest over the suit land.

8. In respect of issue no.5, it was held that defence was taken that the suit land was purchased by the father of the appellants, but as no relief was sought for against the real owner, though they had come to know that the suit land was sold to the respondents. Hence, it was held that the respondents had waived their right by remaining silent even after knowing that their right over the suit land was at stake. Accordingly, it was held that the appellants did not have lawful occupation over the suit property and the plea of having rightful possession over the suit property was not found to be sustainable. Hence, it was held that the respondents was the bonafide purchaser of the suit property. In respect of issue no.6, as the respondents could establish that he had purchased the suit land from the real owner, the learned trial Court held that the

respondent was entitled to a decree for eviction of the appellants.

9. Accordingly, the sale deed dated 03.01.1997 was found to be valid and that the respondents was found to be entitled to *khas* possession of the suit land by evicting the appellants therefrom. The suit was decreed with cost.

10. The appellants had filed an appeal before the learned First Appellate Court, which was registered as TA no.6/2017. The learned First Appellate Court had formulated a point of determination as to whether the judgment and decree passed by the learned trial Court is justified or needs an interference in the appeal.

11. With a brief discussion of the pleadings and evidence all the issues as decided by the learned trial Court was affirmed. It was held that the learned First Appellate Court had examined the materials available on record had found that the appellants were taking two pleas, firstly, that the appellants were claiming that their father had purchased the suit land and allowed the appellant no.1 to live in the suit land and secondly, that the appellant no.1 was claiming that he had acquired adverse title against the owner. The said pleas were not found trustworthy as it was not pleaded by the appellants about the date on which the appellant no.1 had come into possession of the suit premises. The learned First Appellate Court also held that the appellant no.1 had not deposed in his evidence that he had possessed the suit land open and undisturbed or adverse against the respondents. Accordingly, it was held that the respondents was able to prove his right, title and interest over the suit land and being the purchaser of the suit land it was held that the respondents had a right to evict

the appellant. Accordingly, the appeal was dismissed.

12. The learned counsel for the appellant had submitted that the judgment and decree passed by the learned Courts below were perverse and bad in law and that the evidence of the witnesses were misinterpreted both in facts and in law. It was also submitted that both the Courts had erred in appreciating facts and law by holding that they had failed establish their right of adverse possession. It was also submitted that a specific plea was taken that the suit was bad for non-joinder of necessary party, as their elder brother was not impleaded, without whom the suit could not have been adjudicated.

13. In respect of first point raised by the learned counsel for the appellant, the Court has examined the materials available on record. The learned counsel for the appellant could not demonstrate as to which part of the finding the learned Courts below were perverse on any ground including misinterpretation or misreading of the evidence or pleading on record. It could not be demonstrated that the learned First Appellate Court had arrived at an incorrect finding that there was absence of pleading about the date on which the alleged possession of the appellants over the suit land had become hostile and adverse to the interest of the respondent. Although it was strenuously submitted that the appellants have been paying electricity bills, municipal tax bills, urban tax etc., but in the considered opinion of the Court, mere payment of electricity bills, municipal tax bills, etc. by the appellants in the name of their elder brother Radheshyam Mishra, would not confer title to the appellants over the suit land on account of adverse position. It could not be demonstrated that the possession of the appellants over the suit land was open, hostile and adverse to

the interest of the respondents. Therefore, the second and third point urged by the learned counsel for the appellants is found to be devoid of any force.

14. In respect of submission made by the learned counsel for the appellant that the suit is bad for non-joinder of necessary parties, it is noted that there is no foundational pleading with regard to person in whose absence suit cannot be adjudicated. Moreover, as the appellants had taken a plea of adverse possession, the said plea was only against the respondent and none else. Under such circumstances, the Court does not find that the trial of the suit was bad for non-joinder of necessary parties. Therefore, the Court does not find that any substantial question of law arises for a decision in this appeal, necessitating in admission of the appeal.

15. Therefore, the Court does not find any substantial question of law involved in the present appeal and the appeal stands dismissed at the "admission stage" without issuance of notice on the respondents.

16. There shall be no order as to cost.

17. Let a decree be prepared.

18. Let a copy of this order be sent to the concerned trial Court and Appellate Court for keeping it as a part of record.

JUDGE

Comparing Assistant