

GAHC010004362010



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

Case No. : RSA/32/2010

KUNJALAL DAS and 2 ORS
S/O LATE RAMESH CH. DAS.

2: HEMEN DAS

S/O LATE RAMESH CH. DAS.

3: RANJU KUMAR DAS @ RANJAN DAS

S/O LATE RAMESH CH. DAS
ALL RESIDENTS OF VILL. BRINDABANHATI
BARPETA
IN THE DIST. OF BARPETA
WITHIN THE STATE OF ASSAM

VERSUS

SUKHADA DAS and 15 ORS
W/O LATE SURENDRA NATH DAS.

2:KAMAL CH. DAS

S/O LATE SURENDRA NATH DAS.

3:ANIL KUMAR DAS

S/O LATE SURENDRA NATH DAS.

4:SMTI LEELA DAS

W/O LATE DHARMA DAS

5:SMTI MONIKA DAS

W/O LATE GUNADHAR DAS.

6:SMTI MALATI DAS

W/O LATE GIRISH CH. DAS.

7:ALAKESH DAS

SON OF THE GRAND SON OF LATE PURNA RAM DAS

8:NARAYAN DAS

S/O GRAND SON OF LATE PURNA RAM DAS.

9:SMTI KAMAKHA BALA DAS

W/O LATE RAM CHARAN DAS.

10:BIRENDRA NATH DAS

S/O LATE RAM CHARAN DAS.

11:AKSHAY KR. DAS

S/O LATE RAM CHARAN DAS.

12:KHANINDRA NATH DAS

S/O LATE RAM CHARAN DAS.

13:SMTI ANIMA BHARALI

D/O LATE RAM CHARAN DAS.

14:SMTI GANGA BALA DAS

D/O LATE RAM CHARAN DAS.

15:SMTI SUKUM DAS

D/O LATE RAM CHARAN DAS.

16:SMTI GAYA BALA DAS

D/O LATE RAM CHARAN DAS
ALL R/O VILL. BRINDABANHATI
BARPETA

IN THE DIST. OF BARPETA
WITHIN THE STATE OF ASSAM

Advocate for the Appellants : MR.D DAS

Advocate for the Respondent : MS.T GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (CAV)

Date : 10-01-2023

Heard Mr. K. Sarma, the learned counsel appearing for the appellants and Mr. P.K.Kalita, the learned senior counsel assisted by Ms. T. Goswami, the learned counsel appearing on behalf of the respondents.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908. This Court vide order dated 5/3/2010 had formulated three substantial questions of law which are as follows:-

1. Whether the learned First Appellate Court committed any illegality by reversing the impugned judgment and decree by holding that the plaintiff/respondents had got right, title and interest over the suit property ?
2. Whether the learned First Appellate Court committed any illegality by questioning the legality and validity of the mutation order granted in favour of the defendant in view of the bar imposed by Section 154 (1) (c) of the Assam Land and Revenue Regulation, 1886 ?
3. Whether the learned First Appellate Court committed any error in reversing the findings of the learned Trial Judge regarding local inspection conducted by him ?

3. This Court had also on 23/6/2022 framed an additional substantial question of law, which is as follows :-

Whether the plaintiff who are admittedly the tenants of Shyam Ray Bigrha can maintain a suit for right, title and interest in respect to the suit land ?

4. For ascertaining as to whether the aforementioned substantial questions of law are involved in the instant appeal, this court would like to take note of the relevant facts which led to the filing of the instant appeal.

5. It has been stated in the plaint that the followers of "Ek-Saran Hari Ram Dharma" represented by the deity called " Shyam Ray Bigrha" is a landlord of landed properties covering almost half of the municipal area of Barpeta town and the land has been settled by the Government under Nisfi-Kiraj Patta No. 2. These landed properties are being possessed and enjoyed by "Bhakatas" who are called rayats and the rayats have permanent heritable and transferable right over their respective plot of lands. During the settlement operation in 1958-65 the Government divided the land under N.K. Patta No. 2 into two different dags and made settlement of the land in favour of the rayats. The suit in question relates to a plot of land measuring 10 lechas under N.K. Patta No. 2 and covered by Revenue Dag No.4532. It has been mentioned that in the settlement operation of 1958-65, the government settled this 10 lechas of land and thereby conferred tenancy title upon –(a) Anandi Kalita, (b) Purnaram, (c) Kembol Ram

(d) Chandra Kanta, (e) Jagannath, (f) Ramanoi, (g} Prankrishna, (h)Jagannath, (i) Nibaran Choudhury, (j) Hemrath Dutta (k) Jibon Chandra, (l) Chandra Mohan Gayan, (m) Jadab Chandra, (n) Umakanta Bharali, (o) Ranadeb Das, (p) Ramcharan Das.

6. It has further mentioned that all the rayats named above had expired except one Ranadeb Das. The plaintiff Nos. 1 to 5 are the legal heirs of Rayat Late Ananda Kalita and the plaintiff No. 6 to 8 are the legal heirs of Late Purnaram Das and the plaintiffs 9 to 16 are the legal heirs of rayat Late Ramcharan Das. It was mentioned that the proforma defendants are the legal heirs of other rayats. In the revenue records the names of as many as 16 persons were recorded as tenants. It is the case of the plaintiff that neither the defendants nor their predecessors in interest were recorded tenants of the suit land at any point of time and had no manner of title over the suit land but suddenly the defendants started earth filling upon the suit land on 19/11/2005 for which the plaintiff had lodged an FIR at Barpeta P.S. and due to intervention of the police the defendants could not succeed. However, subsequently on 5/12/2005 the defendants again started filling up the suit land and made an attempt to cover the suit land by a bamboo fencing. Initially at the intervention of the local police the defendants stopped from doing anything upon the suit land, but subsequently as the defendants were taking law in their own hands, a

suit was filed by the plaintiffs seeking inter alia for a decree declaring that the plaintiffs have right, title and interest over the suit land as rayats of "Shyam Ray Bigraha", and that the defendants had no title; for confirmation of possession of the plaintiffs over the said land; for permanent injunction against the defendants to restrain them from entering into the suit land, from dispossessing the plaintiffs from the suit land as well for causing disturbance and inconvenience in any manner whatsoever in the peaceful possession and enjoyment of the suit land by the plaintiffs ; for cost of the suit and for other reliefs. It has also been mentioned in paragraph No. 4 of the plaint that the defendants claimed title over the suit land on the basis of obtaining mutation in the revenue records.

7. The principal defendants jointly filed a written statement. In the said written statement various preliminary objections were taken and the statement made by the plaintiffs were denied. In paragraph No. 7 of the said written statement the defendants admitted that the suit land measuring 10 lechas covered by N.K. Patta No. 2 stood in the name of "Shyam Ray Bigraha' the deity of Baishnava cult propagated by Shri Sankar Deva. It was also admitted that various lands in the name of the Bigraha were in possession of the Bhakats who did not pay any revenue for possession of the land like the land belonging to other religious cult. It has been mentioned that the Bhakats gets khatian over

the land in their possession for which they only have to offer "Khem Khatani" to the Barpeta Satra commonly known as the Barpeta Kirtan Ghar. It has been mentioned that the defendants since time immemorial are in possession of the land covered by Dag No.3515, 3514 as well as the suit land covered by Dag No. 4532 through which they reach the public road situated on the west of the said land. It was mentioned that Dag No. 4532 is situated on the west of Dag No.3515. Further on the south of Dag No. 4532 is Dag No. 4533 and on the north of Dag No.4532 there are three Dags i.e Dag Nos. 4531, 3502 and 4534. It has also been mentioned that Dag No. 3503 is situated on the north of Dag No. 3515 and Dag No. 3514 which belongs to the plaintiffs. Further to that, it has been mentioned that on the north of Dag No.4532 the Sangeet Sevak Sangha is in occupation of Dag No. 4531 which have been rightly described in the Schedule of the plaint. It has been mentioned that there is a common boundary wall in between Sangeet Sevak Sangha and the main defendants but so far as the portion between Dag No. 4534, 3502 and 4532 are concerned, the boundary wall is yet to be constructed as the said portion is very low lying and requires earth filling. It has been mentioned that the plaintiffs' land covered by Dag No.4534 is also low lying and situated at the back side of their residence.

8. Further to that, it has been stated that the defendants are filling the low lying portion of the earth filling since last several years and in continuation of

their work, they started earth filling as stated in the plaint. But the plaintiffs in order to create disturbance and obstruction in their pious activities submitted a report in the Barpeta Police Station alleging some false statements. In the said paragraph, it has also been mentioned that the suit land covered by Dag No.4532 was in possession of the father of the defendants. The father of the defendants submitted Mutation Case No. 383/68-69 before the then SDC, Barpeta Circle and by order dated 22/10/1969 the mutation of the entire 10 lechas of land covered by Dag No. 4532 was granted in favour of the father of defendants. It is under such circumstances, the defendants claimed that on the basis of inheritance from their father they are in exclusive possession of the said land in a compact plot including the land covered by Dag No. 3515. The defendants therefore had claimed that they have right, title and interest and exclusive possession over the suit land.

9. On the basis of the said pleadings, four issues were framed which are as under :

1. Whether there is a cause of action for the suit ?
2. Whether the plaintiffs have right, title, interest and possession over the suit land ?
3. Whether the plaintiffs are entitled for a decree as prayed for in the suit ?
4. To what other reliefs the parties are entitled to ?

10. On behalf of the plaintiffs there were 5 witnesses who adduced evidence and the plaintiffs exhibited the certified copy of the draft Chitha for the Dag No. 4532 prepared during the settlement operation in 1958 as Exhibit -1 as well as the certified copy of the Chitha for Dag No. 4532 as Exhibit- 2. The defendants on the other hand adduced the evidence of 2 witnesses and exhibited the certified copy of the Chitha of Dag No. 4532, as Exhibit "Ka"; certified copy of the rayati khatian as Exhibit "Kha" and the trace map of the suit dag as Exhibit-"Gha".

11. After completion of the said evidence, the learned Trial court also carried out a local inspection on 14/8/2006. In terms with the said inspection, a Memorandum was prepared by the Trial Court. In the said Memorandum, the Trial Court observed that the suit land is bounded on the --

North by --- Sangeet Sevak Sangha, legal heirs of late Ram Charan Das and late Purna Ram Das;

South -- Dag No.4533;

East- Defendants ;

West --Public road.

12. It was further recorded that the suit land is attached with/sharing boundary wall with Sangeet Sevak Sangha and half of it is a ditch without wall. It was recorded that the suit land is in possession of the defendants except the

ditch. It was also observed that it could not be said that the plaintiffs were in possession of the ditch land which is a part of the suit land. It has also been observed that in the north east corner of the suit land there is a water tank belonging to the defendants.

13. The Trial Court vide the judgment and decree dated 18/9/2006 dismissed the suit. In doing so, the Trial Court while deciding the issue no. 2 came to a finding that in terms with Ext. "Ka" and Ext. "Kha", the name of the defendant's father, Ramesh Chandra Das has been recorded/mutated which have been admitted by the plaintiffs. The Trial court therefore came to the finding that as the plaintiffs did not challenge the said mutation of the defendants' father as fraud and collusive in the revenue records the same mutation was deemed to be correct. On the question of possession, the Trial Court relying upon the inspection so carried out under Order XVIII Rule 18, presumed that the plaintiffs failed to prove their case to the extent of right, title, interest and possession on the suit land and accordingly therefore decided the issue No. 2 against the plaintiffs. The remaining issues being dependent on issue No. 2 were also decided against the plaintiffs.

14. Being aggrieved and dissatisfied, the plaintiffs preferred an appeal before the Court of the Civil Judge Barpeta which was registered and numbered as Title

Appeal No. 45/2006. The First Appellate Court after taking into account the various grounds of objections taken in the Memo of Appeal framed a point of determination – “whether the impugned judgment and decree passed by the Trial Court are tenable in the eye of law; and whether the appellant got made out a case to justify interference with the same or not ?” The First Appellate in deciding the said point for determination considered the decision of the trial Court as regards the issue Nos. 2, 3 and 4.

15. The First Appellate Court after taking into account the evidence on record observed that the Trial Court had erred in deciding the issue nos. 2, 3 and 4. Accordingly, the appeal was allowed thereby setting aside the judgment and decree passed by the Trial Court. The suit of the plaintiffs was decreed declaring the plaintiffs’ possessory right, title and interest over the suit land as rayats of Shyam Ray Bigrha, confirming possession of the plaintiffs thereon as well for permanent injunction granted against the defendants to restrain them from entering into the suit land, from dispossessing the plaintiffs therefrom as well as from causing disturbance and inconvenience in the peaceful possession and enjoyment of the suit land by the plaintiffs.

16. Being aggrieved and dissatisfied, the principal defendants had preferred the instant appeal under Section 100 of the Code of Civil Procedure. As already

noted herein above, this Court vide orders dated 5/3/2010 and 23/6/2022 formulated certain substantial questions of law in terms with Section 100(4) of the Code of Civil Procedure.

17. In the backdrop of the above, let this Court take into consideration as to whether the substantial questions of law so formulated are substantial questions of law involved in the instant appeal.

18. This Court have heard the learned counsels for the Appellants as well as the respondents at length and have also perused the materials on record including the Lower Court records.

19. As regards the first substantial question of law so formulated, this Court is of the opinion, that the same under no circumstances can be said to be a substantial question of law involved in the instant appeal inasmuch as "a substantial question of law" not only means a substantial question of law of general importance but also substantial question of law arising in a case as between the parties. It is well settled that in the context of Section 100 of the CPC, any question of law which affects a final decision in a case is a substantial question of law between the parties. It is said that the substantial question of law arises when a question of law which is not finally settled arises for consideration in a case. This statement has to be understood in the correct

perspective inasmuch as where there is a clear enunciation of law and the lower court have followed or rightly applied, obviously the case will not be considered as giving rise to a substantial question of law even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court or by the Supreme Court, but the Lower Court had ignored or misinterpreted or misapplied the same and correct application of the law as declared or enunciated by this Court or by the Supreme Court would have led to a different decision, the appeal then can be said to involve a substantial question of law as between the parties. It is also well settled that where there is an enunciation of law by this Court or by the Supreme Court and the same has been followed by the Lower Court and if the appellant is able to persuade this Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two view points, it can be said that a substantial question of law arises for consideration.

20. In the backdrop of the above, the question as to whether the learned First Appellate Court committed illegality in reversing the impugned judgment and decree by holding that the plaintiffs/respondents have got right, title and interest over the suit property under no circumstances can be a substantial question of law. It may at best be a ground of objection in an appeal but

certainly not a substantial question of law.

21. The second substantial question of law is as to whether the learned First Appellate court committed an illegality by questioning the legality and validity of the mutation order granted in favour of the defendants in view of the bar imposed under by Section 154(1) (c) of the Assam Land And Revenue Regulation, 1886 (for short 'the Regulation of 1886'). For understanding as to whether the said substantial question of law is involved in the instant appeal or for that matter would change the course of the decision, it is relevant to take note of what is Section 154 (1) (c) of the Regulation of 1886.

22. Section 154 of the Regulation of 1886 stipulates certain matters which are exempted from the cognizance of the Civil Court. Amongst the many as stipulated in Clauses (a) to (n) of Sub Section (1) of Section 154, Clause (c) stipulates that in respect to matters pertaining to the formation of record of rights or the preparation, signing or alteration of the documents contained therein, the same is outside the scope of the jurisdiction to be exercised by the Civil Court. In the instant case, admittedly there is an order passed by the SDC dated 22/10/1969 whereby the mutation of the entire 10 lechas of land covered by Dag No. 4532 was granted in favour of the father of the defendants.

23. Now the question arises as to what is the effect of the said order. It is well

settled that an entry in the revenue records does not confer title on a person whose name appears in the record of rights. It is also well settled that entries in the revenue records and the jamabandi have only fiscal purpose i.e payment of revenue and no ownership is conferred on the basis of such entries. As held by the Supreme Court in the case of **Jathu Ram Vs. Hakam Singh** reported in **(1993) 4 SCC 403**, so far as title on property is concerned it can only be decided by the competent Civil Court. The effect of the above would be that the order dated 22/10/1969 passed by the SDC, Barpeta Circle thereby granting mutation of 10 lechas of land covered by Dag No. 4532 in favour of the predecessors in interest of the defendants would not confer any title upon the predecessors in interest of the defendants or the defendants. Under such circumstances the second substantial question of law so formulated by this Court in the opinion of this Court is not a substantial question of law involved in the second appeal in as much as the bar to Section 154 (1) (c) of the Regulation of 1886 would under no circumstances effect on the decision rendered in the instant case. Further to that, it is no longer res integra that Section 154(1) (c) of the Regulation of 1886 does not bar the suit for declaration of title and injunction. Under such circumstances, this court is of the opinion that the second substantial so formulated is not a substantial question of law involved in the instant appeal.

24. The third substantial question of law so formulated vide the order dated 5/3/2010 pertains as to whether the First Appellate Court committed any error in reversing the finding of the learned Trial Judge regarding the local inspection conducted by him. In order to appreciate the said substantial question of law so formulated, it is relevant to take note of as to what is the local inspection so carried out. In the anterior of the judgment, this court has referred to the local inspection so carried out. The same was done in terms with order XVIII Rule 18 of the Code. Now the question which arises as to what is the scope and ambit of the inspection carried out under Order XVIII Rule 18 of the Code. A plain reading of the said Rule would indicate that such a Memorandum is only to be a part of the record in the suit and the legislature did not say that it has to be treated as evidence in the suit. At this stage, if this Court refers to the provisions of Order XXVI Rule 10(2), 12(2), it would be seen that the report of the Commissioner shall be evidence in the suit. Therefore, it is obvious that such Memorandum on the notes of inspection based on the observations of the Judge cannot be treated as evidence in the suit or proceedings and cannot be at par with any evidence because in that case the Judge himself would be a witness and the party against whom the Memorandum or the notes go would not have the opportunity of examining the Judge. In other words, in using the notes as evidence, the Judge would render himself as a witness in the case

which cannot be countenanced under any system of law. The question therefore is what is the purpose of empowering the Court to inspect the site. It is now well settled that this power has been conferred upon or with a view to enable it the Judge to understand and appreciate the evidence on record. Just for example, in a given case the Judge may not be in a position to properly understand and appreciate the evidence on record. There may be certain cases where the Judge may not be in a position to properly understand and appreciate the oral and documentary evidence on record without himself seeing the situation on the spot. It is to this limited extent that the Court is permitted to see the spot and draw its notes. This power so conferred upon the Court therefore, cannot extend to enable the court to rely solely or wholly on its observations disregarding the evidence which is on record.

25. This Court in the case of **President, Bharat Sevashram Sangha Vs. Secretary to the Government of Meghalaya and Ors.** reported in (2013) **3 GLR 586** had the occasion to deal with the provisions of Order XVIII Rule 18 and observed the very purpose of this particular provision is to help the Court to understand the evidence brought on record by the witness of the parties before the Court and upto that limited extent the Court can conduct inspection of any property or thing connected with the property. Paragraphs 16, 17 and 18 being relevant are quoted herein below : -

“16. In order to appreciate the arguments, advanced by the learned counsel for the parties to know which side of the story is true. I find it necessary to appreciate the provisions of law in the light of decision, referred to by the parties before this court. For ready reference, the provision of Order 18 Rule 18 of the CPC is reproduced below :-

“18. Power of court to inspect – The Court may at any stage of a suit inspect any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.”

17. On going through the aforesaid provision of law, I have found that the very purpose of the order 18 Rule 18 of the CPC is to help the Court to understand well the evidence brought on record by the witnesses of the party (ies) before the Court and up to that limited extent, the court can conduct inspection of any property or thing connected with the suit. Therefore, at any stage of the suit, in my considered opinion, means anytime after putting in evidence on record by the parties of anyone of them.

18. Here it needs to be remembered that if a Judge is allowed to conduct inspection of such property/thing even before recording the evidence then there is every possibility of such a Judge becoming witness to any of the parties to the proceeding before him. But such an eventuality has strongly been deprecated by the provisions of law which makes such inspection possible. In that view of the matter, a Judge cannot be allowed to make inspection of the suit land even before recording of evidence.”

26. In the backdrop of the above, let this Court take into consideration the judgment of the Trial Court and more particularly paragraph No. 12. Reference has been made in the said paragraph to the effect that from the evidence of

PW-2 and PW-3 there is admission that the defendants cultivated some vegetables on the suit land and it is under such circumstances, to clarify the same, the Trial Court inspected the suit land. However, in the evidence of PW-2 and PW-3 the said witness have categorically stated in their evidence-in-chief that the plaintiffs were possessing their suit land. It does not appear from the said evidence that in their cross examination, the PW-2 and PW-3 had admitted that the defendants were cultivating vegetables on the suit land. Though the PW-3 in his cross-examination had stated that in a small area the defendants were cultivating vegetables. It is clear that there is no mention whatsoever that the said cultivation by the defendants is on the suit land. In the Memorandum so drawn by up by the trial court, he has observed the following:-

“the suit land attached with/sharing boundary wall with Sangeet Sevak Sangha and ½ of it is ditch without wall. The suit land is in possession of the defendants except the ditch. However, it also cannot be said that the plaintiffs are in possession of the ditch land which is a part of the suit land”

27. The learned First Appellate Court interfered with the said finding of the learned Trial Court on the ground that the Trial Court have decided the issue of possession solely on the basis of such personal local inspection substituting the evidence led by the parties. It was further observed by the First Appellate Court that the Trial Court stated in its finding that by evaluating/looking from the 4 corners of the ditch land which is a part of the suit land falls undoubtedly within

the possession of the defendants and the Trial Court presumed that the plaintiffs failed to prove its case to the extent of right, title, interest and possession over the suit land. It was observed by the First Appellate Court that the Trial Court had simply presumed the possession in favour of the defendants on the basis of his local inspection without appreciating the evidence on record at all. The First Appellate Court also took into consideration that the plaintiffs have been able to prove their right, title and interest over the suit land and therefore, unless the defendants could show a better title to remain in possession of the defendants, the possession of the defendants would be taken as constructive possession of the plaintiff and as such it interfered with the findings of the Trial Court on the ground that the said finding was palpably erroneous and grossly perverse.

28. The learned counsel for the appellant however have not been able to show any perversity in the findings of the First Appellate Court by showing that the First Appellate Court had taken or have not taken any particular material fact which would otherwise have changed the course of the decision. Be that as it may, this Court would also like to take note of the judgment of the Supreme Court in the case of **Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De Sequeria** reported in **(2012) 5 SCC 370** and would like to refer to paragraphs 61 to 67 which are quoted herein below. :-

“61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63. Possession is important when there are no title documents and other relevant records before the court, but, once the documents and records of title come before the court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.

65. A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.”

29. From a perusal of the above quoted paragraphs, it would transpire that in an action for recovery of possession of immovable property upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have

been under and in subordination to the legal title and it will be for the person resisting the claim for recovery of possession or claiming a right to continue in possession to establish that he has such right. Applying the said ratio in the instant case, once the right, title and interest of the plaintiffs have been held to be established, the defendants' possession would be a possession as a permissive occupier subservient to the title of the plaintiffs. Consequently therefore the third substantial question of law which relates to an error in reversing the first finding of the learned Trial Judge regarding local inspection being conducted by him in the opinion of this Court would not change the course of the decision rendered in the instant case by the First Appellate Court and consequently the same cannot be said to be a substantial question of law involved in the instant appeal.

30. As regards the additional substantial question of law so framed as to the whether the plaintiffs who admittedly are tenants of Shyam Roy Bigrha can maintain a suit for right, title and interest in respect to the suit land. It is relevant to take note of that 16 rayats were settled as is evident from Ext-1 and 2 in the settlement operation of 1958-65. The plaintiffs and the Proforma Defendants' are the successors interest of the said rayats. Accordingly, they have a right to claim a decree as regards the right, title and interest over the suit land as rayats of Shyam Roy Bigrha and that the defendants did not have

any title. Under such circumstances, the additional substantial question of law so formulated on 23/3/2022 cannot be said to be a substantial question of law involved in the instant appeal.

31. In view of the above observations and directions, the instant appeal stands dismissed.

32. Send back the LCR.

JUDGE

Comparing Assistant