

GAHC010004792009



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

Case No. : RSA/76/2009

SHRI SWAPAN DEY and ORS.

2: SHRI SIBU DEY @ SHRI RUPA DEY
ALL ARE SONS OF LT. DHIRENDRA KR. DEY

3: NIBHA RANI DEY @ NEHAR

W/O LT. DHIRENDRA KR. DEY R/O VILL. CHERAGIBAZAR
P.O. CHERAGI
P.S. RATABARI
DIST. KARIMGANJ
ASSAM.

4: KRISHNA PAUL

W/O SRI MATI PAUL R/O VILL. and P.O. AIRANGMARA
P.S. SILCHAR
DIST. CACHAR
ASSAM.

5: KALAPANA DHAR

W/O SRI SEKHAR DHAR
R/O VILL. RAMKRISHNANAGAR BAZAR
P.O. and P.S. RAMKRISHNANAGAR
DIST. KARIMGANJ
ASSAM.

6: JAYA DEB

W/O SRI ASHOK DEB R/O VILL. GIRIGHAT BAZAR
P.O. GIRIGHAT
DIST. CACHAR

ASSAM.

7: SHRI PANNALAL DEY

8: SHRI BABUL DEY

9: SHRI SANKAR LAL DEY

ALL ARE SONS IOF LT. DHIRENDRA KUMAR DEY
RESIDENTS OF VILL. GHERAGI BAZAR
P.S. RFATABARI
P.O. CHERAGI
DIST. KARIMGANJ
ASSAM

VERSUS

SHRI SRINATH CHANDRA DEB.
S/O SHRI SRISH CHANDRA DEB R/O VILL. CHERAGI, P.O. CHERAGI, P.S.
RATABARI, DIST. KARIMGANJ, ASSAM.

Advocate for the Petitioner : MR.D C MAHANTA

Advocate for the Respondent : MR. B C DAS

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellants : Mr. P. K. Roychoudhury, Advocate.

For the Respondent : Mr. B. C. Das, Senior Advocate.

Date of Hearing : 18.05.2023

Date of Judgment : 18.05.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. P. K. Roychoudhury, learned counsel for the appellants. Also heard Mr. B. C. Das, learned Senior Counsel assisted by Ms. I. Das, learned counsel for the respondent.
2. The present appeal is preferred against the Judgment and Decree dated 25.08.2008 passed by the learned Civil Judge, Karimganj in Title Appeal No. 61/2005 affirming the Judgment and Decree dated 17.09.2005 passed by the learned Civil Judge (Jr. Division) No. 2, Karimganj in Title Suit No. 122/2001 decreeing the suit of the plaintiff/respondent.

3. The case of the plaintiff:-

The plaintiff pleaded the following facts in his plaint.

- I. The plaintiff had become owner of Schedule-I land by purchase from the proforma defendant No. 5 by a Registered Deed No. 1291 dated 27.11.1987.
- II. It is the claim of the plaintiff that prior to execution of the sale deed on 30.04.1987 plaintiff entered into an agreement with the proforma defendant No. 5 for sale of the aforesaid suit land, however, when the proforma defendant No. 5 refused to execute such sale deed, he had to file a suit for specific performance of contract which was registered as Title Suit No. 34/1987. The said suit was compromised between the plaintiff and the proforma defendant No. 5 and accordingly the sale deed was executed.
- III. Regarding Schedule-II land, it is the case of the plaintiff that he has become owner of the Schedule-II land by virtue of a registered

deed of exchange being deed No. 905 dated 07.07.1988 entered between the plaintiff and the principal defendants.

- IV. It is the further case of the plaintiff that the principal defendants were trying to dispossess him from the said land, accordingly, proceeding under Section 145 of the Code of Criminal Procedure, 1973 was initiated before the Court of learned A.D.M., Karimganj vide Misc. Case No. 329(M)/1999, the same was ordered in favour of the plaintiff, however, in a revision petition, the same was reversed. Accordingly, the plaintiff filed the suit for declaration of his right, title and interest over the Schedule-I and II land and for confirmation of his possession and permanent injunction.

4. The case of the principal defendants:-

The principal defendants jointly filed a written statement and took the following stands:-

- I. The plaintiff has not acquired any right, title and interest over the suit land either by registered sale deed executed by the proforma defendant No. 5 or by the purported registered deed of exchange executed by the principal defendant.
- II. It was the case of the principal defendants that though the registered deed of exchange dated 07.07.1988 is shown to be an Exchange Deed, in fact the same cannot be treated as exchange deed rather it is a deed of compromise and therefore, on the basis of such registered deed of exchange, the plaintiff cannot acquire any right, title and interest over the Schedule-II land.

- III. It was the case of the principal defendants that the plaintiff is basically a litigant person and after purchase of his land from the proforma defendant No. 5, he is trying to encroach the land of the principal defendants which is contiguous.
- IV. It was also pleaded by the principal defendants that they never tried to disposes or disturb the possession of the plaintiff over the suit land rather it is the plaintiff who is trying to encroach the land of the principal defendants taking advantage of the registered deed of exchange.

5. The Issues:-

The learned trial Court below framed following three issues:-

- I. Is there any cause of action for the suit?
- II. Whether the plaintiff has right, title interest and possession over the suit land?
- III. Whether the plaintiff is entitled to reliefs as prayed for?

6. The plaintiff examined two witnesses and exhibited 5 documents including the certified copy of the registered sale deed as well as registered deed of exchange. The principal defendants examined two witnesses and also exhibited 6 documents including the deed of sale, by which the principal defendants purchased the land from their vendors and the Exhibit-G i.e. registered deed of exchange. Same was also exhibited by the plaintiff as Exhibit-2.

7. Determination of the learned Trial Court:-

The learned trial Court below came to the following findings:-

- I. The principal defendants in their written statement states that proforma defendant No. 5 by Exhibit-I, sold the Schedule-I land to the plaintiff.
- II. The principal defendant No. 1 reiterated such fact in his examination-in-chief on affidavit and during cross-examination stated that they have no claim over the land under Exhibit-I.
- III. The plaintiff exhibited the registered sale deed i.e. Exhibit-1. On the basis of such Exhibit-I, the learned trial Court concluded that the Schedule-I land was purchased by the plaintiff from the proforma defendant No. 5 through Exhibit-1 which consist of 6 Bighas.
- IV. Exhibit-G and Exhibit-2 are the same document which is named as registered deed of exchange.
- V. The plaintiff contends to be owner of the land described in Exhibit-2/Exhibit-G by virtue of exchange, however, the principal defendants denies the same to be registered deed of exchange and therefore, claims that the plaintiff cannot become owner by virtue of a compromise deed.
- VI. The learned Court after appreciation and perusal of Exhibit-2/Exhibit-G came to a conclusion that the plaintiff vide the registered deed of exchange got an area of land measuring 1 Bigha 1½ Katha and the principal defendant Nos. 1 and 4 got an area of land

measuring 14 Katha 10 Chatak.

VII. Relying on the definition of exchange given in Section 118 of the Transfer of Property Act, 1882 the learned Court below concluded that as there was exchange, the same to be treated as transfer and transfer confers title and ownership upon the transferee of the land so transferred. Accordingly, the learned Court below concluded that the plaintiff acquired right, title and interest over the Schedule-II land by virtue of the registered deed of exchange (Exhibit-2/Exhibit-G).

VIII. The learned trial court below also relied on the deposition of the DW-2 in his cross-examination that DW-2 admitted the possession and ownership of the plaintiff over the Schedule-II land i.e. land under Exhibit-2 and therefore, concluded that the plaintiff is having possession over the Schedule-II land.

IX. In view of the aforesaid conclusions, the suit was decreed by the learned trial Court below.

8. Decision of the learned Appellate Court:-

The learned appellate Court below after going through the judgment, arguments advanced by the learned counsel for the parties and considering Exhibit-1 and Exhibit-2/Exhibit-G affirmed/concurred the decision of the learned trial Court below.

9. Argument advanced by Mr. P. K. Roychoudhury, learned counsel for the appellants/defendants.

Mr. Roychoudhury, learned counsel for the appellants submits the

following:-

- I. Both the learned Courts below committed perversity by declaring the right, title and interest of the plaintiff over the Schedule-II land on the basis of Exhibit-2/Exhibit-G, misinterpreting the same to be deed of exchange inasmuch as such deed was a compromise deed between the plaintiff and the principal defendants and therefore, such deed cannot conferred any right, title and interest over the plaintiff.
 - II. It was also contended that the judgment itself is perverse in view of the fact that the learned Courts below has stated that the DW-1 made an admission of the plaintiff's title over the Schedule-II land inasmuch as no admission was made by the DW-1. Therefore, the conclusion that the DW-1 also admitted the title of the plaintiff over the Schedule-II land is perverse.
 - III. Exhibit-2/Exhibit-G has not been properly appreciated rather it has perversely been appreciated and it was treated to be an act of exchange in terms of the Section 118 of the Transfer of Property Act, 1882.
10. Per contra, Mr. B. C. Das, learned Senior Counsel for the respondent submits that the determination made by both the learned Courts below are based on proper interpretation and materials available on record including the Exhibit-2/Exhibit-G and admission of DW-1. The Execution of Exhibit-2/Exhibit-G has never been disputed by the principal defendants rather the principal defendant No. 1 admitted such exchange. Therefore, in a second appellate stage such finding of facts and the determination based on such

facts cannot be interfered with.

11. **Determination of this court:-**

- I. This Court has given anxious consideration to the submissions made by the learned counsel for the parties. Also perused the materials available on record.
- II. As the substantial question of law framed by this Court while admitting the appeal revolves around perversity of the determination and misinterpretation of Exhibit-2/Exhibit-G and the admission of DW-1, this Court though is exercising power under Section 100 of the Code of Civil Procedure, 1908 has perused the aforesaid two documents and evidence.
- III. It is well settled that power of High Court to interfere in second appeal under Section 100 is very limited and the Court is to decide only substantial question of law, if at all arises. Finding of facts reached by the learned Court below cannot be interfered or reversed in a second appeal without coming to a conclusion that the said finding of fact is either perverse or not based on materials on record. In this regard this Court can gainfully rely on the judgment of the Hon'ble Apex Court in the case of ***Karnataka Board of Wakf vs- Anjuman-E Ismail*** reported in ***1999 6 SCC 343***. It is equally well settled that even when from the evidence two inferences are possible, then the one drawn by the Courts below should be opted. Such finding of facts and decisions can only be interfered in a second appeal when such decision is based on inadmissible evidence or

arrived at without evidence or recorded based on misreading of material on records and documents.

- IV. The Word "Perverse" in the legal parlance is defined to mean "against the weight of evidence".
- V. Exhibit-2 clearly describes to be a deed of exchange. The said deed of exchange specifically describes two Schedule of land i.e. "exchange land of Schedule-I" and "exchange land of Schedule-II" and it is also the recital and term of the exchange deed that there has been a boundary dispute and therefore, to settle the boundary dispute, exchanges were made between the parties and the plaintiff was entitled for Schedule-I (exchange land) land the principal defendants were entitled for Schedule-II (exchange land) land.
- VI. In fact the DW-1 in his cross-examination specifically stated that the parties i.e. the plaintiff and the principal defendants are respectively possessing the Schedule land under the exchange deed i.e. Exhibit-2/Exhibit-G and the principal defendants are having no claim over such land.
- VII. Further it was admitted by the principal defendants in their written statement as well as in their evidence in affidavit and also in cross-examination of DW-1 that they have no claim over the Schedule-I land and the owner of the Schedule-I was proforma defendant No. 5 and the proforma defendant No. 5 has transferred the said land by registered sale deed i.e. Exhibit-1.
- VIII. Therefore, in view of the aforesaid evidence, the findings of the

learned Courts below as recorded hereinabove cannot be termed as perverse. Therefore, in view of the aforesaid, this Court unhesitatingly holds that the learned Courts below have not misconstrued the Exhibit-2/Exhibit-G and the evidence of DW-1. The learned Courts below has also did not misread or misconstrued the Schedule-I of the Exhibit-1 and the Schedule-II of the plaint. The Courts below had not misconstrued any of the evidence while declaring the right, title and interest of the plaintiff over the Schedule land by virtue of Exhibit-2/Exhibit-G and on the basis of admission of DW-1.

- IX. In view of the above, the substantial question of law framed on 21.08.2009 cannot be treated to involve any substantial question of law.
- X. In that view of the matter, the present second appeals stands dismissed. LCR be sent back. Prepare the decree accordingly. Parties to bear their own cost.

JUDGE

Comparing Assistant