

GAHC010005192001



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

**Case No. : RSA/71/2001**

MD MOKBUL ALI

VERSUS

MD RAMJAN ALI and ANR

**Advocate for the Petitioner : MR.G GOPAL**

**Advocate for the Respondent : MR. M A ISLAM**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**JUDGEMENT AND ORDER(CAV)**

**Date : 19-07-2023**

Heard Mr. I. Alam, learned counsel for the appellant. Also heard Mr. L.R. Mazumder, learned counsel for the respondents.

2. This is a second appeal under Section 100 CPC filed by the appellant/defendant against the judgment dated 15.05.2001 and decree dated 21.05.2001 passed by the learned Civil Judge(Senior

Davison) Morigaon in Title Appeal No. 11/99 allowing the appeal preferred by the respondents/plaintiffs by setting aside the judgment and decree dated 30.01.1999 and 03.02.1999 respectively passed by the learned Civil Judge(Junior Division) No.1, Morigaon in Title Suit No. 90/1993 dismissing the suit filed by the respondents/plaintiffs.

3. When the appeal was admitted, the following substantial question of law was framed-

a. Whether the first appellate court committed illegality by admitting Ext. 'Kha' in to evidence in spite of strong objections from the appellant/defendant side as Ext. 'Kha' was obtained fraudulently in collusion with the settlement authority and that to without serving proper notice as required under the law.

4. The respondents as plaintiffs filed a title suit before the court of Civil Judge(Junior Division), Morigaon for declaration of right, title, interest and confirmation of possession over the suit land measuring 6 Bighas 1 Katha 14 Lechas covered by Dag No. 405 of patta No. 204 at the village Satarbari Kismat under mouza and police station Mikirbheta in the district of Morigaon and also for permanent injunction.

5. The case of the plaintiffs/respondents is that their mother late Asabunessa was the owner of the suit land and during her life time, she was possessing the said land and after her death, the plaintiffs possessed the land in question. They contended that the suit land was made cultivable by clearing jungles about 40 years back and the land was converted in to annual patta land in the name of their mother and

subsequently, the land was converted to periodic patta land in the name of Asabuessa. But on 02.03.1987, the appellant/defendant tried to dispossess them forcibly. The plaintiffs then filed a case under Section 145/146 Cr.P.C. and the land was attached. By the act of the defendants, the right, title and interest over the property of the plaintiffs became clouded and therefore, they had brought the aforesaid suit before the court of Civil Judge, Morigaon.

6. The appellant as defendant had contested the suit by filing written statement. In the written statement, the defendants denied the claims and allegations of the plaintiffs for their dispossession from the suit land. Their case is that the suit land when it was annual patta land, stood in the name of their father and the mother of plaintiffs and on the eastern side of the suit land, the plaintiffs mother possessed 2 Bighas 3 Kathas 2 Lechas of land and in the middle portion was possessed by the father of the defendant Makbul and in the western side 1 Bighas 2 Kathas 12 Lechas was possessed by the defendant No. 2. Later, the mother of the plaintiffs sold the portion of land measuring 2 Bighas 3 Kathas 2 Lechas in the year 1971 to one Milauddin. Thereafter, Millauddin sold the said land to the defendant Ala Box in 1979. Since then, the defendants had been possessing their own portion of land but the plaintiffs in collusion with Mondal, Kanango and official of sub-registrar got the entire land mutated in the name of their mother late Asabuessa without having possession over the suit land. Hence, the plaintiffs were not entitled to claim any right over the suit land and therefore, the defendants prayed for dismissal of the suit.

7. On the pleading of both parties, 7(seven) number of issues were framed by the learned Civil Judge(Junior Division), wherein the main issue was whether the plaintiffs have right, title and possession over the suit land.

8. The learned Civil Judge(Junior Davison) after discussing the evidence of the witnesses as well as the documents available in the record, dismissed the suit of the plaintiffs on the ground that the suit land stood in the name of their mother Asabonessa while it was annual patta land and subsequently, settled her name and the plaintiffs inherited the said land after the death of their mother.

9. The plaintiffs were examined in the case as P.W.5 and P.W. 6. According to them, the said land mutated in their names after the death of their mother. The learned Civil Judge(Junior Division) has stated in the judgment that in support of the fact, the plaintiffs have failed to produce any documents rather the defendants produced draft chitha vide Ext. 'gha' which reveals that the land stood in the name of Asabonessa, the mother of plaintiff. But as the land was annual patta land and the annual patta land is not transferable and unless the land is settled with the plaintiffs, they could not claim the suit land covered by annual patta as a right of inheritance. The learned Civil Judge(Junior Division) hold that the plaintiffs have got no right, title over the suit land and accordingly, dismissed the suit.

10. Against the dismissal of the suit, the plaintiffs had preferred the appeal before the learned Civil Judge(Senior Division), Morigaon. After hearing the learned counsel of both sides, the learned Civil

Judge(Senior Division) reversed the judgment and decree passed by the learned Civil Judge(Junior Division) and allowed the appeal of the respondents/plaintiffs on the ground that the learned Civil Judge(Junior Division), Morigaon while discussing issue No. 5 stated that no document was produced by the plaintiffs to claim the matter to their own rather the defendants produced the draft chita vide Ext. 'gha' but that observation of the learned court below was not correct. Ext. 1, 2 and Ext. 'gha' are the jamabandi copies of the suit land from which it is clear that the suit land stood in the name of Asabonessa i.e. mother of the respondents/plaintiffs. After the death of Asabonessa, the suit land was inherited and mutated in the name of plaintiffs. The learned Civil Judge(Junior Division) also relied on Ext. 'Gha' which also proves the plaintiff's possession over the suit land.

11. Learned Civil Judge (Senior Division) in the judgment also reflected that while learned Civil Judge (Junior Division) discussing the issue No. 5 misinterpreted the provision of annual patta land by saying that the annual patta land is not transferable but in fact, the annual patta land is inheritable and transferable. But the said point is not necessary to discuss as because the names of the plaintiffs/respondents were mutated after the suit land was converted to periodic patta land in the name of Asabonessa, the mother of the plaintiffs/respondents.

12. The learned Civil Judge(Senior Division) also discussed in the judgment that the name of Asabonessa as it appears from Ext. 'gha' was in the revenue record as of annual lease holder in the last

settlement operation and subsequently, it was converted into periodic patta land in her name. Moreover, the Civil Court has no jurisdiction to cancel the patta as it is barred by Section 154 of Assam Land Revenue Regulation Act as observed by this Court, reported in 1990(2) GLR 412.

13. The learned Civil Judge (Senior Division) also mentioned in the judgment that the plaintiffs/respondents claimed that the suit land was possessed by them and subsequently the defendants dispossessed them. P.W.5 Ramjan Ali stated that they were dispossessed by the defendants about one and half bighas of land. D.W. 5 Mokbul Ali also admitted in his evidence that the entire suit land was settled with the mother of the plaintiffs Asabonessa in the last settlement operation which was inherited and mutated in the name of the plaintiffs after her death. Thus, it is apparent that the plaintiffs/defendants had good title over the suit land. Even if the plaintiffs were not in possession over the suit land but they are entitled to get khas possession over the suit land as observed by the Hon'ble Supreme Court in **AIR 1991 SC 395**. Accordingly, the learned Civil Judge(Senior Division) allowed the appeal of the plaintiffs/respondents by setting aside the order of the Civil Judge(Junior Division) and declared right, title, interest and confirmation of possession and alternatively for recovery of khas possession in favour of plaintiffs. As such, this second appeal has been preferred by the appellants/defendants.

14. It was urged by the learned counsel for the appellants that the suit land was found in the possession of the appellant. The First

Appellate court has committed grave error by relying on Ext. 'Kha' wherein the name of the mother of the plaintiffs late Asabonessa has been shown as pattadar which is illegal as because the same has been obtained fraudulently in collusion with settlement authority without serving proper notice as required under the law.

15. It is further submitted that the name of the father of the appellant and that of father of defendant No. 2 in T.S. No. 19/93 are shown as pattadar in draft chita i.e. Ext. 'Ka' and the same has been totally suppressed while obtaining Ext. 'Kha' and it is settled law that the appellant and other defendants are entitled to an automatic renewal unless notice was given to them cancelling the lease patta holders and in the present case Ext. 'Kha' has been obtained fraudulently as such, the learned First Appellate court committed error by relying on Ext. 'Kha' and, therefore, the judgment and decree passed by the learned First Appellate court is liable to be set aside.

16. It is also submitted by the learned counsel for the appellant that the learned First Appellate court misinterpreted the provision of Section 154 of the Assam Land Revenue Regulation Act, 1986. It is a settled law that the rights of a patta holder cannot be affected without issuing non-renewal notice and the settlement of the patta land can be made only after cancellation of the existing patta by issuing notices and that being the position, the learned First Appellate court failed to consider Ext. 'Ka' and only relied on Ext. 'Kha', as such, so called mutation which does not give right or title and, therefore, the impugned judgment and decree passed by the learned First Appellate

court is liable to be set aside.

17. In support of his submissions, learned counsel for the appellant has placed reliance on the following case laws-

(i) (1997) AIR (SC) 2181 (State of Himachal Pradesh vs. Keshav Ram & Ors.)

(ii) 2002(2) GLT 669 (Govinda Chandra Das vs. Balo Ram Boro).

(iii) (2006) 2 GauLR 565 [Manmatha Rajan Tribedi vs. Gopal Krishna T.E. CO. (P.) Ltd. & Ors.]

(iv) (2007) vol.4 SCC 221 (A.V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors.)

18. In response, the learned counsel for the respondents/plaintiffs has argued that the Hon'ble Supreme Court in catena of decisions has held that as per Section 100 of CPC while exercising the power, the High Court is not required to re-appreciate the entire evidence on record as if the High Court is deciding the first appeal. It is further submitted that the substantial question of law framed by the High Court cannot be said to be the substantial question of law at all. It is also submitted that Section 100 CPC provides for a second appeal only on the substantial question of law. Even second appeal is not required to be entertained on question of law only. It is further submitted that the question of law must be a substantial question of law and not mere a question of law. The substantial question of law formulated and framed by the High Court while deciding the second appeal,

cannot be said to be substantial question of law at all. It is submitted that on the face of it, even substantial question of law formulated and framed by the High Court, are the questions of fact.

19. The learned counsel for the respondents/plaintiffs has further contended that so far as the question of fact is concerned, the learned First Appellate court is the final court on facts. Unless and until, the finding recorded are found to be perverse or contrary to the evidence on record, the High Court would not be justified in upsetting such findings recorded by the courts below, more particularly the First Appellate court.

20. Section 154 of Assam Land Revenue Regulation Act, 1886 deals with matters exempted from cognizance of Civil Court:- (i) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following:

(a) Questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force.

21. The learned counsel for the appellant submits that the question raised in the present suit squarely falls under clause (a) above and, as such, a suit in respect thereof, is barred.

22. It is submitted by the learned counsel for the respondents/plaintiffs that the appellant has raised a new point for the first time before the High Court as substantial question of law which is

not a question involved in the case before the original court or the first appellate court as such it cannot be said a substantial question of law and is not a question involved in the case unless it goes to the root of the matter. A question of law having a material bearing on the decision of the case will be a substantial question of law if it is not covered by any specific provision of law or settled legal principal emerging from binding precedent and involves debatable legal issues. Under such backdrop, the appeal filed by the appellant/defendant is not tenable in the eye of law.

23. In support of his submissions, learned counsel for the respondents/plaintiffs has placed reliance on the following case laws-

- (I) AIR 1963 SC 1917 (Gurbaksh Singh vs. Nikka Singh & Anr.)
- (ii) 1990 (2) GLR 412 (Shri Produmnya Das Purkayastha & Ors. Vs. Shri Rasendra Kumar Das & Ors.)
- (iii) (1996) vol. 5 SCC 618 (Durga Ds vs. Collector & Ors.)
- (iv) 2006 (2) GRL 565 (Manmatha Rajan Tribedi vs. Gopal Krishna T.E. Co.(P.) Ltd. & Ors.)
- (v) (2006) vol. 5 SCC 545 [Hero Vinoth (Minor) vs. Seshammal]
- (vi) (1997) vol. 7 SCC 137 [Balwant Singh & Anr. Vs. Daulat Singh (Dead) by LRS. & Ors.]

24. I have considered the submissions made by the learned counsel for the parties. As I have already stated that the learned trial court has dismissed the suit filed by the respondents/plaintiffs. On appeal, the first appellate court has reversed the judgment passed by the learned trial court and allowed the appeal preferred by the plaintiff/respondents. It also appears from the record that Ext. 'Ka' is the sale deed executed between Milai Shiekh and late Asabonessa on 23.09.1971 and Ext. 'Kha' is another sale deed executed between Haji Alla Box and Milai Sheikh dated 28.03.1979. It appears from the evidence of the witnesses as well as the judgment of the learned trial court and the learned first appellate court that there is no whisper made by the appellant/defendant that the said document Ext. 'Kha' was obtained by the plaintiff/respondents by fraudulent means.

25. As per catena of decisions of Hon'ble Supreme Court, while deciding the second appeal under Section 100 of CPC, the High Court is not required to reappreciate the entire evidence on record and to come to its own conclusion and the High Court cannot set aside the findings of facts recorded by the Court below when the findings were recorded on appreciation of evidence.

26. The second appeal does not lie on question of facts or of law. The existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by the Hon'ble Supreme Court in the case of ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar***, reported in ***(1999) 3 SCC 722***, in a second appeal under Section 100 of the CPC,

the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being:

- (I) Contrary to the mandatory provisions of the applicable law; or
- (ii) Contrary to the law as pronounced by the Apex Court; or
- (iii) Based on inadmissible evidence or no evidence.

27. It is further observed by the Hon'ble Supreme Court in the aforesaid decision that if the First Appellate court has exercised its discretion on a judicial manner, its decision cannot be recorded as suffering from an error either of law or procedure requiring interference in second appeal. It is further observed that the trial court could have decided differently is not a question of law justifying interference in second appeal.

28. When a substantial question of law can be said to have arisen, has been dealt with and considered by the Hon'ble Supreme Court in the case of Ishwar Dass Jain, reported in (2000) 1 SCC 434. In the said decision, it was held that:-

*“Under Section 100 CPC, after 1976 amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so. There are two situations in which interference with findings of fact is permissible. The first one is*

*when material or relevant evidence is not considered which, if considered which, would have led to an opposite conclusion. The second situation in which interference with findings of fact is permissible is where finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In either of the above situations, a substantial question of law can arise.”*

29. The settled position of law is that so far as the facts are concerned, the first appellate court is the final court and unless and until findings of facts recorded by the court below are found to be manifestly perverse or contrary to the evidence on record, the High Court would not be justified in setting aside the findings of facts recorded by the court below which were on appreciation of evidence on record. It is not permissible for the High Court to reappreciate the entire evidence on record and come to its own finding when the findings recorded by the court below, more particularly, the first appellate court are on appreciation of evidence.

30. In view of the above, I find no merit in the appeal and the appeal is dismissed.

31. Send back the LCR.

**JUDGE**