

GAHC010005492014



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

Case No. : WP(C)/525/2014

ON THE DEATH OF AMIYA KUMAR BORO, HIS LEGAL HEIRS RUNI BORO
W/O LT. AMIYA KUMAR BORO, R/O KAMARKUCHI, P.O. TEPECHIA, P.S.
SONAPUR, DIST- KAMRUP, ASSAM, PIN-782402

1.1: BISHWAJIT BORO
S/O LT. AMIYA BORO
R/O KAMARKUCHI
P.O. TEPECHIA
P.S. SONAPUR
DIST- KAMRUP METRO
ASSAM
PIN-782402

1.2: DEBAJIT BORO
S/O LT. AMIYA BORO
R/O KAMARKUCHI
P.O. TEPECHIA
P.S. SONAPUR
DIST- KAMRUP METRO
ASSAM
PIN-78240

VERSUS

ASSAM BOARD OF REVENUE and 3 ORS.
PANBAZAR, GHY-01

2:PRADIP BORO

3:DEEPAK BORO

4:JAYANTA BORO

NO.2
3
and4 ARE S/O LT. RAGHUNATH BORO
R/O KACHARI BASTI
ULUBARI
GHY-7
P.O. ULUBARI
P.S. PALTANBAZAR
DIST- KAMRUP
ASSA

Advocate for the Petitioner : Mr. P. K. Kalita, Advocate
Mr. K. Talukdar, Advocate

Advocate for the Respondents : Mr. Mr. J. Handique, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 11.08.2023

Date of Judgment : 11.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed challenging the order dated 19.08.2013 passed by the learned Assam Board of Revenue in RA(K)165/2012 whereby the order of the Additional Deputy Commissioner, Kamrup (Metro) in RA(M)47/2012-13 dated 03.12.2012 was affirmed.

2. From the facts narrated in the petition, it transpires that the land in question which is the plot of land measuring 3.75 Ares covered by Dag No.1946 of KP Patta No.1331 situated at village Sahar Ulubari Part-11 under Guwahati Revenue Circle in the district of Kamrup (Metro), Assam originally belonged to the mother of the

petitioner.

3. It is the claim of the petitioner that the petitioner's mother gifted the said plot of land in favour of the petitioner by a registered Deed of Gift bearing Registration No.4227/2000 dated 16.06.2000. The petitioner thereupon applied for mutation of the land as well as the houses standing thereon which were granted by the concerned Revenue Authority as well as the Guwahati Municipal Corporation.

4. Subsequent to that, it is the case of the petitioner that a purported Gift Deed was executed by the mother of the petitioner in favour of the respondent Nos.2, 3 & 4 vide the registered Deed of Gift bearing No.12597 dated 13.10.2009.

5. On the basis of the said Deed of Gift, the respondent Nos.2, 3 & 4 applied for mutation of their names in respect to the land. The said mutation was rejected by the Circle Officer, Guwahati Revenue Circle in Mutation Case No.3463/2010-11 vide an order dated 13.01.2012.

6. The respondent Nos.2, 3 & 4, thereupon, preferred an appeal before the Additional Deputy Commissioner, Kamrup (Metro) which was registered and numbered as RA(M)47/2012-13. The Additional Deputy Commissioner, Kamrup (Metro) vide an order dated 03.12.2012, without deciding as to whether the mutation granted in favour of the petitioner was in accordance with the provisions of law or the respondent Nos.2, 3 & 4 would be entitled to the mutation, cancelled the mutation in favour of the petitioner and reinstated the name of the petitioner's mother who was already dead as on 21.12.2009.

7. Being aggrieved, the petitioner thereupon preferred an appeal before the Assam Board of Revenue which was registered and numbered as RA(K) 165/2012. The learned Assam Board of Revenue vide its judgment and order dated 19.08.2013 did not interfere with the order of the Additional Deputy Commissioner, Kamrup (Metro) and observed that it is the Civil Court who can decide as regards

the genuineness of the Gift Deeds, one executed in favour of the petitioner and the other executed in favour of the respondent Nos.2, 3 & 4. Be that as it may, the learned Assam Board of Revenue made certain observation which touches on the rights of the parties which could have been decided only by the Civil Court.

8. It is under such circumstances that the petitioner being aggrieved by the order passed by the Additional Deputy Commissioner, Kamrup (Metro) dated 03.12.2012 as well as the order dated 19.08.2013 by the learned Assam Board of Revenue had approached this Court by filing the instant writ petition.

9. It appears from the record that vide an order dated 03.02.2014, this Court had issued notice and stayed the order dated 19.08.2013 passed by the learned Assam Board of Revenue in RA(K) 165/2012 as well as the order of the Additional Deputy Commissioner, Kamrup (Metro) dated 03.12.2012. It further appears from the records that there is an affidavit-in-opposition so filed by the respondent Nos.2, 3 & 4 wherein it has been mentioned that there has been various litigations in Civil Court amongst the petitioner as well as the respondent Nos.2, 3 & 4.

10. I have heard the learned counsels for the petitioner as well as the counsel appearing on behalf of the respondent No.1. The respondent Nos.2, 3 & 4, however, are not represented.

11. This Court has duly perused the order dated 03.12.2012 passed by the Additional Deputy Commissioner, Kamrup (Metro) in RA(M) 47/2012-13 as well as the order dated 19.08.2013 passed by the learned Assam Board of Revenue in RA(K)165/2012. The findings by both the Authorities, in the opinion of this Court that the dispute needs to be resolved by the Civil Court taking into account that there are certain disputes as regards the genuineness of the Gift Deeds seems to be a reasonable conclusion arrived at by both the Authorities. This Court further finds it relevant to take note of that in the meantime, the petitioner had also filed a

suit being Title Suit No.56/2013 before the Court of the Civil Judge Senior Division-I, Kamrup (Metro) which is also presently pending wherein the Gift so executed in favour of the respondent Nos.2, 3 & 4 has been put to challenge as well as the declaration of the petitioner's right over the land in question has also been sought for.

12. However, this Court also finds it relevant to take note of that though both the Authorities, i.e. the Additional Deputy Commissioner, Kamrup (Metro) as well as the learned Assam Board of Revenue, Assam held that it is the Civil Court who has to decide, but surprisingly the said Authorities instead of relegating the parties to the Civil Court cancelled the mutation and reinstated the name of the mother of the petitioner who had already expired on 21.12.2009. It baffles that Court to observe that when the basic intention of mutation is for collection of revenue, why the authorities concerned reinstated the name of a dead person.

13. Under such circumstances, this Court, therefore, interferes with the order dated 19.08.2013 passed by the learned Assam Board of Revenue in RA(K)165/2012 as well as the order dated 03.12.2012 passed by the Additional Deputy Commissioner, Kamrup (Metro) in RA(M)47/2012-13 to the extent of reinstating the name of the mother of the petitioner who had already expired.

14. This Court further restores the name of the petitioner in the mutation records in respect to the land in question and such restoration shall be subject to the outcome of the Civil Suit. The Deputy Commissioner, Kamrup (Metro) shall do the needful within 15 (fifteen) days from the date a certified copy of this order is served upon the Deputy Commissioner, Kamrup (Metro).

15. This Court further observes that the restoring of the name of the petitioner in the mutation records pertaining to the land in question shall not confer any equity upon the petitioner in respect to the land in question which as observed herein

above shall be subject to the outcome of the Title Suit No.56/2013.

16. This Court is of the opinion that as the question of title over the land in question as well as the genuineness of the Gift Deed executed in favour of the respondent Nos.2, 3 & 4 are subject matter for consideration before the Civil Court, the observation so made by the learned Assam Board of Revenue in the judgment dated 19.08.2013 shall not affect the adjudication of the Title Suit No.56/2013

17. With the above observation and direction, the instant writ petition stands disposed of.

18. The LCR so called is returned.

JUDGE

Comparing Assistant