

GAHC010006242009



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

Case No. : RSA/153/2009

SRI MANIRAM HAZARIKA and ORS,
S/O LATE TULURAM HAZARIKA.

2: JITUBAN HAZARIKA

S/O LATE GHANA HAZARIKA.

3: KARUNA HAZARIKA

S/O LATE GHANA HAZARIKA

4: SMTI MINA HAZARIKA

W/O LATE GHANA HAZARIKA.

5: SMTI BULU HAZARIKA

W/O LATE NIREN HAZARIKA.

6: BADAN SAIKIA

S/O TANKESHWAR SAIKIA. ALL ARE R/O JANTI GAON
TITABOR
MOUZA and P.O. TITABOR
DIST. JORHAT
ASSA

VERSUS

KHITISH CHANDRA PHUKAN and ANR
RO PARBATIA GAON, PO PARBATIA SARUSARAI MOUZA DISTRICT
JORHAT ASSAM

2:JOYTISH CHANDRA PHUKAN

BOTH ARE SONS OF LATE SONARAM PHUKAN RESIDENT OF PARBATIA
GAON
P.O. PARBATIA
SARUCHARAI MOUZA
DIST. JORHAT
ASSAM

Advocate for the Petitioner : MS.P BHATTACHARYA

Advocate for the Respondent : MR.B SHARMA, Mr. S MURARKA

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

JUDGMENT

Date : 12.10.2023

Heard Ms. P. Bhattacharya, learned counsel for the appellants. Also heard Ms. S. Todi, learned counsel for the respondents.

2. By filing this appeal under Section 100 CPC, the appellants have assailed the first appellate judgment and decree dated 27.07.2009, passed by the learned Civil Judge, Jorhat in Rent Appeal No. 01/2009, thereby dismissing the appeal and affirming the judgment dated 25.02.2009, passed by the learned Munsif No.1, Jorhat in Rent Suit No. 02/2007.

3. The respondent as plaintiffs had file the rent suit for recovery of rent in respect of the plot of land described in schedule-A of the plaint. In the plaint, it has been claimed that the entire 23 bigha 2 katha 0 lessa land has been given to the appellants on "*Adhjar*" basis for paddy cultivation and that the rent is sought to be recovered in form of $\frac{1}{5}$ share of the respondents-plaintiffs against total production of paddy from the schedule-A land, which according to the respondents was Rs.90,000/- for the years 2003-04 to 2005-06. It has been

submitted at the bar that from the nature of the claim made by the respondents-plaintiffs, the said rent suit is within the scope and ambit of the Assam (Temporarily Settled Areas) Tenancy Act, 1971. The appellants had contested the suit by filing a written statement.

4. The learned trial Court had framed the following issues for trial:

1. *Whether there is a cause of action for the suit?*
2. *Whether the suit is maintainable?*
3. *Whether the suit is bad for non-joinder of necessary parties?*
4. *Whether the defendants' have deposited the share to the plaintiff from 2003 to 2006?*
5. *Whether the suit land yields decent quantity of paddy?*
6. *Whether the plaintiff is entitled to a decree as prayed for?*
7. *To what relief/reliefs parties are entitled?*

5. Issue no.1 relating to the cause of action was answered in the affirmative. Issue no.2 as regard to the maintainability of the suit was also decided in the affirmative in favour of the respondents. In respect of issue no.3, the said issue was decided in the negative and in favour of the respondents by holding that the suit was not bad for non-joinder of necessary parties. In view of the admission by the appellant no.1, namely, Maniram Hazarika during his cross-examination had stated that he used to give paddy to respondent no.1, namely, Khitish Chandra Phukan only and not to others and the said Khitish Chandra Phukan and Jyotish Chandra Phukan were accepted to be landlords. In respect of issue no.4, after examining the evidence on record, the learned trial Court had held that the appellant no.1 had deposed in his evidence on affidavit that he had already paid share of the respondents till 2004-05 and they have to pay only for the year 2005-06 and in the said context, the learned trial Court had held that when the landlord had taken a plea that he has not been offered

the rent, the onus is shift on the tenant to prove that he had offered the share of paddy to the respondents from 2003 to 2005 and accordingly, the issue was decided in the affirmative and in favour of the respondents that the appellants had not deposited the share due to the respondents from 2003 to 2006. In respect of issue no.5, the learned trial Court, relying on the cross-examination of appellant no.1 to the effect that each "*pura*" of land (4 bigha=1 *pura*) had the capacity to produce 30-40 "*mund*" paddy per year (1 *mund*=40 kg), it was held that the suit land had the capacity to yield a decent quantity of paddy and accordingly, the issue was decided in the affirmative. In respect of issue no.6, in view of the discussions on the other issues and taking note of the admission of the appellant no.1 that they had occupied 23 bigha 2 katha land, arrived at a conclusion that this was indicative of the appellants were cultivating in the said area of land. The claim by the respondents that the market value of each quintal of paddy was Rs.1,000/-, on which there was no cross-examination, the value claimed by the respondents was accepted as Rs.1,000/- per quintal. Accordingly, the respondents were found entitled to decree as prayed for. In respect of issue no.7, in view of the decision on the other issues, the suit was decreed on contest with cost.

6. Aggrieved by the judgment of the learned trial Court, the matter was taken up for being Rent Appeal 01/2009 and the learned first appellate Court had concurred with the finding on each of the issues by independently appreciating the evidence on record as well as on examination of the trial Court judgment and all the findings on all these six issues were affirmed and insofar as issue no.2 is concerned, the learned first appellate Court had held that the said issue was unnecessarily framed. Accordingly, the judgment and decree passed by the learned trial Court was affirmed.

7. This appeal against the first appellate judgment, affirming the judgment of the learned trial Court was admitted for hearing by order dated 13.11.2009 on the following 3 (three) substantial questions of law:

1. *Whether the plaintiffs/respondents suit is maintainable in view of non-compliance of the statutory provision laid down in Section 36 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971?*
2. *Whether the decree passed by the trial Court and affirmed by the lower appellate Court is based on evidence adduced on the basis of conjunctures and surmise regarding rent due and the area under occupation of its tenants?*
3. *Whether both the Courts below committed an error in deciding the merit of the suit without taking relevant facts and law into consideration?*

8. The learned counsel for the appellants by referring to the provision of Section 36 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 has submitted that the suit was in non-compliance of the said provision. By referring to the schedule appended to the plaint, it is submitted that the four boundaries of the suit land was not described and accordingly, it is submitted that if proper description of land is contained in the schedule, the suit would not have been decreed. Accordingly, it is submitted that not only the judgment and decree passed by the learned trial Court, but the first appellate judgment and decree was also vitiated.

9. In this regard, it would be appropriate to refer to the provision of Rule 3 of Order VII CPC as well as the High Court Amendment in respect of Gauhati, which is same as in Calcutta:

“3. ***Where the subject-matter of the suit is immovable property.*** – *Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint*

shall specify such boundaries or numbers.

High Court Amendments

Bombay. -

Calcutta. – In order VII, in rule 3, at the end, insert the words "and where the area is mentioned, such description shall further state the area according to the notation used in the record of settlement or survey, with or without, at the opinion of the party, the same area in terms of the local measures".

Gauhati. – Same as in Calcutta."

10. From the above, it would appear that the High Court Amendment of Gauhati requires stating of the area accordingly to the notation used in the record of settlement of survey. It could not be demonstrated that the appropriate description in terms of the High Court Amendment to the provisions of Rule 3 of Order VII is not contained in the schedule appended to the plaint. Moreover, as already mentioned hereinbefore, there is a concurrent finding of both the trial Court as well as the first appellate Court that the appellants had admitted the respondents to be their landlord in respect of 23 bigha 2 katha land, which tallies with the description of 2 (two) plots of land contained in the schedule-A of the plaint. Hence, the Court is of the considered opinion that there was no dispute with regards to the boundaries of the suit land and that the appellants had contested the suit with full knowledge of the boundaries. Therefore, in view of the admission made by the appellant no.1 in his examination-in-chief and cross-examination, the evidence being contrary to the stand taken in the written statement to the effect that they had been occupying (A) 14 bigha 1 katha 2 lessa, (B) 2 bigha 1 katha 3 lessa would stand disproved and the admission made by the said witness would be read in favour of the respondents. Therefore, insofar as the first substantial question of law is concerned, the Court is of the considered opinion that the suit was maintainable and no case has been made out by the appellants regarding non-compliance by

the respondents of the statutory provision of Section 36 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971. There is another aspect to the issue, which has been already laid down in several judicial pronouncement of the Supreme Court of India as well as of this Court that in case there is any mismatch of the boundaries, even at an execution stage, the correct boundaries can be taken on record. Therefore, mere absence of boundary or mis-description of boundary would not scuttle the decree passed in the suit.

11. In respect of the substantial questions of law no.2, it could not be demonstrated from the LCR that the finding regarding quantification of the rent was only on the basis of conjunctures and surmises. The learned trial Court as well as the learned first appellate Court had returned a concurrent finding to the effect that the value of paddy quantified at Rs.1,000/- per quintal was admitted in view of the non-cross-examination of the respondents witness on such valuation. Therefore, as the respondents had given the quantification of value of paddy per quintal at Rs.1,000/- in schedule-B of the plaint, the Court is unable to accept, on the basis of pleadings and evidence available on record that the quantification of rent due was merely on the basis of conjunctures and surmises. Moreover, quantification of rent is on the basis of agricultural produce, which, by its nature and demand, has a fluctuating market value, which is dependent on various factors. The appellants had not examined any witness to show that although there was a yield of 30-40 *munds* of paddy every year from the suit land, it would not fetch the value given by the respondents in the schedule-B of the plaint in the market. Moreover, as the witness of the appellants had disclosed the yield capacity of the suit land, the quantification of rent does not merit interference in this second appeal when there is a concurrent finding of fact. The rate of paddy is a pure question of fact and in

the considered opinion of the Court, unless perversity is shown, the quantification of paddy cannot become a substantial of law. Therefore, the Court is of the considered opinion that second substantial question of law in fact cannot be regarded as a substantial question of law being a pure question of fact. Nonetheless, the said question is decided against the appellants and in favour of the respondents.

12. In respect of the substantial question of law no.3, in view of the finding returned in respect of substantial question of law no.1, it is held that the decision of the learned trial Court, as affirmed by the learned first appellate Court, does not warrant interference as it could not be demonstrated that relevant law and facts were not taken into consideration while deciding the suit in the first appellate Court.

13. Accordingly, this appeal fails and the same is dismissed with usual cost.

14. Let the decree be prepared.

15. Let LCR be returned.

JUDGE

Comparing Assistant