

GAHC010013362019



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

Case No. : RSA/35/2019

SYED NABAB HUSSAIN AND ANR
S/O LATE ABDUL MAZID,
RESIDENT VILLAGE KAYAKUCHI,
MOUZA PUB BANBHAG, PS GHAGRAPAR, DIST NALBARI, ASSAM, 781369

2: SYED KHURSED ALI

S/O LATE ABDUL MAZID

RESIDENT VILLAGE KAYAKUCHI

MOUZA PUB BANBHAG
PS GHAGRAPAR
DIST NALBARI
ASSAM
78136

VERSUS

GHOGRAPAR NIMNA BUNIADI PRATHAMIK VIDYALAYA AND 11 ORS
VILLAGE BAGHMARA, PO AND PS GHAGRAPAR, DIST NALBARI, ASSAM,
781369

2: SRI PRATUL DAS

S/O LATE BANDHU

PRESIDENT NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI

ASSAM
781369

3:MD. BAHARUL ISLAM
HEADMASTER
NIMOWA BUNIADI PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

4:SRI UNESH BORO
S/O LATE LAWGA BORO

MEMBER
NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

5:SRI BIJUMANI KALITA
S/O HARESWAR
MEMBER
NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

6:MD. MAHAMMAD ALI

S/O MD. SAFIR ALI

MEMBER
NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

7:MD. MAINUL ALI

S/O MD. SAFIR ALI

MEMBER
NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

8:SRI KASHI DAS
MEMBER
NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

9:MD. BAHARUL ISLAM
MEMBER
NIMNA BUNIADI

PRATHAMIK VIDYALAYA

RESIDENT OF VILLAGE BAGHMARA
PO AND PS GHAGRAPA
DIST NALBARI
ASSAM
781369

10:THE EDUCATION SECRETARY
DISPUR

GUWAHATI
06

11:THE STATE OF ASSAM
REPRESENTED BY THE EDUCATION SECRETARY DISPUR
GUWAHATI 06

12:THE DEPUTY INSPECTOR OF SCHOOLS
NALBAR

Advocate for the Petitioner : S ALI
Advocate for the Respondent : MR. R SARMA (R1)

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. A. Iqbal,
Advocate.

For the Respondents : Mr. R. Sarma,
Advocate.

Date of Hearing : 04.05.2023

Date of Judgment : 09.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Iqbal, learned counsel representing the appellants as well as Mr. R. Sarma, learned counsel appearing for the respondents.

2. This is a regular second appeal under Section 100 of the Code of Civil Procedure (CPC) whereby the judgment dated 26.11.2018 passed by the court of learned Civil Judge, Nalbari in Title Appeal No.03/2017, reversing the judgment and decree dated 22.12.2016 passed by the court of learned Munsiff No.1, Nalbari in Title Suit No.68/2013, is under challenge.

3. The present second appeal was admitted for hearing upon the following substantial questions of law-

- “1. Whether the impugned judgment and decree suffers from misreading, non-reading of the pleadings and the evidence as well as misinterpretation of the documents adduced by the parties and, as such, the courts below arrived at a wrong and perverse finding in deciding the issues of the case, particularly, the issue nos.4 and 5 and, as such, the impugned judgment and decree is liable to be set aside?
2. Whether judgment and decree passed by the first appellate court is sustainable and tenable in law for non-consideration of material documents in the form of exhibit-2, exhibit-4, exhibit-5 and exhibit-7?
3. Whether the learned first appellate court was correct in not accepting Exhibit-1 being a certified copy of the sale deed in spite of the defendants having not denied the existence and execution of the sale deed no.22306/98?”

4. The factual matrix giving rise to this case is like this—

Late Abdul Majid was an occupancy tenant in respect of 4 kathas 4 lechas of land covered by Dag No.594 of K.P. Patta No.124 of Village-Baghmara. He obtained the Khatain No.121. Thereafter, his sons (the present appellants) purchased the said land from its owner Md. Umar Khursid. They continued to possess the land as possessed by their father Abdul Majid.

5. The Managing Committee of the respondent school, installed a pucca wall covering about 1 katha 10 lechas of the aforesaid 4 kathas 4 lechas of land owned by the appellants. The school further tried to occupy some more land.

6. On the aforesaid issue, both sides had series of litigations before the revenue authorities. Finally, the appellants filed the suit praying for declaration of their right, title, interest over the entire 4 kathas and 4 lechas of land as well as recovery of 1 katha 10 lechas of land.

7. The respondents contested the suit by filing a common written statement. They never denied the fact that the appellants had purchased 4 kathas and 4 lechas of land from Md. Umar Khursid on execution of a registered sale deed.

8. The respondents claimed that the school was established in the year 1944 over 2 bighas 2 kathas and 1 lecha of land and this land includes the aforesaid suit land measuring 1 katha 10 lechas.

9. On the basis of the pleadings of the parties, the trial court framed the following issues–

- “1. Whether there is any cause of action for the suit?
2. Whether the suit maintainable?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the plaintiffs or their predecessor had any manner of right, title, interest and possession over the suit land?
5. Whether the suit land has been all along in the possession of the defendant No.1 since 1944?
6. Whether the plaintiffs' are entitled to the relief (s) as prayed for?
7. To what other relief/reliefs the parties are entitled to?”

10. In course of trial, the appellant examined 3(three) witnesses. The respondents did not examine any witnesses.

11. On the basis of the evidence on record, the trial court decreed the suit in favour of the appellants.

12. On appeal, the appellate court reversed the trial court judgment by setting aside the same.

13. I have considered the submissions made by the learned counsels of both sides.

14. The respondents never denied the facts that late Abdul Majid was an occupancy tenant in respect of 4 kathas 4 lechas of land covered by Dag No.594 of K.P. Patta No.124 of Village- Baghmara and thereafter, his sons (the present appellants) purchased the said land from its owner Md. Umar Khursid. There are no pleadings to that effect in the written statement. Order 8 Rule 5 of the Code of Civil Procedure lays down that every allegation of fact in the plaint must be specifically denied and if not specifically denied, it shall be taken to be admitted except against a person under disability. Therefore, there are sufficient reasons to hold that the respondents had admitted that the appellants have purchased 4 kathas 4 lechas of land, which includes the suit land of 1 katha and 10 lechas. The law of evidence provides that admitted facts need not be proved.

15. The trial court framed the issue no.5, whether the suit land has been all along in the possession of the defendant no.1 since 1944? The appellate court decided this issue in favour of the respondents.

16. This Court is of the opinion that the learned trial court has erroneously framed this issue only on the basis of the pleadings of the written statement. On what points issues are to be framed in a civil suit. Issues

must be framed on the basis of allegations made by the plaintiff in the pleadings which is denied by the defendants in their pleadings. The appellants did not have the opportunity to deny the aforesaid pleading of the respondents. Moreover, the respondents did not adduce any evidence though it was an issue based on facts. Therefore, the opinion of the trial court on this issue no.5, is bad in law.

17. The non-denial of the fact that late Abdul Majid was an occupancy tenant in respect of 4 kathas 4 lechas of land covered by Dag No.594 of K.P. Patta No.124 of Village- Baghmara and thereafter, his sons (the present appellants) purchased the said land from its owner Md. Umar Khursid, amounts to admission of fact. The plea that the respondents have been in occupation of 1 katha 10 lechas of land out of 4 kathas 4 lechas of land covered by Dag No.594 of K.P. Patta No.124 of Village- Baghmara, has remained not proved by the respondents because they did not adduce any evidence.

18. Under the circumstances, the impugned judgment dated 26.11.2018 passed by the court of the Civil Judge, Nalbari in Title Appeal No.03/2017, reversing the judgment and decree dated 22.12.2016 passed by the court of the Munsiff No.1, Nalbari in Title Suit No.68/2013, is bad in law.

19. The appeal is allowed. The impugned judgment dated 26.11.2018 passed by the court of the Civil Judge, Nalbari in Title Appeal No.03/2017 is set aside. The trial court judgment and decree dated 22.12.2016 passed by the court of the Munsiff No.1, Nalbari in Title Suit No.68/2013 is affirmed.

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JUDGE

Comparing Assistant