

GAHC010076742008



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

Case No. : RSA/97/2008

ON THE DEATH OF DIMBESWAR GOGOI HIS LEGAL HEIRS KUSHAL
GOGOI AND ORS
S/O-LATE MIRI AHOM, R/O-SUKANJAN GAON, P.S.-BORHOLLA, DISTRICT-
JORHAT, ASSAM.

VERSUS

ON THE DEATH OF NANDESWAR AHOM HIS LEGAL HEIRS ARE SMT
BAKULI GOGOI
W/O LT NANDESWAR AHOM
MUKTI NAGAR NAGABAT BORHOLLA
TITABOR
JORHAT

2:DHARMESWAR GOGOI
S/O LT NANDESWAR AHOM
NAGINIJURI
MIRIGAON
RAIDANGJURI
TITABOR
JORHAT

3:PPONA GOGOI
S/O NANDESWAR AHOM
NAGINIJURI MIRIGAON RAIDANGJURI TITABOR
JORHAT

4:PHANIDHAR GOGOI
MUKTI NAGAR
NAGABAT BORHOLLA
TITABOR
JORHA

Advocate for the Petitioner : MR.T J MAHANTA

Advocate for the Respondent : MR P K KALITA

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

Date of Hearing& : 20.4.2023
date of Order

JUDGMENT AND ORDER(ORAL)

1. Heard Ms. P. Bhattacharya, learned Counsel learned counsel for the appellant and Mr. P. K. Kalita, learned Senior Counsel assisted by Ms. B. Talukdar, learned counsel for the respondent.
2. The present appeal is preferred against the judgment and decree dated 23.4.2008 passed in Title Appeal No. 32/2007 by the learned Civil Judge, Jorhat dismissing the appeal of the appellant preferred against the judgment and decree dated 5.9.2007 passed in Title Suit No. 5/2007 (89/2006) by the learned Munsiff No. 2, Jorhat decreeing the suit of the respondent plaintiff.
3. This court while admitting this appeal under its order dated 8.8.2008 formulated the following substantial questions of law :
 - (i) Whether the finding recorded by the learned first appellate court to the effect that the appellant defendant is the licensee under the respondent plaintiff is perverse there being evidence to the contrary?
4. Before coming to a determination as to whether the aforesaid substantial question of law is to be answered in favour of the appellant,

let this court summarise the factual background and the pleadings:

5. **The case of the plaintiffs:**

- (i) The suit being Title Suit No. 5/2007 (Original No. 89/2006) was preferred by the plaintiff/respondent seeking declaration of right, title, interest, eviction and permanent injunction.
- (ii) The basic plea of the plaintiff is that he is the recorded pattadar of the suit land and due to his illness and in the backdrop his two sons being minors, he allowed the defendant being co-villager to cultivate Rabi crops over the suit land with a stipulation that the defendant will return the vacant possession of the suit land as and when the plaintiffs requires for his personal use.
- (iii) The defendant continued to possess the land by cultivating the Rabi crops for their personal gain. Thereafter, the defendant started construction of a *kutchra* residential house over the suit land without prior permission from the side of the plaintiff. Accordingly, the plaintiff protested the matter and asked the defendant to deliver the vacant possession of the suit land to which the defendant threatened the plaintiff of dire consequence.
- (iv) Accordingly the title of the plaintiff being clouded, the suit was filed for declaration of title and recovery of possession.

6. **The case of the Defendant:**

- (i) The defendant filed written statement and amongst others, took a stand that the suit land is defendant's own land and he has purchased the same from one Konram Chutia and defendant is having his house since 1964 and his possession is continuous, peaceful and uninterrupted.
- (ii) It is the further case of the defendant that he has been possessing the land from 20.2.1964. The land was sold by one Nandeswar Ahom to Konaram Chutia and Konaram Chutia sold the same land to the defendant for consideration of Rs 1500/- and at that point of time, the land was annual patta land.
- (iii) The defendant has been paying land revenue since the year 1996 to 2000. Thereafter the defendant again purchased another plot of land for Rs 500/- from the plaintiff on 23.3.1972. The plaintiff put his signature in the deed of agreement for sale.

7. **The evidences:**

The plaintiff examined two witnesses in support of his claim and exhibited three numbers of exhibits including certified copy of the Jamabandi/ land record. The defendant also adduced two witnesses and exhibited two document including one agreement for sale.

8. **The issues:**

- (I) The learned trial court framed as many as 10 issues which are quoted hereinbelow:

“1. Whether there is any cause of action for institution of the suit?”

- 2. Whether the suit is bad for non-joinder of necessary party?*
- 3. Whether the plaintiff has right, title, interest over the suit land?*
- 4. Whether the defendants are permissive occupier of the suit land and refused to hand over the vacant possession of the suit land to plaintiff when they were asked for?*
- 5. Whether the suit land was purchased by defendant from Konram Chutia on 20.2.1964 and possessed the same since then?*
- 6. Whether the defendants acquired right, title, interest over the suit land?*
- 7. Whether the plaintiff is entitled to a decree of khas possession by evicting the defendants from the suit land by demolishing structure thereon?*
- 8. Whether the plaintiff is for a decree of permanent injunction ?*
- 9. Whether the plaintiff is entitled for a decree as prayed for?"*
- 10. What relief /reliefs the parties are entitled for ?*

9. The findings of the learned Trial Court

- (I) As the plaintiff pleaded in the plaint that he gave the suit land to the defendant in the year 1984. On cross examination the plaintiff deposed that he gave the suit land to the defendant in the year 1990 and as the PW 2 deposed that earlier the land was possessed and cultivated by Konram Chutia and therefore, the plaintiff has failed to prove that the defendant was under permissive possession over the suit land. However, from the evidence of defendant no.1, the learned Trial court came to a conclusion that the defendant refused to leave the possession of the suit land despite plaintiff's demand.
- (II) Relying on the Ext. A, the agreement executed by Konram

Chutia and evidence of DW 2, the attesting witness of Ext. A and his admission in cross-examination that the land sold by Konram Chutia was a different plot of land and as Ext. A does not disclose any description of any land, the court came to a finding that there was no sell and purchase in respect of suit land by the defendants though they have been in continuous possession of the suit land since 1964.

- (III) During his cross-examination, as the defendant No. 1 also admitted that the plaintiffs are having right, title and interest over the suit land, the court came to a finding that Konram Chutia has no right to sell the suit land at any point of time. Further conclusion of the learned trial court was that Ext. A document cannot confer any right or title to the defendant over the suit land. It was also concluded that Ext. A document cannot confer any right, title and interest to the defendant over the suit land.
- (IV) The plaintiff's right title and interest has been proved. It was also held that though the defendant is having long possession of suit land, but mere long possession does not confer any right, title over the suit land and inasmuch as the plaintiff has already proved his right, title and interest over the suit land.

10. **Finding of the appellate Court:**

The learned appellate court after- re-appreciation of evidences and material before it came to the following finding:

- I. Ext. A on the basis of which the defendant claims title is an

unregistered sale deed for consideration of Rs 1500 and therefore such sale deed is not valid in the eye of law.

II. The pleadings that plaintiff handed over the land to the Konram Chutia by virtue of an agreement for sale has not been proved and therefore, preponderance of evidence goes in favour of the appellant plaintiff.

III. Learned appellate court also came to a conclusion that the plaintiff has been able to prove that the defendant was a permissive occupier over the suit land and learned trial court committed an error while deciding that the appellant is not a permissive occupier of the suit land.

IV. As it is proved that the defendant is a permissive occupier of the suit land, the defendant is always duty bound to return the same as and when demanded by the plaintiff.

V. The claim of the defendant regarding acquisition of title over the suit land by virtue of unregistered sale deed was negated by the learned appellate court holding that Section 54 of the Transfer of Property Act 1882 bars such transaction and it gives no legal sanctity to such transaction. Accordingly, the appeal was dismissed and decree was upheld. Being aggrieved, the present appeal has been filed.

11. **Ms. P. Bhattacharyya, Learned counsel for the appellant advanced the following arguments:**

(i) The pleading of the plaintiff clearly shows that the land in question was agricultural land and possession was handed

over for cultivation and therefore for all meaning and purport, the defendant was a tenant under the plaintiff and as such tenant is having protection under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 and therefore, the both the learned Court below have not framed the issues properly and therefore this is a case, which should be remanded for fresh trial inasmuch as the plaintiff himself has pleaded that the land was handed over for cultivation of Rabi crops and it is also pleaded that sometimes the defendant used to give crops to the plaintiff and therefore the defendant for all meaning and purport, is a tenant.

- (ii) The learned appellate Court has perversely decided that the defendant is a permissive occupier and accordingly passed the decree and thus held that the defendant was a licensee under the plaintiff therefore such decision is erroneous and perverse in the given facts and evidence of the case. Accordingly, the substantial question of law framed should be answered in favour of the defendant appellant.

12. **Argument Advanced on behalf of the Plaintiff/ respondents:**

Per contra, Mr. P.K. Kalita, learned Senior Counsel advances the following argument:

- (i) The plaintiff has by cogent material proved his title over the suit land. Such title has also been admitted by the defendant in his cross-examination.
- (ii) The defendant himself admitted that the ownership of

the land lies with the plaintiff by relying on unregistered sale deed and it is specifically pleaded the land was initially sold by the plaintiff to Konram Chutia and thereafter, the defendant purchased it from Konram Chutia. Thus, the defendant admitted the ownership of the plaintiff however, he has failed to prove his title and the both the courts below has rightly decided that such unregistered sale deed which even do not disclose any landed property cannot be relied on.

- (iii) Such finding of fact cannot be reversed in a second appeal until and unless such findings of fact are perverse and contrary to the evidence on record. Therefore, this second appeal is liable to be dismissed.

13. **Findings of this Court:**

- I. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties and perused the materials on record.
- II. That plaintiff is the owner of the suit land has been concurrently found to be correct on the basis of evidence laid by the plaintiff.
- III. Admittedly, the Ext.A Sale Deed was an unregistered Sale Deed for an amount of Rs 1500/- and admittedly both the courts below concurrently found such evidence do not disclose any landed property. Both the Court came into to a conclusion that section 54 of the Transfer of Property Act, 1882 debars such kind of transfer and therefore, such Sale Deed cannot confer any

title upon the plaintiff.

- IV. In the considered opinion of this Court the aforesaid findings are not based on extraneous consideration and rather based on evidence and the exhibited documents. On perusal of the materials, this Court is of the unhesitant view that , the appellant has failed to point out that the findings of facts arrived at by the two learned Courts are perverse for the reason that it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law. As discussed herein above, the decision has been arrived at judicially and reasonably. Therefore, this court in exercise of its power under Section 100 of the CPC, 1908 cannot reverse such findings of fact.
- V. The substantial question of law framed and argument advanced is based on a new plea taken for the first time in the second appellate stage that defendant being a tenant under the plaintiff under the Assam (Temporarily Settled Areas) Tenancy Act, 1971, the decision of the learned Trial court is perverse holding the defendant as licensee under the plaintiff. But fact remains that while upholding the decree passed by the learned Trial Court, the learned appellate court reversed such findings and held the defendant to be a permissive occupier inasmuch as it was nobody's case that the defendant was a licensee under the plaintiff.
- VI. The Section 3 (17) of the Act of 1971 defines a tenant as a person who cultivates or holds the land of another person under

a special contract, expressed or implied and pays rent for that land to the other person, including by way of delivery of share or quantity of the produce of such land. To claim to be a tenant and to get a protection of the tenancy right, the defendant has to specifically plead as to for how many years he has been a tenant, and what is the rate and what is the mode of payment of rent that he has been paying, but nothing is pleaded by the defendant except the pleading of the plaintiff that the defendant was allowed to cultivate Rabi crop.

VII. Such right of tenancy under the Act, 1971 is raised for the first time in the second appellate stage inasmuch as it is never a pleaded case of the defendant that he was a tenant under the plaintiff and it is also not a case of the defendant that his rights had matured under the provision of the Act, 1971 and such argument has been advanced for the first time at the second appellate stage.

VIII. In view of the aforesaid, this court finds no substantial questions of law in this case.

IX. Accordingly the Second Appeal stands dismissed. Parties to bear their own cost.

X. A decree be drawn accordingly.

XI. LCR be returned back.

JUDGE