

GAHC010120122012



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

Case No. : RSA/11/2012

RAM NARAYAN RAJBHOR
S/O LATE DURBALI RAJBHOR, R/O KALAPAHAR CYCLE FACTORY, P.S.
FATASIL AMBARI, GUWAHATI-16, KAMRUP, ASSAM.

VERSUS

GEETA GHOSH @ GEETA KALITA AND ORS
W/O LATE RAM PRASAD GHOSH

2:MASTER ASHOK GHOSH

3:MISS GUNU GHOSH

NO. 2 IS THE SON AND NO. 3 IS THE DAUGHTER OF LATE RAM PRASAD
GHOSH AND BOTH ARE MINORS AND REPRESENTED BY THEIR MOTHER
AND NATURAL GUARDIAN

SMTI GEETA GHOSH @ SMTI GEETA KALITA AND ALL ARE RESIDENT OF
KALAPAHAR CYCLE FACTORY
P.S. FATASIL AMBARI
GUWAHATI-16
KAMRUP
ASSAM

Advocate for the Petitioner : MS.D CHAKRABORTY

Advocate for the Respondent : MR.T BARUAH

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 14-11-2023

Heard Mr. S.P. Roy, learned counsel for the appellant. Also heard Mr. R. Ali, learned counsel for the respondents.

2. The appellant Ram Narayan Rajbhor instituted Title Suit No. 76/2006 against the respondents Geeta Ghosh, Ashok Ghosh and Gunu Ghosh where Geeta Ghosh is the wife of Late Ram Prasad Ghosh and Ashok Ghosh and Gunu Ghosh respectively are son and daughter of Late Ram Prasad Ghosh.

3. In paragraphs 3, 4 and 5 respectively of the plaint it is stated as extracted:

“3. That Late Fakaruddin Ali Ahmed (the former president of India) was the absolute owner and possessor of a plot land measuring 5(five) Bighas 4(four) Kathas and 18 (righteen) Lechas of land, covered by K.P. Patta No. 25 Dag No. 20 of village Fatasil Gaon, Mouza- Beltola, situated near the Fatasil Ambari P. S. Later on as per family arrangement, a plot of land measuring 1(one) Katha and 1(one) Lecha had fallen in the share of Late Ahtzamuddin Ali Ahmed (the own brother of Late Fakaruddin Ali Ahmed) out of aforesaid total plot of land of Late Fakaruddin Ali Ahmed.

4. That Late Ahtzamuddin Ali Ahmed vide a Registered Deed of Sale No. 1800/81 dtd 2.3.81, had sold the said plot of land measuring 1(one) Katha and 1 (one) Lechas to Late Durbali Rajbhor and handed over the actual physical possession of the said plot of land to Late Durbali Rajbhor. The plot of purchased by Late Durbali Rajbhor, vide Sale Deed No. 1800/81 dated 2/3/81, is morefully described in the Schedule 'A' below.

5. That after purchase of the below Schedule 'A' plot of land, by Late Durbali Rajbhor (who was the father of the present plaintiff), he had constructed Assam Type and Ekchali thatched houses thereon and started residing thereon, along with his family members. At the time of purchase of the below Schedule 'A' plot of land, the father of Late Durbali Rajbhor and the grandfather of the present Plaintiff was alive and he was Karta of his H.U.F which included Late Durbali Rajbhor and his family members. As such the houses constructed over the 'A' Schedule plot of land, was assessed by the G.M.C. in the name of Late July Tajbhor, under holding No. 427 of Ward No. 19-A of G.M.C. and he was regularly paying the holding taxes to the G.M.C.”

4. A reading of paragraphs 3, 4 and 5 of the plaint makes it discernible that the predecessor-in-interest of the appellant plaintiff Ram Narayan Rajbhor had purchased a plot of land described as Schedule A to the plaint being land measuring 1 Katha 1 Lecha covered by K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon Mouza Beltola bounded by North: Fatasil Ambari Main Road, South: Bharalu River, East: land of Mr. Das (Kalapahar) and West: land of Mithailal Koeri and soap factory and the claim is that the land was purchased by registered Sale Deed No. 1800/81 dated 02.03.1981 where Late Ahtzamuddin Ali Ahmed is the vendor and Late Durbali Rajbhor is the purchaser. The appellant plaintiff accordingly instituted the suit for a declaration of right, title and interest over the Schedule A land and also for recovery of possession of the Schedule B which is two rooms measuring 10 ft. X 10 ft. each, standing over the Schedule A land, which is stated to have been taken at a monthly rent by Late Ram Prasad Ghosh being the predecessor-in-interest of the respondents defendants.

5. The respondents defendants filed their written statement taking the stand as stated in paragraphs 4, 5 and 6 of the written statement which is extracted as below:

“3. That the fact narrated in the plaint are false. The suit property does not belong to the plaintiff as alleged by the plaintiff.

4. That the defendant No. 1 owns and possess a plot of land measuring 10 (ten) lechas covered by Dag No. 20 of village Kalapahar Gaon, Mouza- Beltola, Guwahati, District- Kamrup.

5. That the land in question is a Government land. The Defendant No. 1's father-in-law Late Rameswar Ghosh was in occupation of the said land, since 1960. After death of the father-in-law of the defendant No. 1, the husband of the defendant No. 1 was in occupation of the said land. After the death of the defendant No. 1's husband, the defendant No.1 and her children are in occupation of the land. This occupation is continuous and with out any question whatsoever. The plaintiff, considering the poverty of the defendant, instituted this suit to have illegal gain.”

6. A reading of the stand taken by the respondents defendants in the written statement makes it discernible that they are in possession of 10 lechas of land covered by Dag No. 20 of village Kalapahar Gaon Mouza Beltola Guwahati in the district Kamrup which as per paragraph 5 of the written statement is a Government land.

7. On the basis of the aforesaid pleadings, the following issues were framed:

- 1. Whether the suit is maintainable in its present form?*
- 2. Whether there is cause of action for the suit?*
- 3. Whether the plaintiff is the owner and pattadar of 'A' schedule plot of land?*
- 4. Whether the defendants are in illegal possession of the 'B' schedule land and house?*
- 5. Whether the defendants have any right, title in the suit property?*
- 6. Whether the plaintiff is entitled to the reliefs claimed in the suit?*

8. We particularly take notice of issue No. 3 which is whether the plaintiff is the owner and pattadar of the Schedule A plot of land and issue No. 4 as to whether the defendants are in illegal possession of the Schedule B land and house. But what is already noticed is that it is the claim of the plaintiff appellant that their predecessor-in-interest had purchased the Schedule A land from Late Late Ahtzamuddin Ali Ahmed as per the Sale Deed No. 1800/81 dated 02.03.1981 which apparently pertains to K.P. Patta No. 25 of Dag No. 20 of village Fatasil Ambari Gaon Mouza Beltola along with an Assam Type and Ekchali thatched houses standing thereon bearing GMC Holding No. 427 of Ward No. 19-A(old)/20(new) whereas on the other hand it is the stand of the respondents defendants in the written statement that they owned and possessed a plot of

land measuring 10 lecha of Dag No. 20 of village Kalapahar Gaon Mouza Beltola and that the land in question is a Government land and that the predecessor-in-interest of the respondents defendants was in occupation of the land.

9. Clearly there is a variance on the claim of the appellant plaintiff *inasmuch* as the appellant plaintiff claimed ownership over 1 katha 1 lecha of land of K.P. Patta No. 25 of Dag No. 20 of village Fatasil Ambari Gaon Mouza Beltola whereas the respondents defendants claimed ownership and possession over 10 lechas of land of Dag No. 20 of village Kalapahar Gaon which admittedly is a Government land meaning thereby that the appellant plaintiff is stating his claim over a plot of land which is a patta land covered by K.P. Patta No. 25 whereas the respondents defendants are claiming ownership over a plot of land which is admittedly as per the written statement is a Government land.

10. In the circumstance, taking note of the variance of the respective claims of the appellant plaintiff and the respondents defendants, a further issue also ought to have been framed by the learned Trial Court as to which is the disputed land in Title Suit No. 76/2006. If the disputed land is the land claimed by the plaintiff in his plaint and the defendants claimed ownership over another plot of land which is a Government land, the matter could have been decided in a particular manner and on the hand, if the disputed land is a Government land as claimed by the respondents defendants, the matter could have been decided in another manner whereas on the other hand, if the disputed land is unidentifiable, then the first and foremost would have been a requirement to first identify the disputed land and find out as to how the disputed land would be described and thereafter, proceed in the matter to decide the respective claims.

11. Without framing an issue as to which is the disputed land in view of the

variance of the claims of the appellant plaintiff and the respondents defendants to two different lands, where the claim of the appellant plaintiff is to a patta land covered by K.P. Patta No. 25 whereas the claim of the respondents defendants is to a Government land as stated in paragraph 5 of the written statement, we are of the view that any decision that may have been rendered would be an incomplete decision.

12. In course of the trial the plaintiff appellant exhibited the registered Sale Deed No. 1800/81 dated 02.03.1981 as Exhibit No. 1 to prove his right, title and interest over the Schedule A land. The Trial Court in its judgment dated 08.03.2010 had decided the issue No. 3 as to whether the appellant plaintiff is the owner of Schedule A land, as extracted:

“The submission of the original sale deed does not prove its execution when the defendant denied the right, title and interest of the plaintiff over the suit land. So it is the bounden duty of the plaintiff to prove the execution of the Ext-1, sale deed either by examining the vendor or the scribe or the attesting witness. But plaintiff failed to examine any of these persons, as such the execution of the Ext-1 sale deed is not proved. The plaintiff has also not submitted the jamabandi or the patta of the suit land to show that he is the recorded pattadar. So, it cannot be held that the plaintiff is the owner and pattadar.”

13. Having decided the issue No. 3 against the appellant plaintiff, Title Suit No. 76/2006 was dismissed. Being aggrieved, the appellant plaintiff instituted T.A. No. 45/2010 in the Court of the learned Civil Judge No. 3, Kamrup at Guwahati.

14. In the circumstance, the substantial questions of law to be determined are reframed as under:

1. Whether a registered Sale Deed duly exhibited is also required to be proved by

examining the vendor of the Sale Deed and whether Section 67 of the Evidence Act is applicable in the circumstance?

2. *Whether the respective claims of ownership leading to right, title and interest in respect of a property can be determined when the disputed property itself is not being identified for such determination?*

15. The appellate Court had formulated its points for decision by rescheduling the issues framed where the point No. 1 for decision was whether the plaintiff has right, title and interest over the suit land and whether the defendants are in illegal possession of the Schedule B land. While deciding the point No. 1, the appellate Court in respect of the Exhibit 1 Sale Deed No. 1800/81 dated 02.03.1981 relied upon by the appellant plaintiff had decided as extracted:

“The plaintiff/ appellant has exhibited the original sale deed No. 1800/81 (Ext-1) to prove his title over the suit land. But the plaintiff failed to establish by way of oral or documentary evidence to show that Fakaruddin Ali Ahmed was the absolute owner of the land measuring 5 Bighas 4 Kathas 18 Lechas and that out of that land, the suit land measuring 1 Katha 1 Lecha fell in the share of Late Ahtajuddin Ahmed, the brother of Fakaruddin Ali Ahmed by way of family settlement. Whereas the defendant denied the right, title and interest of the plaintiff over the suit land, the plaintiff must prove its execution. Requirement of Section 67 of Evidence Act must be satisfied either by examining the vendor or the scribe or the attesting witness. But the plaintiff did not examine any of those persons. It is settled law that mere making of a document as an exhibit does not dispense its proof. The Ld. Court below also rightly pointed that the plaintiff has failed to prove the title of the vendor. The plaintiff failed to produce any documentary evidence to show that Fakaruddin Ali Ahmed, the elder brother of the vendor of the plaintiff was the recorded pattadar of the suit land. Plaintiff also failed to prove the fact of family settlement.”

16. Having regard to the afore-extracted portion of the respective judgments of the learned Trial Court and the learned appellate Court on the issue as to whether the plaintiff has right, title and interest over the Schedule A land, it is noticed that both the Courts had taken note that the Exhibit 1 Sale Deed No. 1800/81 dated 02.03.1981 is relied upon by the appellant plaintiff to prove his

right, title and interest over the Schedule A land which apparently is a land measuring 1 katha 1 lecha of K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon, Mouza Beltola and also proceeded on the premises that the defendants have denied the right, title and interest of the appellant plaintiff over the Schedule A land.

17. On the aspect as to whether the right, title and interest of the plaintiff had been denied by the defendants, we refer to the statements made in paragraphs 4, 5 and 6 of the written statement. As already noted in paragraphs 4, 5 and 6 of the written statement, it is the clear stand of the respondents defendants that they are the owners and possessors of a plot of land measuring 10 lechas covered by Dag No. 20 of village Kalapahar Gaon Mouza Beltola which according to the respondents defendants is a Government land.

18. No statement is discernible in the written statement that there is any denial in respect of the claim of the appellant plaintiff that he has the right, title and interest over the land measuring 1 katha 1 lecha of K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon, Mouza Beltola. In the absence of any determination as to whether the disputed land is the land measuring 1 katha 1 lecha of K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon, Mouza Beltola or whether it is the land measuring 10 lechas of Government land covered by Dag No. 20 of village Kalapahar Gaon, Mouza Beltola, and in the backdrop of the stand of the respondents defendants in the written statement that they have ownership and possession over 10 lechas of land which is a Government land covered by Dag No. 20 of village Kalapahar Gaon, even the proposition of implied denial is found to be absent in the present proceeding.

19. In view of such conclusion, both the Trial Court as well as the Appellate Court premises that the claim of right, title and interest of the appellant plaintiff

over the land measuring 1 katha 1 lecha of K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon, Mouza Beltola had been denied by the respondents defendants is found to be contrary and incorrect to the stand of the respondents defendants.

20. When the denial of the right, title and interest of the appellant plaintiff over the Schedule A land measuring 1 katha 1 lecha of K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon, Mouza Beltola is found to be absent, the proposition sought to be decided by the learned Trial Court as well as the Appellate Court that in view of the denial of the right, title and interest of the plaintiff over the Schedule A land, which the plaintiff intends to prove by relying upon Exhibit 1 registered Sale Deed No. 1800/81 dated 02.03.1981, there is also a requirement to bring in the evidence of the vendor of the Sale Deed to be examined. Firstly, the respondents defendants had not placed any proposition of law before the Court that in the event the right, title and interest claimed by the plaintiff is denied by the defendants, even production, reliance and exhibition of a registered Sale Deed will not be sufficient and the vendor of the Sale Deed would have to be orally examined to prove the contents of the Sale Deed.

21. The learned Appellate Court in its judgment dated 06.08.2011 in T.A. No. 45/2010 also goes into the aspect that the requirement of Section 67 of the Indian Evidence Act, 1872 would have to be satisfied in such a situation.

22. Mr. S.P. Roy, learned counsel for the appellant plaintiff on the other hand, on the proposition as to whether upon production and exhibition of a registered Sale Deed, there is also a requirement under the law to orally examine the vendor of the Sale Deed, relies upon paragraph 27 of the judgment rendered by the Hon'ble Supreme Court in *Prem Singh & Ors. Vs. Birbal & Ors.*, reported in (2006) 5 SCC 353, wherein it is provided as extracted:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

23. A reading of the proposition laid down by the Hon'ble Supreme Court in paragraph 27 of its judgment rendered in *Prem Singh (supra)* makes it explicit that there is a presumption that a registered document is validly executed and a registered document therefore prima facie would be valid in law and the onus to prove against such registered document would be on a person who leads evidence to rebut the presumption.

24. As there is a presumption in favour of a registered document, as per the proposition laid down by the Hon'ble Supreme Court, in the event the respondents defendants intend to take a stand that the contents of the registered Sale Deed Exhibit 1 do not prove the right, title and interest of the plaintiff over the Schedule A land, it is for the respondents defendants to lead evidence to the contrary to show that the contents thereof would be unacceptable.

25. In view of the above, the conclusion arrived at by the learned Trial Court as well as by the learned Appellate Court that the appellant plaintiff had failed to discharge the burden, therefore would be unacceptable in law. Furthermore, as already noticed, the respondents defendants in their written statement had not denied the right, title and interest of the appellant plaintiff over the Schedule A land comprising of 1 katha 1 lecha of K.P. Patta No. 25 Dag No. 20 of village Fatasil Ambari Gaon, Mouza Beltola, and on the other hand it is their stated claim that they are the owners and possessors of a plot of land measuring 10 lechas which is a Government land covered by Dag No. 20 of

village Kalapahar Gaon, Mouza Beltola, which apparently is at a variance from the identity of the land over which the appellant plaintiff has claimed his right, title and interest. Furthermore, as already noticed above, in view of the variance of the description of the lands over which the appellant plaintiff and the respondents defendants have claimed their respective right, title and interest and there being no material on record to identify as to which description of land i.e. the description of land claimed by the appellant plaintiff or the description of land claimed by the respondents defendants, is the identity of the disputed land, we are of the view that unless a specific issue is framed on the same and the identity of the disputed land is explicitly stated, no decision can be arrived at on the respective claims *inasmuch as*, the appellant plaintiff and the respondents defendants both apparently claim right, title and interest over plots of land which have their respective different descriptions.

26. In view of the above, the judgment dated 08.03.2010 in T.S. No. 76/2006 passed by the learned Munsiff No. 2, Kamrup, Guwahati and the judgment dated 06.08.2011 in T.A. No. 45/2010 passed by learned Civil Judge No. 3, Kamrup, Guwahati are set aside and the matter is remanded back to the learned Trial Court to decide the respective claims of the appellant plaintiff and the respondents defendants, firstly by framing a specific issue as to what is the identity of the disputed land involved in the present suit and thereafter, make an attempt to determine the right, title and interest of the plaintiff and the defendants over the identified disputed land by taking note of the respective evidences and material that may have been produced. If it is desirable, the respective parties may be allowed to adduce further evidence on discretion of the learned Trial Court, if necessary by exhibiting any further material. In doing so, the learned Trial Court is also required to follow the proposition of law that

may be applicable in respect of the admissibility of the claim of right, title and interest based upon an exhibited registered Sale Deed.

27. Accordingly, the matter is remanded back to the learned Trial Court for a fresh consideration as indicated above. Both parties to appear before the learned Trial Court on 18.12.2023.

Regular Second Appeal stands disposed of as indicated above.

Send back the LCR forthwith.

JUDGE

Comparing Assistant