

GAHC010120452012



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

Case No. : RSA/37/2012

ON THE DEATH OF BANABASHI BAISHNAB HIS LEGAL HEIRS BISWA
BAISHNAB SON and ANR
KRISHNA MAHANTA DAU, AS PER HON'BLE COURT'S ORDER DTD.
26/6/2012 IN MC NO. 1052/2012

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-5

2:THE DEPUTY COMMISSIONER

BARPETA
P.O. and DIST. BARPETA
ASSA

Advocate for the Petitioner : B CHAKRAVARTY

Advocate for the Respondent : MS B DUTTA

Linked Case : MC/2552/2014

ON THE DEATH OF BANABASHI BAISHNAB HIS LEGAL HEIRS BISWA
BAISHNAB SON and ANR

VERSUS

THE STATE OF ASSAM AND ANR

Advocate for : MR.S K DAS

Advocate for : appearing for THE STATE OF ASSAM AND ANR

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. B. Chakravarty,
Advocate.

For the Respondents : Mr. D. Mazumdar,
Addl. Advocate
General, Assam.

Date of Hearing : 19.09.2023

Date of Judgment : 05.10.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Chakravarty, learned counsel representing the appellants as well as Mr. D. Mazumdar, the learned Addl. Advocate, General, Assam appearing for the State respondents.

2. This is a Regular Second Appeal under Section 100 of the Code of Civil Procedure (CPC) whereby the judgment dated 12.12.2011 passed by the court of Addl. District Judge (FTC), Barpeta in Title Appeal No.19/2004, reversing the judgment and decree dated 07.10.2004 passed by the court of learned Civil Judge (Senior Division), Barpeta in

Title Suit No.13/2000, is under challenge.

3. Late Banabashi Baishnab purchased 1 Bigha 3 Khathas 13 Lechas of land covered by Old Dag No.742 of village- Kalahbhanga under Mouza- D.C. Baushi of Kamrup District. The land was purchased from Brajabashi Aditya and Binod Bihari Aditya on execution of registered Sale Deed No.3555 dated 01.07.1958. Since then, Late Banabashi Baishnab has been occupying the said land by constructing a temple.

4. Subsequently, the respondent State settled the said land in favour of the Fire Service Department of Barpeta. Therefore, Late Banabashi Baishnab filed the suit seeking his right, title and interest in the said land.

5. The respondent (defendant in the said suit) denied the aforesaid facts. They claim that the said land is covered by Dag No.1505 of Barpeta Road Town under Gobardhan Mouza and it is a Government land. The respondent further submitted that Late Banabashi Baishnab has been occupying the said land by constructing a dwelling house and a temple.

6. The respondent submitted that the ritual of issuing notice under Rule 18(2) of the Assam Land and Revenue Regulation, 1886 has been discontinued as per Government Notification No.(LR-26)96/pt/13-A dated 21.04.1997. According to the respondent, Late Banabashi Baishnab was a trespasser who encroached Government land and that is why the land was handed over to the Fire Service Department.

7. On the basis of the pleadings of the parties, the trial court framed the following issues:

1. Whether there is cause of action of the suit?
 2. Whether notice under Section 80 CPC was served upon the defendant?
 3. Whether the suit is barred under Section 154 of Assam Land and Revenue Regulation?
 4. Whether plaintiff has purchased the suit land by registered Sale Deed No.3555 dated 01.07.1958 from Brajabasi Aditya and others?
 5. Whether the plaintiff was evicted by C.O. of Barnagar Circle on 28.06.2000 as per order of Encroachment Case No.5/99/2000?
 6. Whether notice under Rule 18(2) of Assam Land and Revenue Regulation, 1886 was served upon the plaintiff?
 7. Whether plaintiff is in possession of the suit land for more than 30 years adversely, openly, continuously against the Govt. and acquired right, title and interest upon the suit land?
 8. Whether the plaintiff is entitled to decree as prayed for?
- 8.** During the trial of the case, both sides examined witnesses and the trial court decreed the suit in favour of the respondent/plaintiff.
- 9.** The first appellant court allowed the appeal by reversing the judgment passed by the trial court.
- 10.** The present second appeal was admitted for hearing upon the following substantial questions of law:
- (I) Whether the learned first appellate court was justified in dismissing the suit of the plaintiff for declaration of right, title and

interest over the suit land, by holding that the plaintiff could not prove that Dag No.742 was converted to Dag No.1505, when the issue no.4 was answered in favour of the plaintiff and when Ext.-B revenue record shows that the plaintiff is in possession of the land in Dag No.1505.

II. Whether the suit of the plaintiff for declaration of right, title and interest over the suit land is hit by Section 154 of the Assam Land and Revenue Regulation 1886?

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

12. The entire suit stands on a single issue that the appellant has been occupying a plot of Government land for a period of 30 years continuously and openly and therefore, he has perfected his right, title and interest over the said plot of land by way of adverse possession.

13. In *State of Rajasthan v. Harphool Singh* (2000) 5 SCC 652, the Supreme Court has held as under:

“So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involve destruction of right/title of the State to immovable property and conferring upon a third party encroacher title where, he had none. The decision in [P. Lakshmi Reddy vs L. Lakshmi Reddy](#) [AIR 1957 SC 314], adverted to the ordinary classical requirement - that it should be nec vi nec clam nec precario - that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or

intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in Secretary of State for India in [Council vs Debendra Lal Khan](#) (1933) LR (LXI) I.A. 78 (PC), strongly relied for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. [In Annasaheb Bapusaheb Patil & Others vs Balwant](#) alias Balasaheb Babusaheb Patil (dead) by Lrs etc. [AIR 1995 SC 895], it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the Courts must have regard to the animus of the person doing those acts."

14. Mere possession of land for long time does not provide title. In order to acquire title, one has to possess land continuously and openly and he has to show that he has challenged the title of the actual owner during that period. In the case in hand, the appellant may be possessing the land for a long time, but he never challenged the title of the respondent. The learned first appellate court correctly decided that the appellant never acquired right, title and interest over the suit land by way of adverse possession.

15. The appellant also failed to prove that the Dag No.742 was converted to Dag No.1505.

16. Section 154 of the Assam Land and Revenue Regulation, 1886 bars the jurisdiction of civil court regarding validity of any settlement. The

appellant challenged the settlement order in the suit. Therefore, jurisdiction of the civil court is barred.

17. I have found that the learned first appellate court correctly appreciated the legal aspects and arrived at a correct finding.

18. For the aforesaid reason, I find that the present appeal is devoid of merit and stands dismissed accordingly.

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JUDGE

Comparing Assistant