

GAHC010138642018



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

Case No. : RSA/209/2018

SMTI SIPRA BARUA AND 2 ORS
W/O LATE KALYAN KR. BARUA, R/O VILL. SONAKHULI, GOREHAT, P.S.
GOLAKGANJ, DIST. DHUBRI, ASSAM.

2: SRI JOYDEEP BARUA
S/O LATE KALYAN KR. BARUA
R/O VILL. SONAKHULI
GOREHAT
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM.

3: SRI RAJDEEP BARUA
S/O LATE KALYAN KR. BARUA
R/O VILL. SONAKHULI
GOREHAT
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM

VERSUS

SMTI DIPALI BARUA AND 3 ORS
W/O LATE ANJAN KR. BARUA, VILL. KALDOBA, P.S. AGOMONI, P.O.
AGOMONI, DIST. DHUBRI, ASSAM, PIN 783335

2: SMTI RAJASHREE BARMAN
D/O LATE ANJAN KR. BARUA
VILL. KALDOBA
P.S. AGOMONI
P.O. AGOMONI
DIST. DHUBRI
ASSAM
PIN 783335

3:SRI SRIKANT BARMAN
S/O UNKNOWN
R/O VILL. KALDOBA
P.S. AGOMONI
P.O. AGOMONI
DIST. DHUBRI
ASSAM
PIN 783335

4:SMTI JAYASHREE RAY
W/O SRI PRABIR RAY
VILL. HALAKURA
P.S. GOLAKGANJ
P.O. AGOMONI
DIST. DHUBRI
ASSAM
PIN 78333

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : MR. T J MAHANTA (R1-R4)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellants : Mr. K. R. Patgiri Advocate.
For the Respondents : Ms. P. Bhattacharya, Advocate.
Date of Hearing : 16.05.2023
Date of Judgment : 16.05.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. K. R. Patgiri, learned counsel for the appellants. Also heard Ms. P. Bhattacharya, learned counsel for the respondents.
2. The present appeal is directed against the Judgment and Decree dated

10.08.2017 passed by the learned Civil Judge, Dhubri in Title Appeal No. 44/2015 whereby the Judgment and Decree dated 11.05.2015 passed by the learned Munsiff No. 1, Dhubri dismissing Title Suit No. 453/2010 preferred by the present appellants was upheld.

3. The Title Suit No. 453/2010 was filed by the present appellant for partition declaration of right, title, interest, division and permanent injunction.
4. It is the claim of the plaintiffs/appellants that one Apurba Jiban Baruah predecessor-in-interest of the plaintiffs and defendants was the original owner of the suit land. After his death, the property divested upon the predecessor-in-interest of the plaintiffs and the predecessor-in-interest of the defendants and also upon the three daughters of Late Apurba Jiban Baruah. However, as the three daughters relinquished their share, the property divested upon the two predecessor-in-interests of the plaintiffs and defendants respectively, they being sons of Late Apurba Jiban Baruah.
5. It is the further claim of the plaintiffs that the two sons of Late Apurba Jiban Baruah amicably partition the Schedule-A land between them. According to the plaintiffs, Schedule-A land consist of two types of land, 6 Lechas of land is commercial land and remaining land is for residential purpose. The said 6 Lechas of commercial land was divided between the two brother i.e. two sons of Late Apurba Jiban Baruah having 3 Lechas of each and rest of the land i.e. 1 Katha 7 Lecha for residential were also divided between them consisting of 13 ½ Lechas each. Such commercial portion of land was described as Schedule-C and the residential portion of land was described as Schedule-D to the plaint.

6. According to the plaintiffs, as the plaintiffs resided away from Schedule-D land, taking advantage of such situation, the defendants dispossessed the plaintiffs from the Schedule-D land by making certain construction and accordingly, the suit was filed before the learned trial Court below.
7. The defendants contested the suit. Though, they admitted that the original owner was late Apurba Jiban Baruah, however, disputed that the three daughters of late Apurba Jiban Baruah had relinquished their share. They also pleaded that there are other plots of land measuring more or less 13 Bighas of late Apurba Jiban Baruah in a village – Sonakhuli Pt-II and the entire land was possessed by the plaintiffs and such fact has been suppressed while filing the suit.
8. The plaintiffs examined 4 (four) witnesses and exhibited one Raiyoti Khatian as Exhibit-1. The defendants examined 2 (two) witnesses and exhibited certain documents including certain tax payment receipt and khatian.
9. The learned trial Court below after evaluating the evidences, came to the following conclusions:-
 - I. It is an admitted position that the originally property belongs to late Apurba Jiban Baruah. Suit property has been partitioned between plaintiffs and defendants. Total land left by late Apurba Jiban Baruah at village Kaldoba Pt-I is 13 lechas in Schedule-A, consisting of commercial place of 6 lechas. Two sons having 3 lechas each over the said land doing business.
 - II. After appreciating the evidence of PW-1 and more particularly

considering the admission of PW-1 in her cross-examination that late Apurba Jiban Barua had 12/13 Bighas of land in village Sonakhuli Pt-II and after death of Apurba Jiban Barua, the plaintiffs had been possessing the said land and that there is no documents relating to partition of the land at village Kaldoba Pt-I, the learned trial Court below came to a conclusion that the plaintiffs had failed to substantiate their claim that after partition, the suit land fell into their share and thereby they have right, title and interest over the Schedule-D land. Accordingly, it was held that the plaintiffs are not entitled for recovery of khas possession over the Schedule-D land. Such decision was challenged before the learned appellate Court below in Title Appeal No. 44/2015.

III. The learned appellate Court below after considering the evidence on record and after appreciating such evidence came to a conclusion that the plaintiffs are silent in their plaint in respect of land of Late Apurba Jiban Baruah at Village – Sonakhuli, though they have admitted during cross examination regarding existence and possession of the said land by the plaintiffs.

IV. The learned appellate Court also came to a conclusion that the plaintiffs side failed to prove that they are entitled to half share of Schedule-A land and their right, title and interest over the Schedule-D land. It was further conclusion of the learned appellate Court that the defendants have successfully proved by evidence and admission made by the plaintiffs that they have only 3 Lechas of share in commercial land each at village Kaldoba where the shops are situated

and not more than that. Accordingly, the judgment of the learned trial Court was upheld by dismissing the appeal.

10. This Court after consideration of the aforesaid judgment is of the inhesitant view that both the learned Courts below came to the aforesaid conclusion after properly appreciating the evidence on record as well as the exhibited documents.
11. The plaintiff deposing as PW-1 herself admitted in her cross- examination regarding the pleading of the defendants that there are more land measuring about 13 to 15 Bighas of land under the possession of plaintiffs which originally belonged to Late Apurba Jiban Barua. Further the PW-1, herself deposed that there is no proof that daughters of Late Apurba Jiban Barua has relinquished their land rather it was admitted that one of the daughter had earlier initiated certain proceeding claiming her right. At the same time, the Exhibit-1 relied on by the plaintiffs which is a certified copy of Raiyoti khatian in respect of village Kaldoba Pt-I discloses that the said land was in the name of Late Apurba Jiban Barua and later on the same came in the name of Kalyan Kr. Barua and Dipali Baruah who are the plaintiffs. It was also established through the evidence of DWs that land was partitioned and Kalyan Kr. Barua got only 3 Lechas of land at village Kadoba Pt-I and the entire land of Late Apurba Jiban Barua situated at village Sonakhuli Pt-II. Aforesaid determination has been made concurrently by the learned Courts below on the basis of evidence on record.
12. It is well settled that power of High Court to interfere in second appeal under Section 100 is very limited and the Court is to decide only substantial

question of law, if at all arises. Finding of facts reached by the learned Court below cannot be interfered or reversed in a second appeal without coming to a conclusion that the said finding of fact is either perverse or not based on materials on record. In this regard this Court can gainfully rely on the judgment of the Hon'ble Apex Court in the case of ***Karnataka Board of Wakf vs- Anjuman-E Islamia*** reported in ***1999 6 SCC 343***. It is equally well settled that even when from the evidence two inferences are possible, then the one drawn by the Courts below should be opted. Such finding of facts and decisions can only be interfered in a second appeal when such decision is based on inadmissible evidence or arrived at without evidence or recorded based on misreading of material on records and documents.

13. The Word "Perverse" in the legal parlance is defined to mean "against the weight of evidence".
14. The learned counsel could not show any perversity in such determination. Therefore, in absence of any materials to show that findings of fact so arrived and as discussed above by both the learned Courts below are perverse, based on no evidence and result of misreading of evidence, this Court in the second appellate stage cannot interfere with such decisions. The arguments advanced are on basis of facts.
15. Accordingly, this Court finds that no substantial question of law is involved in the present appeal, same stands dismissed.

JUDGE

Comparing Assistant