

GAHC010150922020



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

Case No. : RFA/60/2020

BHASKAR KR. BAISHYA
S/O- LATE HANGSHA NATH BAISHYA, R/O- H/NO. 8, SAMANNAY PATH,
CHRISTIAN BASTI, DISPUR, P.O. GUWAHATI- 781005, DIST.- KAMRUP(M),
ASSAM AND PRESENTLY RESIDING AT VILLAGE- BETKUTCHI
(NOONMATI), LAKHRA, MOUZA- BELTOLA, P.O. GUWAHATI- 781034, DIST.-
KAMRUP(M), ASSAM.

VERSUS

SMTI. USHA RANI BAISHYA AND 3 ORS.
W/O- LATE HANGSHA NATH BAISHYA, H/NO. 8, SAMANNAY PATH,
CHRISTIAN BASTI, DISPUR, P.O. GUWAHATI- 781005, DIST.- KAMRUP(M),
ASSAM.

2:PRANAB JYOTI BAISHYA
S/O- LATE HANGSHA NATH BAISHYA
NARIKAL BASTI
P.O. GUWAHATI- 781027
DIST.- KAMRUP(M)
ASSAM AND PRESENTLY RESIDING AT FLAT NO. A- 10783
DLF
WESTERN HEIGHTS
AKASHAYANAGAR
P.O. BENGALURU- 560068
KARNATAKA.

3:HEMANTA KUMAR BAISHYA
S/O- LATE HANGSHA NATH BAISHYA
H/NO. 72
SENDURI ALI PATH
ZOO ROAD
NABIN NAGAR
P.S. GEETA NAGAR

P.O. GUWAHATI- 781032
DIST.- KAMRUP(M)
ASSAM.

4:SMTI. SABITA PATGIRI
D/O- LATE HANGSHA NATH BAISHYA
W/O- SRI AMIYA KUMAR PATGIRI
H/NO. 24
BYE LANE NO. 1
LAKHIMI NAGAR
NAMGHAR PATH
P.S. HATIGAON
P.O. GUWAHATI- 781019
DIST.- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : MR. T K BHUYAN (r-3,4)

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 21-09-2023

JUDGMENT AND ORDER (CAV)

Heard Mr. N. Dhar, learned counsel assisted by Mr. B.K. Sen, learned counsel representing the appellant as well as Mr. S. Sarma, learned senior counsel assisted by Mr. J. Das, learned counsel appearing for the respondents.

2. This is a Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC) whereby the impugned order and decree dated 19.09.2020 passed by the court of learned Civil Judge Sr. Div. No.3 at Kamrup(M), Guwahati in Title Suit

No.287/2020 is under challenge.

3. In the year 1992, the respondent Usha Rani Baishya had purchased a plot of land measuring 2 Kathas on execution of a registered sale deed. Usha Rani Baishya has 3 sons, namely- the plaintiff Bhaskar Baishya, the respondents Pranab Jyoti Baishya and Hemanta Baishya. She has one daughter, named Smti. Sumita Patgiri.

4. Usha Rani Baishya had allowed her elder son Bhaskar Baishya to build a house on a part of the aforesaid land. Accordingly, Bhaskar Baishya constructed the house.

5. Now, Bhaskar Baishya has filed a suit against his mother Usha Rani Baishya and his brothers and sister praying for a declaration of possessory right and title over the said building situated on a part of the land given to him to construct the house.

6. The learned trial court rejected the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure.

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

8. The relevant portion of the order of the trial court is quoted as under:

“So, let us peruse the registered sale deed of 1992 at the outset. And if we peruse the aforesaid registered sale deed of 1992, we will find that there is no mention of any facts regarding purchase of suit land by the father of the plaintiff out of his money in the name of her wife. So under such circumstances, the claim of the plaintiff that his father had purchased the suit land in the name of his mother cannot sustain in view of provision of law laid down under section 91/92 of Evidence Act.

Now, if the mother of the plaintiff is found to be the sole owner of the suit land, then the claim of the plaintiff for possessory right and title of the plaintiff in respect of the suit premises against his mother i.e., Defendant No.1 cannot sustain being hit by doctrine of "**Spes Sucessionis**". And, as regard other defendants, the claim of plaintiff will be hit by **sec 6(a) of T.P. Act R/W Sec 15 of Hindu Succession Act R/W Sec 34 of Specific Relief Act**. Moreso, when the alleged NOC was given only for the purpose of construction of building and not for any other purpose."

9. There is no dispute that the land belongs to Usha Rani Baishya and she is still alive. She allowed her elder son to build a house on one part of the said land. Now, the son filed the suit praying for declaration of possessory right and tile over the said building.

10. Both sides belong to Dayabhaga School of Hindu Law. Therefore, during the lifetime of Usha Rani Baishya, her son cannot claim any right, title over her property. This is the classic case where the son by building a permanent structure over the land belongs to his mother has claimed title over the building. Indirectly, he has claimed title over the portion of land where the building stands.

11. This Court is of the opinion that there is no cause of action for the suit. The learned trial court should have rejected the plaint under Order 7 Rule 11(a) of the CPC instead of Order 7 Rule 11(d). The suit has been filed with mala fide intentions in order to grab land that does not belong to the plaintiff. The learned trial court has rightly held that the plaintiff has the only remedy to go and seek damages for the expenses incurred by him at the time of construction of building.

12. I am of the considered opinion that the impugned order does not require any interference of this Court. There is no cause of action for the suit. The trial court has rightly rejected the plaint.

13. The appeal is found to be devoid of merit and stands dismissed and disposed of.

Interim order if there be any, shall stands vacated.

Return the LCR.

JUDGE

Comparing Assistant