

GAHC010176392009



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

Case No. : RSA/171/2009

ROBIN GOSWAMI
S/O LATE KANAK CH. GOSWAMI, VILL. KAIHATI, MOUZA-KHETRI
DHARMAPUR, P.S. BELSOR, DIST. NALBARI, ASSAM.

VERSUS

BHOGI BHARALI and 17 ORS

2:KARUNA BHARALI

BOTH S/O LATE DHANO BHARALI.

3:DHARMA KANTA BARMAN
PROF. DEFT

4:SADANANDA BARMAN

5:PHANIDHAR BARMAN

6:HARENDRA DAS

7:JOGENDRA DAS

8:LAKSHI SALOI

9:AMIR SALOI

10:MOTI RAM BARMAN

11:SMTI. KASHAYLA BALA DAS

12:BHUBANESWAR BARMAN

13:BIDYADHAR BARMAN

14:GANGADHAR BARMAN

15:UTTAM CH. BARMAN

16:BHAGABAN BARMAN

17:LAKSHIDHAR BARMAN

18:NARAYAN BARMAN

3 TO 18 ARE PRO. DEFDTs. ALL ARE R/O VILL. KAIHATI
P.S. BELSOR
DIST. NALBARI
ASSAM

Advocate for the Petitioner : MR.D C MAHANTA

Advocate for the Respondent : MR.B KALITA

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. A Dhar, Advocate

For the Respondents : None appears.

Date of Hearing : 08.06.2023, 26.06.2023

Date of Judgement :19.10.2023

JUDGEMENT & ORDER (CAV)

1. Heard Mr. A Dhar, learned counsel for the appellant. Though notice was served upon the respondents and the respondents were duly represented, however, none appears for the respondents during the course of hearing.
2. The present second appeal is directed against the judgment and decree dated 22.12.2008 passed by the learned Civil Judge (Sr.Div.), at Nalbari in TA 01/2008 dismissing the appeal by upholding the judgment and decree dated 25.01.2008 passed by the learned Civil Judge (Jr. Div.) No. 2, Nalbari in TS 13/2002 whereby the suit preferred by the plaintiff/appellant was dismissed.
3. This Court while admitting the appeal under its order dated 04-12-2009 framed the following substantial questions of law:

“1) Whether the lower appellate court misconstrued and

misapplied the provision of the Ceiling Act and the Assam Tenancy Act in deciding the title of the plaintiff-appellants over the suit land?

2) Whether the non-compliance of the provision of order 41 rule 31 CPC by the lower appellate court resulted in miscarriage of justice to the appellants?"

4. To examine whether the aforesaid substantial questions of law is involved in the present case, let this court first record in a nutshell, the facts leading to filing of the present second appeal.

5. The case of the plaintiff:

I. Plaintiff's father namely, Late Kanak Chandra Goswami was the original owner of 74 Bighas 4 Kathas 11 Lechas of land covered by *Nisfi Kheraj* Patta No.6 of Village - Kaihati, Mouza-Khetri Dharmapur, in the district of Nalbari. The Government of Assam initially acquired 24 Bighas 4 Kathas 11 Lechas of land as ceiling surplus land in connection with Ceiling Case No.237/76 under the Assam Fixation of Ceiling on Land Holdings Act, 1956 (hereinafter referred to as the Act of 1956).

II. The father of the appellant, namely, Kanak Chandra Goswami (since deceased) preferred revision petition under the provisions of Section 7(6) of the Act of 1956 against the final order of the Collector, Nalbari in respect of the Land ceiling Case No.237/76. Upon hearing the party as well as on perusal of the case records, by the order dated 30.03.1987, the Deputy Secretary to the Govt. of Assam, Revenue (R) Department, Dispur was pleased to acquire 11 B 2 K 11 L of land as ceiling surplus land instead of 24 Bighas 4 Kathas 11 Lechas of land.

III. The area of land measuring 13 Bighas 2 Kathas 0 Lechas (physically 13 Bighas 1 Katha 19 Lechas) of *Nisfi Kheraj* were retained and split into different Dag Nos. as follows and retained in the name of the Original Pattadar.

Dag No.867 - 0 B 2 K 10 L

Dag No.865 -	1 B 3 K 0 L
Dag No.866 -	1 B 4 K 0 L
Dag No.902 -	3 B 4 K 0 L
Dag No.1052 -	1 B 2 K 18 L
Dag No.901 -	2 B 0 K 10 L
Dag No.751 -	0 B 2 K 0 L
Dag No.1045 -	0B 1 K 0 L
Dag No.1047 -	1 B 2 K 1 L
TOTAL -	13 B 1 K 19 L

The above fact is reflected in the Jamabandi (Plaintiff's Document No.1) pertaining to Nisfi Kheraj Patta No.6 of Village – Kaihati, Lot No.2, Mouza- Khetri Darmapur, Pashchim Nalbari Circle in the District of Nalbari in the entry "Dha". That apart, the said fact has also been mentioned in the Ext-2 (order dated 23.11.1998).

IV. After allowing the deceased father of the Appellant to retain the aforementioned land measuring 13 Bighas 1 Katha 19 Lechas by the Collector, the names of the Plaintiff, his brother and his mother were recorded in the revenue records in respect of N.K.Patta No.6. The Plaintiff continued to be in possession of the aforementioned land measuring 13 Bighas 1 Katha 19 Lechas by way of cultivation through his employees. Land measuring 13 Bighas 1 Katha 19 Lechas is the suit land.

V. On 02.12.1996 the Defendant Nos.1 & 2 caused obstruction to the Plaintiff and threatened the Plaintiff of dire consequences in the event of continuation of cultivation over the suit land.

VI. The Plaintiff filed a petition under the provisions of Section 145/146 Cr.P.C. against the Defendants which was registered as Case No.270^m/1996 before the Additional Deputy Commissioner. By the order dated 23.11.1998, the Ld. Additional Deputy Commissioner was pleased to declare possession of the Plaintiff over the suit land and directed the Belsor Police to deliver possession of the suit land to the Plaintiff

and accordingly, the police restored the possession of the suit land to the Plaintiff.

VII. The Defendant No.1 preferred Crl Rev.(P) No.269/1999 before this Court. This Court while admitting the Criminal Revision petition was pleased to direct both the parties to maintain status quo in respect of possession as on 02.07.1999. At that time, the Plaintiff was in possession of the suit land. Eventually, the Hon'ble Gauhati High Court remanded the revision petition to the Ld. Additional Deputy Commissioner, Nalbari.

VIII. Since the Defendants clouded the title of the Plaintiff by illegally interfering with the suit land, the Plaintiff had instituted Title Suit No.13 of 2002 before the Civil Judge (Junior Division) No.2, Nalbari *inter alia* praying for declaration of right, title and interest of the Plaintiff over the suit land, confirmation of possession and for permanent injunction.

6. The case of the defendant:

I. The Defendant Nos.1 & 2 along with Proforma Defendant Nos.4, 7, 11 and 20 contested the suit by filing their joint written statement. The suit proceeded ex-parte against the Defendant Nos.3, 5, 6, 9, 12, 14, 15, 16, 17 18 and 19.

II. The Defendants denied return of land measuring 13 Bighas 2 Kathas 11 Lechas by the Collector to the Plaintiff with delivery of possession. The Defendants further stated that the schedule land particularly of Dag Nos.865, 902 and 1052 corresponding to Dag Nos.^{511/719/865}_{131 511} of N.K.Patta No.6 were possessed by Late Dhano, father of the Defendant Nos.1 and 2 as an occupancy tenant under Late Kanak Chandra Goswami, i.e., the father of the Plaintiff and accordingly, a Katcha Khatian No.130 was issued in favour of the father of the Defendants on 28.02.71 in respect of 7 Bighas 3 Kathas 6 Lechas of land. The Defendants stated that their father got allotment of 5 Bighas 4 Kathas 16 Lechas of land in Dag No.511, 719 and 865 leaving an area of 1 Bigha 3 Katha 10 Lechas of Dag No.865/511 which was outside the purview of the Ceiling Act. The Defendants further pleaded that the suit land was under continuous possession of the father of the Defendants and since the date of

settlement they have been paying "touzi Shira" and hence, the Plaintiff has no right to claim the suit land.

7. The Issues:

Upon perusal of the pleadings, the Learned Trial Court was pleased to frame the following issues:

- i. Whether there is any cause of action for the suit?
- ii. Whether the suit is maintainable in the present form?
- iii. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?
- iv. Whether the suit is barred by limitation?
- v. Whether the Plaintiff has got right, title, interest and possession over the suit land?
- vi. To what relief/ reliefs the Plaintiff is entitled?

8. An additional Issue was framed to the following effect :

"Whether the land described in the schedule to the plaint has been acquired by the government in accordance with law and what portion of such acquired land had been exempted as ceiling surplus and whether any sale was done in respect of such exempted land? "

9. Findings of the learned trial court:

I. The father of the plaintiff was the original owner of 74 B 4 K 1 L of land. Such fact was established through the evidence of PW1 and also in his cross-examination and same was corroborated by PW4. As per Ext. 1 leaving aside 50 Bighas, 24 Bighas 4 Kathas 11 Lechas of the land was acquired.

II. However, Ext. 1 does not reflect that the exempted land being returned to the plaintiff as land was already sold for which exemption was granted. Therefore, question of exemption of land already sold does not arise inasmuch as land sold before

01.04.1970 cannot be exempted. Ext. 1 makes it abundantly clear that Government exempted 13 B 1 K 19 L of land including 4 B of land reserved for orchard and land already sold.

III. There is no documentary evidence for return of land though an averment was made that delivery of possession was given. Defendant's Exhibit Ka is an allotment certificate in respect of 5 B 4K 16L of land under NKP No. 6 and under Dag Nos. 511 (O) 865, 131 (N) and 719 also shares the plaintiffs case of possession. Further Ext. Kha being the final Khatian in respect of 1B 3K 10L of land under Das No. 511 also undermines petitioners case of possession over the scheduled land.

IV. Therefore, plaintiff has no right, title, interest and possession over the suit land and that land described in the schedule to the plaint is Sarkari Khas land and exemption in respect of the acquired land was alone for the land already sold by the plaintiff's father.

10. Findings of the learned Appellate court:

I. The learned Appellate Court appreciating the Ext. 1 came to a conclusion that leaving 50 Bighas of land, the Collector acquired 24 Bighas 4 Kathas and 1 Lechas of land and also though recorded that exemptions were made from the preview of the Ceiling Act, however, the court concluded that 11 Bighas 2 Kathas land were acquired by the Government as ceiling excess land.

II. It was further finding of the learned trial court that the Exhibit 1 does not reflect that the exempted land being returned to the plaintiff as land was already sold for which exemption was granted. Therefore, question of return of such land does not arise.

III. The learned appellate court also approved the decision of the learned trial court that though there is an averment regarding the delivery of possession in respect of suit land after the passing of the order in the revision on the ground that there is no record to show handing over delivery of the possession though there is an averment that delivery of possession was made and thus came to a conclusion that the schedule

land is sarkari khas land and the exemption of the acquired land was alone for the land already sold by the plaintiff.

IV. The decision of the learned appellate court reflects that the individual issues were not separately dealt with by the learned appellate court and upheld the decision of the learned trial court and even has not discussed the relevance of Ext. 1 and Ext. 2 and concurred with the decision of the learned trial court.

11. **Argument advanced by the learned counsel for the appellant are as under:**

I. The Learned Trial Court as well as the First Appellate Court misconstrued the Exhibit – 1, the order passed by the Revenue Authority of the Government of Assam and the Ext-2, order dated 23.11.1998 passed by the Executive Magistrate in Case No.270 ^m/96 U/S 145, 146(1), Cr.P.C. in respect of suit land and erroneously held that the suit land is a Ceiling surplus land and thus, the decision of both the court below are perverse as both the courts misconstrued the provision of the Ceiling Act. In support of such contention Mr. Dhar, learned counsel for the appellant relies on the decision of the Hon'ble Apex Court rendered in the case of ***Vinod Kumar Vs. Gangadhar*** reported in **(2015) 1 SCC 391** .

II. The Learned Courts below has misconstrued that vide Exhibit -1, the Government had acquired only 11 B 2 K 11 L out of 74 B 4 K 11 L of land belonging to the father of the Plaintiff. So after deducting the statutory permissible area of land to be held i.e., 50 Bighas, the remaining land measuring 13 B 2 K was retained by the Plaintiff. Thus, the Learned First Appellate Court has failed to appreciate the evidence adduced by the Plaintiff in its proper perspective and failed to decide the first appeal keeping in view the scope and powers conferred under Section 96 read with Order 41 Rule 31, CPC.

12. **Decision:**

I. 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 Courts 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. The word "Perverse" in the legal parlance is defined to mean "against the weight of evidence".

II. There are two situations in which interference with findings of fact is permissible in a Second Appeal under Section 100, CPC. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. The second situation in which, interference with findings of fact is permissible is, where a finding has been arrived at by the courts by placing reliance on inadmissible evidence, which if it was omitted, an opposite conclusion was possible.

III. Therefore, now let this court examine whether the findings of fact arrived concurrently are perverse and erroneous so as to exercise the power of this court under Section 100 of CPC and answer the substantial question of law in favour of the appellant.

IV. The Ext. 1 is not disputed by the defendants and both the learned trial court and appellate court relied on such exhibit. As it is seriously argued that the Ext. 1 and Ext. 2 are wrongly interpreted and misread resulting in the aforesaid decision, this court perused both the Ext. 1 and Ext. 2.

V. From the appreciation of the Ext. 1, the following facts are discernible:

- a. Ext. 1 is an order by Governor passed on 30.03.1987 in a revision petition filed under Section 7 (6) of the Act, 1956, which is also been acknowledged by both the courts and the defendants.

- b. According to the said order, the petitioner (predecessor in interest of the appellant) was holding 74B 4K 11L of land. Such fact is also not under dispute.
- c. Leaving aside 50B, the Collector acquired 24B 4K 11L of land.
- d. On being approached by the petitioner Government allowed 4B more land to be retained as orchard. Thus, total land acquired was 20B 4K 11L.
- e. 9B 2K 10L land were exempted from the purview of the Act by the order dated 30.03.1987 as the said land were sold during the period from 1970 to 1973 under a compelling circumstance for treatment of the petitioner, who was suffering from cancer.
- f. Accordingly, 11B 2K 11L were only acquired and the land under the orchard were allowed to be retained and the land sold were exempted from the purview of the Ceiling Act.

VI. The predecessor-in-interest of the plaintiff was owner of land measuring 74B 4K 11L and in term of Section 4 of Act of 1956 a landlord can retain maximum 50 B of land and the remaining land beyond such ceiling is acquired by the Government. Thus, in term of the said Act the surplus land beyond the ceiling should be 24B 4K and 11L of land. However, the Section 7 (6) of the Act of 1956 permits the State Government, on its own motion or on the application if filed within a period of one year from the date of publication of the final statement under Sub-section 4 or from the date the Amendment Act, 1993 came into force whichever is later, to call for any record relating to any final statement and it may pass such order as it deems fit after giving the person concerned an opportunity of being heard. Accordingly, the father of the plaintiff filed a revision petition under Section 7 (6) of the Act of 1956 against the final order of the Collector in respect of Land Ceiling Case No. 237/76 and by the Ext. 1 such revision petition was decided and the acquisition under the Act was determined to be 11B 2K and 11L.

VII. Thus, the area remained after acquisition of 11B 2K 11L out of 74B 4K 11L is 63B 2K 0L. Now if from the 63B 2K 0L the retainable area of land measuring 50B is

deducted the area remained is 13B 2K 0L. Therefore, after acquisition of 11B 2K 11L acquired under the Act after the revision the predecessor-in-interest of the plaintiff retained an area of 13B 2K 0L land. Such Ext. 1 was not at all considered by both the learned Courts below.

VIII. The Ext. 2 reflects that said 13B 2K 0L exempted by Ext. 1 were under different Dag numbers which is reflected in the document 2, Jamabandi and same is also pleaded at paragraph 3 of the plaint. However, from the aforesaid Ext. 2 it is seen that instead of 13 B 2K 0L the total land under the aforesaid Dags the total land is 13B 1K 19L. The Ext. 2 order clearly reflects such proposition and ascertains such facts, however, both the learned courts below ignored such vital piece of evidence and dismissed the suit of the plaintiff.

IX. Therefore, it is clear from the Ext. 1 that out of 74B 4K 11L, total land acquired was 11B 2K 11L, excluding the land sold i.e. 9B 2K 10L and retained for orchard. Therefore, the exclusion of the land from the purview of the Ceiling Act by the competent authority as aforesaid cannot be treated as land acquired under the Act in as much as Ext. 1 is very specific that aforesaid land (land sold and orchard land) are exempted from the purview of the Act and the land acquired is 11B 2k 11L. It is not a duty of the competent authority that exemption is made from the total acquirable land rather the said land has been exempted from the purview of the Act. Exemption shall mean freeing the said land from obligation or liability imposed under/ by the Act. Thus the exempted lands are made beyond the purview of the Act. And such action of the Govt. remained unchallenged. The natural corollary is that the aforesaid land is excluded from the total land of 74B 4K 11L. That being the position, both the learned Courts below has committed perversity by misreading the Exhibit 1 and by including the excluded land from the purview of the Act to be a part of the acquired land under the Act. Therefore, the actual position will be as follows :

Total area of land possessed by Late Kanak Chandra

Goswami at the time of acquisition in 1976 - - 74B 4K 11L

Less, Actual area of land acquired as per EXT-1 -11B 2K 11L

Remaining area of land - 63B 2K 0L

Less, permissible area of land to held - - 50B

Area excluded from the purview of the Act- 13B 2K 0L

Exhibit 2 also clearly corroborates such facts which was not considered by both learned Courts below.

X. As to the other question regarding possession of the land, this Court is of the considered opinion, in view of Exhibit 1 and in terms of the Act, there is no necessity of any documentary proof of the handing over of the possession of the land by the state to the plaintiff in as much as oral evidence of the plaintiff regarding assertion of the possession has remained unshaken and such possession was also affirmed in Ext. 2.

XI. As discussed hereinabove, this court is of the unhesitant view that the suit was dismissed by ignoring and misconstruing the Ext. 1 and Ext. 2 inasmuch as it was ignored by the learned courts below that the revision preferred by the predecessor in interest of the plaintiff under the provision of the Act was allowed and by Ext. 1 11B 2K 11L were only acquired under the Act, after excluding the land already sold and orchard land from purview of the Act as discussed hereinabove. The Ext. 2 clearly establishes as discussed hereinabove that this is the land which was exempted and the predecessor-in-interest of the plaintiff was allowed to retain.

XII. Now coming to the second substantial question of law, Order 41 Rule 31 of the CPC, contemplates that the judgment of the Appellate Court should be in writing; include the points for determination; the decision; the reasons; and where decree is varied or reversed, the relief to which the appellant is entitled.

XIII. It is seen that the learned Appellate court did not adhered to the aforesaid principles of law while deciding the appeal and just reaffirmed the decision of the Trial Court and therefore, this Court is of the view that the Appellate Court committed a

serious error in neither forming the points for determination nor considering the evidence on record, in particular the Ext.1 and Ext.2. Accordingly, the impugned judgment of the appellate Court is thus unsustainable in law and liable to be set aside.

XIV. As discussed herein above, the Ext.1 order was passed on 30.03.1987, Possession of the father of the plaintiff was affirmed by Ext.2 order on 30.11.1998, the suit was filed In the year 2002 and the present second appeal is pending since the year 2009, therefore, instead of remanding the matter to the Appellate Court on this Count, the Court has decided the matter on merit as discussed and determined herein above.

XV. In view of the aforesaid discussion, it is held that both the courts below dismissed the suit of the appellant by misconstruing the provision of the Act of 1956, and the Tenancy Act in deciding the title of the appellant. Accordingly, the present second appeal stands allowed and the suit is decreed by declaring that the plaintiff is having right, title and interest over the schedule land less 19 Lechas as discussed hereinabove and permanent injunction as prayed for is also granted. Prepare a decree accordingly. LCR be sent back. Parties to bear their own cost.

JUDGE

Comparing Assistant