

GAHC010177632006



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

Case No. : RSA/95/2006

GOPAL CH. SAHA .
S/O CHANDRA KUMAR SAHA.

2: 2. KUMUD RANJAN MALLICK

S/O BHUPAN CH. MALLICK
R/O BORPATHAR
PO
PS and DIST-TINSUKIA
ASSAM

VERSUS

MUSTT. AYESHYA KHATUN

2:1B. ENAMUL HAQUE

3:1C AIMUL HAQUE

4:1D IBRARUL HAQUE

S/O LATE AZIZUL HAQUE.

5:1E MUSTT. HASHNU-E-AFASHAN

6:1F MUSSTT. NOOR-E-AFASHAN

7:1G MUSSTT. JABIN-E-AFASHAN

D/O LATE AZIZUL HAQUE.

8:2. TAMIZUL HAQUE

9:3. ANEWARUL HAQUE

10:4. SAMSUL HAQUE
S/O LATE M. SAFIULLA

11:5. MUSSTT. HAKIMA KHATUN
S/O ABDUL KALAM

12:6. MUSSTT. SADRUN NESSA

13:7. MUSSTT. DAHJEDA KHATUN
D/O LATE M. SAFIULLA. ALL ARE RESIDENTS OF TINSUKIA
PS-TINSUKIA
DIST-TINSUKIA AT PRESENT OF CALCUTTA IN WEST BENGAL
C/O HAQUE BROTHERS
STATION ROAD
POandPS. TINSUKIA
DIST-TINSUKIA.

14:8. RATAN SINGH DAHOTIA

15:9. MADAN SINGH DAHOTIA

BOTH ARE SONS OF LATE SOMDUTT DAHOTIA
R/O BORPATHAR
TINSUKIA.

16:10. BHADRESWAR DAHOTIA

S/O LATE LABA DAHOTIA OF TINSUKIA.

17:11. ON THE DEATH OF ASWINI KUMAR DUTTA

REP. BY A SRI SANTI DUTTA B S. DUTTA
R/O TINSUKIA.

18:12. SISIRKUMAR DUTTA

S/O K.C. DUTTA
PO and DIST-TINSUKIA

19:13. SMT. SMRITI RANI DUTA

W/O ASWINI KUMAR DUTTA OF TINSUKIA.

20:14. JIBAN DAHOTIA

21:14B FULESWAR DAHOTIA

22:14B DURGESWAR DAHOTIA

S/O LATE BHUPEN DAHOTIA

23:14C SMT. MANU DAHOTIA

24:14 D SMT. GIRITI DAHOTIA
W/O LATE BHUPEN DAHOTIA

25:14E JANAKI DAHOTIA

D/O LATE BHUPEN DAHOTIA

26:14F MISS. MALABI DAHOTIA

27:14G MISS EHNA DAHOTIA

28:14H mISS LAHAMIA DAHOTIA

D/O LATE BHUPEN DAHOTIA

29:14 I SRI PROBIN DAHOTIA

S/O LATE BHUPEN DAHOTIA 14 TO 14I ARE OF KAKOPATHAR SAIKHOWA
DIST-TINSUKIA
ASSAM.

30:15. KHAGENDRA DAHOTIA

31:15A NARENDRA NATH DAHOTIA

32:.

33:15B OPEN CHANDRA DAHOTIA

34:15C BHOGBOR DAHOTIA

SONS OF LATE NANDIRAM DAHOTIA AND LATE PRABILA DAHOTIA
15 TO 15C ARE RESIDENTS OF TINSUKIA
PS-TINSUKIA
DSIT-TINSUKIA
ASSAM.

35:16. MADAN CHANDRA DAHOTIA

S/O LATE MAHENDRA NATH DAHOTIA

36:17A DALIM BARUA

W/O AMULYA BARUA OF GELAPUKHURI
TINSUKIA

37:17B ADITI NEOG

W/O KAMINI NEOG
NEOG BASTI
TINSUKIA.

38:17C HALIMI DAHOTIA

39:17D MILIKI DAHOTIA

17C AND D ARE MINOR DAUGHTERS OF LATE MAHENDDDRA NATH
DAHOTIA DULY REPRESENTED BY THEIR BROTHER AND GUARDIAN
MADAN CHANDRA DAHOTIA.

40:18. BHADRA KANTA DAHOTIA

41:19. BIBEKANANDA DAHOTIA

18 AND 19 ARE SONS OF LATE NANDIRAM DAHOTIA.

42:29. JOGESWAR GOHAIN

43:29A PURNANDU GOHAIN

44:20B INDRA GOHAIN

45:20C SMT. ARUNABALA GOHAIN
20A TO 20C ARE SONS AND DAUGHTERS OF LATAE SABITRI DAHOTIA
R/O GHORAMARA
DIBRUGARH SUB-DIVISION
DIST-DIBRUGARH.

46:21. SMT. RUPESWARI DAHOTIA

D/O LATE NANDIRAM DAHOTIA

47:22. BANSHI DAHOTIA

48:23. ANANDA DAHOTIAALIAS NANDA
22 AND 23 ARE SONS OF LATE BAJO SINGH DAHOTIA OF TINSUKIA
DIST-TINSUKIA

49:24. PURABI DAHOTIA

W/O LATAE GOLAP DAHOTIA

50:25.A JIBA KANTA DAHOTIA

S/O LATE GOLAP DAHOTIA BOTH ARE HINDU BY CASTE
RESIDENTS OF TINSUKIA
DIST-TINSUKIA

51:26. KULA CHANDRA DAS

S/O MAHENDRA DAS
TINSUKIA.

52:27. HARI PADA BHOWAL

S/O RABOTI MOHAN BHOWAL
TINSUKIA.

53:28. BICHITRA BALAL KARIKAR

W/O BASANTA KUMAR KARKAR
R/O BORPATHAR
S. DAHOTIA ROAD
TINSUKIA.

54:29. BASANTA KUMAR KARIKAR

S/O HARIBILASH KARIKAR
S. DAHOTIA ROAD
TINSUKIA.

55:30. SMT. BALA RANI GAON APPELLANT

W/O LATE PABITRA MOHAN GAON.

56:31. SMT. SANKARI BHOWMIK

W/O PARITOSH BHOWMIK
R/O TINSUKIA
ASSAM.

57:32. SMT. NIRADA SUNDARI DEVI

W/O CHANDRA MOHAN DEBNATH
R/O NALIAPOL
DIBRUGARH.

58:33. RANJIT CH. BHOWMIK

S/O RADHIKA MOHAN BHOWMIK
R/O NEW COLONY
TINSUKIA.

59:34. SMT. SARJU RAY BARMAN

D/O LATE TILAK ROY BARMAN
KHAGESWAR ROAD
TINSUKIA.

60:35. SMT. NIRMALA BALA PAUL

W/OMAKHAN CHANDRA PAUL
RAM KRISHNA MISSION PARA
TINSUKIA.

61:36. SRI HRISHIKESH SAHA

S/O PARESH NATH SAHA
S. DAHOTIA ROAD
TINSUKIA.

62:37. JAGADISH CHANDRA ROY

S/O LATE AMAR CHANDRA ROY.

63:38. SMT. SHILA NANDY

W/O SUBIMAL KANTINANDY
DEOMALI TEA ESTATE
DOOM DOOMA.

64:39. SMT. TANUSHRIPPAUL

W/O BIMALENDU PAUL
R/O DIBRUGARH TOWN.

65:40. SUDHARANI ROY

W/O AKANI KANTA ROY
SRIPURIA
TINSUKIA TOWN.

66:41. NRIPEN CHANDRA PAUL

S/O LATE ANANTA KUMAR PAUL
BARPATHAR
TINSUKIA.

67:42. SATYA DEB

S/O MANMOHAN CH. DEB
KHAGESWAR ROAD
TINSUKIA.

68:43. SMT. BITHIKA GUPTA

W/O SATISH RANJAN GUPTA
NEW COLONY
TINSUKIA.

69:44. GOPAL CH. SAHA

70:45. DULAL CH. SAHA

71:46. BABUL CH. SAHA

72:47. GIRISH CH. CHOUDHURY

S/O PIYARI MOHAN CHOUDHURY
TINSUKIA TOWN.

73:48. ON THE DEATH OF BEHARI LAL DAS

HIS LEGAL HEIR TRILOKYA RANJAN DAS
RESIDENT OF TIMES CENTRE
TINSUKIA

Advocates for the appellants : Mr. G. N. Sahewalla, Sr. Cl.
Md. Aslam
D. Senapati
S. Senapati
N Anix Singh

Advocates for the respondents : Mr. D. Mazumdar, Sr. Cl.
Mr. C. Baruah
Mr. B. Baruah
G. Rahul
R. M. Deka
Ms. M. Saikia
S. B. Sarma

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 06.12.2022

Date of Judgment & Order : 15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. G. N. Sahewalla, learned Senior Counsel for the appellants/defendants. Also heard Mr. D. Mazumdar, learned Senior Counsel for the respondents/plaintiffs.

2. This instant appeal is filed under Section 100 of the Code of Civil Procedure, 1908, challenging the judgment and decree dated 05.01.2006, passed by the learned Civil Judge (Senior Division), Tinsukia, in T.A. No. 04/1996, dismissing the appeal and upholding the judgment and decree dated 30.10.1995, passed by the learned Munsiff No. 1, Tinsukia, in T.S. No. 89/1993.

3. The case of the plaintiffs/defendants is that Late Somdutt Dahotia, the father of the original defendant Nos. 1 & 2, and Late Dashiram Dahotia were brothers. They, along with original defendant Nos. 14 and 15 were the original owners of the land measuring 21 Bighas, 14 Lessas under Dag No. 790, 830, 1268 and 1174/1265, covered by Periodic Patta No. 263 of Tinsukia Town, Mauza Tinsukia and accordingly, they were possessing the land by making amicable partitions and their names were also mutated in their respective shares.

4. On 03.04.1946, the original defendant Nos. 14 & 15 sold their shares out of the land measuring 20 Bighas 14 lessas in favour of original plaintiff- Azizul Haque (since deceased), original Plaintiff No. 2, original Plaintiff No. 3 and original plaintiff No. 4- Late Muktaraul Haque by executing registered sale deed.

5. Similarly, another land owner- Late Bhupen Dahotia also sold his share of land to Late Azizul Haque and Anwarul Haque by executing registered sale deed and also delivered the possession thereof. All the plaintiffs also got their names mutated over the purchased land. But, within the period between 06.05.1957 to 10.05.1957, the original defendant No. 1 filed a false complaint before the Officer-In-Charge, Tinsukia Police Station, alleging that the plaintiff were disturbing his peaceful possession. Accordingly, one proceeding was drawn up under Section 145 Cr.P.C. by the learned Additional District Magistrate and accordingly, the land was attached and the total land under the attachment was 24 Bighas 3 Kathas 14 Lessas where the entire land of the plaintiffs measuring 14 Bighas 3 Kathas 4 Lessas were also included. In the said proceeding, the learned Magistrate declared the possession in favour of the original defendant Nos. 1, 2, 3 & 4 including plaintiff- Lt. Azizul Haque. Then, Lt. Azizul Haque filed a revision petition before the learned Sessions Judge and after hearing the revision matter, the learned Sessions Judge referred the same to this Court for necessary order. Thereafter, this Court accepted the order passed by the learned Magistrate and thereby the right and title of the plaintiffs over the said land were clouded and hence, the plaintiffs, after immediate disposal of the criminal reference, filed the suit along with a petition for temporary injunction. The original plaintiffs claimed that they are the original owner of the suit land described in the schedule of the plaint and are also in physical possession over the same. Accordingly, the plaintiffs also obtained the temporary injunction against the original defendant Nos. 1 & 2, whereby, they were restrained from disturbing the possession of the plaintiffs.

6. During the pendency of the suit before the learned Magistrate, some of

the plaintiffs as well as defendants died and their legal heirs were accordingly substituted as party.

7. Thereafter, the defendant Nos. 1 & 2, in spite of the order of temporary injunction, illegally sold some parts of the suit land to the original defendant Nos. 18 to 41 by executing some sale deeds suppressing the real facts of order of injunction.

8. After the inclusion of the name of the original defendant Nos. 18 to 41 in the suit as defendants, the plaintiffs sought some new relief and inserted in paragraph No. 22 (d) of the plaint, which reads as under:-

"A declaration that all the sale deeds made by the defendants Nos. 1 and 2 in favour of the defendant Nos. 18 to 41 are void, illegal and inoperative in law."

9. The defendant Nos. 1 & 2 contested the suit by filing their joint written statement and it is stated *inter alia* that the land measuring 21 Bighas 14 Lessas originally belonged to Late Bibhishan Dahotia and after his death, the land devolved on his 2 (two) sons, namely, Somdutt Dahotia and Dashiram Dahotia, the father of the defendant Nos. 1 & 2, the defendant Nos. 7, 14 to 17 and Late Nandiram Dahotia were the original owners of the land measuring 21 Bighas 14 Lessas covered by Periodic Patta No. 263 of Tinsukia Town and accordingly, they were possessing their respective shares by making amicable partitions amongst themselves. The entire land in the Patta were the joint property and hence there was never any partition between Somdutt Dahotia

and Dashiram Dahotia. It is further stated that the vendors of the plaintiffs, i.e. the defendant Nos. 14, 15, 16 & 17, never had any right, title and interest and possession over the suit land though it is alleged that the Sale Deeds were executed in favour of the alleged vendors of the plaintiff on 08.03.1946. The plaintiffs, along with defendant Nos. 14, 15, 16 & 17, were never in possession of the suit land and the name of the plaintiffs were mutated over the suit land only with the collusion with the staff of the authority and without serving any notice to the defendants, they mutated their name over the suit land. The defendant Nos. 1 & 2 also denied the validity of the Partition Case No. 25/1947-48 in respect of the land measuring 9 Bighas, 1 Katha, 19 Lessas of Periodic Patta No. 830/885. As per the defendants, pattadar- Somdutt Dahotia died before 1940 and no notice of partition was served on the defendants. The entire proceeding of the Partition Case No. 23/1947-48 is null and void. However, it is admitted by the defendants that as per the order under Section 145 Cr.P.C., the plaintiffs were allowed to cultivate the land on furnishing security for each year and the plaintiffs were not aware of the boundary of the alleged partition land. It is further admitted by the defendants that the learned Executive Magistrate passed the final orders and released the land under attachment under permissive possession of the plaintiffs on 30.07.1959 and temporary permissive possession was also awarded in favour of the plaintiffs, but that has become ineffective in the present claim for confirmation of possession.

10. The defendants, by filing a written statement, stated that the Sale Deed dated 08.03.1946, executed by the defendant Nos. 14 to 17, who are Muttuks by cast and cultivator by profession, and the Sale Deed dated 15.11.1946 purported to be executed by the defendant No. 7, who is also a Muttuk by cast

and cultivator by profession, in favour of the plaintiffs. The plaintiffs are businessman by profession and non-cultivators and without sanction of the Deputy Commissioner, the Sale is prohibited and illegal.

11. The defendant Nos. 3 & 4 also filed their written statement separately and stated that the land measuring 3 Bighas, the possession of which was declared in their favour by the learned Magistrate in the proceeding under Section 145 Cr.P.C., are not included in the suit land.

12. The defendant Nos. 7, 14 & 15 also filed their written statement, but the defendant Nos. 3, 4, 7, 14 & 15 never appeared before the Court nor took part in cross-examining the plaintiffs' witnesses.

13. The defendant Nos. 1 & 2 further stated in their additional written statement that defendant Nos. 14 to 17 never acquired any right, title and interest over the suit land to execute any Sale Deed in favour of the plaintiffs. The defendant Nos. 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 35, 36, 37, 38, 39 & 40 also filed their written statement denying all the allegation brought against them in their plaint about the purchase of the land illegally and they stated that they are the *bona fide* purchaser of the land and as per them, Section 52 of the T. P. Act is also not attracted against them. Accordingly, the defendants prayed for dismissing the suit filed by the plaintiffs.

14. On the pleadings of both the parties, following issues were framed by the learned Munsiff No. 1:

1. Whether the suit is maintainable?
2. Whether there is any cause of action for the suit?
3. Whether the suit is bad for non-joinder of parties?
4. Is the suit barred by the principles of acquiescence, waiver and estoppels?
5. Is the suit undervalued? Is the value of the suit land Rs. 4,100/- as alleged by the plaintiffs or Rs. 21,000/- as alleged by the defendants?
6. Is the suit barred under Article 142 of the Limitation Act?
7. Whether the vendors of the plaintiffs held any right or tile in the suit land?
8. Whether defendant No. 7 sold his share of the land to the plaintiffs on 18.10.1946 by executing any legally valid deed of sale and the plaintiff got possession thereof as stated in para 4 of the plaint?
9. Have the plaintiff acquired any valid right and title in the suit land? Is the plaintiffs story of amicable partition as stated in paras 1 and 2 of the plaint true?
10. Whether the plaintiffs became the owner of the suit land and possessed the same on their own rights as stated in para 5 of the plaint?
11. Was the order passed in partition case No. 23 and 25 of 1947-48 alleged in the plaint instituted after the death of Somdutt Dahotia? Was the order passed in the said partition void and illegal having passed against a dead person?

12. Whether the defendant Nos. 1, 2 3 and 4 have any manner of right, title and possession over the suit land?
13. Are the plaintiffs entitled to a decree for declaration of their right and title to the suit land and confirmation of possession and permanent injunction as prayed for in the plaint?
14. Are the defendants entitled to recover compensation from the plaintiffs u/s 35 A Cr.P.C.? If so how much?
15. To what relief, if any, are the parties entitled?

Additional Issues:-

16. Whether the transaction of sale of the suit land to the defendant Nos. 18 to 41 in parts are hit by provisions of Section 52 of the T. P. Act? If so, what is the legal effect of the said sales on the suit lands.

15. The plaintiffs' side examined the following witnesses in favour of their case:-

1. PW- 1, Shri Ananda Rajabansi
2. PW- 2, Shri Hari Narayan Mitra
3. PW- 3, Shri Tamizul Haque
4. PW- 4, Shri Mahindra Lal Bhuyan
5. PW- 5, Shri Abdul Bari

16. All the witnesses, accordingly, adduced their evidences and also executed

the relevant documents which have been numbered as Exhibit Nos. 1 to 65.

17. The defendant Nos. 1 & 2 cross-examined the witnesses, but no other defendants appeared at the time of cross-examination of the witnesses and none of the defendant Nos. 3 to 41 took part either cross-examining the witnesses or by producing any evidence in support of their case. However, the defendant No. 21- Smti Bela Rani Paul cross-examined the P.W.- 5. But, none of the defendant adduced their evidence though lots of chances were given by the learned Court below to adduce their evidence and from the record, it also reveals that except the defendant No. 21, no other defendants took part in the argument of the case before the learned Munsiff No. 1.

18. The learned Munisff No. 1, accordingly, decided the case discussing the issues as per convenience. The issue Nos. 7, 8 & 9 were taken together for discussion by the learned Munsiff No. 1. As per the claim of the plaintiffs, the defendant Nos. 14 & 15, namely, Late Puspa Dahotia and Late Golap Dahotia, sold their respective shares of land measuring 7 Bighas 4 $\frac{3}{2}$ Lessas out of total land measuring 21 Bighas 14 lessas covered by Periodic Patta No. 263 in favour of the original plaintiff No. 1- Late Azizul Haque and the plaintiff Nos. 2 to 4 and also to Late Muktarul Haque for valuable consideration by duly executing registered Sale Deed and also delivered their possession thereof. Further, it is also claimed by the plaintiffs that the original defendant No. 7 also sold his share of land measuring 2 Bighas 1 Katha 14 $\frac{3}{4}$ Lessas together with a share of land measuring 5 Bighas 1 Katha 5 Lessas for valuable consideration in favour of the original plaintiff Nos. 1, 2 & 3 and delivered the possession thereof. And, to substantiate the same, they have also exhibited the relevant Sale Deeds

executed in favour of the plaintiffs. Further, it reveals from the evidence as well as from the exhibited documents that the name of the original plaintiff Nos. 1, 2, 3 & 4 were also mutated in their respective land. As per the claim of the plaintiffs, the vendors of the plaintiffs were possessing their respective shares by making amicable partition amongst themselves before they executed the Sale Deed in favour of the plaintiffs. During the course of evidence, it is seen that the plaintiffs exhibited the certified copy as well as the original Sale Deed, which were executed in favour of the original plaintiff Nos. 1, 2, 3 & 4 and accordingly, from the discussion made by the learned Munsiff No. 1 as well as from the records, it reveals that the plaintiffs could establish their right, title and possession over the suit land and accordingly, the learned Munsiff No. 1 decided the issue Nos. 7, 8 & 9 in favour of the plaintiffs.

19. Further, in view of the discussion made in issue Nos. 7, 8 & 9, the issued No. 10 was also decided in favour of the plaintiff by the learned Munsiff No. 1.

20. Coming to the issue No. 11 that the Partition Case No. 23 and 25 of 1947-48 with a prayer for issuance of new Pattas in respect of their shares of land, it is seen that the notices were also issued to the recorded patta holders and at that time, Late Somdutt Dahotia and Dashiram Dahotia were not the land owners as it was already purchased by the original plaintiffs and the vendors were accordingly made as opposite parties and notices were duly served on them. Further, there was no evidence laid by the defendants that the Partition Case was instituted only after the death of Somdutt Dahotia. Late Somdutt Dahotia already sold the land to the plaintiffs and hence, he had not raised any objection in mutating the name of the original plaintiffs on their respective

shares. During the course of evidence, the order passed in the Partition Case No. 23/1947-48 was also exhibited as Exhibit-15 and the order on the Partition Case No. 25 of 1947-48 was exhibited as Exhibit- 16 while adducing evidence by the P.Ws. in favour of the case of the plaintiffs. Considering the facts brought in the evidence, the learned Munsiff No. 1 decided this issue also in favour of the plaintiffs.

21. The issue Nos. 12 & 13 were taken together for discussion by the learned Munsiff No. 1. From the discussion made in issue Nos. 7, 8 & 9, it is seen that the plaintiffs have able to prove their right, title and interest and possession over the suit land since their date of purchase. In the same time, the Exhibits- 15 & 16, i.e. the orders of Partition Case Nos. 23/1947-48 and 25/1947-48, were proved and accordingly, it was held that the partition cases were not void or illegal and the defendants failed to produce any evidence on record that the partition cases were instituted only after death of Somdutt Dahotia. In the same time, it is also seen that though the defendant Nos. 1, 2 & 21 have cross-examined the P.W.-5, but none of the defendants adduced any evidence in their favour nor could substantiate the plea that the defendant Nos. 1, 2, 3 & 4 had any right, title, interest and possession over the suit land. Accordingly, the learned Court below decided these 2 (two) issues also in favour of the plaintiff.

22. The issue No. 6 is as to whether the suit is barred under Section 142 of the Limitation Act and from the discussion made in the other issues, it is seen that the suit is filed within a period of limitation and the plaintiffs also claimed their right, title, interest and possession over the suit land till the date of filing and accordingly, it has been decided that the suit is not barred by the limitation

and the issue is decided in favour of the plaintiffs.

23. The learned Court below also decided the issue No. 5, i.e. on the suit valuation, in favour of the plaintiffs as it is found that there is no any averment made by the defendants as to why it is undervalued except the statement made in the written statement that the suit is undervalued and to substantiate the said plea, the defendants neither adduced any evidence nor made any explanation in the written statement itself as to why the suit is undervalued.

24. Further, the issue Nos. 3 & 4 were also rightly decided in favour of the plaintiffs as there is no specific averment made in the written statement in regards to the non-joinder of the parties as well as there is no specific statement as to why the suit is barred by principles of acquiescence, waiver and estoppel. Except the plea taken in the written statement, the defendants did not make any specific mention or averments as to why the suit is barred by the principles of acquiescence, waiver and estoppel.

25. After filing of the additional written statement by the defendants, one additional issue was also framed by the learned Court below, which reads as under:-

“whether the transaction of sale of the land to the defendant Nos. 18 to 41 in parts are hit by provisions of Section 52 of the T.P. Act? If so, what is the legal effect of the said sales on the suit lands?”

26. It is claimed by the plaintiffs that during the pendency of the case, the

defendant Nos. 1 & 2 sold some parts of the suit land to the defendant Nos. 18 to 41 by making some sale document and also delivered the possession to the respective purchasers without the knowledge of the plaintiffs. Coming to know about the said illegal transaction of sale deed, the plaintiffs prayed for amendment of the plaint to implead the defendant Nos. 18 to 41 as the defendants in the case and accordingly, they were impleaded as defendants in the case, summons were issued and they accordingly appeared before the Court and contested the suit by filing their written statement. However, during the course of evidence, except the defendant No. 21, no other newly impleaded defendants, i.e. defendant Nos. 18 to 41, participated in the Court proceeding or adduced any evidence or cross-examined the witnesses in spite of several chances given to them. However, the defendant No. 21 had cross-examined the P.W.-5 and the learned engaged counsel for the defendant No. 21 also placed his argument before the learned Court below.

27. Section 52 of the T.P. Act reads as under:

"During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

28. So, under the said provision of law, anybody who purchase any immovable property during the pendency of a case is held to be bound by the judgment that may be made against the person from whom he derives title, irrespective of

the question of notice. In the instant case also, if there is any execution of sale deed by defendant Nos. 1 & 2 in respect of defendant Nos. 18 to 41, ignoring the pendency of the suit before the Civil Court, the provision under Section 52 of the T.P. Act will come into operation and will affect the right and interest of the defendant Nos. 18 to 41 arising out of the transfers of suit land made in favour of the defendant Nos. 18 to 41 and accordingly, the learned Munsiff No. 1 also decided the additional issue in favour of the plaintiffs.

29. Coming to the issue on maintainability, it is seen that during the course of argument, the learned counsel appeared on behalf of defendant No. 21 submitted that as there was no prayer for khas possession of the suit land in the plaint and the only prayer was for declaration and therefore, the suit is hit by Section 42 of the T.P. Act as well as under Section 34 of the Specific Relief Act. But, it is discussed by the learned Court below that from the evidences and records, it is very much evident that the plaintiffs were dispossessed only in the year 1970-1973 and on the date of filing of the present case, there was no relief for khas possession. However, on 22.12.1994 only, the petition was filed praying for relief of khas possession of the suit land together with the declaration of right, title and interest and permanent injunction over the suit land. It reveals that during the course of argument, the learned counsel for the plaintiffs also relied on the decisions of Hon'ble Orissa High Court and Hon'ble Bombay High Court, wherein, the Hon'ble High Courts have expressed the view that the Court can grant relief if it is not specifically prayed for and if it is not inequitable to do so. The learned Court below also made discussion at length considering the view expressed by the other Hon'ble High courts and accordingly, it has been held by the learned Munisfff No. 1 that no amendment of the plaint is required

for granting any relief of khas possession even if the same was not specifically prayed at the time of filing of the plaint.

30. Further, the issue No. 14 was also decided in favour of the plaintiffs as there was no specific averments made in the written statement nor any evidence is adduced by the defendants though they claimed for recovery of compensation from the plaintiffs under Section 35(A) of the Cr.P.C.

31. From the discussion and decisions made in all the issues stated above, it has been held by the learned Munsiff No. 1 that there is a cause of action for the suit and accordingly, the issue No. 2 was also decided in favour of the plaintiffs.

32. Accordingly, after making detail discussion in regards to all issues, the suit of the plaintiffs was decreed and the right, title and interest of the plaintiffs were also declared over the suit land and the defendant Nos. 1 to 4 were permanently restrained from taking possession over the suit land and all the sale deeds executed by defendant Nos. 1 & 2 in favour of the defendant Nos. 18 to 41 were declared as inoperative in law and cancelled forthwith along with a decree for recovery of khas possession over the suit land wherefrom the plaintiffs were stated to be dispossessed by the defendants.

33. On being dissatisfied and aggrieved by the judgment and decree passed by the learned Munsiff No. 1, the defendants- Smti Niroda Sundari Devi and 12 Ors. had preferred an appeal before the learned Civil Judge (Senior Division) at Tinsukia, but the learned Appellate Court had held that the plaintiffs had

acquired their right, title and interest and possession over the suit land and hence, the learned Appellate Court did not make any interference in the judgment and decree passed by the learned Munsiff No. 1 and upheld the judgment of the learned Munsiff No. 1 and dismissed the appeal accordingly.

34. On being aggrieved and dissatisfied with the judgment and decree of the learned Munsiff No. 1 as well as the learned Appellate Court, Tinsukia, the present second appeal has been preferred by the appellants/defendant Nos. 35 & 40 under Section 100 of the Code of Civil Procedure and the same was admitted on the following substantial question of law:-

“Whether the learned Court below was justified while passing the judgment and decree by exercising powers under Order 7 Rule 7 CPC in absence of specific prayer for recovery of possession made in the plaint?”

35. The learned Senior Counsel, Mr. G. N. Sahewalla, appeared on behalf of the appellants, has submitted that the judgment of the learned Appellate Court is vitiated due to perversity in respect of prayer portion of the plaintiffs, wherein the prayer for recovery of khas possession was not pleaded and the learned Munsiff No. 1 cannot give the relief of recovery of khas possession by exercising the power under Order 7 Rule 7 of the Code of Civil Procedure in absence of any specific prayer to that effect. Further it is submitted that the appellants land are not included in the suit land and after purchasing of the suit land, the appellants had already took their possession in their respective shares. The appellants, as defendant Nos. 25, 35, 36, 37 & 38, had already taken the plea in their written statement that they have no connection with the suit land and in

the same time, they have also taken the plea that there was no partition as claimed by the plaintiffs and they have duly purchased the land from defendant Nos. 1 & 2. Further, in paragraph No. 8 of the written statement, they have also denied that they purchased the portion of the suit land knowingly about the pending litigation between the parties. In the written statement of the defendant Nos. 23, 28, 31, 32 & 42, they have taken the plea that they are no way connected with the land attached to the schedule or in the suit land. Further it is submitted that the learned Trial Court as well as the learned Appellate Court did not specifically mentioned whether the land purchased by these appellants falls under the suit land.

36. The learned Senior Counsel for the appellants further relied on the following decisions of the Hon'ble Supreme Court in support of his submissions:-

- (i) **T. Ravi & Anr. Vs. B. Chinna Narashimha & Ors.**, reported in **(2017) 7 SCC 342**; and
- (ii) **Madhukar D. Shende Vs. Tarabai Aba Shedage**, reported in **(2002) 2 SCC 85**.

37. The Hon'ble Supreme Court in paragraph Nos. 41 & 42 of the judgment of **T. Ravi (supra)** has held as under:

41. Reliance has been placed by learned senior counsel for the respondents on [Vinod Seth v. Devinder Bajaj](#) (2010) 8 SCC 1 in which this Court has laid down that the doctrine of lis pendens does not affect the conveyance by a party to the suit but only renders it subservient to the rights of other parties to the litigation. [Section 52](#) will not therefore render a transaction void. This Court has laid down thus:

"42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. [Section 52](#) will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.

43. ...

42. Reliance has also been placed on [A. Nawab John v. V.N. Subramaniam](#) (2012) 7 SCC 738 in which this Court has laid down thus:

"18. It is settled legal position that the effect of [Section 52](#) is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.

"12. ... The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court." ([Sanjay Verma v. Manik Roy](#), (2006) 13 SCC 608, SCC p. 612, para 12)."

38. The other case which is cited by the learned Senior Counsel for the appellants, Mr. G. N. Sahewalla, does not directly applicable in the present case and in the said judgment, it has been held that ignoring of relevant and material piece of documentary evidence is a serious error of law having a vitiating effect on findings of the Appellate Courts.

39. Further it is submitted by the learned Senior Counsel for the appellants that the amended plaint was filed by the plaintiff/respondent on 20.01.1994, but they did not make any prayer for confirmation of possession if they claimed their possession over the suit land. During the time of filing the amended plaint,

the present appellants were in possession of their respective shares. So, the learned Munsiff No. 1 as well as the learned Appellate Court cannot pass the decree of khas possession without any prayer and the same is gross violation of Section 41 of the T.P. Act as well as Section 34 of Specific Relief Act and exercising the power under Order 7 Rule 7 of the Code of Civil Procedure, the Court cannot grant the relief of khas possession without any specific prayer made by the plaintiffs' side. Further it is submitted that there were 40 Bighas 4 Kathas 9 Lessas of land in 2 (two) patts and out of that, only 14 Bighas 3 Kathas 4 Lessas of land are the suit land and the land purchased by the appellants do not fall under the suit land as claimed by the plaintiffs. After the purchase of the land by the appellants, they are possessing the same having right, title and interest over the said land and hence, without any prayer for khas possession over the suit land, the Court cannot pass an order for relief of khas possession only in view of Order 7 Rule 7 of the Code of Civil Procedure.

40. In this context, the learned Senior Counsel for the respondents, Mr. D. Mazumder, submitted that the issues were rightly discussed by the learned Trial Court as well as by the learned Appellate Court and there was no argument forwarded by the appellants side that there was perversity of fact finding. Defendant Nos. 35 & 40 are the appellants in the instant case and it is an admitted fact that they have already filed their written statement before the learned Munsiff No. 1 after they were being made as a party in the said case. But, it is seen that though they submitted their written statement, but no evidence was adduced in their favour to substantiate their plea that they were under the possession of the lands which were sold to them or the lands under their possession do not fall in the suit land as claimed by the plaintiffs. The

prayer for confirmation of possession was already there in the plaint and all the defendants, i.e. defendant Nos. 18 to 41, were impleaded subsequently and they did not take part in the argument except the defendant No. 21 in the original case. However, the defendant No. 21 also did not adduce any evidence in support of her case though the P.W.-5 was duly cross-examined by the defendant No. 21 and also took part in the argument.

41. It is a fact that at the time of filing of the suit, there was no prayer for khas possession, but during the pendency of the case and violating the order of injunction, the defendant Nos. 1 & 2 had sold the land to defendant Nos. 18 to 41 and for which, the learned Munsiff No. 1 as well as the learned Appellate Court granted the relief of khas possession modifying the relief sought by the plaintiffs. As the defendants, who claimed to be as the *bona fide* purchaser, have not adduced any evidence in their favour nor took part in the argument to disprove the claim of the plaintiffs and accordingly, they are bound by the decree passed against the defendant Nos. 1 & 2 and is hit by Section 52 of the T.P. Act. In this context, the learned Senior Counsel for the respondents relied on a decision of this Court reported in **(2015) 5 GLT 45 [Legal Heirs of Bhabani Prasad Rabha Vs. Dayabati Rabha & Ors.]**.

42. Further, it is submitted by the learned Senior Counsel appearing on behalf of the respondents that the prayer for confirmation of possession was already there in the original plaint, but it is a fact that the prayer for khas possession was not there initially. However, subsequently the prayer was made by filing a petition after they have been dispossessed from the suit land. The defendant Nos. 18 to 41 also had to be impleaded as defendants in the original suit only

when the plaintiffs/ respondents came to know about the selling of some portion of the suit land to those defendants by executing the sale deed by original defendant Nos. 1 & 2.

43. The learned Senior Counsel for the respondents further relied on a decision of Hon'ble Supreme Court reported in **(2010) 3 SCC 470 [Sheshambal (Dead) through Lrs. Vs. Chelur Corporation Chelur Building & Ors.]**, wherein, it is held that "Relief - Subsequent events – Effect – Held, normally right to relief must be judged by reference to date suit or legal proceedings are instituted – However, subsequent developments having a bearing on right to relief claimed by a party cannot be shut out from consideration – Courts are expected to examine impact of such subsequent developments on right to relief claimed by a party and if necessary, suitably mould the relief." Further, the learned Senior Counsel emphasized on paragraph Nos. 17, 18 & 19 of the said judgment, which reads as under:

"17. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted.

18. That proposition of law is, in our view, fairly settled by the decisions of this Court in Pasupuleti Venkateswarlu case (supra). Krishna Iyer J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words:

"4. ... If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently

to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

19. To the same effect is the decision of this Court in Om Prakash Gupta's case (supra) where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit yet the Court has power to mould the relief in case the following three conditions are satisfied:

"11. ... (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

44. I have given my due considerations to the submissions made by the learned counsels for both sides and also carefully gone through the judgments of the learned Courts below as well as the case laws cited by the learned counsels of both sides.

45. It is seen that the learned Trial Court had elaborately discussed all the issues and declared the right, title and interest of the plaintiffs over the suit land along with recovery of khas possession of the suit land and the original

defendant Nos. 1 to 4 were also permanently restrained from taking possession over the suit land and in the same time, the sale deeds, executed in favour of defendant Nos. 18 to 41 by the defendant Nos. 1 & 2, were declared as inoperative in law and liable to be cancelled. From the discussion made by the learned Munsiff No. 1, in its judgment on the issues, it is seen that the plaintiffs could establish their right, title and interest over the suit land on the basis of their evidence as well as from the exhibited documents. Further it is seen that by producing the certified copy of the order passed in the Partition Case Nos. 23 & 25 of 1947-48, it was proved that there was a partition. Though, the defendants took the plea that the partition suit was liable to be declared as null and void, but they could not adduce any evidence to that effect and it was rightly discussed by the learned Munsiff No. 1 that on the basis of the partition, the plaintiffs purchased the suit land. It is a fact that initially there was no prayer for recovery of khas possession over the suit land and only the confirmation of possession was sought for as a consequential relief. However, it is a fact that during the pendency of the suit, the defendant Nos. 1 & 2 executed some sale deeds in favour of the defendant Nos. 18 to 41 violating the order of temporary injunction and it is alleged that subsequently, the plaintiffs were being dispossessed from the suit land and for which, the plaintiffs filed a separate petition on 22.12.1994 narrating the entire facts of the case and also prayed for granting relief of khas possession over the suit land along with earlier relief of declaration of right, title and interest and permanent injunction.

46. The learned Trial Court as well as the learned Appellate Court also discussed in detail about the judgment passed by the Hon'ble Orissa High Court as well as the Hon'ble Bombay High Court, wherein, the Hon'ble High Courts

had expressed the view that if there is any subsequent event, the Court should look into Order 7 rule 7 of the Civil Procedure Code, 1908 and can grant relief, which had not been specifically prayed for, if the Court finds it proper and justified and also to avoid the multiplicity of proceeding. More so, it is seen that a petition was filed on 22.12.1994 praying for khas possession stating the subsequent development and dispossession of the plaintiffs from the suit land. So, the decree of khas possession, though not specifically prayed for, can be granted as prayer for any other relief is already made in the plaint to which the parties are entitled to under law and equity and thus, considering the subsequent development or dispossession of the plaintiffs, the relief of khas possession cannot be denied for the substantial justice.

47. Further, it is already seen from the discussion made above that none of the defendants have adduced their evidence to substantiate their plea of possession or *bona fide* purchase etc. over the suit land. Though the defendant No. 21 took part in the argument of the case and cross-examined P.W.-5, but failed to adduce any evidence that the defendant Nos. 18 to 41 were the *bona fide* purchaser of the land and the lands were purchased without any knowledge about the pendency of the suit. Further, the plaintiffs were also able to prove that the disputed lands were sold to defendant Nos. 18 to 41, including defendant No. 21, during the pendency of this case and thus, the provision of Section 52 of the T.P. Act is applicable and the sale deeds is liable to be declared as inoperative in law and also liable to be cancelled.

48. Further, it is seen that the learned Appellate Court also rightly dismissed the appeal holding that the original plaintiffs purchased 21 Bighas 14 Lessas of

land from 2 (two) Pattas comprising different Dags by executing the registered sale deed from the defendants and accordingly, on the date of purchase, the possession was also delivered to the original owners and their names were also mutated over the same. The plaintiffs, by adducing the evidence, also able to prove the fact that on the strength of the Partition Case Nos. 23 & 25 of 1947-48, separate Pattas were issued and accordingly, they also mutated their names over the suit land and accordingly had right, title and interest and possession over the suit land. However, in the subsequent development, the plaintiffs were being dispossessed and therefore the prayer for khas possession was separately filed through a separate petition and the learned Appellant Court also held that the learned Court of Munsiff No. 1 rightly granted the relief of khas possession though it was not specifically prayed for at the time of filing of the plaint as at that time, the plaintiffs were in possession over the suit land.

49. This Court has also held in a case reported in **2015 (5) GLT 45 [Legal Heirs of Bhabani Prasad Rabha Vs. Dayabati Rabha & Ors.]** that under Order 7 Rule 7 of the Code of Civil Procedure relief can always be granted by the Court by moulding the relief as if it has been prayed for applying the provision under Order 7 rule 7 of the Code of Civil Procedure which provides that even if a general or other relief is not being categorically sought for in the plaint, the Court is vested with the power to grant proper relief according to attending facts and circumstances of the case.

50. The Hon'ble Apex Court in another case reported in **(1998) 5 SCC 381** has expressed the view that general or other relief as Court may deem fit, sought by the plaintiff can be granted only when it is consistent with the

pleading as well as proof and it is admissible to grant relief on the basis of what emerges from the evidence, even if not pleaded, if no prejudice is caused to the opposite party.

51. Accordingly, in view of the aforesaid facts and circumstances and discussion, the substantial questions of law have been answered in the above manner and the same is decided against the present appellants/defendants.

52. Thus, in view of the discussion made above, it is seen that the learned Appellate Court rightly upheld the judgment and decree passed by the learned Munsiff No. 1, Tinsukia, and therefore, I am of the opinion that the present second appeal has no merit and accordingly, the same stands dismissed without any cost affirming the judgment and decree dated 30.10.1995, passed by the learned Munsiff No. 1, Tinsukia, in T.S. No. 89/1993, as well as the judgment and decree dated 05.01.2006, passed by the learned Civil Judge (Senior Division), Tinsukia, in T.A. No. 04/1996.

53. Registry to transmit back the records of the case to the learned Courts below forthwith.

JUDGE

Comparing Assistant