

GAHC010206812023



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

Case No. : RSA/176/2023

MANNASH ALI @ MD. ABDUL MANNASH AND ANR.
S/O LATE ABDUL HAMID,
RESIDENT OF VILLAGE SAHARIA GAON, PO SAHARIA GAON, DIST
MORIGAON, ASSAM

2: MD. SAIDUL ISLAM
S/O MD. ABDUL HASEN
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSA

VERSUS

MAJIBUR RAHMAN AND ORS.
S/O LATE ISMILE,
RESIDENT OF VILLAGE SAHARIA GAON, PO SAHARIA GAON, DIST
MORIGAON, ASSAM, 782126

2:MUSSTT. RAZIA KHATUN
S/O LATE ISMILE

RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

3:MD. JALAL UDDIN

S/O LATE KASAM ALI
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON

ASSAM
782126

4:MD.ABDUL HASEN
S/O LATE ABDUL RASID
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

5:MD. ANARUL HOQUE
S/O LATE IDDRISH ALI

RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

6:MD. NOOR MOHAMMED
S/O LATE ABDUL MAJID
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

7:MUSSTT. MANUWARA KHATUN
D/O LATE ABDUL HAMID
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

8:ON THE DEATH OF MD. FAIZUDDIN HIS LEGAL HEIRS MUSST AKHTARA
KHATUN
W/O FAIZUDDIN

RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

9:MUSST. PARBINA KHATUN
D/O FAIZUDDIN

RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126
TO BE REP. BY. RES. NO. 8

10:MUSST. KHATIZA KHATUN
D/O FAIZUDDIN

RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126
TO BE REP. BY. RES. NO. 8

11:MD. MEHEDI ALOM
S/O FAIZUDDIN

RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126
TO BE REP. BY. RES. NO. 8

12:MUSST. DILUWARA BEGUM
D/O LATE ABDUL RASID
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
782126

13:MUSST. SAHJAHAN BIBI
D/O LATE ABDUL RASID
RESIDENT OF VILLAGE SAHARIA GAON
PO SAHARIA GAON
DIST MORIGAON
ASSAM
78212

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : MR J I BARBHUIYA

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 18.12.2023

Heard Mrs. R. Choudhury, learned counsel for the appellants and Mr. J.I. Barbhuiya, learned counsel for the respondent nos. 1 to 3.

2. This appeal under Section 100 CPC is directed against the judgment and decree dated 07.07.2023 passed by the learned Civil Judge (Senior Division), Morigaon in TA 15/2019. By the said appellate judgment, the appeal of the appellants herein was dismissed and the judgment and decree dated 20.05.2019 passed by the learned Munsiff [now re-designated as Civil Judge (Junior Division)] No.1, Morigaon in TS 52/2016, by which the suit of the respondents-plaintiffs was decreed.

3. The concurrent finding of the learned Courts below is assailed by the appellants on the strength of the five substantial question of law as formulated by the learned counsel for the appellants, which are as follows:

1. Whether the findings arrived at by the learned First Appellate Court as well as learned trial court are correct for not considering the various pleadings and evidences in its proper perspective?

2. Whether the learned courts are correct in allowing the suit of the respondents/plaintiffs whereas the suit is itself not maintainable for misjoinder of parties and misjoinder of various causes of action in one suit?

3. Whether the judgment and decree passed by the learned First Appellate Court

and the learned trial court in allowing the suit of the plaintiffs without considering the provisions of law as enumerated under Article 65 of the Limitation Act, 1963?

4. Whether the Judgment and decree passed by both the learned courts below are correct in allowing the suit of the respondents/plaintiff without any proof of the Exhibits 2,5,6 & 8 (the original registered sale deeds) in accordance with law?

5. Any other substantial questions of law that may arise at the time of hearing?

4. The respondent nos. 1 to 3 are the plaintiffs in TS 104/2016. In the plaint there are 17 principal defendants and 13 proforma defendants. The suit was for declaration of right, title and interest and recovery of possession as well as decree for permanent injunction in respect of land described in schedule A, B, C and D of the plaint. The Schedule A land is a plot of land measuring 1 katha out of 10B-3K-8L covered by Dag no. 243 Patta no. 84 and 12 lessa out of 2K-6L covered by Dag No. 206, P.P. No. 84 situated at Chaharigaon under Mouza- Moirabari, PS- Laharighat in the district of Morigaon. The Schedule B land is a plot of land measuring 17 lessa covered by Dag No. 205/204, patta no. 188/29 of Chahariagaon Kissam under Mouza- Moirabari, PS Laharighat in the district of Morigaon. The Schedule C land is a plot of land measuring 4 lessa out of 2K-6L in Dag No. 206 patta no. 84 and land measuring 4K-16L out of 10B-3K-8L covered by Dag No. 243, P.P. No. 84 of Chahariagaon Kissam under Mouza- Moirabari, PS- Laharighat in the district of Morigaon. The Schedule D land is a plot of land measuring 1K-6L covered by Dag No. 242/243 patta no. 84 of Chahariagaon Kissam under Mouza- Moirabari, PS- Laharighat in the district of Morigaon. The four boundaries are mentioned in the plaint, which are not reiterated herein.

5. It is claimed that the original pattadar of the suit land was one Rumed Ali @ Rume and it is projected that the suit land was occupied by

various persons and all the legal heirs of the deceased *pattadar* took possession of land irrespective of their specific share in a particular dag and particular patta and it was projected in the plaint that the heirs of the original *pattadar* had amicably partitioned the land in various point of time. Specific plots of land was sold by one Zakir Hussain (also spelt as Jakir Hussain) to the plaintiff no. 2 and accordingly, after obtaining the sale permission, the said Zakir Hussain sold the Schedule A land vide registered sale deed no. 2053/2004 and delivered possession thereof to the plaintiff no.2 and subsequently, the said land was mutated in the name of the plaintiff no.2. Similarly, another patta holder, Mustt. Sakina Khatun sold 17 lessa of land vide registered sale deed no. 2328/2006 dated 17.11.2006 and the land got mutated in the name of plaintiff no.2 and another patta holder, Abdul Rashid sold 3 katha $9\frac{1}{2}$ lessa land vide registered sale deed no. 10836 of 1968 to Mustt. Kadbanu Bewa and out of her land holding which included the purchased land, Kadbanu Bewa sold 4 lessa of land to Ismail Ali, father of plaintiff no.1 and the husband of plaintiff no.2 by executing registered sale deed no. 107 of 1978 and after his demise, it is projected that the plaintiffs were in possession of the land. Another pattadar, namely, Abdul Hamid had sold 1K-6L land to the father of plaintiff nos. 2 and 3 vide registered sale deed no. 1536 of 1981 and after the demise of their father, the plaintiff no. 3 is in possession of the said land, which has been duly mutated in his name. Accordingly, it was claimed in the plaint that the plaintiffs were possessing the suit land described in Schedule A, B, C and D. However, as the principal defendants had encroached and constructed a hut over the said Schedule A land on 29.02.2016 and that the land described in Schedule B, C and D was also occupied by the principal defendants, finding no alternative, the said suit was filed for declaration of recovery of possession and permanent

injunction. The appellants had filed a joint written statement along with seven others. The appellants were defendant nos. 4 and 5 respectively in the suit. Apart from taking a defence that the suit was hit by adverse possession, had accepted the stand of the plaintiffs of amicable partition of the suit land, but they had also taken a plea that if the suit land was given to the plaintiff, they would be deemed to have given a possession of the landed property where they were living as per their amicable settlement. The defendant nos. 1 to 9 had further taken a plea that it was required to ascertain as to whether all the sale deeds were correct and also to ascertain as to whether the sellers have the power to make the sale or not. It was also stated that all the facts of the plaintiff are not correct and that they had purchased the land from persons who had no right to sell and accordingly, the defendant nos. 1 to 9 including the appellants prayed for dismissal of the suit.

6. In course of trial, the learned trial Court had framed following issues:

“I. Whether there is a cause of action for the suit?

II. Whether the Plaintiff No. 2 has got right, title and interest over the suit scheduled "A" and "B" land as described in the plaint?

III Whether the Defendants has illegally constructed house over suit Scheduled "A" land on 29.02.2016?

IV. Whether the Defendants forcefully/illegally occupied the suit scheduled "B", "C" & "D" land on 01.03.2016?

V. Whether the Plaintiff No. 1 & 2 have got valid right, title and interest over the suit scheduled "C" land as described in the plaint?

VI. Whether the Plaintiffs are entitled to a decree as prayed for?

VII. To what other relief/reliefs are the plaintiff entitled to?"

7. The plaintiffs' side had examined four witnesses, namely, Md. Majibur Rahman (PW-1), Md. Jallal Uddin (PW-2), Md. Ashad Ullah (PW-3) and Md. Ismail Hussain (PW-4) and exhibited the following documents, viz., Trace-map (Ext.1), original registered sale deed no. 2053/2004 (Ext.2), certified copy of draft chita of Dag No. 206, patta no. 84 (Ext.3), certified copy of draft chita of Dag No.204, 205 and 206 (Ext.4), the original registered sale deed no. 10836/1968 (Ext.5), original registered sale deed no. 107/1978 (Ext.6), copy of the order dated 10.07.2007 passed in mutation case no. 10/07 (Ext.7), original registered sale deed no. 1536/1981 (Ext.8), certified copy of jamabandi of Dag No. 206, 242, 243 (Ext.9), certified copy of the draft chita of dag no. 242 and 243 (Ext.10) and original sale deed no. 2328/2006 (Ext.11) and the defendants' side had examined two witnesses, namely, Md. Mannash Ali (DW-1) and Md. Abdul Hasen (DW-2) and exhibited three documents, viz., certified copy of the jamabandi of P.P. no. 84 (Ext.A), certified copy of the jamabandi of P.P. No. 29 (Ext.B) and revenue payment receipt (Ext.C).

8. The issue no. 1 relating to cause of action was decided in the affirmative and in favour of the plaintiffs. In respect of issue nos. 2 and 5, which were taken up together, the learned trial Court had examined the pleadings and the evidence and arrived at a finding that the plaintiffs had purchased the suit land on the strength of four sale deeds referred hereinbefore and the land was

duly mutated in their respective names and accordingly, it was held that the plaintiffs had discharged their initial burden by proving Ext. 2 and 9. Moreover, it was held that the defendants could not discharge their burden to show that Ext. 2 was forged and accordingly, it was held that documents which are rightly exhibited would *prima facie* be valid in law. In connection with the said issue, the learned trial court held that the evidence of PW nos. 1 and 2 remained un-impeached and uncontroverted during their cross-examination and it was further held that the PW-4 had proved the execution and registration of sale deed marked as Ext.11 and also proved the description of the land by producing and exhibiting the draft chitha of Dag no. 204, 205 and 206 as Ext.4. Accordingly, on the basis of Ext.4 and Ext.11, it was held that the PW-2 had acquired the right, title and interest over land described in Schedule B. On the strength of Ext.5, which was the registered sale deed no. 10836 of 1968, it was held that the plaintiff nos. 1 and 2 had also acquired right, title and interest over land described in Schedule C of the plaint. It was also held that the defendants could not be able to prove that the sale deeds marked as Ext.5 and 6 were forged and it was also observed that the defendants did not challenge the genuineness of the sale deeds and accordingly, presumption of lawful execution and genuineness of the signature was presumed under Section 90 of the Evidence Act in respect of the documents which was 30 years old and accordingly, it was held that the plaintiffs had acquired their respective right, title and interest over the suit land described in Schedule C by way of its inheritance. Resultantly, the issue nos. 2 and 5 were decided in affirmative and in favour of the plaintiffs.

9. In respect of issue nos.3 and 4, the learned trial Court had held

that the plaintiffs were in peaceful possession of land described in Schedule A, B, C and D by their own right, title and interest and that the land was illegally occupied by the defendants and having regard to the certified copy of Misc. Case No. 10/2007 (Ext.7), denial by the defendants was viewed as if the defendants' side had not been able to controvert the allegation of dispossession. Accordingly, in view of the admissions made by the DW-1 and on the strength of the testimonies of PWs, the issue was decided in the affirmative and in favour of the plaintiffs. Accordingly, the learned Trial Court had held that the plaintiffs had right, title and interest in respect of Schedule A, B, C and D land. It was also held that the plaintiff no. 2 was entitled to recovery of possession of the Schedule A and B land and the plaintiff no. 2 was also found entitled to decree for permanent injunction and right, title and interest was decreed in favour of plaintiff no. 2 in respect of Schedule A and B land. Similarly, it was held that the plaintiff nos. 1 and 2 had right, title and interest over the Schedule C land and they were entitled to recovery of possession of the said land and the defendants were permanently restrained from entry into the Schedule C land. Moreover, it was held that the plaintiff nos. 2 and 3 were entitled to recovery of possession of the Schedule D land and they were also entitled to permanent injunction by restraining the defendants from entering into the Schedule D land.

10. Decree passed by the learned trial Court was unsuccessfully challenged by the appellants before the learned first appellate Court. The learned first appellate Court, by impugned appellate judgment and decree dated 07.07.2023, dismissed the appeal being TA 15/2019. It would suffice to mention that the learned first appellate Court had formulated the following point of determination:

“Whether the judgment and decree passed by the learned trial Court is just and proper or it needs any interference?”

11. The learned first appellate Court had revisited all the issues and after appreciation of the evidence on record, affirmed the finding of the learned trial Court on all the issues and thereupon dismissed the appeal.

12. In support of the substantial question of law as formulated by the learned counsel for the appellants, she had referred to the pleadings of the parties and also referred to the evidence of the witnesses. Based on the pleadings on record, the learned counsel for the appellants could not successfully demonstrate that the learned trial Court or the learned first appellate Court had failed in considering the various pleadings and evidence in its proper perspective. It may be mentioned that in the written statement filed by the nine defendants, they had merely taken a plea of denial and claimed that the registered sale deeds are not of any value in the eye of law. The said defendants had not set up their own case and merely asserted that they had become the absolute owner of the land on ground of adverse possession. Therefore, the Court is not convinced by the fact that any pleadings or evidence were not read by the learned trial Court and the learned first appellate Court in a proper perspective.

13. In support of the substantial question of law no.2 as formulated by the learned counsel for the appellant, it has noted that the plea has been taken at the second appellate stage regarding non-maintainability of suit for mis-joinder of parties and mis-joinder of various cause of action. In this regard, it is submitted that there are four separate sale deeds in favour of the respective

plaintiffs and therefore, cause of action could not have been joined together. In respect of the said issue, as raised by the learned counsel for the appellants, the Court finds that at the initial stage of the suit, the appellants as defendants had not raised the issue of mis-joinder of plaintiffs and therefore, at this second appellate stage, the Court is unable to return a finding that the mis-joinder of plaintiffs had resulted in any embarrassment or delay in the trial of the suit. Had the said point been raised at the trial stage, it would have been open to the learned trial Court to take recourse to the provisions of Order I Rule 2 of the CPC and order separate trial. The same having not been done at an appropriate stage, it is for the appellants to demonstrate that the prejudice they had suffered in course of trial was irreversible. There is nothing on record to show that the appellants had suffered any prejudice merely because of mis-joinder of causes of action or joinder of several plaintiffs in the trial. Therefore, the said plea is found to be unacceptable at the second appellate stage. In respect of the mis-joinder of necessary parties, in this regard also the Court finds that there is no pleading in the written statement to show that who ought to have been joined as defendants or plaintiffs in the suit. Therefore, the plea of mis-joinder of parties is not sufficient for this Court to interfere with the concurrent finding of the learned trial Court and the learned first appellate Court. Therefore, the plea taken by the appellants is found not sustainable.

14. In support of the substantial question of law no. 3 as formulated by the learned counsel for the appellants, it is observed that in the written statement a mere plea is taken that the defendants have perfected that possession and that within the meaning of Article 65 of the Limitation Act without any basic pleadings as to the date on which the claim of adverse

possession had started to operate. No counter claim was preferred by the appellants/ defendants to assert their claim over the suit land by application of the principle of Article 65 of the Schedule to the Limitation Act, 1963. Therefore, the point raised by the learned counsel for the appellants does not find favour of the court for admission of this appeal on the ground of perfection of the title of the appellants under Article 65 of the Limitation Act.

15. In support of fourth substantial question of law as formulated by the learned counsel for the appellants, it is noticed that the witnesses of the plaintiffs had exhibited four sale deeds, which was marked as Ext. Nos.2, 5, 8 and 11. It could not be demonstrated that by any effective cross examination, the legality and validity of the said sale deeds could be dispelled. Therefore, the Court is constrained to hold that the appellants have not been able to demonstrate that the learned trial court or the learned first appellate Court had committed any perversity in appreciating the Ext. Nos. 2, 5, 8 and 11. It may be mentioned that in the question as formulated by the learned counsel for the appellants, reference is made to proof of the Ext. 2, 5, 6 and 8 as original sale deeds. Apparently, the plea is not found acceptable as it appears that the original sale deeds were Ext. 2, 5, 8 and 11 respectively. Therefore, the submissions made by the learned counsel for the appellants are not found sustainable that the said exhibits were admitted without any valid proof.

16. No other substantial question of law could be raised at the time of hearing.

17. In view of discussions above, the Court is disinclined to admit this appeal. The appellants have not been able to demonstrate that any

substantial question of law has arisen for decision in this appeal and therefore, the appeal is not found to be maintainable and accordingly, this appeal stands dismissed at the admission stage without issuance of notice on the respondent.

18. Let a formal decree be drawn up and transmitted to the learned Courts below for making it as part of their respective records.

JUDGE

Comparing Assistant