

GAHC010219322012



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

Case No. : WP(C)/2498/2012

ON THE DEATH IF MD. TASADDUK HUSSAIN, HIS LEGAL HEIRS , SAHIDA
HUSSAIN and ORS
S/O LATE TAZMUL HUSSAIN

2: MD. TAFFAZZUL HUSSAIN

3: MD. MUZAMMIL HUSSAIN

4: MD. MASRUR HUSSAIN
ALL ARE SONS OF LATE TAZMUL HUSSAIN
R/O COL. J. ALI ROAD
LAKHTOKIA
GHY-1
DIST- KAMRUP M
ASSA

VERSUS

THE ASSAM BOARD OF REVENUE and ORS.
GUWAHATI, DIST- KAMRUP M, ASSAM

2:2. THE SETTLEMENT OFFICER
GUWAHATI TOWN RESETTLEMENT
ULUBARI
GHY-7
DIST- KAMRUPM
ASSAM

3:3. THE ASSTT. SETTLEMENT OFFICER
GUWAHATI TOWN RESETTLEMENT
ULUBARI
GHY-7

DIST- KAMRUPM
ASSAM

4:4. THE DY. COMMISSIONER
KAMRUP M
GHY-1

5:5. MUSSTT. NAZRANA AHMED
W/O LATE NAZIMUL ISLAM

6:6. MASTER NUMAIR ISLAM

7:7. MASTER NAMIR ISLAM
NOS. 6 AND 7 BEING MINOR SONS OF LATE NAZIMUL ISLAM ARE LIVING
UDNER THE CARE AND ATTENTION OF THEIR MOTHER
NATURAL GUARDIAN AND NEXT FRIEND MUSSTT. NAZRANA AHMED
NOS. 5 TO 7 ARE R/O K.N.C. BORDOLOI PATH
BAIRAGI MATH
DIBRUGARH TOWN
DIST- DIBRUGARH
ASSAM
NOTICES ON THE RESPONDENT NOS. 6 AND 7 MAY BE ORDERED TO BE
SERVED THROUGH THEIR MOTHER
NATURAL GUARDIAN AND NEXT FRIEND MUSSTT. NAZRANA AHMED
THE RESPONDENT NO.5

8:8. MUSSTT. NAAZNEEN ISLAM JAMIL
W/O SAYED INAM JAMIL
R/O CHANDMARI
M.R.D. ROAD
NEAR CHANDMARI MASJID
GHY-3
DIST- KAMRUP M
ASSAM

9:9. SMTI TULUMONI GOGOI
W/O SRI PURNANANDA GOGOI
R/O DHARAMNALATOWN
P.O. and P.S. DIPHU
DIST- KARBI ANGLONG
PIN-782460

10:10. SRI SADYUT SANDHAN
S/O LATE INDIBOR GOGOI
R/O NEAR BIRLA FACTORY
P.O. RANG KHELANG
DIPHU

DIST- KARBI ANGLONG
PIN-782460

11:11. SMTI KASTURIKA BURAGOHAIN
W/O BIMAL BURAGOHAIN
R/O DHARAMNALA TOWN NEAR DIP CHAND BUILDING
P.O. and P.S. DIPHU
DIST- KARBI ANGLONG
PIN-782460

12:12. MANASH ROBIN
S/O RABINDRA NATH GOGOI
R/O BARPATRA NAGAR
P.O. and P.S. CHERAKAPARA
MOUZA NAGAR MAHAL
DIST- SIBSAGAR
ASSAM
AT PRESENT R/O MANIK NAGAR
BYE LANE NO.2
BEHIND SAGAR APARTMENT
R.G. BAURAH ROAD
GHY-5
DIST- KAMRUPM
ASSAM

13:13. HEMANTA SAIKIA
S/O LATE MAHESWAR SAIKIA
R/O DHEMAJI TWON
WARD NO.3
MOUZA DHEMAJI
P.O. and P.S. DHEMAJI
DIST- DHEMAJI
ASSAM

14:14. SRI PRADIP HANDIQUE
S/O LATE KANAK CH. HANDIQUE
R/O NATBOMA
HOUSEFED COMPLEX
BLOCK B
FLAT NO.201
SIJUBARI
HATIGAON
GUWAHATI
DIST- KAMRUPM
ASSAM

15:15. SRI BIMAL BURAGOHAIN
S/O LATE INDIBAR GOGOI

R/O DHARAMNALA TOWN NEAR DIP CHAND BUILDING
P.O. and P.S. DIPHU
DIST- KARBI ANGLONG
PIN-78246

Advocate for the Petitioner : MR.N RAJKHOWA

Advocate for the Respondent : MR.T BARUAH

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 26/09/2023

Heard Mr. P.K. Kalita, learned senior counsel assisted by Mr. D. Talukdar, learned counsel for the writ petitioners. Also heard Mr. B.J. Talukdar, learned senior counsel assisted by Mr. P.K. Medhi, learned counsel for the respondent nos. 1 to 4. Mr. B. Baruah, learned counsel has appeared on behalf of the respondent nos. 8, 10, 12, 13 & 14. The remaining respondents have remained unrepresented before the Court today.

The common judgement and order dated 19/05/2011 passed by the learned Assam Board of Revenue, Guwahati, in cases Nos. 3 RA(K)/2009, 53 RA(K)/2010, 72 RA(K)/2010 and 73 RA (K)/2010, has been assailed in the writ petition primarily on the ground that the learned Board of Revenue, while deciding the appeals in favour of the private respondents, have made certain observations and have recorded findings, touching upon the question of right, title and interest of the parties, more particularly, the writ petitioner herein, thereby, causing serious prejudice to their interest.

Mr. Kalita has argued that the Board of Revenue does not have the authority or jurisdiction under the law to make any observation on the question of title of the parties over the disputed land nor can it record any finding as regards the question of legitimacy of the inheritance in respect of immovable properties by the legal heirs of the rights holders. Mr. Kalita, therefore, submits that his clients are primarily aggrieved by the observations made in the judgement and order dated 19/05/2011 which would have an adverse bearing on the question of title of the petitioners, if the matter ultimately reaches the Civil Court.

Mr. B. Baruah, learned counsel for the private respondents, on the other hand, submits that the question arising in this proceeding is a pure question of title and ownership of the land, which can

only be decided by the Civil Court. Therefore, he would have no objection, if the writ petition is disposed of by clarifying that the observations made by the learned Board of Revenue would not have any bearing on the question of claims and counter claims of the parties in a civil suit between the contesting parties. If that be so, this Court is of the opinion that adjudication of any other issue raised in this writ petition would not be necessary.

It is pertinent to mention herein that being aggrieved by the order dated 10/12/2008 passed by the Settlement Officer cancelling the mutation of the private respondents over the disputed land, separate appeals under sections 147/151 of the Assam Land and Revenue Regulations were filed by the aggrieved parties, which were numbered and registered as 3 RA(K)/2009, 53 RA(K)/2010, 72 RA(K)/2010 and 73 RA (K)/2010. All the appeals were disposed of by the common judgement and order dated 19/05/2011, allowing the appeals. The operative part of the judgement and order dated 19/05/2011 is reproduced herein below for ready reference :-

“29. In view of the above legal position, we have set the impugned order dated 10/12/08 passed by the Settlement office in Misc. Case No. 19/08-09. In the meantime status-quo of revenue records in respect of chithas mutation in respect of the disputed land will maintain as on 22/05/2008, till disposal of various case/ suit filed by the parties. However, respondents are directed personal endeavor for speedy disposal of their pending civil regarding their claimed on relinquishment deed.

Appeal is allowed accordingly.

No order as to cost.”

After going through the pleadings in the writ petition and on hearing the submissions of learned counsel for both the sides, this Court is left with no manner of doubt that the key issues arising by and between the contesting parties would have to be resolved in the civil suit instituted before the competent Court of jurisdiction. Therefore, by the observations made in the judgement and order dated 19/05/2011 passed by the learned Board of Revenue, cannot have any bearing on the question of title of the parties if either party prefer a civil suit, involving the questions of title and ownership in respect of the land in question.

It is, accordingly, clarified that, if a title suit is instituted by any of the contesting parties, the learned Civil Court would decide the suit without being influenced by any observations made in the judgement and order dated 19/05/2011 passed by the learned Board of Revenue.

Parties to bear their own costs.

Send back the LCR.

JUDGE

sukhamay

Comparing Assistant