

GAHC010227812022



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

Case No. : RSA/56/2023

ASHOK KUMAR BAROI .
S/O LATE BHAGIRATI PRASAD BAROI,
RESIDENT OF ALOICHERA PART II, PS KATLICHERA, DIST HAILAKANDI,
ASSAM

VERSUS

ON THE DEATH OF SHEW PRASAD SAHA, HIS LEGAL HERIS - RANJIT
SAHA AND ORS
S/O LATE SHEW PRASAD SAHA,
RESIDENT OF VILLAGE AND PO SULTANICHERA, DIST HAILAKANDI,
ASSAM 788162

2:MISS DEEPA SAHA
S/O LATE SHEW PRASAD SAHA

RESIDENT OF VILLAGE AND PO SULTANICHERA
DIST HAILAKANDI
ASSAM 788162

3:MISS GITA SAHA

S/O LATE SHEW PRASAD SAHA

RESIDENT OF VILLAGE AND PO SULTANICHERA
DIST HAILAKANDI
ASSAM 788162

4:SHRI DURGA PRASAD SAHA
S/O LATE JAGANNATH PRASAD SAHA

RESIDENT OF VILLAGE AND PO SULTANICHERA

DIST HAILAKANDI
ASSAM 788162

5:SHRI AYODHA PRASAD SAHA
S/O LATE JAGANNATH PRASAD SAHA

RESIDENT OF VILLAGE AND PO SULTANICHERRA
DIST HAILAKANDI
ASSAM 788162

6:SHRI LAKSHMI PRASAD SAHA
S/O LATE JAGANNATH PRASAD SAHA

RESIDENT OF VILLAGE AND PO SULTANICHERRA
DIST HAILAKANDI
ASSAM 788162

7:THE LAND ACQUISITION OFFICER/ADDITIONAL DEPUTY
COMMISSIONER

HAILAKANDI/ADDITIONAL DISTRICT MAGISTRATE (L.A BRANCH
REVENUE) DIST HAILAKNADI
ASSAM

8:THE DEPUTY COMMISSIONER

HAILAKANDI
ASSAM 788151

9:THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI
REPRESENTED BY THE DEPUTY COMMISSIONER
HAILAKANDI
ASSAM 788151

10:THE STATE OF ASSAM
REPRESENTED BY THE DEPUTY COMMISSIONER
HAILAKANDI
ASSAM 78815

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent :

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. P. K. Deka. Advocate.

For the Respondents :

Date of Hearing : 02.05.2023

Date of Judgment : 02.05.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. P. K. Deka, learned counsel for the appellants.
2. The present appeal is directed against the Judgment and Decree dated 29.11.2016 passed by the learned Civil Judge, Hailakandi in Title Suit No. 39/2014, whereby suit of the plaintiffs was decreed and also the Judgment & Order dated 04.08.2022 passed in Title Appeal No. 02/2017 by the learned Additional District Judge, Hailakandi affirming the Judgment and Decree of the Court of first instance and thus dismissed the appeal.
3. The plaintiffs/respondents filed a suit for declaration of their ownership over Schedule- II land prior to the acquisition of the said land by the defendant No. 3, the State and for a declaration that the order passed on 16.07.2014 by the defendant No. 2 i.e. the Additional District Magistrate, Hailakandi is void and also for a declaration that the plaintiffs are entitled to get compensation and zirat for acquisition of Scheduled-II land in total exclusion to others including the defendant No. 1.

4. The plaintiffs case:

The basic pleaded case of the plaintiffs is that

- I. The plaintiffs purchased the Schedule-II land within Schedule-I land through a registered sale deed being No. 1131 dated 14.12.1988 and they were in possession since the date of purchase.
 - II. Thereafter, on 19.05.2010, a notice for acquisition of Schedule-II land was issued by the competent authority of Ministry of Surface Transport and Highways. Such notice was issued in the name of the plaintiffs.
 - III. Thereafter, on 08.12.2011, another notice was served upon the plaintiffs pertaining to one Misc. Case No. 15/2011 seeking objection. Said Misc. Case was filed by the defendant No. 1, raising objection to payment of compensation to the plaintiffs.
 - IV. Thereafter, an order was passed by one Additional District Magistrate allowing the entire compensation in favour of the plaintiffs.
 - V. Subsequently, by the order dated 16.07.2014, another Additional District Magistrate, Hailakandi has cancelled the earlier order without hearing the plaintiffs.
 - VI. Accordingly, the aforesaid suit was filed.
5. The defendant No. 1 took a stand that the plaintiffs cannot acquire right title and interest over the suit land acquired by the State on the basis of the sale deed dated 14.12.1988 executed by one Ram Nath Baroi and others who had no right title over the acquired land in question and also took a stand that the plaintiffs were tenant under their predecessor-in-interest and

therefore, the Additional District Magistrate, Hailakanding has rightly decided and apportioned the compensation giving 60% to the defendant No. 1 and 40% to the plaintiffs as tenant.

6. The plaintiffs examined himself as PW-1 and defendant No. 1 examined himself as DW-1. The plaintiffs exhibited the sale deed as Exhibit-1 and the Patta of the land was exhibited by the defendant No. 1 as Exhibit-A, the Jamabandi copy was exhibited as Exhibit-B and the notice for compensation was exhibited as Exhibit-C.

7. Though the official defendants i.e. defendant Nos. 2 to 5 filed written statement raising certain objection for non issuance of notice under Section 80(1) of the CPC, 1908 and tenancy, however, no evidence has been laid in proof of such pleadings.

8. The learned Court below framed as many as six issues which are quoted herein below:-

- I. Is there any cause of action for the suit?
- II. Whether the suit is maintainable in present form?
- III. Whether the plaintiffs are the owners of the suit land by virtue of purchase having right, title and interest?
- IV. Whether the plaintiffs are entitled for full compensation?
- V. Whether the defendants No.2/3 have party apportioned the compensation amongst rightly to the extent of 60:40?
- VI. To what relief or relief(s) parties are entitled to?"

9. Decision of the learned trial Court below:

The learned trial Court below after appreciating the pleadings and evidence available on record came to the following findings:-

- I. The plaintiffs purchased the suit Schedule-II land by Exhibit-1 i.e. registered sale deed No. 1131 dated 14.12.1988 from (1) Ramnath Baroi, (2) Girija Prasad Baroi, (3) Uma Shankar Baroi, (4) Baliram Baroi and (5) Omprakash Baroi.
- II. In Exhibit-B, (Jamabandi) the name of the vendors of the plaintiffs are reflected as the joint owner of the suit schedule land including other landed properties. Exhibit-B also reflects the name of the father of the defendant No. 1 as Co-owner including some other landed properties.
- III. The defendant only pleaded that the Exhibit-1 is collusive but failed to prove the same by adducing any evidence and such sale deed i.e. Exhibit-1, has also never been challenged.
- IV. Exhibit-A, Khatian No. 44 was prepared in the year 1978 in which plaintiff's predecessor-in-interest was shown as tenant under Bhagirati Prasad Baroi. However, there had been change of status of the plaintiffs by virtue of the sale deed i.e. Exhibit-1
- V. The payment of earlier compensation for acquisition of land by Railways and apportionment of same at 60:40 relates to the Dag under tenancy.
- VI. After execution of the registered sale deed, the plaintiffs have

become owner of Schedule-I land and Schedule-II land is integral part of the Schedule-I land.

- VII. Therefore, the plaintiffs are entitled for entire compensation amount so far it relates to Schedule-II land.

10. Findings of the learned Appellate Court below:-

The learned appellate Court below upheld the decision of the learned trial Court and came to the following findings:-

- I. The name of the vendors of Exhibit-1 i.e. Sale Deed, appears again SL. No. 3 and 4 of Exhibit-B i.e. Jamabandi which has been exhibited by the defendants.
- II. By virtue of execution of sale deed dated 14.12.1988, the plaintiff's status has been changed from tenant to owner and holder.
- III. As the Exhibit-1 is a registered document which was registered before the Sub Registrar, Katlicherra, in absence of anything contrary, it is presumed that the said deed was registered after due enquiry.
- IV. Relying on a decision of the Hon'ble Apex Court in the case of ***Prem Singh and Ors –Vs- Birbal and ors*** reported in ***2006 5 SCC 353***, the Appellate Court came to a conclusion that there is a presumption that a registered document is validly executed and onus of proof would be on a person who wants to rebut such presumption.
- V. There is also no counter claim to set aside the sale deed.
- VI. In a civil proceeding, it is the 'preponderance of probability' which

is required to be considered by a Court and not the principle of 'proof beyond reasonable doubt'. Accordingly, the learned appellate Court below held that the learned court at the first instance has elaborately discussed the materials and came to the conclusion and therefore, the appellate Court also concurs with such view. Accordingly, the appeal was dismissed.

11. Argument advanced by Mr. P. K. Deka, learned counsel for the appellant.

- I. Mr. Deka, learned counsel for the appellant submits that that the plaintiffs have claimed their ownership and right to get their compensation on the basis of the sale deed dated 14.12.1988 inasmuch as it was the burden upon the plaintiffs as mandated under Section 104 of the Indian Evidence Act, 1872 to prove such ownership right inasmuch as it was a stand of the defendant No. 1 that his predecessor-in-interest has not transferred the land in favour of the plaintiffs.
- II. As the predecessor-in-interest of the defendants has never transferred their land, the Exhibit-1 is not binding upon them.
- III. Relying on the judgment of this Court in the case of ***Birendra Sankar Sanyal & Ors –Vs- Dinesh Chandra Sarma*** reported in ***2015 (5) GLT 147***, Mr. Deka submits that both the learned Courts below have passed the judgment and decree in total ignorance of the provision of Section 102 and 104 of the Indian Evidence Act, 1872 and therefore, such decisions are perverse as given without any iota

of evidence, and therefore, liable to be set aside.

12. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
13. In ***Birendra Sankar Sanyal*** (Supra), this Court after considering the decision of the Hon'ble Apex Court in the case of ***Anil Rishi –Vs- Gurbaksh Singh*** reported in ***2006 5 SCC 558*** and the Full Bench decision of the Hon'ble Andhra Pradesh in the case of ***Nelluru Sundararamareddi & Ors –Vs- State of Andhra & Ors*** reported in ***AIR 1959 AP 215*** and decision of the Hon'ble Apex Court in the case of ***Narayan Govind Gavate & Ors –Vs- State of Maharashtra & Ors*** reported in ***1977 1 SCC 133***, and the decision of this Court in the case of ***Moslem Mondal & Ors –Vs- Union of India & Ors*** reported in ***2010 2 GLT 1*** culled out certain principle of law which are as follows:-
 - I. The “burden of proof” cast under Sections 101 and 102 of the Indian Evidence Act, 1872 is the persuasive burden or the onus probandi.
 - II. The persuasive burden to prove and establish the case always lies upon the plaintiff and the said burden never shifts upon the defendant.
 - III. Once the plaintiff side succeeds in prima facie establishing his pleaded case by leading evidence, the onus will then shift upon the defendant side to lead evidence so as to disprove the case.

IV. The parties may also have to discharge the burden of establishing the admissibility of the evidence by leading evidence in respect thereof.

V. The initial burden to establish the basic allegations made in the plaint constituting the foundational facts, undoubtedly lies upon the plaintiff whether such assertion is couched in the affirmative or negative.

14. In the case in hand, both the learned Courts below as discussed hereinabove came to a finding that the persuasive burden i.e. the title of the plaintiffs on the basis of a registered sale deed has been discharged by the plaintiffs. This court is of the opinion that in the given facts of the present case where the final issue is who is entitled for the compensation amount, the persuasive burden that the plaintiffs are the owner of the Schedule-II land has been discharged by the plaintiffs.

15. The defendant has taken a specific stand that by virtue of the sale deed, no title has been conferred upon the plaintiffs, now the burden shifts to defendant. The defendants by bringing Khatian and Jamabandi i.e. Exhibit-A and Exhibit-B, though tried to establish that the predecessor-in-interest of defendant No. 1 is the owner of the suit land and the plaintiffs were their tenants, however, there is concurrent finding of fact after appreciation of Exhibit-A (Khatian) and Exhibit-B (Jamabandi) that in the land record not only the name of the defendant No. 1 is reflected, but also of the vendor of plaintiffs as well as some other persons. Thus, the documents relied upon by the defendants to prove title reflects that defendants are not the sole pattadar of the land and the vendor of the plaintiffs are also co-pattadars.

In absence of challenge to the sale deed, the learned Courts below has rightly decided the issue.

16. The Exhibit-B, (Jamabandi) by which the defendant claim that the predecessor-in-interest of the plaintiffs were tenant under defendant No. 1 relates to the year 1978 and therefore, both the learned Courts below came to a finding of fact by virtue of Exhibit-1, that the status of defendants has changed to that of owners. Further it is also concurrently concluded that such Jamabandi also reflects name of the vendors of the plaintiff and other land owner.
17. 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 learned Court 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 Ismail*** 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.
18. The Word "Perverse" in the legal parlance is defined to mean "against the weight of evidence".

19. Such finding of fact, in the considered opinion of this Court cannot be reversed at the second appellate stage by re-appreciation of evidence inasmuch as this Court finds no perversity in appreciation of such documents inasmuch as the Exhibit-13 on the basis of which the defendant claim title also reflects name of other land owner including the vendors of the plaintiffs.
20. Further, the plaintiffs have exhibited the Sale Deed. The Schedule-I land which was sold by Exhibit-1 i.e. Sale Deed also is reflected in the Exhibit-B (Jamabandi) and Exhibit-B (Jamabandi) reflect the name of the vendors of the plaintiffs as land owners and on the basis of aforesaid evidence, both the learned Courts below concurrently held that plaintiffs acquired right, title and interest by virtue of the sale deed.
21. In view of the aforesaid, this Court finds no substantial question of law in the second appeal. Accordingly same stands dismissed.

JUDGE

Comparing Assistant