

GAHC010006282009



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

Case No. : RSA/157/2009

KHITISH NATH and ORS

2: ANANTA NATH.

3: BINOD NATH

ALL SONS OF LATE DIMBESWAR NATH.

4: SMTI BALIKA DEVI.

5: SMTI JEENU DEVI

BOTH DAUGHTERS OF LATE DIMBESWAR NATH
ALL 1-5 RESIDENTS OF VILL. LIKHAKGAON
MOUZA-BIHAGURI
P.S. TEZPUR
DIST. SONITPUR
ASSAM

VERSUS

DHARMESWARI DEVI and ANR
WIDOW OF LATE LELAM NATH

2:SMTI. ILARANI DEVI

D/O LATE LELAM NATH. BOTH RESIDENTS OF NAPAM BAGAPANI
MOUZA-BARGAON
P.S. THELAMARA
DIST. SONITPUR
ASSAM

Advocate for the Petitioner : MS B CHOUDHURY

Advocate for the Respondent : MR. D MOZUMDER

Date of Hearing : **07.03.2024**

Date of Judgment : **07.03.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Ms. B. Choudhury, the learned counsel appearing on behalf of the Appellants and Mr. D. Mozumder, the learned Senior Advocate appearing on behalf of the Respondents.

2. The instant second appeal vide an order dated 10.02.2010 was admitted for hearing by this Court by formulating the following substantial questions of law:

- (i) Whether the suit has been rightly decreed in favour of the Respondents after more than 12 years of possession of the suit land by the Appellants?
- (ii) Whether on the basis of an offer given to the plaintiff during the maintenance proceedings can be the basis for granting decree of right, title and interest and khas possession after 16 years of such Ekrar Nama?
- (iii) Whether the impugned judgments are perverse to the evidence and pleadings?

3. This Court has duly perused the copy of the plaint as well as the written statement which have been filed. The judgments of the learned Trial Court as well as the First Appellate Court have also been duly perused.

4. From a perusal of the materials on record, it is apparent that there are two plots of land wherein the plaintiffs had claimed one half of the share of Late Lilam Nath. One plot comprising of 19 Bighas 16 Lechas covered by old Dag Nos. 732, 770 and 759 included in Periodic Patta No.272 of village Likhokgaon, Mouza Bihaguri which stood in the name of Late Sobhai Katani i.e. 2 Bighas 2 Kathas 13 Lechas. The other plot of land measuring 9 Bighas 3 Lechas covered by Dag No.494, 523 and 602 included in Periodic Patta No.243 of village Moilagaon Mouza Bihaguri standing in the name of Late Sobhai Katani i.e. 2 Bighas 1 Kathas $5\frac{3}{4}$ Lechas. Therefore, in total, the Plaintiffs claimed 4 Bighas 3 Kathas $8\frac{3}{4}$ Lechas.

5. After the death of Late Sobhai Katani, the said properties devolved upon his legal heirs i.e. late Lilam Nath, Late Dimbeswar Katani @ Dimbeswar Nath as well as Late Khargeswar Nath. The Plaintiff No.1 admittedly was the wife of Late Lilam Nath. It is apparent from a perusal of the materials on record and the concurrent findings of fact arrived at that the Plaintiff No.1 Smti Dharmeswari Devi continued to be the wife of Late Lilam Nath till he expired in the month of Aghon, 1979. However, the Defendant No.1 Late Dimbeswar Katani mutated the entire land in his name and debarred the plaintiffs from any share of the said land. Under such circumstances, the suit was filed seeking a decree for half of the share of the land as described in the Schedule to the plaint; for mesne profit out of the share of the suit land enjoyed by the Defendants; delivery of khas possession of the suit land; for cost of the suit as well as for any other reliefs. The said suit was registered and numbered as Title Suit No.53/1983.

6. The defendants duly filed their written statement wherein they had stated that Late Lilam Nath neither inherited any landed property from his father nor he claimed any right over the land of his father. Under such circumstances,

plaintiffs had no right over the said land. Further to that, the plea of adverse possession was taken.

7. On the basis of the pleadings, as many as 14 issues were framed by the learned Trial Court. Vide judgment and decree dated 29.04.2002, the suit was decreed in favour of the plaintiffs thereby declaring that half of the share of the land as described in the Schedule of the plaint in favour of the plaintiffs and further in order to remove the ambiguity and further confusion at the time of execution of the decree, it was decreed that the plaintiffs would be entitled to half of the share of the property of Late Lilam Nath as his legal heirs which Late Lilam Nath inherited the same from his father Late Sobhai Katani i.e. $\frac{1}{3}$ rd share of the total land of Late Sobhai Katani. It is relevant to observe that the learned Trial Court while decreeing the suit observed that the learned Trial Court refrained from passing any order for delivery of possession of the land.

8. Being aggrieved, an appeal was preferred by the defendants which was registered and numbered as Title Appeal No.12/2002. The said appeal was dismissed vide the judgment and decree dated 07.09.2004 thereby affirming the judgment and decree of the learned Trial Court. It is against the said judgment and decree passed by the learned First Appellate Court, the instant appeal has been filed and this Court vide the order dated 10.02.2010 had admitted the appeal by formulating the above noted substantial questions of law.

9. I have heard the learned counsels for the Appellants and the Respondents. The concurrent findings of fact arrived at shows that Late Lilam Nath, the husband of the Plaintiff No.1 and the father of the Plaintiff No.2 had inherited his share of the properties left behind by his father Late Sobhai Katani. It is also a finding of fact that the Plaintiffs are the Class-I heirs of Late Lilam Nath. In

that backdrop, let this Court take into consideration the substantial questions of law which were formulated as to whether they are involved in the instant Appeal.

10. The first substantial question of law formulated is whether the suit was rightly decreed in favour of the Respondents after more than 12 years of possession of the Appellants. The said substantial question framed in the opinion of this Court does not arise for two reasons. First mere possession of the Appellants would not constitute adverse possession. The second reason is that a co-owner cannot raise the plea of adverse possession unless and until specific plea is raised when the possession had become adverse to the plaintiffs. On the other hand, the Appellants not only did not raise such plea in their written statement but also the Appellants denied that Late Lilam Nath had right over the suit land. This was a clear case of self destructive pleadings for which the said substantial question of law does not arise.

11. The second substantial question of law does not arise at all as the right of the plaintiffs is based on being Class-I heirs of Late Lilam Nath and not on the Ekranama.

12. The third substantial question of law in the opinion of this Court is completely vague and cannot be said to be a substantial question of law involved in the appeal. Further, the learned counsel for the Appellants also failed to show how the judgments of the Courts below were perverse.

13. Under such circumstances, the instant Appeal is dismissed. In the facts of the case, this Court imposes a cost of Rs.10,000/- upon the Appellants which is required to be paid to the Respondents herein.

14. The order of stay granted on 10.02.2010 stands vacated with the dismissal

of the Appeal.

15. The Registry shall forthwith transmit the LCR to the Court below.

JUDGE

Comparing Assistant