

GAHC010091692009



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

Case No. : RSA/54/2009

RADHA RAMAN DAS
S/O- LATE JAYGASHWAR DAS, VILL and P.O. PANCHGRAM, POLICE
STATION ALGAPUR, DIST.- HAILAKANDI, ASSAM.

VERSUS

MAHADEV URANG
S/O- LATE SAMUA URANG, VILL and P.O.- PANCHGRAM, POLICE STATION
ALGAPUR, DIST.- HAILAKANDI, ASSAM.

Linked Case : RSA/53/2009

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POLICE STATION ALGAPUR
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ASSAM.

For the Appellant(s) : Mr. T. U. Laskar, Advocate
: Mr. B. Malakar, Advocate
For the Respondent(s) : None appears.

Date of Hearing : **23.07.2024**
Date of Judgment : **23.07.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. T. U. Laskar, the learned counsel appearing on behalf of the Appellant in both the appeals. This Court had earlier heard Mr. S. Bhattacharjee, the learned counsel appearing on behalf of the Respondent in the instant appeal.

2. It is seen that this Court vide an order dated 03.06.2009 admitted RSA No.53/2009 by formulating 3 (three) substantial questions of law which reads as under:

“1. Whether the impugned judgment and decree passed by the learned court below dismissing the suit filed by the appellant/plaintiff for recovery of his possession on the basis of his previous possession over the suit land in holding that the sale deeds i.e. Exhibits 4 and 5 by which the plaintiff/appellant purchased and got possession of the suit land are secondary evidence and as such not admissible in evidence are perverse and unsustainable in law?

2. Whether the impugned judgment and decree passed by the learned court below holding that payment of rent is required to be made to the landlord even after Khatian was issued to the vendor of the plaintiff under the Assam

(Temporarily Settled Areas) Tenancy Act are perverse and unsustainable in law?

3. Whether the impugned judgment and decree passed by the learned Lower Appellant Court holding that the suit filed by the appellant/plaintiff is barred by res-judicata and thereby decreeing the counter claim filed by the respondent/defendant without taking consideration of the respective issues in both the suits and particularly the issue of recovery of possession of the suit land by the plaintiff/appellant on the basis of his previous possession over the suit land are perverse and unsustainable in law?"

3. In RSA No.54/2009, there is no separate question of law formulated. However, while hearing the matter on 20.06.2024, this Court had observed that the substantial questions of law which have been formulated in RSA No.53/2009 would cover RSA No.54/2009.

4. For deciding both the appeals which are inter-connected, this Court finds it relevant to take note of the brief facts which led to the filing of both the appeals before this Court.

5. The appellant in both the appeals as plaintiff had instituted a suit being Title Suit No.24/2006. The facts leading to the filing of the said suit were that one Sukhram Urang was a tenant under one Chanda Singha (since deceased). It was averred that there was a Khatian No.53 issued as a proof of his permanent non-evictable tenant. Thereupon, after the death of the said Sukhram Urang, one Shri Krishna Urang stepped into his shoes and was in peaceful possession by constructing houses. The said Shri Krishna Urang thereupon purchased the right over the suit land from one Shri Mukti Singha who was the descendant of Late Chanda Singha on 03.03.2004 vide a registered Deed No.515/533 and became the owner of the suit land. On the

same date, another Sale Deed was executed by the said Shri Krishna Urang bearing Deed No.518/536 thereby transferring the right over the suit land in favour of the Plaintiff.

6. It was averred in the plaint that the defendant used to reside in the northern boundary of the suit land which was intervened by a passage to the house of the plaintiff. On 11.04.2004, the defendant along with others trespassed into the said suit land and dispossessed the plaintiff. It is under such circumstances, the suit was filed seeking declaration of right, title and interest of the plaintiff over the suit land; for recovery of khas possession by breaking the lock and by evicting the defendant or any unauthorized person/persons who may be found in illegal occupation of the suit land.

7. Pursuant to the filing of the said suit, the defendant filed a written statement stating inter alia that the suit filed by the plaintiff is false and frivolous suit inasmuch as the plaintiff or his predecessor-in-interest did not have any right over the suit land. It was stated that the defendant and one Shri Rabia Urang had purchased a plot of land measuring 1 Bigha 4 Kathas 4 Chataks from one Shri Niranjana Singh vide a registered Deed No.7048 dated 02.12.1978 and got possession thereof. Thereupon, one Shri Pradip Kumar Shib purchased land measuring 15 Kathas of the said patta vide a registered Sale Deed No.229 dated 08.02.1989 from one Fulia Urang and Smti. Maloti Urang but did not get possession as the said land was already transferred to the plaintiff by his brother Rabia Urang for maintaining his brother's wife and daughters. Under such circumstances, the defendant had filed a suit being Title Suit No.19/1989 and Title Suit No.62/1992 which was decreed in favour of the plaintiff and the vendor of the plaintiff was a party to the said suit. It

was also mentioned that one Shri Sama Urang and Shri Sukhram Urang had a Kacha Khatian No.52 under Sardar Chand Singh for land measuring 8 Kathas 10 Chataks, the ownership of which was purchased by the plaintiff and his brother vide the registered Deed No.7048 dated 02.12.1978 and became the absolute owner wherein they were in possession prior to the purchase. It was mentioned that the Kacha Khatian was never became pacca and as such Sukhram Urang, the father of Shri Krishna Urang did not get any heritable right as the same was purchased by Rabia and the defendant.

8. It is under such circumstances, the defendant also filed a counter claim for declaration that the Sale Deed bearing Deed No.518 dated 03.03.2004 and Sale Deed No.536 dated 03.03.2024 on the basis of which the plaintiff claimed his right, title and interest over the suit land was void, illegal, inoperative, collusive and did not confer any right, title and interest to the plaintiff and also for a declaration that the said documents be liable to be cancelled. To the said counter claim which was filed by the defendant, the plaintiff also filed a written statement.

9. On the basis of the pleadings, the learned Trial Court framed as many as 4 (four) issues. Issue No.2 pertained to as to whether the plaintiff had right, title over the suit land and Issue No.3 pertained to as to whether the Deed Nos. 518 and 536 both dated 03.03.2004 through which the plaintiff had purchased the suit land from one Shri Krishna Urang is void, collusive and liable to be cancelled as prayed for by the defendant/counter claimant. On behalf of the plaintiff, two witnesses were examined and eight documents were submitted and on behalf of the defendant, three witnesses were examined and eight documents were submitted. It is relevant to take

note of that the plaintiff exhibited only the certified copy of the Deed Nos. 518 and 536 both dated 03.03.2004 as Exhibit-4 and Exhibit-5 respectively which were put under objection. On behalf of the defendant, it is relevant to take note of that the Deed of Sale bearing Deed No.7048 dated 02.12.1978 was exhibited as Exhibit-Ka and the judgment so pronounced in Title Suit No.62/1992 was exhibited as Exhibit-Ga amongst other documents.

10. The learned Trial Court vide the judgment and decree dated 25.06.2007 dismissed both the suit as well as the counter claim. The suit was dismissed on the ground that the plaintiff failed to produce the primary documents of the Sale Deed Nos. 518 and 536 both dated 03.03.2004 and secondary evidence was produced by way of Exhibit 4 and 5 that too without taking leave in terms with Sections 63 and 65 of the Indian Evidence Act, 1872.

11. The counter claim of the defendant was dismissed on the ground that the defendant was also failed to prove that the defendant had acquired any right over the suit land and had also disregarded Exhibit-Ka which was the certified copy of the Deed of Sale bearing Deed No.7048 dated 02.12.1978.

12. Being aggrieved, two appeals were filed. One appeal was filed by the plaintiff which was registered and numbered as Title Appeal No.19/07 and the other by the defendant which was registered and numbered as Title Appeal No.20/07. The learned First Appellate Court passed two separate judgments in both the appeals on 29.05.2008. While Title Appeal No.19/07 filed by the plaintiff was dismissed, the Title Appeal No.20/07 filed by the defendant was decreed thereby decreeing the counter claim. It is against the decision in both the appeals, the instant two second appeals have been filed

which are presently taken up for adjudication.

13. In the above perspective, let this Court take into consideration as to whether the substantial questions of law which have been formulated by this Court vide the order dated 03.06.2009 arises or for that matter are involved in both the appeals in question.

14. I have heard Mr. T. U. Laskar, the learned counsel appearing on behalf of the Appellant in both the appeals who submitted that the substantial questions of law which have been formulated are duly involved in the instant appeal. He submitted that Exhibit- 4 and 5 were though certified copies, the same could have been taken into consideration by the learned Trial Court as well as the learned First Appellate Court and by not taking the said Exhibit-4 and 5 have rendered the judgments passed by the learned Trial Court as well as the learned First Appellate Court perverse. He further submitted by drawing the reference to Exhibit-Ga that the principles of res-judicata could not have been applied in the facts of the case taking into account that the suit land was in respect of Dag Nos. 80, 81 and 82 whereas the judgment which was passed in Title Suit No.62/1992 was in respect of Dag No.80 and 81 and as such there is a perversity in applying the principles of res-judicata for which the third substantial question of law which have been formulated is duly involved in the instant appeal.

15. This Court have duly heard the learned counsel for the parties as well as also perused the materials on record including the evidence. Let this Court first take up as to whether the first substantial question of law is involved in the instant appeal. The first substantial question of law relates to as to whether the learned Court below were justified in dismissing the suit

filed by the plaintiff for recovery of his possession on the basis of his previous possession over the suit land in holding that the sale deeds i.e. Exhibits 4 and 5 by which the plaintiff purchased and got possession of the suit land are secondary evidence and as such not admissible in evidence are perverse and unsustainable in law. This Court has duly taken note of the plaint wherein the plaintiff claims that he has entered into possession of the suit land on the basis of deed of purchase being made on 03.03.2004. The record categorically shows that Exhibit-4 and Exhibit-5 which were the Deeds of Sale, the primary documents were not brought on record. The records also do not show that any steps were taken in terms with Section 65 of the Indian Evidence Act, 1872 to adduce secondary evidence. Under such circumstances, this Court does not find any error committed by both the Courts below as regards not taking into consideration Exhibit-4 and 5 as the same were secondary evidence that too without following the due process. Under such circumstances, the first substantial question of law so formulated in the opinion of this Court is not involved in the instant appeal.

16. The second substantial question of law relates to as to whether the learned Court below were justified in holding that the payment of rent is required to be made to the landlord even after Khatian was issued to the vendor of the plaintiff under the Assam (Temporarily Settled Areas) Tenancy Act. The said substantial question of law so formulated with due respect cannot be said to be a substantial question of law involved in the instant appeal taking into account that the decision in respect to the said question of law so formulated would in no manner affect the adjudication of the instant dispute. In the instant case, the plaintiff has claimed his right on the basis of a Deed of Sale which however was not brought on record in

accordance with law. The defendant on the other hand claimed his right over the suit land on the basis of another Deed of Sale which was executed much prior to the plaintiff's purchase. The defendant further claimed his right on the basis of a judgment being passed by the Court of competent jurisdiction in Title Suit No.62/1992. The non-payment of the rent as such in the opinion of this Court had nothing to do inasmuch as the plaintiff did not claim any right over the suit land on the basis of a Khatian but rather claimed his right on the basis of deed of purchase. Under such circumstances, the said substantial question of law so formulated is not only involved in the instant appeal but cannot also be regarded as a substantial question of law at all for the purpose of the instant case.

17. The third substantial question of law so formulated relates to as to whether the First Appellate Court committed illegality in holding that the suit filed by the plaintiff is barred by res-judicata and thereby decreeing the counter claim filed by the defendant without taking consideration of the respective issues in both the suits and particularly the issue of recovery of possession of the suit land by the plaintiff on the basis of his previous possession over the suit land. This Court has duly taken note of the judgment and decree passed in Title Suit No.62/1992. In the said judgment and decree, the vendor of the plaintiff was arrayed as Defendant No.4 and the plaintiff therein who is the respondent herein was declared to have right, title and interest over the suit land in the said suit. It is also seen that the learned First Appellate Court on consideration of the facts came to a categorical conclusion that the suit land involved in the instant appeal was duly involved in Title Suit No.62/1992. This being a finding of fact and there being no perversity shown, this Court cannot interfere with the same. Under

such circumstances, the third substantial question of law so formulated is also not involved in the instant appeal.

18. Accordingly, this Court is of the opinion that both the appeals are devoid of any substantial question of law which are involved in the present appeals for which both the appeal stands dismissed with costs quantified at Rs.11,000/- for each appeal.

19. The Registry is directed to forthwith return the LCR to the learned Court below.

JUDGE

Comparing Assistant