

GAHC010093212008



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

Case No. : RSA/4/2008

GUTTU and CO. PVT. LTD.
REGD. OFFICE AT JANIGANJ BAZAR, SILCAHR, DIST. CACHAR, ASSAM.

2: THE MANAGER

KALINAGAR TEA ESTATE
PO. KALINAGAR TEA ESTATE
DIST. KARIMGANJ
ASSA

VERSUS

ABDUL HAOQUE and ORS
S/O MIA CHAND ALI.

2: MOINUL HOQUE
S/O ABDUL HOQUE

3: JAINUL HOQUE
S/O ABDUL HOQUE
ALL RESIDENTS OF KALINAGAR TEA ESTATE
NAPIT-CHERRA
PO. KALINAGAR TEA ESTATE
DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : G N SAHEWALLA

Advocate for the Respondent : K UDDIN (R-1)

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

04.06.2024

Heard Ms. S. Todi, learned counsel for the appellant. Also heard Ms. R. Choudhury, learned counsel for all the respondents.

2. The instant appeal has been preferred against a Judgment and Decree dated 30.07.2007 passed by the learned Civil Judge, Karimganj in Title Appeal 26/2003. By the aforesaid judgment, the Judgement and Decree dated 24.12.2002 passed by the learned Civil Judge (Junior Division) No. 3, Karimganj in Title Suit No. 232/2000 has been affirmed.

3. The appeal was admitted on the following substantial questions of law vide an order dated 07.01.2008:

(i) Whether the judgment of the appellate court below is in accordance with Order 41 Rule 31 of the Civil Procedure Code as the learned Court has not considered the issued framed and answered by the trial Court?

(ii) Whether the finding of the appellate court below is perverse to the facts of the case and on mis-appreciation of evidence specially with regard to DW-4, Civil Branch of District Administration holding that the suit land is excess ceiling surplus land whereas as per evidence of DW-4 no excess land has been surrendered nor government made land khas?

(iii) Whether the judgment of the learned appellate Court below is perverse is dismissing the appeal in spite of its finding that the

defendants failed to exhibit any legally enforceable document of taking lease whereas the appellant proved their title deed vide exhibit-1?

(iv) Whether the finding of the court below is perverse in holding that exhibit-1 does not relate to suit land whereas exhibit-1 relate to the land of entire garden and suit land is a small portion inside the garden land surrounded on all sides by the garden land?

4. The suit was instituted by the appellant as plaintiff for eviction of the defendants. While the plaintiff has ascertained that the land in question was purchased by them from the vendor "Shri Ram Tea Company" by a registered deed, the defendants had entered possession on the strength of an unregistered lease deed from the same vendor "Shri Ram Tea Company". It however transpires that the sale deed which the plaintiff was relying upon was in the name of a firm whereas the plaintiff is a company registered.

5. Be that as it may, without going into further details, the learned counsel for the rival parties have fairly informed this Court that analogous suits were filed by the same plaintiff which had resulted in similar RSA. It has also been informed that all the RSAs have been dismissed and in respect of one of the RSA, an SLP before the Hon'ble Supreme Court was preferred which also dismissed.

6. The learned counsel for the parties has also placed before this Court a copy of a recent judgment dated 30.04.2024 passed in a similar RSA 160/2007.

7. A perusal of the said judgment would reveal that the said appeal was against a Judgment and Decree dated 30.07.2007 as in the present appeal. The said RSA 160/2007 vide the aforesaid judgment dated 30.04.2024 has been

dismissed by making the following observations regarding the substantial questions of law:

“11. The first substantial question of law so formulated is as to whether the judgment of the Courts below are perverse to the facts of the case in coming to a finding that Ext. 7 is not specific because Dag Numbers were not mentioned although Ext. 7 contained the Tauzi number and the account numbers of different plots of land which clearly shows that the appellants purchased the entire Kalinagar Tea Estate and the suit land. In the opinion of this Court, the said question of law cannot be a question involved in the instant Appeal taking into account that perusal of Ext.7 only describes the land in the first Schedule as Tauzi along with account. But there is no correlation with the said Tauzi and the account so mentioned in Ext.7 with the corresponding Dags in the pleadings as well as in the evidence. Under such circumstances, this Court is of the opinion that the said substantial question of law so formulated is not involved in the instant Appeal.

12. The second substantial question of law is as to whether the judgment of the Appellate Court is perverse being not passed on the pleadings and evidence on record and no oral evidence has been considered by the Appellate Court. This Court has duly taken note of that the judgment of the learned Trial Court and also of the First Appellate Court wherein it appears that the material evidence has been duly taken note of. Under such circumstances, the said substantial question of law so formulated does not arise in the instant Appeal, more so when the appellants completely failed to show which evidence if considered in a different perspective would have changed the course of the proceedings in favour of the appellants.”

8. This Court is of the considered opinion that the issues involved being analogous to the issues in the earlier RSA which has been dismissed and one of such dismissal order has also been upheld by the Hon’ble Supreme Court, this RSA is also required to be dismissed in the line of the earlier judgment.

- 9.** The present appeal accordingly stands dismissed.
- 10.** The observations regarding the cost which is reproduced below would also be applicable in the instant case.

“14. Consequently, the Appeal stands dismissed with costs quantified at Rs.20,000/- for the instant proceedings. In addition to that, the defendants shall be entitled to costs throughout.”

- 11.** Send back the records.

JUDGE

Comparing Assistant