

GAHC010095762006



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

Case No. : RSA/75/2006

ABDUL RASIT ALI

2: 2. CHAND MOHAMMAD @ CHANDU

3: 3. SOHRAB ALI

4: 4. RAHMAN ALI

5: 5. SADEK ALI

6: 6. MAINUDDIN
ALL ARE SONS OF LATE MAZID ALI AND R/O VILL-SOUTH BHAKUAMARI
MOUZA-BETBARI
DSIT-BARPETA
ASSAM

VERSUS

MUSTT. MARIAM NESSA and ORS

2:2. HAMID ALI

S/O LATE SABED ALI
BOTH ARE RESIDENT OF VILL-BHAKUAMARI
MOUZA-BELTOLA
DIST-BARPETA
ASSAM.

3:4. ZELEMAN NESSA

D/O HAKIMUDDIN.

4:4. KHATEMAN NESSA

D/O HAKIMUDDIN.

5:5. MD. ABDUL KUDDUS

S/O ANTAZ ALI.

6:6. MD. MUSLEMUDDIN

S/O ANTAZ ALI.

7:7. MD. AKKAS ALI

S/O ANTAZ ALI

8:8. BAKKAR ALI

S/O ANTAZ ALI

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10:9. FULJAN NESSA

D/O ANTAZ ALI.

11:10. GULJAN NESSA

D/O ANTAZ ALI ALL ARE RESIDENT OF VILLAGE-SOUTH BHAKUAMARI
MOUZA-BETBARI
DIST-BARPETA
ASSAM

Advocate for the Appellants : Mr. M. U. Mahmud, Advocate

Advocate for the Respondents : Mrs. T. Goswami, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 09.05.2024

Date of Judgment : 09.05.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. U. Mahmud, the learned counsel for the appellant and Mrs. T. Goswami, the learned counsel appearing on behalf of the respondents.

2. This is an Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the judgment and decree dated 03.12.2005 passed by the Court of the Civil Judge (Senior Division), Barpeta in Title Appeal No.15/2005 whereby the judgment and decree dated 30.11.2004 passed by the learned Civil Judge (Junior Division) No.1, Barpeta in Title Suit No.26/2004 was reversed.

3. This Court vide an order dated 31.05.2006 admitted the instant Appeal by formulating the following substantial question of law:-

Whether the impugned judgment and decree is sustainable in law on the face of the finding upon Ext.1, on the basis of which plaintiffs' claim their right, title and interest is a katcha deed and not registered under Section 54 of the Transfer of Property Act?

4. The question arises in the instant proceedings as to whether the said substantial question of law so framed on 31.05.2006 is involved in the instant Appeal. In order to ascertain the said aspect of the matter, this Court finds it relevant to take note of the facts leading to the filing of the instant Appeal.

5. The respondent Nos.1 & 2 herein as plaintiffs instituted a suit being Title Suit No.26/2003 before the Court of the Civil Judge (Junior Division) No.1, Barpeta seeking declaration of their rights, title, interest and possession over the suit land as well as for permanent injunction. The

case of the plaintiffs as stated in the plaint is that a plot of land measuring 4 bighas 1 katha 18 lechas which has been specifically described in the Schedule to the plaint originally belonged to one Late Amdul Mazid. It was claimed that the said Abdul Mazid sold the suit land to the plaintiff No.1 by a deed dated 05.02.1980 for a consideration of Rs.4,500/- and delivered possession to the plaintiff on the same date. Thereupon, the plaintiff No.1 has been paying the land revenue in her name after recording her name in the record of rights. The defendants were the sons of Late Abdul Mazid who threatened the plaintiffs on 15.02.2003 to dispossess the plaintiffs from the suit land and it is under such circumstances, the suit was filed seeking declaration of the plaintiffs' right, title, interest and confirmation of possession over the suit land; for declaration of possessory right of the plaintiffs over the suit land and for permanent injunction.

6. The defendants jointly filed a written statement denying the claim of the plaintiffs. It was stated that Late Abdul Mazid never transferred any portion of the suit land to the plaintiff No.1 and the defendants have been all along in possession of the suit land of their father. The other defendants also filed their written statement. In addition to that, it is also seen that the counterclaim was filed by the defendant Nos.7 to 14.

7. On the basis of the said pleadings, the learned Trial Court framed as many as 10 issues. Issue No.3 relates to as to whether the plaintiff No.1 purchased the suit land from Late Abdul Mazid on 05.02.1980, and accordingly, the plaintiffs acquired right, title and interest over the suit land. The Issue No.4 relates to as to whether the plaintiffs have been possessing the suit land from the date of purchase. Issue No.7 to Issue No.10 relate to the counterclaim of the defendants which however being

not relevant is not being taken note of taking into account that the said counterclaim was dismissed and there has been no Appeal filed their against.

8. The learned Trial Court vide its judgment and decree dated 30.11.2004 dismissed the suit of the plaintiffs and the counterclaim of the defendant Nos.7 to 14.

9. Being aggrieved, an Appeal was preferred by the plaintiffs which was registered and numbered as Title Appeal No.15/2005. The learned First Appellate Court decreed the suit of the plaintiffs and it is under such circumstances, the instant Appeal has been filed.

10. This Court has heard the learned counsel appearing on behalf of the appellants as well as the counsel appearing on behalf of the respondent Nos.1 & 2. The question of law so formulated is in respect to Issue No.3 as to whether the plaintiff No.1 purchased the suit land from Late Abdul Mazid on 05.02.1980 and whether the plaintiffs acquired right, title and interest over the suit land. The learned Trial Court had decided the Issue No.3 against the plaintiffs on the ground that the document on which the plaintiff No.1 claimed title over the suit land was an unregistered Deed of Sale and was held by the learned Trial Court that in view of Section 54 of the Transfer of Property Act, 1882 read with Section 17 of the Registration Act, 1908, no title devolved upon the plaintiff.

11. This Court further finds it relevant to take note of that the learned First Appellate Court had decreed the suit in favour of the plaintiffs on the basis of an unregistered Deed of Sale on the grounds that the plaintiffs were possessing the land peacefully on the basis of Ext.1 and it was found

from the oral evidence that the plaintiff No.1 acquired their right, title and interest over the suit land and they were possessing the suit land from the date of their purchase. It is under such perspective, this Court needs to take note of as to whether the substantial question of law is duly involved. In this regard, if this Court takes note of Section 54 of the Transfer of Property Act, 1882 and Sections 17 and 49 of the Registration Act, 1882, no right, title or interest over the suit land could have been transferred in favour of the plaintiff No.1 on the basis of the unregistered Deed of Sale dated 05.02.1980. The learned First Appellate Court completely erred in not considering the said provisions of law, and more so, when the learned Trial Court has duly taken note of those provisions of law.

12. Accordingly, this Court finds that the said substantial question of law so formulated being involved in the instant Appeal, sets aside the judgment and decree dated 03.12.2005 passed by the learned First Appellate Court in Title Appeal No.15/2005 is set aside and the judgment and decree dated 30.11.2004 passed by the learned Civil Judge (Junior Division) No.1, Barpeta in Title Suit No.26/2004 is restored.

13. This Court further by allowing the instant Appeal imposes cost of Rs.11,000/- upon the plaintiffs for the instant proceedings. In addition to that, the defendant Nos.1 to 6 shall be entitled to costs throughout.

14. LCR be returned.

JUDGE

Comparing Assistant