

GAHC010105972010



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

Case No. : RSA/47/2010

MUSSTT. SAFIA KHATUN and 4 ORS,
W/O LATE SAMSUL ALI.

2: MUSSTT. ANIMA BEGUM

D/O LATE SAMSUL ALI.

3: MD. PUTUL ALI

4: MD. DULMAHAMMAD ALI

5: MD. ISLAM ALI

ALL ARE S/O LATE SAMSUL ALI
ALL ARE R/O VILL. JALIMURA
P.O. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM

VERSUS

MD. SAMSUL HAQUE and 95 ORS,

2:MD. MUSHA HAQUE

3:MD. MAINUL HAQUE

4:MD. AINUL HAQUE

5:MD. LHAIRUL HAQUE

6:MD. ISHA HAQUE

ALL ARE SONS OF LATE SADULLA ALI
AND RESIDENT OF VILL. JALIMURA
MAUZA MADARTOLA
P.O. BAIHATA CHARIALI
DIST. KAMRUP.

7:MD. DHANSA ALI

8:MD. NIZOR ALI

BOTH ARE SONS OF LATE RAHIMSA.

9:MD. SAHABUDDIN AHMED

10:S/O MD. SAMSER ALI

11:MD. SAMNUR AHMED

S/O MD. SAMSER ALI.

12:MD. KHAIBAR @ SHEIKH

S/O KADIR

13:MD. MOSEB ALI

14:MD. MASLIM ALI

15:MD. TASLIM ALI

ALL ARE SONS OF LATE KHARSED

16:MD. HASIM ALI

S/O LATE BHEDURA

17:MD. ATWAR RAHMAN

18:MD. AINUL RAHMAN

19:MD. MAINUL RAHMAN

20:MD. AYEZ RAHMAN
ALL ARE SONS OF PHULBAR.

21:MD. MANU ALI

22:MD. KUTUB ALI

23:MD. SAIF ALI

ALL ARE SONS OF KARIMSA

24:MD. SALIM ALI

25:MD. BAHARUL ALI

BOTH ARE SONS OF ASHTAB ALI.

26:MD. MAINA ALI

27:MD. NUR MOHAMMAD

28:MD. MANIR ALI

29:MD. AYUB ALI.

30:MD. SAYD ALI

31:MD. SARUDHAN ALI

BOTH ARE SONS OF SAHNUR ALI.

32:KAISAR ALI

S/O SABANSA

33:MD. SAYEF ALI

34:MD DHAN ALI

BOTH ARE SONS OF SAHFUL.

35:MD. NURUL HAQUE

S/O DILSA.

36:MD. GAFUR ALI

37:MD. MAZNUR ALI

38:MD. SFAD ALI

39:MD. AFZAL ALI

ALL ARE SONS OF MAHIDDIN

40:CHANDRA DAS

41:BHARAT DAS

42:MAHESHWAR DAS

43:MADAN DAS

44:UMESH DAS

45:DILIP DAS

ALL ARE SONS OF LATE LALIT CH. DAS.

46:MD.SAIFUDDIN ALI

47:MD. SAIFUR ALI

48:MD. JAHIDUL ALI

ALL ARE SONS LATE BAHAR ALI

49:JAICHANDRA SAMUA

S/O LOKNATH SAMUA

50:MUSSTT. GOLABANU BIBI

W/O IBRAHIM ALI

51:MOHAN CH. DAS

S/O SAKA.

52:UPEN CH. DEKA

S/O KALIA.

53:KALIKANTA SAMUA

S/O LOKNATH

54:MD. ABDUL HAKIM

S/O HANIF

55:MD. SIDDIQUE ALI

56:MD. ABUL ALI

57:MD. ATOWAR ALI

58:MD. ABED ALI

59:MD. ABDUL ALI

60:MUSSTT. RUPJAN BIBI

ALL ARE SONS AND DAUGHTER OF LATE AKBAR

61:MD. JAMURUDDIN @ JAMUR ALI

S/O NASIB

62:MD. ZIFUL ALI

S/O LATE MAHABBAT

63:MD. BABUR ALI

64:MD. ABBAS ALI

65:MD. AFZAL ALI

66:MD.AFAZ ALI

67:MD. AINUR ALI

ALL ARE SONS OF SANSA

68:AFAS ALI

S/O GOLO

69:RAHUMUSA ALI

S/O DHANSA

70:KHANSUR ALI

S/O DAYASA

71:BISITRA TALUKDAR

S/O ROHI

72:SANKAR MALI

S/O SARAT MALI

73:SMTI RINA BAISHYA

W/O LAKHYADHAR

74:MD. MOSHEB ALI

S/O KHORSED ALI

75:MD. KHAIBAR ALI

S/O LATE KADIR ALI.

76:MD. AZIZOR RAHMAN

S/O KHAIBAR ALI

77:MD. ABJAN ALI

78:MD. ASHED ALI

79:MD. JAFAR ALI

80:MD. SORAJ ALI

81:MD. RIYAJ ALI

ALL ARE SONS OF ARFAT ALI

82:MAJIBAR RAHMAN

83:NABABAR RAHMAN

BOTH ARE SONS OF KHAIBAR ALI

84:MD. DILSAN ALI

S/O MAHISA

85:MD. BABUL ALI

86:MD. AFAJ ALI

87:MD. FAIZ ALI

ALL ARE SONS OF PADMA

88:MD. SAKUBUDDIN @ SAIFUDDIN AHMED

89:SAMNUR AHMED

90:MD. ANISOR AHMED

ALL ARE SONS OF LATE SAMSER ALI

91:JAMAR ALI

S/O LATE NASIR ALI

92:MUSSTT. REZINA KHATUN

W/O MUSAROF

93:MUSSTT. BABIA KHATUN

W/O ABBAS

94:MD. LALCHAN @ KHILCHAN ALI

A/O MAHISA

ALL ARE R/O VILL. JALIMURA

MAUZA MADARTOLA
P.O. BAIHATA CHARIALI
DIST. KAMRUP.

95:SECRETARY

JALIMURA MASJID COMMITTEE
JALIMURA
P.O. BAIHATA CHARIALI
DIST. KAMRUP.

96:FULJAN BIBI

W/O DILNUR ALI
R/O VILL. SANGSARI
MAUZA SANGSARI
MAUZA SILASENDURI
DIST. KAMRUP

Advocate for the Petitioner : MRD C CHAKRABORTY

Advocate for the Respondent : MRS M BARMAN (R-1 to 6)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 28-03-2024

JUDGMENT & ORDER

The present appeal has been filed under Section 100 of the Code of the Civil Procedure, 1908 (for short, the Code), challenging the judgment and decree dated 03.11.2009 passed in Title Appeal No.48/2006 by the Court of the learned Civil Judge No.1 Kamrup at Guwahati as it then existed, now the Court of the Civil Judge Kamrup (Metro) at Guwahati.

2. This Court vide order dated 12.05.2020 admitted the instant appeal by formulating the following substantial question of law:

1). Whether the certified copy of the sale deed (Ext.3) is admissible in evidence and the right, title and interest can be decreed on the basis of the certified copy of such sale deed, which has been marked as exhibit without any objection from the side of the defendant?

3. For deciding as to whether the said substantial question of law is involved in the instant appeal, this Court finds it relevant to take note of the facts which led to the filing of the instant appeal.

4. One Hamir Ali (since deceased) was the father of the defendant No.96 i.e. Phuljan Bibi and his wife was one Guljan Bibi. He left behind various properties at the time of his death. Subsequent to the death of Late Hamir Ali, the defendant No.96 relinquished the land measuring 3 bighas 1 lessa 2 powa in Dag Nos.534, 536, and 522 of K.P. Patta No.71 of village Jalimura under Niz Madartolla Mouza in favour of her mother Guljan Bibi and she sold away a plot of land measuring 2 bighas 2 lessas under Dag Nos. 514, 515, 516, and 526 of K.P. Patta No.71 to the plaintiff No.1. This sale which was made in favour of the plaintiff No.1 was done by a registered deed of sale bearing deed No.3766/67. It is also relevant to take note of that after the death of Late Hamir Ali, his wife Guljan Bibi married one Samsul Ali, who is the predecessor-in-interest of the plaintiffs. Thereafter, Guljan Bibi expired and the said Samsul Ali married the plaintiff No.1 and the plaintiff Nos. 2 to 5 are the sons and daughters out of the said wedlock.

5. It is the case of the plaintiffs that the defendant No.96 vide a deed of sale bearing deed No.944/92 dated 07.08.1992 transferred the plot of land measuring 1 katha 2 lessas comprised in Dag No.543 in favour of the defendant Nos.1 to 6. As per the plaintiffs, the defendant No.96 could not have transferred the said land in favour of the defendant Nos.1 to 6 on the ground that the defendant No.96 did not have a saleable right. It is also seen from the plaint that out of 2 bighas 2 lessas of land, which was sold in favour of the plaintiff No.1 by the defendant No.96, a plot of land measuring 1 bigha was sold by the plaintiff No.1 in favour of one Golbanu Bibi. The remaining plot of land measuring 1 bigha 2 lessas with the plaintiff No.1 have been more specifically described in Schedule 'Ga'.

6. This Court also finds it very pertinent to take note of that a proceeding under Section 145 of the Cr.P.C. was initiated by the plaintiff No.1 against the defendant Nos. 1 to 6 being Case No.266(M)/92 on the ground that the defendant No.1 to 6 wanted to dispossess the plaintiffs from the said land, more specifically, described in Schedule 'Kha' to the plaint. It is also relevant herein to mention that the Schedule 'Kha' to the plaint comprises of two plots of land. The first plot of land measuring 1 katha 2 lessas comprises under Dag No.543 with definite boundaries and the second plot of land measuring 1 katha 12 lessas in Dag No.502 with definite boundaries. During the said proceedings, under Section 145 of the Cr.P.C., which was initiated, the defendant Nos.1 to 6 filed their written statement and stated therein that they had purchased a plot of land measuring 1 katha 2 lessas vide a registered sale deed bearing deed No.944/92 which was covered by Dag No.543 of KP Patta No.71 of village

Jalimura under Niz Madartolla Mouza and since the date of their purchase they have been enjoying possession over the said plot of land. In addition to that, it was also brought to the notice of this Court that another plot of land measuring 1 katha 12 lessas covered by Dag No.502 of KP Patta No.71 was transferred by defendant No.96 by a kutchra sale deed dated 28.09.1992 and the defendants have been possessing the said land till date undisputedly.

7. It is under such circumstances, the plaintiffs filed a suit in the year 2004 seeking a decree for partition; for khas possession of the land described in Schedule 'kha' and Schedule 'ga'; the cancellation of the sale deed bearing deed No.944/92 dated 07.08.1992 thereby declaring it void and the mutation of the defendant Nos.1 to 6 on the basis of the said sale deed be corrected in the revenue records by the Revenue authorities.

8. Pursuant to the filing of the said suit, the defendant Nos.1 to 6 filed their written statement stating, inter alia, that Late Hamir Ali was the original owner and pattadar of various plots of land measuring 6 bighas 1 katha and 2 powa covered by Dag No.543, 502, 526, 514, 515, 516, 536, 534 and 522 of K.P Patta No.71 of village Jalimura under Niz Madartolla Mouza. After the death of Late Hamir Ali, the defendant No.96 inherited the entire property and relinquished a plot of land measuring 3 bighas 1 lessa 2 powa covered by Dag No.534, 536, 522 of K.P Patta No.71 in favour of her mother Late Guljan Bibi. It was mentioned that Late Guljan Bibi immediately after the death of her husband Late Hamir Ali married one Samsul Ali and after the death of Guljan Bibi, her husband Late Samsul Ali sold away the entire plot of land measuring 3 bighas 1 lessa 2 powa to different purchasers and the said purchasers are possessing the

said land till date. It was further mentioned that the defendant No.96 sold away another plot of land measuring 2 bighas 2 lessas covered by Dag No.526, 514, 515 and 516 of Patta No.71 to the plaintiff No.1 by a registered sale deed bearing deed No.3766/67. In addition to that the defendant No.96 also sold the land measuring 1 katha 2 lessas bearing deed No.944/92 covered by Dag No.543 of KP Patta No.71 of village Jalimura under Niz Madartolla Mouza to defendant Nos.1 to 6 and they had been in possession of the said land from the date of purchase. It was also stated by the defendant Nos.1 to 6 that the defendant No.96 sold 1 katha 12 lessas of land covered by Dag No.502 of KP Patta No.71 by kutcha sale deed dated 28.09.1992 in their favour and the said defendants have been possessing the said plot of land till date undisputedly. It was specifically stated in the written statement that the plaintiffs at no point of time had right title and interest over the land in Dag No.543 and 502.

9. The defendant No.96 also filed the written statement categorically stating that she had sold a plot of land measuring 1 katha 2 lessas in favour of the defendant Nos.1 to 6 vide registered deed of sale bearing deed No.944/92 dated 07.08.1992. It was categorically mentioned that the plaintiffs are nowhere connected with the Schedule 'kha' land. In addition to that, the defendant No.96 had also mentioned that she had only relinquished 3 bighas 1 lessa 2 powa of land under Dag No.534, 536 and 522 of KP Patta No.71 in favour of her mother Guljan Bibi and she had sold another plot of land measuring 2 bighas 2 lessas under Dag No.526, 514, 515 and 516 of KP Patta No.71 to the plaintiff No.1. In addition to that, it was also mentioned that after the marriage of Late Guljan Bibi with Late Samsul Ali and the subsequent death of Late Guljan Bibi, Samsul Ali sold the entire land under Dag No.534, 536 and 522 which was relinquished

in favour of Late Guljan Bibi by the defendant No.96 to three different persons and the said three different persons had acquired right, title and interest over the said plot of land. Further to that, it is also seen from the written statement that it is the categorical stand of the defendant No.96 that the plaintiffs had no right, title or interest in respect of Dag No.543 and 502. It is relevant to mention that the other defendants who were proforma defendants in the suit did neither participate in the trial nor submitted their written statement.

10. On the basis of the said pleadings, as many as six issues were framed which included the issue No.3: as to whether the suit was barred by limitation? Issue No.4: whether the plaintiffs have right, title and interest over the land described in Schedule 'kha' and 'ga' of the plaint? Issue No.5 whether the sale Deed No.944/92 is liable to be cancelled? It is, however, very interesting to take note of that the issue No.1 is as regards the maintainability of the suit in its present form.

11. The learned Trial Court vide judgment and decree dated 20.03.2006 decreed the suit in favour of the plaintiffs, inspite of holding that the suit was not maintainable while deciding the issue No.1. The issue pertaining to limitation was decided in favour of the plaintiffs even after taking into account that the said deed of sale dated 07.08.1992 was challenged almost after 12 years by filing the suit. The issue No.4 as to whether the plaintiffs have right, title and interest over the land described in Schedule 'kha' and 'ga' of the plaint, the said issue was decided in favour of the plaintiffs. It is however, relevant to take note of that the learned Trial Court did not take into account as to how the plaintiffs had right, title and interest in respect of Schedule 'kha' land. The issue

No.5 as to whether the sale deed No.944/92 is liable to be cancelled was also decided in favour of the plaintiffs holding that the defendant No.96 did not have a saleable right.

12. Being aggrieved by the said judgment and decree passed by the learned Trial Court dated 20.03.2006, an appeal was preferred by the defendant Nos.1 to 6 which was registered and numbered as Title Appeal No.48/06. The learned first Appellate Court after deciding the said appeal issue-wise decided all the issues against the plaintiffs and thereby allowed the appeal and dismissed the suit. It is under such circumstances that the present second appeal has been filed and this Court vide order dated 12.05.2010 had admitted the appeal by formulating the substantial question of law.

13. This Court during the course of the hearing was of the opinion that for the interest of justice an additional substantial question of law is required to be framed in the present facts. The learned counsel for both the parties were duly heard on that aspect and accordingly this Court frames the following additional substantial question of law as under:

Whether, the learned 1st Appellate Court was justified in dismissing the suit entirely even though it was admitted in the pleadings by both the defendant Nos.1 to 6 as well as the defendant No.96 that the land described in Schedule 'ga' to the plaint was transferred to the plaintiff No.1 vide the deed of sale bearing deed No.3766/67 dated 20.10.1967?

14. This Court upon hearing the learned counsels is of the opinion that the

first substantial question of law which was formulated by this Court on 12.05.2010 is not a substantial question of law involved in the instant appeal inasmuch as, the learned 1st Appellate Court did not allow the appeal on the said aspect of the matter.

15. Coming to the additional substantial question of law as to whether the learned 1st Appellate Court was justified in dismissing the suit without taking into account the respective admission made in the pleadings by the contesting defendant Nos.1 to 6 as well as defendant No.96 in respect to the land described in Schedule 'ga' to the plaint.

16. This Court has duly taken note of the pleadings on record, wherein it is categorically an admission on the part of the defendant Nos.1 to 6 as well as the defendant No.96 that the defendant No.96 had sold a plot of land measuring 2 bighas 2 lessas covered by Dag Nos. 526, 514, 515 and 516 of KP Patta No.71 of village Jalimura under Niz Madartolla Mouza vide registered deed of sale bearing deed No.3766/67 dated 20.10.1967.

17. This Court has further taken note of that the land which has been claimed by the defendant Nos.1 to 6 are two plots of land covered by Dag No.543 and 502 which is nowhere connected with the Schedule 'ga' land. Under such circumstances, this Court finds no justification as to why the learned 1st Appellate Court dismissed the entire suit without taking into account the admission made in the pleadings. Consequently, the issue, therefore, arises as to whether this Court should remand the instant appeal back to the learned 1st

Appellate Court or should this Court decide the said appeal?

18. This Court has duly taken note of that there are pleadings as well as the evidence available on record. Under such circumstances, as there is no requirement of any further evidence, the question of remanding the appeal back to the learned 1st Appellate Court would be only delaying the inevitable. Under such circumstances, this Court is of the opinion that the plaintiffs herein would be entitled to the decree only in respect to the Schedule 'ga' land. However, it is made clear that the plaintiff would have no claim over the Schedule 'kha' land which comprises to two plots of land one covered by Dag No.543 and the other covered by Dag No.502.

19. Accordingly this Court decrees the instant suit thereby declaring the right, title and interest of the plaintiffs over the Schedule 'ga' land. This Court further grants confirmation to possession of the plaintiffs over the Schedule 'ga' land. This Court, however, declares that the plaintiffs have no right, title and interest in respect to Schedule 'kha' land. Accordingly the instant appeal stands disposed of.

20. The Registry shall prepare a decree on the basis of the above and thereupon send the LCR back to the Court below.

21. In the present facts of the case, this Court is not inclined to impose costs and the parties herein shall bear the costs throughout the proceedings.

JUDGE

Comparing Assistant