

GAHC010106022010



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

Case No. : RSA/55/2010

1. On the death of Ram Chandra Malpani
His legal heirs:
 - a. Smti Ganga Devi Malpani
 - b. Sri Manoharlal Malpani
 - c. Sri Bijou Kumar Malpani
 - d. Sri Raj Kumar Malpani
 - e. Sri Ajay MalpaniSl. 1 (a) is widow and 1(b) to 1(e) are sons of late Ram Chandra Malpani

2. Sri Jai Prakash Malpani
Son of Late Mohan Lal Malpani
All are resident of Kenduguri,
A.T. Road, Jorhat town,
Dist. Jorhat, Assam

....Appellants

-Versus-

Sri Khirod Chandra Baruah,
Son of Late Durgeswar Baruah
Resident of No.1 Bamungaon,
Charigaon Mouza, Kenduguri,
Jorhat, Assam

....Respondent

– B E F O R E –

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the appellants : Mr. S.C. Keyal, Advocate

For the respondent : Mr. T. Gogoi, Advocate

Date of hearing & judgment : 28.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. S.C. Keyal, learned counsel for the appellants. Also heard Mr. T. Gogoi, learned counsel for the respondent.

2. The instant appeal under Section 100 of the Code of Civil Procedure, 1908 ('CPC' for short) has been filed challenging the judgment and decree passed by the learned First Appellate Court dated 19.08.2009 in Title Appeal No.2 of 2009 whereby the judgment and decree dated 17.11.2008 passed by the Court of learned Civil Judge, Jorhat, in Title Suit No.2/2002 was affirmed. This Court vide order dated 31.03.2010 admitted the instant appeal by formulating three substantial questions of law which read as under;

“1. Whether the learned courts below erred in law in not considering the Exhibits 5 and 6 jamabandi of surveyed village which indicates that the suit land was mutated in the name of the M/s Mangiram Kishanlal on 15.8.1935?

2. Whether the findings of the learned courts below as regards possession of the plaintiff and proforma defendants are perverse for non-consideration/misreading of evidence on record?

3. Whether the impugned lower appellate judgment is not a judgment in the eye of law for non-compliance of the provisions of Order XLI Rule 31 of the Code of Civil Procedure?”

3. For deciding as to whether the said substantial questions of law are involved in the instant appeal, this Court would like to deal in brief the facts which led to filing of the instant appeal.

4. From the records, it reveals that one Ram Chandra Malpani along with one Jai Prakash Malpani have instituted Title Suit No.2/2002 before the Court of learned Civil Judge (Senior Division) at Jorhat. The suit was essentially filed against the defendant Khirod Chandra Baruah (respondent herein). The remaining defendant Nos.2, 3 and 4 were arrayed as proforma defendants. From a perusal of the plaint, it reveals that the plaintiffs along with the proforma defendant Nos.2, 3 and 4 claimed to be the members of Hindu Undivided Family and owned the business in the name and style of M/s Maganiram Kishanlal. It was stated in the plaint that M/s Maganiram Kishanlal had purchased a plot of land in revenue auction sale measuring 1 Bigha 2 Kathas 1 Lecha covered by Dag Nos.1652 (old) and 1653 (old) corresponding to Dag Nos.1887 (new) and 1888 (new) of Periodic Patta No.155 (old) corresponding to Periodic Patta No.397 (new) of No.1 Bamungaon, Charigaon Mouza, Jorhat. It was stated in the plaint that their names were duly mutated

by order dated 15.08.1935. It was further claimed by the plaintiffs that from the date of purchase of the plot of land they continued to enjoy the right, title, interest and possession over the said plot of land, which was specifically described in the Schedule 'A' to the plaint. However, they came across a public notice published in one Assamese Daily viz. "Dainik Janambhumi" in its issue dated 29.06.2001 in relation to Revenue Misc. Case No.8/2000 pending before the Court of Additional Deputy Commissioner (Revenue), Jorhat, which was filed by the defendants claiming title in respect of the land shown in Schedule 'A'. It was the further case of the plaintiffs that the defendant No.1 had no right, title and interest over the said land as described in Schedule 'A' to the plaint but on account of his action of trying to raise construction on the land and to block the right of the users of the passage had compelled them to approach the Court by filing the suit seeking (i) declaration of their right, title, interest and possession of the plaintiff Nos.1 and 2 along with the proforma-defendant Nos.2, 3 and 4 in respect of the land as described in Schedule 'A' to the plaint; (ii) declaration of right of user of the passage 10 ft. in breadth originating from Charigaon/Neemati Road on the West and terminating on the Schedule 'A' land on the East; (iii) a decree declaring that the defendant No.1 had blocked the passage of 10 ft in breadth leading to the Schedule 'A' land on the East to prevent the 'right of user' of the passage by the plaintiff Nos.1 and 2 and the

proforma-defendant Nos.2, 3 and 4 by raising an iron gate; (iv) a declaration that the defendant No.1 illegally constructed the iron gate at the entry point of the passage to obstruct the ingress and egress of the plaintiff Nos.1 and 2 and the proforma-defendant Nos.2, 3 and 4 as described in Schedule 'A' of the plaint.

5. Pursuant to the said suit being filed, the defendant No.1 filed his written statement specifically denying the statements made in paragraph 2 of the plaint that the said plot, as described in Schedule 'A' to the plaint, was purchased by M/s Maganiram Kishanlal in an auction sale. It was further mentioned that the suit land was under exclusive and uninterrupted possession of the defendant and the iron gate was already there. It was further mentioned that the plaintiffs and the proforma-defendant Nos.2, 3 and 4 did not have any legal right and possession over the suit land and as such, the question of deprivation of any right as alleged did not arise.

6. On the basis of the said pleadings, as many as seven issues were framed, including the Issue No.3, i.e. whether M/s Maganilal Kishanlal is a joint business of the plaintiff Nos.1 and 2 as well as proforma-defendant Nos.2, 3 and 4; and the Issue No.4, i.e. Whether M/s Maganilal Kishanlal purchased the suit land as described in the Schedule 'A' to the plaint in revenue auction sale and if so,

whether the plaintiffs and the proforma-defendant Nos.2, 3 and 4 have acquired right, title, interest and possession over the Schedule 'A' land.

7. The learned trial Court vide judgment and decree dated 17.11.2008 dismissed the said suit. In doing so, the issue No.3 was decided against the plaintiffs on the ground that the plaintiffs failed to prove the existence of M/s Magani Ram Kishanlal and had also failed to prove that they along with the proforma defendants are purchasers of M/s Magani Ram Kishanlal. On the issue No.4, learned trial Court came to a categorical observation that there was no evidence adduced by the plaintiffs to prove the fact that M/s Magani Ram Kishanlal purchased the suit land in auction sale and as such, the plaintiffs never acquired any right, title and interest over the suit land. The remaining issues were decided primarily on the basis of the decisions taken on issue Nos.3 and 4. The plaintiffs being aggrieved thereupon preferred an appeal before the Court of the learned District Judge at Jorhat. The learned District Judge at Jorhat vide judgment and decree dated 19.08.2009 dismissed the said appeal. Being aggrieved, the present appeal has been filed.

8. In the backdrop of the above, let this Court therefore consider as to whether the three substantial questions of law so formulated are involved in the instant appeal. The first two substantial questions are interlinked inasmuch as

they relate to the issue as to whether there had been any perversity in the decision of the First Appellate Court on the ground of non-consideration of Exts-5 and 6. This Court has duly taken note of paragraphs 10 and 11 of the said judgment passed by the learned First Appellate Court. The learned First Appellate Court had duly taken note of Exts.-5 and 6 and, on the basis thereof, it came to the conclusion that the plaintiffs had failed to prove that they had purchased the Schedule 'A' land in auction sale. The said decision arrived at by the learned First Appellate Court is an affirmation of the decision taken by the learned trial Court on the facts of the case. This Court under Section 100 CPC cannot interfere with the findings of facts so arrived at unless a perversity is shown by the appellants in the judgment passed by the learned First Appellate Court. It is well settled principle of law that a wrong finding of fact would not amount to perversity unless such a finding of fact was passed upon a misreading of the evidence or ignoring such evidence which would otherwise have changed the course of the proceedings.

9. In the instant case, from a perusal of the material available on record, more particularly, a reading of paragraphs 10 and 11 of the judgment of the First Appellate Court would show that the question of perversity does not arise. Under such circumstances, the 1st and 2nd substantial questions of law

formulated by this Court vide order dated 31.03.2010 cannot be said to be a substantial questions of law involved in the instant appeal.

10. Next, coming to the 3rd substantial questions of law as to whether the learned First Appellate Court's judgment was in compliance of the provisions of Order XLI Rule 31 of the CPC. This Court, having taken note of the judgment passed by the learned First Appellate Court and also taking into account the requirement in terms of Order XLI Rule 31 of the CPC, is of the opinion that the learned First Appellate Court had passed the said judgment in compliance of the provisions of Order XLI Rule 31 of the CPC. Under such circumstances, the same cannot be said to be a substantial question of law involved in the instant appeal.

11. Accordingly, the instant appeal stands dismissed with a cost quantified at Rs.11,000/-, which the defendant (the respondent herein) shall be entitled to as the cost incurred in the present proceedings. Further, the defendant shall be entitled to costs throughout the proceedings.

12. Send back the LCR.

JUDGE

Comparing Assistant