

GAHC010134072016



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

Case No. : SAO/2/2016

ON THE DEATH OF BHOGI RAM MEDHI, HIS LEGAL HEIRS
Represented By-

1.1: SHANTI RAM MEDHI
S/O LATE BOGIRAM MEDHI
RO VILLAGE AZARA
PO AND PS AZARA
DISTRICT KAMRUP
ASSAM
PIN-781017

1.2: LOHIT MEDHI
S/O LATE BOGIRAM MEDHI
RO VILLAGE AZARA
PO AND PS AZARA
DISTRICT KAMRUP
ASSAM
PIN-781017

1.3: ANUKUL MEDHI
S/O LATE BOGIRAM MEDHI
RO VILLAGE AZARA
PO AND PS AZARA
DISTRICT KAMRUP
ASSAM
PIN-781017

1.4: GHANASHYAM MEDHI
S/O LATE BOGIRAM MEDHI
RO VILLAGE AZARA
PO AND PS AZARA
DISTRICT KAMRUP
ASSAM
PIN-78101

VERSUS

ON THE DEATH OF BHARAT CHANDRA DAS HIS LEGAL HEIRS

Represented By-

1.1:SMTI RIMA DAS
W/O LATE BHARAT CH. DAS
R/O VILLAGE BHATTAPARA
MOUZA RAMCHARANI
PS AZARA
DISTRICT KAMRUP
ASSAM PIN-781017

1.2:SHRI DHURBAJYOTI DAS
S/O LATE BHARAT CH. DAS
R/O VILLAGE BHATTAPARA
MOUZA RAMCHARANI
PS AZARA
DISTRICT KAMRUP
ASSAM PIN-781017

1.3:SHRI RUPJYOTI DAS
S/O LATE BHARAT CH. DAS
R/O VILLAGE BHATTAPARA
MOUZA RAMCHARANI
PS AZARA
DISTRICT KAMRUP
ASSAM PIN-78101

For the appellant (s) : Mr. Sheeladitya, Advocate

For the respondent (s) : None appears

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

16.05.2024

This is an Appeal under Order XLIII Rule 1 (u) of the Code of Civil Procedure, 1908 challenging the order dated 16.10.2015 passed by the learned First Appellate Court, i.e. the Court of the Additional District Judge

No.1, Kamrup (M) at Guwahati whereby the Title Appeal No.5/2011 was disposed of by setting aside the judgment and decree passed by the learned Trial Court and directing the learned Trial Court to decide afresh the suit by allowing the plaintiff to file his prayer for recovery of khas possession of the suit land.

2. From the materials on record, it reveals that it is the case of the plaintiff that vide a Deed of Sale, the plaintiff had purchased the suit land and was put into possession. The plaintiff remained in possession, however on 11.04.1993, the defendant attempted to trespass into the suit land and started construction of the house. However, the said attempt was resisted by the father of the plaintiff. Be that as it may, the defendant continued to disturb the possession for which the plaintiff initiated a proceeding under Section 145 of the Code of Criminal Procedure, 1973. The learned Divisional Magistrate vide an order dated 05.12.2000 declared the possession of the disputed land in favour of the plaintiff. Subsequently, on being appealed, the said order was set aside and this Court also did not revise the order of the Appellate Court. It is under such circumstances, the suit was filed seeking declaration of right, title and interest over the suit property, for permanent injunction restraining the defendant from entering into the suit land or encroaching the suit land. The said suit was registered and numbered as Title Suit No.58/2003.

3. The appellant herein who was the defendant filed written statement stating inter-alia that the appellant has been in possession of the suit land and thereupon an agreement was entered into with the vendor of the plaintiff and at the time of entering into the agreement, the possession of the suit land was handed over to the defendant. The vendor of the

plaintiff did not execute the registered Deed of Sale in favour of the defendant, rather transferred the land by way of a registered Deed of Sale in favour of the plaintiff. However, the plaintiff could not take possession of the suit land. The claim of the defendant is that the defendant is protected under Section 53A of the Transfer of Property Act, 1882.

4. On the basis of the pleadings, as many as 7 Issues were framed of which Issue No.4 is relevant in the instant Appeal which relates to as to whether the plaintiff is the owner and in possession of the suit land.

5. At the time of tendering evidence, the plaintiff filed an application seeing amendment of the plaint to include the relief for recovery of possession. The said application was rejected by the learned Trial Court vide the order dated 05.05.2004 in as much as the suit was fixed for evidence of the plaintiff. Thereupon, the suit proceeded and the learned Trial Court dismissed the suit in view of the proviso to Section 34 of the Specific Relief Act, 1963. Against that, an Appeal was preferred which was registered and numbered as Title Appeal No.5/2011 by the plaintiff. The learned First Appellate Court held that the rejection to the amendment application was erroneous and consequently was of the opinion that the suit is required to be remanded back to the learned Trial Court to decide in as much as after holding that the rejection of amendment was illegal, there might be necessity of adducing certain evidence. This order of remand is the impugned order dated 16.10.2015 which has been assailed in the instant proceedings.

6. I have heard Mr. Sheeladitya, the learned counsel appearing on behalf of the appellant who submits that if the impugned order is not interfered with, the plaintiff would be filling of the lacuna. The learned

counsel for the appellant further submitted that the observations so made by the learned First Appellate Court in disposing of the Appeal would have serious implications and cause great prejudice to the defendant in the suit and more particularly referred to paragraph Nos.10 to 17 of the impugned order. None has appeared on behalf of the respondents on call.

7. This Court having taken note of the order passed by the learned First Appellate Court which has been impugned in the instant proceedings is of the opinion that the said order requires no interference in as much as a perusal of the written statement filed by the defendant does not mention or raise any preliminary objection as regards the non-compliance with the proviso to Section 34 of the Specific Relief Act, 1993. It is also the specific case of the plaintiff that during the pendency of the suit, the plaintiff has been dispossessed, and as such, the learned Trial Court ought not to have rejected the amendment application on the ground that the amendment application was filed when the plaintiff had adduced his evidence.

8. This Court further takes note of that if the amendment is allowed, there would be requirement of further evidence to be given by either of the party, and as such, in the opinion of this Court, the learned First Appellate Court was justified in remanding the suit back to the learned Trial Court by permitting the plaintiff to include the prayer for recovery of possession by amending the plaint.

9. Accordingly, this Court finds no ground to interfere with the impugned order.

10. Before concluding, this Court however finds it relevant to observe that the observations made in paragraph Nos.10 to 17 touches on the

merits of the lis between the plaintiff and the defendant and the same shall not influence the learned Trial Court in deciding the suit.

11. This Court further vacates the interim order so passed by this Court and directs the parties to appear before the learned Trial Court, i.e. the Court of the learned Civil Judge (Senior Division) No.3, Kamrup (M) at Guwahati on 15.07.2024.

12. The Registry is directed forthwith to transmit the records to the said Court, i.e. the Court of the learned Civil Judge (Senior Division) No.3, Kamrup (M) at Guwahati so that the said Court is in a position to proceed with the trial in accordance with the observations so made in paragraph No.21 of the impugned order dated 16.10.2015 in Title Appeal No.5/2011.

13. This Court further takes note of that in the instant case, only the defendant of the said suit is being represented. However, the plaintiff is absent. Under such circumstances, the learned Trial Court before proceeding with the suit shall issue due notice to the plaintiff.

14. In view of the above observations and directions, the instant Appeal stands disposed of.

JUDGE

Comparing Assistant