



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Principal Seat at Guwahati

RFA No. 82/2018.

- 1.** Sri Nalin Mikir,
S/o Late Bolo Ram Mikir,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 2.** Sri Munindra Mikir,
S/o Late Bolo Ram Mikir,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 3.** Smti. Rangmili Mikir,
S/o Late Bolo Ram Mikir,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 4.** The Khepanijal Gaon Unnayan Samittee,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 5.** Sri Jogen Bey,
S/o Debaram Bey,
Secretary of Khepanijal Gaon Unnayan Samittee,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.

- 6.** Sri Dharmeswar Tumung,
Ex-President of Khepanijal Gaon Unnayan Samittee,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 7.** Sri Gajen Bey,
S/o Puti Ram Bey,
Ex-Secretary of Khepanijal Gaon Unnayan Samittee,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 8.** Sri Amrit Keleng,
S/o Late Sukuna Keleng,
President of Khepanijal Gaon Unnayan Samittee,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.

..... Appellants/Defendants.

-Versus-

- 1.** Sri Pulin Mikir,
S/o Late Jon Mikir,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 2.** Sri Indra Mikir,
S/o Late Jon Mikir,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.
- 3.** Smti. Benu Mikir,
D/o Late Suti Ram Mikir,
Vill – Khepanijal (Betkuchi),
P.S. - Gorchuk, Guwahati – 34,
Dist. – Kamrup (M) at Guwahati.

..... Respondents/Plaintiffs.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Advocate for the appellants	:-	Mr. P. Chaudhury.
Advocate for the respondent Nos. 1, 2 & 3	:-	Mr. S.K. Goswami.
Date of Hearing	:-	01.10.2024.
Date of Judgment & Order	:-	20.12.2024.

JUDGEMENT & ORDER (CAV)

Heard Mr. P. Chaudhury, learned counsel for the appellants and Mr. S.K. Goswami, learned counsel for the respondent Nos. 1, 2 & 3.

2. In this appeal, under Section 96 read with Section 151 of the C.P.C., the appellants have put to challenge the correctness or otherwise of the Judgment and Decree dated 28.05.2018, passed by the learned Civil Judge No. 1, Kamrup (M) at Guwahati, in Title Suit No. 277/2013.

3. It is to be noted here that vide impugned Judgment and Decree dated 28.05.2018, the learned Civil Judge No. 1, Kamrup (M) at Guwahati has decreed the suit, declaring the right, title and interest of the plaintiffs in respect of the suit land described in Schedule B jointly along with defendants Nos. 1 - 6 and also declaring that the plaintiffs are entitled to collect rent from the traders of the Lakhra Charali weekly and daily market to the extent of the share they are entitled to as agreed upon by the parties, who are jointly entitled to collect the rent.

Background Facts:-

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“The case of the plaintiffs’ is that Late John Mikir, father of plaintiff No. 1; Late Suti Ram Mikir, father of plaintiff No. 3 and defendant No. 1; Late Kanti Ram Mikir, father of defendant No. 2 & 3; and Late Bolo Ram Mikir, husband of defendant No. 4 and father of defendant No. 5 & 6 had purchased a plot of land measuring 9 Bighas 4 Kathas 1 Lecha covered by Dag No. 1012 of K.P Patta No. 72 from Late Hiren Ram Phukan and Late Biren Ram Phukan, executing a registered sale deed No. 3558 dated 13.03.1957, described in Schedule A in the plaint. After purchase of the land, the names of the Pattadar were mutated in the records of right and after the settlement operation the original patta number and dag number were changed to Patta No. 771 and Dag No. 3030, 3031 & 3032 respectively. The purchasers were in possession for more than 30 years after the settlement operation, vide K.P Patta No. 159 conferring the status of landholders. Then the plaintiffs on 15.12.2004, applied before the Additional Deputy Commissioner, Kamrup (M) by three separate petitions to get their names mutated over a plot of land measuring 10.86 Are of New Dag No. 3030, land measuring 2.42 Are of Dag No. 3030 and land measuring 118.62 Are of Dag No. 3030 under K.P Patta No. 771 for a total area of land measuring 131.90 Are in place of the deceased landholders (pattadars) Suti Ram Mikir, Kanti Ram Mikir and John Mikir, and predecessor in interest of the defendant No. 4 to 6 of Late Bolo Ram Mikir.

Thereafter, defendant Nos. 10 & 11 raised objection before the Settlement Officer, Guwahati in Misc Case No. 17/06-07

stating that they are the absolute owners in respect of the disputed land by virtue of purchase on behalf of "Raij" by registered sale deed No. 3558 dated 13.03.1957, stating that the suit land which was originally used for agricultural purposes and was developed by the people of the locality and now the same has been converted into a commercial land. During the course of time, the land was used by some traders and now it has been developed into a daily and weekly market under the name and style of "Lakhra Bazar" and there is a School as well as the Office of the Mahila Samiti, towards the western part of the land, which were established in the year 2007 & 2010. The plaintiffs have no objection to the establishment of the school and the Mahila Samiti and in the remaining 9 Bighas 4 Kathas 1 Lecha land there is regular market having at least 100 traders and there are some tenants on a monthly basis also. The plaintiffs collected rent from the weekly market traders and from the tenants. After the increase of rent, the collection from the daily market was to the tune of 3 lakhs each month. The defendants started collecting the rent by propagating that they are the owners of the land w.e.f. 01.07.2011, and the defendants are collecting the rent from the market without paying anything to the plaintiffs, thereby causing huge financial loss, to the plaintiffs.

Therefore, they had instituted suit for declaring right, title and interest along with defendant No. 1 - 6 over the Schedule B land and are entitled to collect rent from the Lakhra Bazaar along with other reliefs with cost of the suit.

The defendants had contested the suit by filing separate written statements. Defendant Nos. 1 & 2 in their written

statement had taken a stand that the suit is bad for non-joinder of necessary parties and the title and possession of the suit land has not at all been decided and the decision of the Assam Board of Revenue does not confer any absolute title over the suit land in the name of Raij Gairah and the plaintiffs and defendant Nos. 1 and 2 entitled to equal and proportional share in respect of the suit land.

The defendant No. 3, Shri Soven Mikir, in his written statement has stated that the land was never purchased on behalf of all villagers of Khepanijal and the title and possession of the suit land has not at all been decided and the decision of the Assam Board of Revenue does not confer any absolute title over the suit land in the name of Raij Gairah and entering defendants never allowed defendants No. 7 - 11 to collect rent from the market and entering defendant, being the co-pattadar, has right over the suit land.

The defendant Nos. 4 - 11 in their written statement had stated that the suit is not maintainable being barred by law of limitation and the land measuring 9 Bighas 4 Kathas 1 Lecha was purchased by then John Mikir, Suti Ram Mikir and Boloram Mikir and Kanti Mikir on behalf of Raij Gairah by a registered sale deed No. 3558 dated 13.03.1957, from the original owners namely Biren Ram Phukan and Hiren Ram Phukan. Since the time of purchase, the land is in possession of the Raij of Khepinijal as the same is being maintained by them and the Assam Board of Revenue has set aside the order of mutation granted in favour of the plaintiffs by the Settlement Officer declaring the title of the suit land in favour of the plaintiffs, to which the plaintiffs

preferred a writ petition before this Court and this Court had upheld the order of Board of Revenue and remanded the case back directing the respective parties to substantiate their claim before the Board of Revenue, and accordingly defendant Nos. 2 & 3 filed a petition dated 23.06.2008 and 29.04.2008, stating that their father, along with Bolo Ram Mikir and John Mikir had purchased the land on behalf of Raij Gairah by registered sale deed No. 3558/1957, from Biren Ram Phukan and Hiren Ram Phukan, and since the time of purchase of the land is in possession of the Raij of Khepinijal. It is further stated that the Raij of the Khepanijal have constituted an Unnayan Samity headed by defendant Nos. 8 & 9 and they are running a market and the sale proceeds of the market is being used in development of the area and that the plaintiffs have no right, title and interest over the suit land."

5. Upon the said pleadings of the parties, the learned Trial Court had framed following issues:-

- "1. Whether there is any cause of action?
2. Whether the suit is maintainable in its present form?
3. Whether the suit is barred by limitation?
4. Whether the suit is bad for defect of parties?
5. Whether the plaintiffs have right, title, interest over the schedule B land with the defendant Nos. 1 - 6?
6. Whether the plaintiffs are entitled to realize rent from the traders trading over schedule B land of the plaint?

7. Whether the plaintiffs are entitled to the decree/reliefs as prayed for?

8. To what reliefs the parties are entitled to?”

Grounds:-

6. Being highly aggrieved and dissatisfied, the present appellants have preferred the present appeal, under Section 96 read with Section 151 of the C.P.C., the appellants have put to challenge the correctness or otherwise of the Judgment and Decree dated 28.05.2018, passed by the learned Civil Judge No. 1, Kamrup (M) at Guwahati, in Title Suit No. 277/2013, on the following grounds :-

1. That the trial Court had committed a grave error of law as it was not competent to pass the decree in favour of the respondents violating the provisions of the CPC, 1908. The trial Court did not at all follow the basic and elementary principles of adjudication of a suit under the provisions of the CPC, 1908.
2. That the trial Court had decreed the suit in favour of the defendant Nos. 1 to 6 along with the Plaintiffs which is unknown to any legal principles based on which the trial Court had assumed the jurisdiction to decide the suit. The defendant Nos. 1 to 6 at no point of time had authorised the plaintiffs /respondents to contest the present suit on their behalf before the trial Court. There was no such application under Order I Rule 8 of the CPC, 1908 filed by the plaintiffs/respondents before the Trial Court whereby the plaintiffs /respondents had sought to represent the defendant No. 1 to 6 on the basis of the consent of the defendant Nos. 1 to 6. It is absolutely clear that the plaintiffs/respondents could

not have represented the Defendant Nos. 1 to 6 and as such the trial Court could not have passed the decree in favour of the defendant Nos. 1 to 6.

3. That the trial Court was not competent to transpose the defendant Nos. 1 to 6 as co-plaintiffs in the suit suo motto on its own and the same was not even prayed by the plaintiffs/respondents or by the defendant Nos. 1 to 6 before the trial Court. This is a clear case where the judgment and decree passed by the trial Court is non-est, void and is liable to be set aside by this Hon'ble Court. There is no cause of action stated to be in favour of the defendant Nos. 1 to 6 nor the same were prayed by the defendant Nos. 1 to 6 before the trial Court and as such the trial Court did not have the jurisdiction to try the present suit qua the defendant Nos. 1 to 6.
4. That The trial Court had committed a grave error of law and facts by ignoring the fact that the defendant Nos. 1 to 6 did not authorize the plaintiffs /respondents to represent them in the present suit for seeking relief for declaration of right, title, interest in the suit property. The fact that the plaintiffs /respondents had impleaded Defendant Nos. 1 to 6 for the purpose of seeking reliefs against the Defendant Nos. 1 to 6 before the Trial Court clearly proved that the fact the Defendant Nos. 1 to 6 did not authorize the plaintiffs /respondents to represent them and to protect their interest in the suit. The fact that the plaintiffs/respondents had made the defendant Nos. 1 to 6 as contesting defendants and not proforma defendants in the suit clearly showed that the

plaintiffs/respondents had sought reliefs against the defendant Nos. 1 to 6. This fact would make further the impugned Judgment and Decree passed by the trial Court as untenable and unsustainable in law and facts.

5. That the trial Court ought to have considered the fact that the defendant Nos. 4 to 6 had contested the suit by filing written statement whereby these defendants had in categorical terms opposed the claims and the reliefs sought by the plaintiffs/respondents. The defendant Nos. 4 to 6 in their written statement had in categorical terms stated that neither the Plaintiffs nor the Defendant Nos. 1 to 6 had any right over the suit property and had further pleaded that the present suit ought to have been dismissed. It was on the basis of such pleadings of the defendant Nos. 4 to 6, the impugned judgment and decree passed by the Trial Court is liable to be set aside.
6. That the trial Court had committed a grave error of law and facts when the trial Court had ignored the fact that the defendant Nos. 4 to 6 in whose favour the suit was decreed along with the plaintiffs/respondents had filed their written statement along with defendant Nos. 7 to 11 whereby it was stated that the father of the plaintiffs and the father of the defendant Nos. 1 to 6 had purchased the suit land on behalf of the people staying in the locality of Khepanijal as a Raj property (i.e. public property) and not in their individual names. The said written statement had further stated that no one can individually claim right, title, interest over the suit

land which effectively had denied any claims of the plaintiffs/respondents over the suit property.

7. That there is a clear violation of Order I Rule 1 of the CPC, 1908 by the trial Court when the judgment and decree had granted the Decree in favour of the Defendant Nos. 1 to 6. The trial Court could not have granted the decree of the right, title, interest in the suit property in view of Order I Rule 3 of the CPC, 1908 in favour of the plaintiffs/respondents as well as the defendant Nos. 1 to 6.
8. That the trial Court in the impugned Judgment and Decree had violated the provisions of Order I Rule 4 of the CPC, 1908 whereby the trial Court could not have granted the relief to the defendant Nos. 1 to 6, as these defendant Nos. 1 to 6 were not arrayed as plaintiffs in the suit. The defendant Nos. 1 to 6 admittedly did not file any counter claims against the plaintiffs under Order VIII Rule 6 A of the CPC, 1908 to confer the jurisdiction to the trial Court to pass the impugned judgment and decree in favour of the defendant Nos. 1 to 6
9. That the trial Court had committed a grave error of law and facts whereby the trial Court had ignored the specific case of the defendant Nos. 1 to 6 and the defendant Nos. 7 to 11 was that the plaintiff was never in possession of the suit land as it is a Raj property (i.e. public property) belonging to entire people of the said locality and they are represented by the defendant No. 7 Khepanijal Gaon Unnayan Samiti. The plaintiffs in the plaint did not claim any possession of the suit property at any point of time.

10. That the trial Court has exceeded its jurisdiction in adjudicating the suit whereby the trial Court has taken upon itself to prove the case of the plaintiffs in the suit. There are no materials available on record or evidence based on which the trial Court could have passed the decree of right, title, interest without possession over the suit property. The trial Court had been over jealous and had ignored the basic tenets of law while passing the impugned judgment and decree in favour of the plaintiffs and defendant Nos. 1 to 6 thereby even beyond the scope of the pleadings in the plaint and evidences led by the plaintiffs/ respondents.
11. That the trial Court had committed a grave error of law and facts in view of the provision of Order II Rule 2 Sub-Rule 3 of the CPC, 1908 and the same could not have been granted to the plaintiffs and defendant Nos. 1 to 6 the reliefs of right, title, interest in the suit land without claiming possession of the suit property. There cannot be a decree for the declaration of right, title, interest over immovable property where the plaintiffs who admittedly did not have possession of the suit land do not seek the relief of recovery of possession of the suit property. The said reliefs would be barred by Order II Rule 2 of the CPC, 1908 which clearly states that the suit must include the whole claim and not in part and the same was conveniently ignored by the trial Court.
12. That the trial Court ought to have considered the fact that the trial Court did not have the jurisdiction to decide the non-payment of rent of the tenanted premise. In the suit, the

plaintiffs/respondents in order to claim rent over the property for which the plaintiffs/respondents had not produced any agreement of tenancy executed by the plaintiffs/respondents in favour of those tenants/traders. There is no statement about amount of rent fixed for each shop, no rent receipt was exhibited by the plaintiffs/respondents to show the plaintiffs/respondents are the Landlord of those traders. In such a situation, the trial Court was not competent to award the money decree in favour of the plaintiffs/respondents.

13. That the trial Court had committed a grave error of law and facts ignoring the fact the plaintiffs/respondents had claimed arrear rent from the traders/shopkeepers and as such the present suit is not maintainable and the trial Court did not have jurisdiction to try the suit and passed decree accordingly. Based on the pleadings of the plaintiffs/respondents the relief sought could have under the provisions of the Assam Urban Rent Control Act, 1972 and more particularly the suit ought to have been filled under Section 5 of the Act, 1972 and not under provisions of the CPC, 1908,
14. That the trial Court in order to sustain the illogical and erroneous judgment and decree had chosen to make an incorrect observation that the appellants/defendants did not exhibit any documents to rebut the contents of the suit in order to avoid discussion of the same as the same would not permit the trial Court to pass the illogical and erroneous judgment and decree in the present suit. The defendants/appellants in compliance with under Order VIII

Rules 1 and 1A of the CPC, 1908 had filed several exhibits along with the written statements as Annexure I to XI which were subsequently marked as Exhibits "Ka, Kha, Ga, Gha, Ungo Pratham Cha, Ditiya Cha, Ja, Jha, Niya and Ta".

15. That the perusal of the documents filed by the defendants/appellants in the suit marked as Exhibits- Ka, Kha, Ga, Gha, Ungo, Pratham Cha, Ditiya Cha, Ja, Jha, Niya and Ta would clearly show that trial Court have not been in a position to grant the decree in favour of the plaintiffs/respondents. The trial Court ought to have discuss the said exhibits filed by the defendants/appellants in order to arrive at a judicious decision in the suit. The trial Court had avoided the same as it would defeat the purpose of granting the decree in favour of the plaintiffs/respondents.
16. That the trial Court had committed an error of law and facts in respect of ignoring the mandatory requirements of the contents of the plaint filed by the plaintiffs/respondents before the trial Court. The plaint of the suit is not supported by an affidavit sworn by all the plaintiffs/respondents and the plaintiff No. 1, who had signed the affidavit and the verification of the plaint was done in his individual capacity as the other plaintiffs did not authorize the plaintiff No 1 to swear affidavit on their behalf and this is a clear violation of Order VI Rule 15 of the CPC, 1908.
17. That the trial Court had failed to notice that there was non - compliance of Order VII Rule 3 of the CPC, 1908 by the plaintiffs whereby the plaint should contain the schedule describing exactly by the suit property. In the plaint, the

immovable property was described in a vague manner and as such the immovable property which is a subject matter of the present suit could not be identified in order to enable the trial Court to pass a decree of right, title, interest over the suit property without possession. This would be only a paper decree in favour of the plaintiffs/respondents.

18. That the trial Court had failed to notice that DW-1 (Sic-P.W.3) Soven Mikir whom the plaintiffs had sought to represent had in fact demolished the claim made by the plaintiffs/respondents in the suit. DW-1, in his deposition, had in categorical terms stated that the suit property belonged to the public of the said locality and it neither belonged to the father of the plaintiffs/respondents nor it belonged to the father of the defendant Nos. 1 to 6. The same would have prevented the trial Court to arrive at such an illogical and irrational decision in case the depositions of these DWs were considered by the trial Court.
19. That the trial Court had committed a grave error when it failed to notice the admission made by the plaintiff No 1 who had deposed as P.W.1 which is extracted as under:-

In W.P (C) No 63/2009-, at that time Bolo Ram Mikir was alive and the said Bolo Ram Mikir had filed objection in the said writ petition, since Bolo Ram Mikir, Jon Mikir, Kanti Ram Mikir and Suti ram Mikir had purchased the suit property in behalf of people of Khepanijal"

The above admission of the plaintiff's witness had demolish the entire suit and it would not permit the trial Court to pass the impugned judgment and decree of right, title, interest in favour of the plaintiffs/respondents along with defendants No 1 to 6 where in fact P.W.1 had in categorical terms had admitted that the suit land was purchased in the name of Raij of Khepanijal, not in the name of the plaintiffs/respondents. The P.W.1 admitted that none of the legal heirs of the deceased Bolo Ram Mikir, Kanti Mikir, Suti Mikir except plaintiffs No 3 had sought any relief in respect of the suit property before the competent Court.

20. That the trial Court had ignored the evidence that plaintiff No.1 who had deposed as P.W.1 further admitted that locality has develop the land in question with the expansion of the Guwahati City and also had also stated that locality meant 'Raij'. P.W. 2 did not support the case of the plaintiffs/respondents as reflected in his deposition
21. That the trial Court had failed to notice that the plaintiffs/respondents, nowhere stated in the Plaint that they were in possession of the suit land and they were collecting rents from the traders/shopkeepers. The plaintiff No. 1 had admitted the said fact in his deposition that he is not aware of the fact as to who were in possession of the suit land since 1957 to 1988 even though the plaintiff No 1 has stated that the suit property was purchased in the year 1957. Further, it

is not the case of plaintiff No 1, that he came in possession of the suit land from 1988 onwards till date.

22. That the trial Court had failed to notice that the plaintiff No.1 had clearly admitted that the present suit is barred by limitation, who as P.W.1, had stated in his deposition that he had filed the present suit after 56 years of the alleged purchase of the suit land by his father, Late Jon Mikir and other three persons, namely, Suti Mikir, Kanti Mikir, Bolo Ram Mikir and not on behalf of Raij of the locality, represented by Defendant No.7. The P.W.1 made a contradictory statement whereby he stated that the people of the locality had taken over the suit land and had been permitting the people to run the shop over the suit land. This is a clear admission of the plaintiffs/respondents that they are not in the possession of the suit land and the decree passed by the trial Court is only paper decree.
23. That the trial Court had ignored the Order dated 01.12.2008, passed in Revenue Appeal No 16 RA (K) of 2007 relating to the land which was stated to be the subject matter in the present suit. The Assam Board of Revenue in the order, dated 01.12.2008, held in clear terms that the suit property is a "Raij" property owned by Raij (people of the locality) living in that locality of Khepanijal. The relevant extract of Order dated 01.12.2008, passed in Revenue Appeal No 16 R.A(K) on 2007 stated as follows-

"The perusal of record it is seen that in the Sale Deed No 3558 dated 13.03.1957, the name of the purchasers are clearly written as Suti Ram Mikir, Kanti

Ram Mikir, Bolo Ram Mikir and Jon Mikir. The names of the sellers are written as Hiren Ram Phukan and Biren Ram Phukan. Since "Raij Gairah" is written before the words "Tarafe Likhitam" in the sale deed. It does not mean that the Raij was the pattadar of the land and on behalf of Raij, Hiren Ram Phukan and Biren Ram Phukan sold the disputed land as Hiren Ram Phukan and Biren Ram Phukan were at that time the Patadar of the land, they were actual seller and Suti Mikir, Kanti Ram Mikir, Bolo Ram Mikir and Jon Mikir purchased the land and in absence of any reason as to why these four persons had to buy this land together, it is to be presumed that the word 'Raij Gairah' should have been before the word "Barabar" in the sale deed. If the four purchasers would have started some business or other commercial activities together, it would have meant that the four purchasers had some commercial interest in the land and for better control and supervision perhaps the land was purchased jointly. In absence of such thing on record and the fact that a market, one school and one Mahila Samity house are there on the disputed land, it can safely be presumed that the disputed land was purchased on behalf of Raij of Khepanijal.

The above findings had clearly demonstrated the suit land is a Raij property. It did not belong to the plaintiffs/respondents as well as the defendants/appellants.

24. That the trial Court ought to have rejected the written statement of the defendant Nos. 1 and 2 who after filing the written statement, in the suit had abandoned the defence in the suit and without supporting the evidence to prove the contents of written statement, the trial Court had committed a grave error of law based on the facts of the case that the trial Court was not competent to consider the contents uncorroborated and unproved statements made in the said written statement of defendant Nos. 1 and 2 for the purpose of passing the impugned judgment and decree. The plaintiffs/respondents could not step into the shoe of the defendant Nos. 1 and 2 to represent them after the defendant Nos. 1 and 2 had abandoned the present suit under law. The statement of PW1, apart from it being conflicting and contradictory stand taken in deposition to the statements made in the plaint was not at all supported by P.W.2 and D.W.1 (Suven Mikir).
25. That the trial Court had ignored the fact that during the last settlement operation, the suit land was bearing Pucca Patta No.1442 of the Dag Nos. 3070, 3071, 3072 of Khepanijal Village, Mouza-Beltola. The patta of the suit land in question was issued in the name of defendant No. 7, after verifying all relevant documents by the authority concerned, the Govt. of Assam. None of the plaintiffs/respondents had raised any objection at the time of issuing the said Pucca Patta and the defendant No.7 has a clear right, title, possession over the suit land on behalf of the people of the said locality.

26. That the trial Court had ignored the fact that the Pucca Patta issued in the name of defendant No.7 marked as Exhibit 'Ga', in the suit, had not been challenged by the plaintiffs/respondents in any competent Court of Law and the said patta was not issued in the name of the plaintiffs/respondents and the defendant Nos. 1 to 6. It was for this reason that the impugned judgment and decree passed by the trial Court is bad in law and liable to be set aside as the trial Court for reasons best known had avoided Ext. Ga. as it would not permit the passing of the impugned judgment and decree by the trial Court.
27. That the trial Court had ignored the fact that the D.W.1 (Suven Mikir), in his deposition has stated that it was only the land measuring 9 Bigha 4 Katha 1 Lecha purchased by his father namely Kanti Mikir which was the subject matter in the present suit land, belonging to the Raij. The land purchased by the father of the Plaintiffs/Respondents is different and in no way connected to the land relating to the present suit. In other words the deposition of the Defendant No. 3 who had deposed as D.W.1, did not at all support the case of the plaintiffs/respondents. It was for this reason the trial Court did not have the jurisdiction to pass a composite decree of right, title, interest without possession over the suit land in favour of the plaintiffs/respondents and defendant Nos. 1 to 6.
28. Moreover, the trial Court did not at all consider the written statement of the defendant Nos. 4 to 11, who had demolished the entire pleadings made in the plaint of the suit

thereby making the judgment and decree as void-ab initio and without any jurisdiction. The trial Court, for reasons best known to it, had recorded an incorrect and unsubstantial findings against the defendants/appellants and had agreed with the unsubstantiated grounds of the plaintiffs /respondents based on which the highly erroneous judgment and decree was passed by the trial Court. The perusal of the case record would show that it was totally incorrect approach adopted by the trial Court in order to give some credence to the incorrect and illogical findings of the trial Court.

29. That the present suit is not maintainable for non-joinder of necessary parties i.e. defendant Nos. 1 to 6 as plaintiffs, in order to enable the trial Court to pass the impugned decree. The trial Court had misconceived the case of the appellants/defendants and arrived at erroneous findings which are bad in law based on misinterpretation of law and facts and as such the impugned judgment and decree is liable to be set aside.
30. That it is clearly apparent while deciding the present case that justice was not done nor seem to have been done in favour of the defendants/ appellants even though the defendants/appellants had a clear case in their favour on merit.
31. That the impugned judgment and the decree passed by the trial Court is whimsical, arbitrary, erroneous and as such, the impugned judgment and decree is bad in law and is liable to be set aside by this Court.

Submissions:-

7. Mr. Chaudhury, the learned counsel for the appellants, *firstly*, submits that the learned Trial Court has passed the judgment and decree not only in favour of plaintiffs, but also in favour of defendant Nos. 1 – 6, which is unknown in law as no counter - claim was filed by the defendant Nos. 1 – 6 in the title suit before the learned Trial Court and that defendant Nos. 1 & 2 did not contest the suit, after filing of the written statement and no petition under Order 1 Rule 8 of the C.P.C. seeking permission to file the suit on behalf of the defendant Nos. 1 – 6, was filed. Mr. Choudhury, further submits that the defendant Nos. 4 – 6 & 7 had filed an appeal before the Board of Revenue challenging the patta given to the plaintiffs in respect of Schedule 'A' land by the Settlement Officer and in the said proceeding the defendant Nos. 2 & 3 had filed their affidavit stating that the Schedule 'A' land was purchased on behalf of Raj Gariah by registered sale deed dated 13.03.1957 and that the land was purchased on behalf of the Raj Gariah by 4 persons of the locality namely, Late John Mikir, Late Suti Ram Mikir, Late Kanti Ram Mikir and Late Bolo Ram Mikir and that the said persons were not related to each other and the suit property is not their ancestral property and that the defendant Nos. 1 – 6, do not entitle to ¼ share of the Schedule B land and that the learned Trial Court has granted decree in respect of the Schedule B land and not in respect of Schedule A land and the reliefs (a) & (e) in the plaint are contrary.

7.1. *Secondly*, Mr. Chaudhury submits that the plaintiffs/respondents are not in possession of the land covered by the sale deed dated 13.03.1957, and also there is no averments in the plaint that they are in possession of the Schedule B land and since the plaintiffs were not in possession of the suit land, suit ought to have been filed for declaration of the title and confirmation of possession and as no prayer for possession was made in the title suit, the same is not maintainable in law in view of Section 34 of the Specific Relief Act, 1963. In this regard, Mr. Chaudhury has referred to some case laws in the case of **Ram Saran and Another vs. Smti.**

Ganga Devi, reported in AIR 1972 SC 2685; **Mossmt. Kalchibon Nesson and Others vs. Mossmt. Samitra Bibi and Others**, reported in 2012 (1) GLT 382; and **Nani Bhusan Dey vs. LRs of Bijoy Kumar Ganguly**, reported in 2014 (4) GLT 349.

7.2. Thirdly, Mr. Chaudhury submits that there is no cause of action and though the plaintiffs/respondents have taken a stand that cause of action arose on 01.07.2011, for which defendants/appellants restrained them from collecting rent from the traders in the market in Schedule B land, yet, no cause of action arose on that day. But, the learned Trial Court has rejected the claim of rent in favour of the plaintiffs and as such, the cause of action had ceased to exist on the said day and the learned Trial Court having not been proceeded to grant decree of title to the plaintiffs and defendant Nos. 1 – 6, the finding of the learned Trial Court is not at all maintainable. In this regard, Mr. Chaudhury has referred to a decision in the case of **Om Prakash Srivastava vs. Union of India and Another**, reported in 2006 (6) SCC 207.

7.3. Fourthly, Mr. Chaudhury submits that the suit for declaration of title for the Schedule 'B' is clearly barred under Article 58 of the Limitation Act, 1963 and the period of limitation is 3 years from the date when the right to sue accrued to the plaintiffs and that the plaintiff No. 1 (P.W.1) stated that he was born in the year 1977 and when he was 19 years old his father Late John Mikir told his mother about the purchase of the suit land and therefore, he had come to know about the fact in the year 1988, then the right to sue first arose when the plaintiff No. 1 came to know about the said fact in the year 1988, but the suit was filed on 16.07.2013.

7.4. Fifthly, Mr. Chaudhury submits that consequential relief claimed by the plaintiffs seeking a declaration of title of Schedule 'B' land as consequential relief based on the deprivation of the collection of rent

from 01.07.2011, will amount to placing the cart before the horse and in such a position, when the plaintiffs had succeeded in establishing the title to the suit land then only the issue of right to collect the rent from the alleged shops in the suit land could be adjudicated by the learned Trial Court. But, the learned Trial Court had over looked the fact that the land and the declaration of title was sought for Schedule B which is not connected to Schedule A as both are separate land.

7.5. Sixthly, Mr. Chaudhury submits that the Assam Board of Revenue has interpreted the sale deed dated 13.03.1957, and held that Raj Gariah was written slightly below by handwriting of the writer, it cannot be said the 4 vendors have not purchased the suit land on behalf of Raj Gariah and the Board of Revenue has cancelled the mutation granted in favour of the plaintiffs. Defendant No. 1 and her sister filed their affidavit stating that the 4 persons purchased the land from the contribution of people of Khepanijal and the land belongs to Khepanijal Raj Gariah not to plaintiffs and in their affidavits defendant Nos. 2 & 3 also stated the said fact. Mr. Choudhury submits that Hon'ble Supreme Court in the case of **Naseem Kahnam and Others vs. Zaheda Begum and Others**, reported in **2024 (7) SCC 245**, has dealt with the construction/interpretation of a document/deed.

7.6. Seventhly, Mr. Chaudhury submits that plaintiffs cannot rely upon the weakness of case of the defendant as held by Hon'ble Supreme Court in the case of **Ram Das vs. Salim Ahmed and Another**, reported in **1998 (9) SCC 719** and **R.K. Madhurjyyajit Singh and Another vs. Takhellambam Abung Singh and Others**, reported in **AIR 2001 GAU 181**.

7.7. Eighthly, Mr. Chaudhury submits that while deciding the suit the learned Trial Court has not considered the documents and deposition of

the witnesses of the defendants namely, Shri Nalin Miki (D.W.1), Shri Ranga Teron (D.W.2) and Shri Gajen Bey (D.W.3) and their Exhibits, Nos. 'Ka' to 'Murdhanya Ta' and had the evidence of three witnesses of the defendants and their exhibits been considered by the learned Trial Court, then the suit could not have been decreed, as such, the impugned judgment and decree, so passed by the learned Trial Court, is not at all maintainable.

7.8. Under the aforementioned facts and circumstances, Mr. Chaudhury has contended to set aside Judgment and Decree dated 28.05.2018, passed by the learned Civil Judge No. 1, Kamrup (M) at Guwahati, in Title Suit No. 277/2013.

8. On the other hand, Mr. Goswami, learned counsel for the respondent Nos. 1 – 3 has supported the impugned judgment and decree so passed by the learned Trial Court. Referring to the prayer portion of the plaintiffs submits that the plaintiffs had made a prayer for declaration of right, title and interest over the suit land along with defendant Nos. 1 – 6 and as such, there is no legal bar in granting decree in favour of the respondent Nos. 1 – 6 along with plaintiffs/respondents.

8.1. Mr. Goswami, further submits that in favour of the plaintiffs/respondents, the patta was issued on 12.10.2009, and that the defendants/appellants have not challenged the sale deed and no resolution was produced to show that the land was purchased on behalf of Raij Gariah and that the Board of Revenue has no authority to cancel the order of mutation and to declare title and possession in favor of the defendants/appellants though it has the power to interpret the sale deed only.

8.2. Mr. Goswami, further submits that no counter claim was filed by the defendants/appellants before the learned Trial Court as the plaintiffs/respondents had filed the suit for declaration and that the suit is not barred by limitation and that the assertions made by the plaintiffs/respondents in their plaint has not specifically being denied by the defendants/appellants and that being so the same amount to admission and that there is no merit in this appeal. Therefore, Mr. Goswami has contended to affirm the impugned Judgment and Decree dated 28.05.2018, passed by the learned Civil Judge No. 1, Kamrup (M) at Guwahati, in Title Suit No. 277/2013.

8.3. Mr. Goswami has referred following case laws in support of his submissions :-

- (1) **M/S Ramnath Exports Private Limited vs. Vinita Mehta and Another**, reported in 2022 (7) SCC 678;
- (2) **M/S Supreme General Films Exchange Limited vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others**, reported in 1975 (2) SCC 530;
- (3) **Harimati Das vs. Jadav Chandra Deka**, reported in 1990 (1) GLJ 304;
- (4) **Santokh Singh and Another vs. Mahant Iqbal Singh**, reported in 2000 (7) SCC 215;
- (5) **Kaliaperumal vs. Rajagopal and Another**, reported in 2009 (4) SCC 193;
- (6) **Shri Puspendra Hazarika and Others vs. Sri Gajen Hazarika**, reported in 2014 (1) GLR 650;
- (7) **Bhabani Prasad Rabha vs. Dayabati Rabha and Others**, reported in 2015 (5) GLT 45;
- (8) **Nanibhusan Dey vs. Legal Heirs of Bijoy Kr. Gangul**, reported in 2014 (4) GLT 349;

- (9) Md. Asgar Ali and Others vs. Md. Goumar Ali and Others, reported in 2016 (1) GLT 438;
- (10) Darshan Singh and Others vs. Parag Gogoi, reported in 2018 (4) GLT 403;
- (11) Shaukathussain Mohammad Patel vs. Khatunben Mohammedbhai Polara, reported in 2019 (10) SCC 226,
- (12) A. Subramanian and Another vs. R. Rannerselvam, reported in 2021 (3) SCC 675;
- (13) M/S Karamdeep Finance and Investment (I) Private Limited vs. Delhi Development Authority and Others, reported in 2020 (4) SCC 136; and
- (14) V. Prabhakara vs. Basavaraj K. (Dead) by Legal Heirs and Another, reported in 2022 (1) SCC 115.

The points to be determined by this Court are:-

9. In view of the submissions, so advanced by learned counsel for both the parties, the point for determination by this Court are formulated as under:-

- (1) Whether the suit is maintainable?
- (2) Whether there is any cause of action?
- (3) Whether the suit is barred by the law of limitation?
- (4) Whether the learned Trial Court without any counter claim and without the defendant Nos. 1 – 6 being transpose as plaintiffs can grant relief in their favour along with plaintiffs?
- (5) Whether the impugned judgment and decree, so passed by the learned Trial Court suffers from perversity for non-consideration of the evidence adduced by the defendants/appellants and the

documents exhibited by them as Exhibit 'Ka'' to Mudharnya To'?

- (6) Whether the learned Trial Court has correctly decided issue No. 5,6 and 7 ?

10. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also gone through the impugned Judgment and Decree dated 28.05.2018, passed by the learned Civil Judge No. 1, Kamrup (M) at Guwahati, in Title Suit No. 277/2013 and also gone through the case laws referred by learned counsel for both the parties.

Discussion and Finding of this Court :-

11. Out of the six points for determination, as formulated herein above, the point No.1 i.e. '*whether the suit is maintainable*' appears to be vital and therefore, the same is taken up first, for discussion.

11.1. That, a perusal of the impugned judgment and decree, reveals that the learned Trial Court had granted right, title and interest of the plaintiffs/respondents in respect of suit land, described in Schedule-'B', along with defendant Nos. 1 – 6 and also allowed the prayer to collect rent from the traders of Lokhra Bazar of weekly and daily market to the extent of the share they are entitled to as agreed upon by the parties who are jointly entitled to collect the rent.

11.2. It also appears from the plaint that the reliefs sought for by the plaintiffs/respondents herein is that they have got right, title and interest along with defendant Nos. 1 – 6 over the Schedule 'B' land and that the plaintiffs/respondents have got right to collect rent from the traders of Lokhra weekly and daily market to the extent of shares of

plaintiffs/respondents that extent to Rs. 75,000/- in respect of plaintiff No. 1 and Rs. 18,750/- in respect of plaintiff No. 2 out of total monthly income of Rs. 3,00,000/- only and a decree for releasing of Rs. 18,00,000/- from the defendant jointly and severally and interest @ 12% of the decreetal amount and permanent injunction restraining the defendants/appellants their men and material from disturbing the plaintiffs/respondents in collecting rent from the traders of Lokhra Chariali weekly and daily market held over the Schedule B land.

11.3. Admittedly, the Schedule 'B' is not under the possession of the plaintiffs. And admittedly also, nowhere in the plaint, the plaintiffs/respondents have prayed for recovery of possession of the Schedule 'B' land. And on such count, seeking a relief for declaration of right, title and interest over the Schedule 'B' land; a prayer ought to have been made for recovery of possession also, as admittedly the possession was with the defendant/appellants.

11.4. It is to be noted here that Section 34 of the Specific Relief Act provides as under:-

"Discretion of court as to declaration of status or right –

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Provided that no court shall make any such declaration where the plaintiff, being able to seek

further relief than a mere declaration of title, omits to do so.”

11.5. While interpreting this provision i.e. Section 34 of the Specific Relief Act, Hon’ble Supreme Court in the case of **Union of India vs. Imbrahim Uddin**, reported in (2012) 8 SCC 148, has held that the suit for seeking declaration of title or ownership of property, without seeking possession, when plaintiff is not in possession, is not maintainable.

11.6. Again in the case of **Ram Saran (Supra)** Hon’ble Supreme Court has held as under:-

“4. We are in agreement with the High Court that the suit is hit by Section 42 of the Specific Relief Act. As found by the fact-finding Courts, Ganga Devi is in possession of some of the suit properties. The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence the suit is not maintainable. In these circumstances, it is not necessary to go into the other contention that the suit is barred by limitation.”

11.7. Similar observation was made by this Court also in the case of **Mossmt. Kalchibon Nesson (Supra)** and **Nani Bhusan Dey (Supra)**, so referred by Mr. Chaudhury, learned counsel for the appellants.

11.8. It is also to be noted here that in the case of **Sivanna and Others vs. B.S. Puttamadaiah (Dead) Through Legal Heirs**, reported in (2023) SCC Online 1969, Hon’ble Supreme Court has held that moulding of reliefs could at best be applied as an exception. Same reference has been made by Hon’ble Supreme Court in the case of **Om Prakash Gupta v. Ranbir B. Goyal**, reported in (2002) 2

SCC 256, and laid down the following conditions where the relief could be moulded:-

“11.The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied:

- (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;
- (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and
- (ii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.”

11.9. In the instant case, no such subsequent event has been brought to the notice of the learned Trial Court as well as before this Court. Thus, applying the ratio laid down in the case of **Om Prakash Gupta (Supra)** and also in the case of **Shivanna (Supra)** to the instant case, this Court is of the view that it is *functus officio* in moulding the relief in favour of the plaintiffs/respondents.

11.10. In view of the legal proposition, laid down in the cases discussed here in above, I find that the learned Trial Court had framed an issue on this point i.e. Issue No.2 and decided the same in favour of the

plaintiffs solely on the ground that no specific averments, in the written statement, was shown as to why the suit is not maintainable and the averments made in the written statement is not enough unless cause is shown as to why the suit is not maintainable. But, what eschewed from the consideration of the learned Trial Court is the requirement of proviso of Section 34 of the Specific Relief Act and that being the position the finding of the learned Trial Court that the suit is not maintainable suffers from manifest illegality and arbitrariness and on such count, the same requires to be interfered with.

12. Now, coming to the second points i.e. *whether there is any cause of action* and I find that the learned Trial Court had framed an issues on this point i.e. Issue No.1. Thereafter, discussing the materials on record, it had arrived at a finding that there is cause of action.

12.1. Though relying upon a decision of Hon'ble Supreme Court in **Om Prakash Srivastava** (supra), Mr. Chudhury, the learned counsel for the appellants submits that there is no cause of action, yet the submission of Mr. Choudhury left this Court unimpressed.

12.2. In the case of **Omprakash Srivastava** (supra), Hon'ble Supreme Court had the occasion to deal with what cause of action is as under:-

- 10.** In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadran v. Madhavan Sunil Kumar* [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471] .)
- 11.** It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which

taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See *South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd.* [(1996) 3 SCC 443]]

12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in “cause of action”. (See *Rajasthan High Court Advocates' Assn. v. Union of India* [(2001) 2 SCC 294] .)
13. The expression “cause of action” has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh* [(1977) 1 SCC 791].)

14. The expression “cause of action” is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see *Black's Law Dictionary*). In *Stroud's Judicial Dictionary* a “cause of action” is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In *Words and Phrases* (4th Edn.) the meaning attributed to the phrase “cause of action” in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See *Navinchandra N. Majithia v. State of Maharashtra* [(2000) 7 SCC 640 : 2001 SCC (Cri) 215].)

12.3. In the case in hand the learned Trial Court had held that the plaintiffs have asserted that they are the absolute owner of Schedule B land on the strength of Sale Deed No. 3558/57 dated 13.03.1957 which was purchased by their predecessors and have been collecting rent from the Lakhara bazaar till 30.06.2011, when the defendants/appellants had started to collect rent claiming that the plaintiffs/**respondents** have no right, title and interest over the suit land as the same was purchased on behalf of Raij. The learned Trial Court also held that the defendants/appellants have averred that the title and possession of the Schedule-B land have been declared in their favour by the Assam Board of Revenue vide judgment and order dated 12.01.2007 and the Schedule B land was purchased on behalf of Raij vide registered Sale Deed No.

3558/57 dated 13.03.1957, from one Hiren Ram Phukan and Biren Ram Phukan and since the time of purchase, the land is under occupation of Raij and the plaintiffs/respondents have no right, title and interest over the same. And as such, there is genuine dispute and the facts narrated in the plaint disclose cause of action and accordingly, decided the issue.

12.4. Having examined the finding of the learned Trial Court, in the light of principle propounded by the Hon'ble Supreme Court in the case of **Omprakash Srivastava** (supra), as discussed herein above, this Court is unable to agree with the submission of Mr. Chaudhury, the learned counsel for the appellants that there is no cause of action. The bundle of facts asserted by the plaintiffs/respondents in the plaint and denied by the defendants/appellants in their written statements gives the plaintiffs/respondents a right to claim relief(s) against the defendants/appellants. It indicates that there is genuine dispute to go for trial and on such count there is cause of action. That being so point No. 2 has to be decided in affirmative and decided accordingly.

13. Coming to the third point, as to *whether the suit is barred by the Law of Limitation*, I find that the learned Trial Court had also framed an issue i.e. Issue No. 3 on this point and after discussion, had held that the suit was filed within the period of limitation prescribed under Article 58 of the Limitation Act. The learned Trial Court has also held that the suit was for declaration and was instituted on 16.07.2013, and the plaintiffs/respondents have averred that they were collecting rents from the Lakhara bazaar running from the Schedule 'B' land till 30.06.2011 and from 01.07.2011 the defendants/appellants had started collecting rent and as such the cause of action arose on 01.07.2011 and the suit was filed on 16.07.2013.

13.1. However, it is the contention of Mr. Chaudhury, the learned counsel for the appellants that the period of limitation of 3 years has to be counted from the date when the right to sue accrued to the plaintiffs/respondents. According to Mr. Chaudhury, the plaintiff No. 1 as P.W.1 deposed that he was born in the year 1977, almost after 20 years of purchasing of the suit land and when he was 11 years old his father Late John Mikir told his mother about the purchase of the suit land and therefore, he had come to know about the fact in the year 1988, then the right to sue first arose when the plaintiff No. 1 came to know about the said fact in the year 1988, but the suit was filed on 16.07.2013 and as such the suit is barred by limitation.

13.2. The submission of Mr. Chaudhury receives due consideration of this Court. Indisputably, the period of limitation is three years, as per Article 58 of the Limitation Act, accrues when right to sue accrues. And generally right to sue accrues when cause of action arose. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendants against whom the suit is instituted. (See – **State of Punjab vs. Gurdev Singh**, reported in (1991) 4 SCC 1.

13.3. In the case in hand, it appears from the record that respondents/plaintiffs were collecting rents from the Lakhara bazaar running from the Schedule 'B' land till 30.06.2011. And from 01.07.2011 the defendants/appellants had started collecting rent. That being so, the cause of action and right to sue arose on 01.07.2011. Since the suit was filed on 16.07.2013, the same is well within the period of limitation. And as such, the finding so arrived at by the learned Trial Court cannot be faulted with. Point No.3, as formulated herein above has to be decided in affirmative and decided accordingly.

14. Now, coming to the fourth point, i.e. *Whether the Learned Trial Court without any counter claim and without the defendant Nos. 1 - 6 being transpose as plaintiffs can grant relief in their favour along with plaintiffs?*, I find that admittedly, no counter-claim was filed by the defendant No.1-6, seeking declaration of their right, title and interest in respect of the suit land described in Schedule 'B' land and also for declaration that they are entitled to collect rent from the traders of the Lakhra Charali weekly and daily market, along with the plaintiffs/respondents. Notably, the defendants No.1-6 have filed their written statements also contesting the case of the plaintiffs/respondents and denying the averments and assertions made in the plaints. It is also to be noted here that though defendants No.1, 2 and 3 had filed written statement they had in fact supported the contention of the plaintiffs/respondents. But, rest of the defendants/appellants had denied the contention of the plaintiffs/respondents and contested the suit tooth and nail.

14.1. Thus, in absence of such counter claim and in absence of transposition of said defendants/appellants as per provision of the Code of Civil Procedure, this Court is of the considered opinion that granting relief to the defendants No.1-6 is illegal and contrary to the provision of CPC. In this connection, reference may be made to a decision of a co-ordinate bench of this Court in **Second Appeal No. 103 of 1998 (Smti. Joneswari Baruah and 5 others vs. Shri Gajen Baruah)** wherein it has been held as under:-

“In the absence of a counter-claim by the defendants it is incomprehensible as to how any declaration could have been made in favour of the defendant No.1 in the suit. Consequently, the declaration of right, title and interest of the

defendants as a co-owner as made by the learned Appellate Court below is set aside."

14.2. Thus, I find sufficient force in the submission of Mr. Chaudhury, the learned counsel for the appellants, who had vehemently argued that without there being any transposition of the defendants as plaintiffs, no relief can be granted to the defendants. In view of the settled legal position, this Court is inclined to record concurrence with the submission of Mr. Chaudhury. Accordingly, point No.4 is decided in negative.

15. Coming to the point No.5 i.e. *Whether the impugned judgment and decree, so passed by the Learned Trial Court suffers from perversity for non-consideration of the evidence of adduced by the defendants/appellants and the documents exhibited by them as Exhibit 'Ka' to 'Mudharnya To'*, I find from the impugned judgment and decree that the learned Trial Court had never discussed the evidence of the witness of appellants'/defendants'. Though the learned Trial Court had shown one Soven Mikir as D.W.3, yet the categorical contention of the appellants/defendants is that Soven Mikir, though arrayed as defendant No.3 in the plaint of the Title Suit No. 277/2013, and though he had been shown as D.W.3 in the appendix of the impugned judgment, yet, he had never been their witness. It appears that the appellants/defendants had examined three witnesses, namely, Shri Nalin Mikir as D.W. 1 and Shri Ranga Teron as D.W.2 and Shri Gajen Bay as D.W.3. But, it appears that the learned Trial Court had never ever discussed and considered the evidence of Shri Nalin Mikir as D.W. 1 and Shri Ranga Teron as D.W.2 and Shri Gajen Bay as D.W.3, though it had discussed the evidence of D.W. Soven Mikir, while arriving at the finding on the issues, so framed by it. Further, it appears that the learned Trial Court had also not mentioned their names in the appendix of the impugned Judgment for the reason best known to it. Mr. Chaudhury, the

learned counsel for the appellants had rightly brought the same to the notice of this Court during hearing.

15.1. Also, it appears that the appellants/respondents had exhibited as many as 19 documents as Exhibits- Ka, Kha, Ga, Gha, Unga, Unga(i), Unga(ii), Unga (iii), Unga (iv), Pratham Cha (i), Pratham Cha (ii), Pratham Cha(iii), Pratham Cha(iv), Dritiya Cha, Ja, Jha, Niya, and Mudharnya Ta. But, the learned Trial Court had never discussed any of the exhibits in the impugned judgment.

15.2. Mr. Chaudhury, the learned counsel for the appellants had argued that had the evidence of the other D.W.(s) and the exhibits were considered by the learned Trial Court, then the suit could not have been decreed in favour of the plaintiffs/respondents, as such due to non consideration of the material evidence as well as documents, the finding so recorded by the learned Trial Court stands vitiated.

15.3. That, a careful perusal of the evidence of D.W.1, Shri Nalin Mikir reveals that he had exhibited the Sale Deed as Exhibit 'Ka', which indicate purchasing of the land by Suti Ram Mikir, Kanti Ram Mikir, Baloram Mikir and John Mikir on behalf of the villagers of in favour of the purchaser stated therein, and Exhibit-Kha to contend that there was no mutation in name of Suti Ram Mikir, Kanti Ram Mikir, and John Mikir. He had also exhibited the order of this Court in WP(C) No. 63/2009, dated 29.01.2015, as Exhibit - 'Mudharnya-Ta', and the Registration Certificate of Khepenijal Gaon Unnanyan Samittee as Exhibit 'Cha' and Registration Certificate of another Samittee as Exhibit- 'Ga' and Exhibit- 'Pratham Cha' and the Judgment in Case No. 16 RA (K)/07 as 'Mudharnya-Ta'.

15.4. The evidence of D.W.1, 2 and 3 also reveals that the land measuring 9 Bighas 4 Kathas 1 Lecha was purchased by Late John Mikir, Suti Ram Mikir and Boloram Mikir and Kanti Mikir on behalf of Raj Gairah

by a registered sale deed No. 3558, dated 13.03.1957, (Exhibit 'Ka') from the original owners, namely, Biren Ram Phukan and Hiren Ram Phukan. Their evidence also reveals that since the time of purchasing, the land is in possession of the Raj of Khepinijal as the same is being maintained by them. Further, their evidence reveals the Settlement Officer had allowed mutation of the suit land in favour of the respondents/plaintiffs, on a petition, registered as Misc. Case No. 17/2006-07, preferred by them to that effect, vide order dated 12.01.2007. But, on being challenged the same before the Assam Board of Revenue, by Boloram Mikir and the Unnayan Samittee, then the same was set aside in Appeal No. 16(R)(A)/2007. Then the order of Assam Board of Revenue was challenged by the respondents/plaintiffs in the writ petition being WP(C) No. 5549/07, before this Court and this Court had upheld the order of the Assam Board of Revenue and remanded the case back directing the respective parties to substantiate their claim before the Board of Revenue, and accordingly, defendant Nos. 3, Shri Suven Mikir had filed a petition, Exhibit- 'Jha', wherein he had stated that his father along with Bolo Ram Mikir and John Mikir had purchased the land on behalf of Raj Gairah by registered sale deed No. 3558/1957, from Biren Ram Phukan and Hiren Ram Phukan, and after purchase of the land, same is in possession of the Raj of Khepinijal. The evidence of D.W. (s) further reveals that the Raj of the Khepanijal have constituted an Unnayan Samittee and said Samittee has been running a market and the sale proceeds of the market is being used in development of the area and one school is also established in the suit land and one office of the Mahila Sammittee is also established there and the suit land is in the possession of the Sammittee and that the plaintiffs have no right, title and interest over the suit land.

15.5. It also appears from the evidence of P.W.1 and 2, that Late John Mikir, Late Suti Ram Mikir, Late Kanti Ram Mikir and Late Bolo Ram Mikir,

had purchased a plot of land measuring 9 Bighas 4 Kathas 1 Lecha covered by Dag No. 1012 of K.P Patta No. 72, from Late Hiren Ram Phukan and Late Biren Ram Phukan, executing a registered sale deed No. 3558 dated 13.03.1957, Exhibit-1. After purchase of the land, the names of the Pattadar were mutated in the records of right and after the settlement operation the original patta number and dag number were changed to Patta No. 771 and Dag No. 3030, 3031 and 3032 respectively. Their evidence also reveals that the purchasers were also conferred the status of landholders more than 30 years after the settlement operation, vide K.P Patta No. 159. Then the plaintiffs/respondents, on 15.12.2004, applied before the Additional Deputy Commissioner, Kamrup (M) in Misc. Case No. 17/06-07, by three separate petitions to get their names mutated over a plot of land measuring 10.86 Are of New Dag No. 3030, land measuring 2.42 Are of Dag No. 3030 and land measuring 118.62 Are of Dag No. 3030 under K.P Patta No. 771, for a total area of land measuring 131.90 Are in place of the deceased landholders (pattadars) Suti Ram Mikir, Kanti Ram Mikir and John Mikir, and of Late Bolo Ram Mikir. Their evidence also reveals that defendants Nos.10 & 11 had raised objection in the said case, stating that they are the absolute owners in respect of the disputed land by virtue of purchase on behalf of "Raij" by registered sale deed No. 3558 dated 13.03.1957, but the Settlement Officer had allowed mutation in favour of the plaintiffs/respondents, which was challenged before the Assam Board of Revenue and vide order dated 12.01.2007, the order of the Settlement Officer, was set aside. Thereafter, the same was challenged by the respondent/plaintiffs before this Court by filing a writ petition and in the said petition this Court had directed the Assam Board of Revenue to adjudicate the respective claims of both the parties and accordingly, the Assam Board of Revenue had declared the title and possession both in favour of the Raij of Khepenijal. Their

evidence also reveals that one school and one office of Mahila Samittee was established over the suit land.

15.6. The evidence of Soven Mikir also lend support to the evidence of P.W.1 and 2 and he deposed that the land was never purchased on behalf of the villagers of Khepenijal and name of Raij Gairah was not mutated in respect of the disputed land.

15.7. However, the learned Trial Court had held that the evidence of plaintiffs' witnesses could not be demolished in cross-examination and that Exhibit-1, the Sale Deed does not in any way conveyed that the land was purchased on behalf of the Raij and Exhibit-5 shows that holding was issued in the name of the plaintiffs and Kheraj Patta Exhibit-7 was issued in the name of Suti Ram Mikir, Kanti Ram Mikir, Boloram Mikir and Jhon Mikir and in the Draft Jamabandi, Exhibit-8 also the names of the purchasers were reflected and that the Board of Revenue could not assign any valid reason in the order dated 01.12.2008, declaring the right, title in favour of the Raij and the interpretation, without there being any reason cannot be accepted, and thereafter, it had decided the Issue No. 5, i.e. *Whether the plaintiffs have right, title, interest over the schedule B Land with the defendant Nos. 1 - 6*, and Issue No.6, i.e. *Whether the plaintiffs are entitled to realize rent from the traders trading over schedule B Land of the plaint*, in favour of the plaintiffs.

15.8. This finding, being arrived at by the learned Trial Court, without considering the evidence of three witnesses of the defendants/appellants and without consideration of the 19 numbers of exhibits of the defendants, to the considered view of this Court, cannot be said to be justified and reasonable. Moreover, the learned Trial Court had failed to take note of the cross-examination of P.W.1, who had admitted in his

cross-examination that in writ petition No. 63/2009 filed by him and three others, Boloram Mikir was alive and Boloram had filed objection in the said writ petition –since Boloram Mikir, Jon Mikir, Kanti Mikir and Suti Mikir had purchased the disputed land on behalf of people of Raij.

15.9. However, a comprehensive analysis of the evidence of the three witnesses of the defendants/appellants and of the three witnesses of the plaintiffs/respondents and the exhibits of both the parties, this Court is of the view that evidence of the three witnesses of defendants/appellants and their exhibits goes a long way to outweigh the evidence of the plaintiffs/respondents. Admittedly, the Schedule- 'B' land is not in possession of the respondent/plaintiffs. No prayer is also being made by the plaintiffs/respondents for recovery of possessions. Moreover, the Assam Board of Revenue also cancelled the mutation granted to the respondent/plaintiffs and decided the title and possession of the suit land in favour of the appellants/defendants. Though the learned Trial Court had held that the interpretation of the Assam Board of Revenue is not acceptable for absence of valid reason, yet, perusal of the said Order of Assam Board of Revenue, Exhibit- 'Niya', this Court is unable to agree with the finding so recorded by the learned Trial Court that there is no reason in the interpretation of the Board. The said order appears to be a reasoned order.

15.10. It is fact that the Assam Board of Revenue has no authority to declare title and possession in favor of the appellants/defendants. Mr. Goswami has rightly pointed out this during argument. This Court is inclined to record concurrence with the same. But, the Board had set aside the mutation order granting mutation in favour of plaintiffs/respondents and the same was in its domain.

15.11. Even for the sake of argument, if we ignore the finding of the Assam Board of Revenue, then also there are numbers of exhibits of the appellants/defendants, such as Exhibit 'Ja', a petition dated 23.06.2008, filed by daughters of Late Suti Ram Mikir and Exhibit-'Jha', a petition dated 22.04.2008, filed by on Chipen Mikir @ Tumung, Brajen Mikir @ Tumung and Suven Mikir @ Tumung (P.W.3) all are son of Kanti Ram Mikir, which goes a long way to show that the suit land was purchased by their father, i.e. Late Kanti Ram Mikir, Suti Ram Mikir, Boloram Mikir and Jon Mikir and that the suit land was not of their land, but of Raij of Khepenijal.

15.12. Though P.W.3, Shri Soven Mikir had deposed in favour of the plaintiffs/respondents and supported their case and the learned Trial Court also accepted his evidence together with the evidence P.W.1 and 2, and granted him relief along with the respondents/plaintiffs, without being transposed as plaintiff, yet, the evidence of Soven Mikir is irreconcilably in conflict with the Exhibit-'Jha' and the same demonstrated that he is not a reliable witness.

15.13. Besides, Exhibit-Kha, the Certified Copy of the Chittha of 1975, Exhibit-'Ga', Pucca Patta in the name of Khepenijal Unnanyan Samity, Exhibit- 'Unga', the Katcha Patta in the name of Khepenijal Unnanyan Samity, Exhibit-'Unga' (I) to (IV), Exhibit- 'Prathan Cha', Money Receipt Gauhati Municipal Corporation(GMC) Receipt No. 2238 and Exhibit-'Prathan- Cha' (I) to (IV) Money Receipts of GMC and Exhibit-'Ditiya Cha' i.e. Certificate of Registration of Societies in the name of Khepenijal Unnanyan Samity also goes a long way to strengthen the case of the appellants/defendants.

15.14. It appears that the learned Trial Court, in the impugned judgment had held that defendants No. 1,2 and 3 had supported the case of the

plaintiffs/respondents, and No.3 entered into witness box and deposed his case as stated in the written statement, yet, defendants No.1 and 2 never entered into the witness box to state their case as set out in their respective written statements and as such the facts stated in their written statement could not have been accepted by the learned Trial Court to gain sustenance to the case in view of the proposition of law laid down by Hon'ble Supreme Court in the case of **Vidhyadhar vs. Manikrao and Ors.**, reported in (1999) 3 SCC 573. It is to be noted here that in the said case it has been held as under:-

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh* [AIR 1927 PC 230: 32 CWN 119] . This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh* [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* [AIR 1931 Bom 97 : 32 Bom LR 924]. The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat* [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in *Sardar Gurbakhsh Singh case* [AIR 1927 PC 230 : 32 CWN 119]. The Allahabad High Court in *Arjun Singh v. Virendra Nath* [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* [AIR 1974 P&H 7] drew a presumption under Section 114 of the

Evidence Act, 1872 against a party who did not enter the witness-box.”

15.15. The outcome of the aforesaid discussion and finding is that the judgment and decree, so passed by the learned Trial Court suffers from perversity for non-consideration of the evidence adduced by the defendants/appellants and the documents exhibited by them as Exhibit 'Ka' to Mudharnya To'. The point No. 5 is accordingly decided in affirmative in favour of the appellants.

16. I have considered the other submissions of Mr. Goswami and in view of aforesaid discussion and finding I am in respectful disagreement with the same. I have also gone through the case laws referred by him in support of the same. There is no quarrel at the Bar about the proposition of law laid down therein. But, I find the same not applicable in all force in the given fact and circumstances here in this case. Therefore, I am not inclined to discuss the same in detail in this judgment.

17. In view of discussion and affirmative finding in respect of point No. 6 above, the point No. 6 i.e. *Whether the Learned trial court has correctly decided issue No. 5, 6 and 7* has to be decided in negative against the respondent/plaintiffs, but, in favour of the appellants.

18. In view of the discussions and findings so recorded herein above, this Court of the considered opinion that there is sufficient merit in this appeal and accordingly, the same stands allowed. The impugned judgment and decree stands set aside. Prepare a decree accordingly. Send down the record of the learned Trial Court with a copy of this judgment and order.

19. Before the parties with the record, this Court is inclined to record its displeasure upon the manner the learned Trial Court had maintained the

record. The Registry shall convey the concern of this Court to the learned Trial Court.

20. The parties have to bear their own costs.

JUDGE

Comparing Assistant