

GAHC010169002008



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

**Case No. : RSA/24/2008**

MUSTT. SULEMA BEGUM and ORS  
W/O JABBAR ALI.

2: MD. NAKIBUR HUSSEIN @ NEIKIBUR ALI

S/O LATE JABBAR ALI

3: MUSTT. RINA BEGUM  
D/O LATE JABBAR ALI

4: MUSTT. LATIFA BEGUM  
W/O LATE ABDUL KADIR  
ALL ARE RESIDENTS OF WARD NO.5  
NORTH LAKHIMPUR TOWN  
PO. NORTH LAKHIMPUR  
DIST. LAKHIMPUR  
ASSA

VERSUS

SANTI RAM BORA and ORS  
SANTI BORA, S/O LATE BHAJO BORA.

2:SMT. HIRAKANTI BORA

W/O SANTI RAM BORA  
BOTH RESIDENTS OF HINDUGAON  
MOUZA-LAKHIMPUR  
DIST. LAKHIMPUR

3:BICHITRA KHANIKAR

S/O LATE KHARGESWAR KHANIKAR  
R/O WARD NO.5

NORTH LAKHIMPUR TOWN  
PO. NORTH LAKHIMPUR  
DIST. LAKHIMPUR  
ASSA

For the Petitioner(s) : Mr. P. P. Baruah, Advocate

For the Respondent(s) : None appears.

Date of Hearing : **14.05.2024**

Date of Judgment : **14.05.2024**

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. P. P. Baruah, the learned counsel appearing on behalf of the Appellants. None has appeared on behalf of the Respondents.

2. This is an Appeal under Section 100 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 07.07.2007 passed in Title Appeal No.06/2007 whereby the Appeal filed by the Appellants herein was dismissed by affirming the judgment and decree dated 04.12.2016 in Title Suit No.34/2006.

3. This Court vide an order dated 26.03.2008 had admitted the instant Appeal by formulating the following question of law:

*“Whether on the basis of the proved facts the learned first appellate court erred in law in holding the suit to be within the period of limitation?”*

4. The question therefore arises as to whether the said substantial question of law so formulated is involved in the instant appeal. From the said substantial question of law so formulated, it is seen that the question arises is as to whether the learned First Appellate Court erred in holding that the suit was

within the period of limitation. This Court has duly taken note of the plaint wherein it has been mentioned that the Defendant Nos.1, 2, 3, 4 and 5 started to stay in the vacant portion of the plaintiffs' land by constructing two temporary houses from the month of May, 1988 and also constructed a cowshed near the rental houses of the plaintiffs. It was also mentioned that the Defendant No.6 had expanded his boundary one and half years ago by constructing a house over the plaintiffs' plot of land. The plaintiffs have sought for declaration of right, title and interest after demarcating the suit land and handing over the khas possession to the plaintiffs and a decree for compensation in respect to the Schedule land.

5. The defendants had filed a joint written statement and in paragraph No.5 it was mentioned that the Defendant No.1 has been possessing the suit land as a second wife of Late Jabbar Ali and without any obstruction of any side and openly for more than 30 years. The children of the Defendant No.1 i.e. Defendant Nos. 3, 4 and 5 were born in the suit land and now they are aged about 30, 28 and 23 years respectively. It was categorically stated that the land in possession of the defendants is not the land of the plaintiffs and the plaintiffs' land was within the land which was acquired by the E&D Department. In addition that, it was stated that if any portion of the land which has been possessed by the defendants belongs to the plaintiffs, the same is barred by limitation.

6. It is seen that the learned Trial Court framed as many as 8 issues of which the Issue No.4 was as to whether the suit was barred by limitation. The learned Trial Court in the opinion of this Court erred in deciding the Issue No.4 inasmuch as the learned Trial Court held that the said issue was unnecessary as there is neither any specific pleadings nor there is any evidence led by the parties

warranting any decision on the point whereas paragraph No.5 of the written statement was specific on the question of limitation. Be that as it may, the learned Trial Court decreed the suit in favour of the plaintiffs by granting the reliefs as sought for. The defendants thereupon preferred an appeal before the Court of the learned Civil Judge, Lakhimpur at North Lakhimpur which was registered and numbered as Title Appeal No.06/2007. The said appeal was dismissed.

7. Issue No.4 was decided again in favour of the plaintiffs and against the defendants by holding that as the plaintiffs have averred in the plaint that in the month of May, 1988, the Defendant Nos. 1, 2, 3, 4 and 5 occupied the land of the plaintiffs and the defendant No.6 occupied the suit land in one and half years prior to the filing of the suit so the suit was brought within the period of limitation. It is against the said judgment and decree dated 07.07.2007 in Title Appeal No.06/2007 passed by the learned First Appellate Court by which the appeal was dismissed, the present appeal has been filed.

8. I have heard Mr. P. P. Baruah, the learned counsel for the Appellants and have given anxious consideration to his submissions.

9. This Court finds it very relevant to take note of that the suit which was filed was a suit for declaration of right, title and interest and recovery of khas possession. In respect to such a suit, which is based on title, there is no limitation prescribed. In such a suit, there is no question of any limitation inasmuch as a suit based on title can be filed for recovery of possession at any point of time. However, if in the case, the defendants pleads and proves adverse possession, the period of limitation would be 12 years from the date when the possession of the Defendant is adverse to the Plaintiff. In the instant case, if this Court duly takes note of the pleadings of the defendants, the same are bereft of

particulars as regards any adverse possession. Under such circumstances, the substantial question of law which has been formulated in the opinion of this Court is not involved in the instant Appeal inasmuch as the learned Trial Court as well as the learned First Appellate Court was justified in passing the judgment and decree dated 07.07.2007 and more so in respect to the decision rendered in Issue No.4.

10. Accordingly, the instant appeal stands dismissed with cost quantified at Rs.11,000/-. In addition to that, the plaintiffs are entitled to costs throughout the proceedings.

11. The Registry is directed to forthwith return the LCR to the Court below.

**JUDGE**

**Comparing Assistant**