

GAHC010176582024



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

Case No. : WA/314/2024

BIRENDRA NATH PHUKAN
S/O LATE MOHINI NATH PHUKAN, R/O M.C. BARUAH ROAD, BARUWARI,
GUWAHATI-781001, DIST- KAMRUP (M), ASSAM

VERSUS

DEBENDRA NATH PHUKAN AND 3 ORS
S/O LATE MOHINI NATH PHUKAN, R/O 19, MARTELLO COURT,
PORTMARNOCK, DUBLIN, D13XF85, IRELAND. THROUGH HIS LEGALLY
CONSTITUTED ATTORNEY SHRI AMAL BORAH, S/O LATE BHABANI
CHARAN BORAH, AGED ABOUT 72 YEARS, R/O HOUSE NO. 8,
MALIBAGAN, KHARGULI, GUWAHATI-781004, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
REVENUE DEPARTMENT
KAMRUP (M)
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI

4:THE ADDITIONAL DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI

5:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
GUWAHAT

Advocate for the Petitioner : MR. S P ROY, MS. P AGARWALA,MS. V RAI,JYOTISH DAS

Advocate for the Respondent : GA, ASSAM, FOR CAVEATOR,MRS. R BORAH,SC, REVENUE

Linked Case : I.A.(Civil)/2719/2024

BIRENDRA NATH PHUKAN
S/O LATE MOHINI NATH PHUKAN
R/O M.C. BARUAH ROAD
BARUWARI
GUWAHATI-781001
DIST- KAMRUP (M)
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GUWAHATI

Advocate for : MR. S P ROY
Advocate for : GA
ASSAM appearing for DEBENDRA NATH PHUKAN AND ORS

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 11.09.2024
(N. Unni Krishnan Nair, J)

Heard Mr. S. P. Roy, learned counsel appearing for the appellant. Also heard Mr. M. K. Choudhury, learned senior counsel assisted by Ms. R. Bora, learned counsel appearing for the respondent No.1/writ petitioner.

2. The present appeal has been instituted by the appellant herein presenting a challenge to the judgment and order dated 29.07.2024, passed by the learned Single Judge in WP(C)/5685/2023. The writ petitioner had instituted the connected writ petition in WP(C)/5685/2023 praying for a direction upon the Revenue Authorities for disposal of Demarcation Case No.382/2017-18 instituted for demarcation of the boundaries of a plot of land measuring 2 Katha, 5.22 Lecha belonging to the petitioner which is covered by Dag No.850 KP Patta No.592 under Ulubari Mouza, Village-Sahar, Guwahati Part No. 7. Mr. S. P. Roy,

learned Senior counsel has submitted that the impugned judgment and order dated 29.07.2024 is not sustainable on account of the fact that the appellant herein was not given an opportunity of placing his case in the matter. In other words, the learned Single Judge had passed the impugned judgment and order without affording an opportunity of hearing to the present appellant. Mr. Roy has submitted that on 29.07.2024, when the matter was taken up, there was an application of leave submitted by him which was contended to also have been reflected in the cause list so published for the said day. Mr. Roy has submitted that although prayer for adjournment was so made before the learned Single Judge, the same was not considered and the learned Single Judge had proceeded to dispose of the writ petition on merits.

Per contra, Mr. M. K. Choudhury, learned senior counsel appearing for the respondent No.1 has submitted that on 29.07.2024, when the writ petition was taken up for consideration there was no prayer so made on behalf of appellant herein for an adjournment, rather a learned counsel had appeared on behalf of the appellant/respondent No.5 before the learned Single Judge and submissions were so made in the matter. Mr. Choudhury has further submitted that nature of direction so passed by the learned Single Judge vide impugned judgment and order dated 29.07.2024 no prejudice has been caused to the interest of the appellant herein and accordingly, this writ appeal would be required to be dismissed.

3. We have heard the learned counsel for the parties and perused the materials available on record. The learned Single Judge vide the judgment and order dated 29.07.2024 passed in WP(C)/5685/2023 noticing that the

application submitted by the respondent No.1/writ petitioner herein for demarcation of the his plot of land as noticed herein above, was pending before the authorities on account of an objection raised in the matter on behalf of the appellant herein, had proceeded to consider the said issue. The learned Single Judge after hearing the learned counsel for the parties proceeded to draw the following conclusions:

“4. This Court has also perused the objection which was filed as the same was made a part of the instructions which was submitted by Mr. N. Goswami, the learned counsel appearing on behalf of the respondent Nos. 2,3 & 4. The objection is based upon Section 100 of the Assam Land and Revenue Regulations 1886. This Court has duly perused the provisions of Section 100 of the Regulations of 1886. The said provision is in respect to a partition wherein it is stipulated that if there is a dispute as regards the title over the property in question, the Revenue Authorities should direct the parties to approach the Civil Court and get a decree in that regard. In the instant case, however, the issue involved is not as regards partition but as regards demarcation whereby the petitioner has sought that the land measuring 2 kathas, 5.22 lechas covered by Dag No. 850 included in K.P. Patta No.592 under Ulubari Mouza, Village-Sahar, Guwahati Part No. 7 be demarcated.

5. Under such circumstances this Court, is of the opinion that the Revenue Authorities can very well go ahead with the demarcation. However, in doing so shall not disturb the possession of either of the parties taking into account that there is a civil proceedings pending. Accordingly, this Court therefore directs the Circle Officer, Guwahati Revenue Circle, i.e. the respondent No. 4 to carry out the demarcation as regards the plot of land measuring 2 kathas, 5.22 lechas covered by Dag No. 850 included in K.P. Patta No. 592 under Ulubari Mouza, Village-Sahar, Guwahati part 7. by giving proper notice to the persons in the boundary of the said plot of land and thereupon show the respective boundaries of the said plot of land.

6. It is made clear that the possession of none of the parties should be disturbed on the said basis of demarcation proceedings.

7. On the basis of said demarcation so carried out the respondent No. 4 shall also prepare a minutes and duly circulate it with the petitioner as well as respondent No. 5. The said exercise be completed within 3 months from the date a certified copy of the instant order be served upon the respondent No. 5."

4. A perusal of the said conclusions drawn by the learned Single Judge would show that the grievance as raised by the appellant in the present appeal was also considered by the learned Single Judge while passing the impugned judgment and order dated 29.07.2024. The fact that a civil proceeding was so pending was noticed by the learned Single Judge and accordingly, while directing the Revenue Authorities to take the proceeding in the Demarcation Case No.382/2017-18 to its logical conclusions had categorically provided that the possession of the parties in question should not be disturbed on the basis of the said demarcation. The order passed by the learned Single Judge also reflects that the appellant herein was duly represented.

Considering the conclusion and directions as passed by the learned Single Judge vide impugned judgment and order dated 29.07.2024, we are of the considered view that the rights of the appellant is in no manner infringed with.

In view of the above position, we are of the considered view that the writ appeal is without any merit and accordingly, the same stands dismissed.

JUDGE

JUDGE

Comparing Assistant