

GAHC010198132008



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

Case No. : RSA/116/2008

MILIYA DEVI and ORS.
W/O LT. JAGAN SINGH.

2: 1B LAKSHMI SINGH @ LACHMI DEVI

3: 1C SARSWATI SINGH @ SARASWATI DEVI

4: 1D BIRENDRA SINGH

5: 1E SITA SINGH @ SITA DEVI
NOS. 1B

1C AND 1E ARE THE DAUGHTERS AND 1D IS THE SON OF LATE JAGAN
SINGH
ALL ARE RESIDENT OF A.T.ROAD HIJUGURI
PO/DIST. TINSUKIA
ASSAM

6: 2. NANDAN CHAUHAN

7: 3. GAUTAM CHAUHAN
BOTH ARE SONS OF LT. BISWANATH CHAUHAN
R/O A.T. ROAD HIJUGURI
PO/DIST. TINSUKIA
ASSA

VERSUS

ON THE DEATH OF MUSTT. SOGRA KHATOON, HER LEGAL HEIRS and ORS.
NAMELY-

1.1:PARVEZ ALI
S/O LATE LAL MOHAMAD

R/O A.T. ROAD HIJUGURI
NEAR BISWANATH FLOUR MILL
P.O. AND DISTRICT TINSUKIA
ASSAM

1.2:JAVED ALI
S/O LATE LAL MOHAMAD

R/O A.T. ROAD HIJUGURI
NEAR BISWANATH FLOUR MILL
P.O. AND DISTRICT TINSUKIA
ASSAM

2:MUSSTT. ASMA KHATOON
W/O MAHAMMAD ISLAM

3:MUSSTT. ZAMILA KHATOON
W/O MAHAMMAD IDRIS
ALL ARE RESIDENT OF A.T.ROAD HIJUGURI
PO/DIST. TINSUKIA
ASSA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the appellants : Shri A. K. Gupta, Advocate.

Advocates for the respondents : Shri S. P. Choudhury, Advocate.

Date of hearing : **06.06.2024**

Date of Judgment : **06.06.2024**

JUDGMENT & ORDER

The present second appeal is preferred against a judgment and decree dated 14.07.2008 passed by the learned Addl. District Judge No. 2, FTC, Tinsukia in Title Appeal No. 11/2003 by which the judgment and decree dated 29.04.2000 passed by the learned Civil Judge Junior Division (No. 1), Tinsukia in TS No. 107/1993 has been reversed. The present appellants are the defendants

in the suit which was instituted for declaration of right, title and interest and ejectment.

2. This Court vide order dated 15.09.2008 had framed the following substantial question of law:-

“(a) whether the finding of the learned Appellate Court below with regard to the plea of adverse possession is perverse to the materials on record.”

3. I have heard Shri A. K. Gupta, learned counsel for the appellant whereas the respondents are represented by Shri S. P. Choudhury, learned counsel. The LCRs which have been requisitioned have also been perused.

4. The learned counsel for the appellant has submitted that the basis of instituting the suit was a Sale Deed No.11/1984 executed in the year 1984 by which the suit land was purchased by the plaintiffs from the original owners. It has been projected in the plaint that the defendant no. 1 was the tenant of the original owners, who has also inducted the defendant nos. 2 & 3 subsequently to the suit premises. It has been averred that upon purchase of the land in question, the defendants were found to be in illegal occupation and accordingly the Title Suit was instituted in the year 1986. The Sale Deed has been exhibited as Ext. 2 and the plaintiff's side had adduced evidence by 3 numbers of witnesses and the PW 1 was the power of attorney of the plaintiff no. 1.

5. It is submitted on behalf of the appellant that a joint written statement was filed by the defendants and by referring to the averments made in paragraph 10 of the written statement, it has been contended that there was a denial of the fact of tenancy. It has also been averred in the said paragraph that the defendants were in adverse possession of the concerned land in question for the

last about 30 years.

6. The learned Trial Court vide judgment and order dated 29.04.2000 had however dismissed the suit. The learned counsel for the appellant has submitted that amongst the issues framed, the relevant issues are Issue Nos. 2 & 6. Whereas Issue No. 2 is with regard to the aspect as to whether the plaintiffs are the owners of the said premise, Issue No. 6 was on the aspect as to whether the defendants were tenants under the plaintiffs by operation of law. The learned Trial Court had come to a finding after discussion of the evidence on record including the deposition of the PW 2 that there were no materials regarding tenancy of the defendants with the original vendors and therefore the aspect that the defendants were the tenants of the plaintiffs could not be proved. As regards the Issue No. 2, the learned Trial Court had come to a finding that since the year 1958-59 the defendants were occupying the suit land adversely to the interest of the original owners and therefore after or about the year 1970, the right of the original owner had extinguished. The suit was accordingly dismissed.

7. Shri Gupta, the learned counsel, by referring to the judgment of the First Appellate Court dated 14.07.2008 had however submitted that while reversing the findings on the aforesaid two issues, the evidence on record were not properly appreciated and the findings are more on conjectures and surmises. It is submitted that at no point of time, there was any attornment from the side of the defendants to consider the plaintiffs to be the landlords and in any event, they were never the tenants even of the original vendors. By drawing the attention of this Court to the original records, more particularly Exts. "Gha" and "Unga" which were relied upon by the plaintiffs, it is submitted that those

notices were issued by the learned counsel for the plaintiffs to the defendants wherein the defendants were not termed as tenants but as illegal occupiers. He submits that from the own admission of the plaintiffs which would reflect from such notices, the plaintiffs would be precluded from taking support of the plea that the defendants were the tenants of the original vendors and after the sale, by operation of law, they had become the tenants of the plaintiffs. The learned counsel for the appellants accordingly submits that the appeal is liable to be allowed and the judgment and decree of the learned Trial Court is to be restored.

8. *Per contra*, Shri S. P. Choudhury, learned counsel for the respondents has submitted that the findings arrived at by the First Appellate Court are based on materials on records. By drawing the attention of this Court to the evidence of the PW 1, it is submitted that the aforesaid evidence would show that the transfer of title from the original vendor to the present plaintiffs through the Sale Deed No. 11/1984 which was exhibited as Ext. 2 was not even the matter of challenge in any proceedings. Reference has also been made to the evidence of the PW 2, Anantaram Agarwalla, who was one of the original vendors who had deposed that the defendants were indeed the tenants of the original vendors. It is submitted that in view of such materials available, the findings arrived at by the learned First Appellate Court cannot be found fault with and accordingly, the present appeal is liable to be dismissed.

9. The learned counsel has also submitted that the First Appellate Court in the judgment had taken into account the law settled by various judicial proceedings on the point of attornment of tenancy as well as adverse possession. It is submitted that there being materials on record that the

defendants were tenants of the original vendors till the purchase in the year 1984, even if the said defendants denied the aspect of attornment, the suit being instituted in the year 1986, the defence of adverse possession would not be available to the defendants/appellants as such defence has to be constituted *qua* the party in the suit.

10. The rival submissions have been duly considered and the materials placed before this Court including the LCRs have been carefully examined.

11. While the plaintiffs have related their right over the suit land on the basis of Sale Deed No. 11/1984, the defendants have taken the defence of "adverse possession" over the suit land. The principle of adverse possession has been explained by the Privy Council in ***Perry Vs. Clissold***, reported in **[1907] AC 73** in the following terms:

"It cannot be disputed that a person in possession of land in the assumed character of the owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquire an absolute title."

12. The Hon'ble Supreme Court has also discussed the aspect of the adverse possession in a catena of decisions. In the case of ***Karnataka Board of Wakf Vs Govt. of India***, reported in **(2004) 10 SCC 779**, the following has been laid down:-

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in

extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina, Parsinni v. Sukhi and D.N. Venkatarayappa v. State of Karnataka.) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharmas.]”

13. The plea of adverse possession, as discussed above is a defence and such defence is recognized by law on fulfillment of the criteria mentioned above. In the opinion of the Court, the aspect of the legality of the Sale Deed by which the title was transferred to the present plaintiffs would not be a relevant factor inasmuch as the defence taken in the suit is of adverse possession. There is no material on record or even the pleaded case to suggest that the defendants were the tenants of the plaintiffs. In fact the pleaded case of the defendants in the written statement is that not to talk about tenancy under the plaintiffs, they are not even the tenants of the original owner. For ready reference the pleadings made in paragraph 10 of the written statement is extracted herein below:-

“10. That the allegations made in para 6 of the plaint are denied. It is specifically denied that the said vendors as well as the plaintiffs duly informed the defendant No.1 of the plaintiffs having purchased the said premises and became the owners of the same, an alleged. Remaining part of the said para is vague, incomplete and wanting in material particulars. It is submitted that a name of the defendants being tenants under any body in respect of the suit premises question of the attornment by the defendant no 1 not arise at all. It is also submitted that since about 30 years back the defendants

and their predecessor-in-interest came from Aithan village near Dibrugarh after the erosion of their lands, and occupied the land on which the suit premises stand and raised their own constructions and since then they have living thereupon, doing all acts of possession openly to the knowledge of all including the then recorded owners of the land, adversely to their interests. Other occupants, on the land alleged to be purchased by the plaintiffs too occupied the same from before the defendants / their predecessors-in-interest. Without prejudice to above. It is also submitted that some years back the then owners of the land occupied by the defendants and others, also entered into an agreement to sell the said land to the occupiers. at a consideration of Rs.16,000/- and a sum of Rs.800/- was taken as part payment also, but they thereafter did not sell the same. Since the defendants and other occupiers are very poor and running somehow hand to mouth, they could not take legal steps for enforcing the sale agreement. Since thereafter the said owners and now the plaintiffs have been fabricating different and contradictory storied against the defendants and others to harass them and to grab their properties somehow. They even dare to raise communal slogans and quarrels also to fulfill their evil designs."

14. The question therefore would arise as to whether the aforesaid pleadings relating to a defence of adverse possession could be established as a valid defence at the time of the trial. The plaintiffs came into picture by virtue of the Sale Deed of the year 1984 and the suit was instituted in the year 1986. However, the pleaded case of the defendants is that they are in adverse possession of the suit land and the suit premises since the year 1958-59. The plaintiffs had adduced evidence of 3 witnesses and towards the issue of adverse possession, it is the evidence of PW2 which would only be relevant as the version of other two witnesses are hearsay on the aforesaid aspect. PW 2, Anantaram Agarwalla had deposed that the defendants were the tenants of the vendors of the plaintiffs. However, in his cross-examination, he had replied that though in his income tax returns, there was reflection regarding rental income, he is not aware as to whether such rental income had also mentioned about the rents obtained from the present defendants. This Court has also noticed that Ext.-"Gha" and "Unga" which are legal notices issued to the defendants have

termed the said defendants to be illegal occupiers. Under those circumstances, this Court is of the considered opinion that the findings arrived at by the Trial Court in its judgment dated 29.04.2000 cannot be said to be perverse and rather those appear to be based on the materials on record.

15. The learned Trial Court, as observed above had come to a finding that there were no materials to come to a conclusion regarding tenancy with the original vendors coupled with the fact that it was the categorical assertion of the defendants that they are in occupation of the suit land since 1958-59 adverse to the interest of the original owners. This Court is therefore of the view that the impugned judgment and decree of the First Appellate Court dated 14.07.2008 by which there would be reversal of the judgment of the Trial Court is not sustainable.

16. The substantial question of law, as framed by the order dated 15.09.2008 is answered accordingly by holding that the finding of the First Appellate Court on the plea of adverse possession is not based on materials on record and stands interfered with.

17. The appeal accordingly stands allowed and the judgment and decree of the Civil Judge Junior Division (No. 1), Tinsukia is restored.

18. Sent back the records immediately.

JUDGE

Comparing Assistant