

GAHC010214522011



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

Case No. : RSA/63/2011

MD. TAUFIIUDDIN ALI,
S/O LATE RAMJAN ALI, R/O SIJUBARI,P.S. DISPUR, GUWAHATI-6, DIST.
KAMRUP, ASSAM.

VERSUS

MD.MASHER ALI AHMED and 8 ORS,
S/O MD. HARMUJ ALI AHMED, R/O FRIEND PATH, HATIGAON, DISPUR,
GUWAHATI-6, DIST.KAMRUP, ASSAM.

Advocate for the Petitioner : MR.B C DAS

Advocate for the Respondent : FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date : 12-03-2024

JUDGMENT & ORDER

The instant appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code) is directed against the judgment and decree dated 13.09.2010 passed by the Court of the learned Civil Judge No.1, Kamrup,

Guwahati, whereby the Title Appeal No.2/2005 was dismissed, thereby affirming the judgment and decree dated 14.12.2004 passed by the learned Civil Judge (Jr. Divn) No.2, Guwahati in Title Suit No.136/2000. The instant appeal was admitted by the order dated 06.04.2011 by formulating the following substantial question of law:

“Whether in view of the specific pleading and evidence led in that respect that the defendant had been possessing the suit land since more than 12 years adverse to the true owner, the learned courts below were justified in not adjudicating the said core issue while deciding issue Nos.2 and 3?”

2. It reveals from the records that the respondent herein, who is a plaintiff had filed a suit being Title Suit No.136/2000 seeking declaration of right, title and interest over the schedule A land; for recovery of khas possession of the schedule B land and for permanent injunction. The basis of the claim of the plaintiff was that vide the registered deed of sale bearing No.5168 dated 26.09.1997, the plaintiff purchased 2 kathas 10 lessas of land from the original owner. The plaintiff thereupon took possession of the said land, erected bamboo fencing. Further to that, the plaintiff also constructed three ekchali houses with C.I. sheet roof, bamboo post and tarza walls and let out to different tenants. It was alleged in the plaint that the defendant No.1 whose land is situated in the northern side of plaintiff land and covered by dag No.189, taking advantage of the absence of the plaintiff, on 10.10.1999 forcefully entered into the plaintiff's land and started construction of one Assam type house on the extreme southern western corner of the plaintiff land adjacent to the road. The said area which the defendant had taken possession as alleged in the plaint measures 6½ lessas which has been specifically described in Schedule B. Thereupon, the plaintiff

filed a suit seeking for the reliefs as already mentioned.

3. The defendant filed his written statement claiming that the defendant had purchased 1 katha of land in dag No.189 of KP patta No.6 from one Md. Harejuddin Ahmed on 25.01.1995. It was pleaded that the defendant had been occupying and possessing a plot of land measuring 16 lessas covered by dag No.191 of village Barsajai under Beltola Mouza in the district Kamrup, Assam since 1988. Further to that, the specific case of the defendant that he had been in possession of dag No.190 which is the suit dag since 1988 and the plaintiff who purchased the land in the year 1997 could not take over the possession and as such, raised the plea of adverse possession.

4. On the basis of the said pleadings, as many as, 7 issues were framed. Though there was no specific issue on the plea of adverse possession or as regards the suit being barred by limitation, neither any steps was taken during the course of trial by the defendant for addition to the said issues. Be that as it may, the learned trial court vide judgment and decree dated 22.12.2004 decreed the suit by holding that the plaintiff duly proved his case, whereas the defendant failed to prove his defence.

5. Being aggrieved, an appeal was preferred by the defendant before the Court of the learned Civil Judge No.1, Kamrup, which was registered and numbered as Title Appeal No.2/2005. The 1st appellate Court vide its judgment and decree dated 13.09.2010 affirmed the judgment and decree passed by the learned trial court and dismissed the Appeal and it is against this dismissal of the appeal vide judgment and decree dated 13.09.2010, the present appeal has

been filed before this Court and on the basis of which this Court had admitted the appeal by framing the substantial question of law as above noted.

6. This Court had duly heard the learned counsels appearing on behalf of both the appellant as well as respondent. A question, therefore, arises before this Court as to whether the said substantial question of law so formulated is involved in the instant appeal. This Court has put a specific query upon the learned counsel appearing on behalf of the appellant as regards what are the pleadings on the basis of which the appellant has taken the plea of adverse possession. The learned counsel referred to paragraph 12 of the said written statement. This Court having taken note of the said paragraph is of the opinion that the said paragraph not only is vague, but also lacks material particulars which are required for raising the plea of adverse possession. It is a trite principle of law that for the purpose of constituting the plea of adverse possession, the person claiming adverse possession has to show: (a) on what date he came into possession; (b) what is 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.

7. It is also well settled that mere possession of land would not ripen into a possessory title and the possession must have *Animus Possidendi* and the person claiming adverse possession has to hold the land adverse to the title of the true owner and, moreover, he must continue in that capacity for a period prescribed under the Indian Limitation Act, 1963. Further to that, the concept of adverse possession contemplates a hostile possession i.e. the possession which is expressly or impliedly in denial of the title of the true owner.

8. In the instant case, more particularly, perusal of paragraph 12 of the written statement, it would be seen that no such pleadings are available and the defendant had merely stated that he had been possessing the land since 1988 and in the year 1997, the plaintiff purchased the land and could not take over possession. The said pleading in the opinion of this Court is bereft of material particulars to constitute the plea of adverse possession.

9. Considering the above, this Court finds that the substantial questions of law so formulated is not involved in the instant appeal for which the instant appeal stands dismissed.

10. This Court imposes a cost of Rs.10,000/- upon the appellant. Registry shall forthwith transmit the records to the Court below.

11. With the above directions and observations, this appeal stands dismissed.

JUDGE

Comparing Assistant