

GAHC010234782013



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

Case No. : RSA/190/2013

ABDUL HAI and ANR.
S/O LATE SAFFILUDDIN

2: MD. RABBUL ISLAM

S/O MD. ABDUL HAI
BY CASTE MSLIM
OCUPATION CULTIVATOR
BOTH ARE RESIDENTS OF VILL.MOIRABARI
MOUZA MOIRABARI
DIST. MORIGAON
ASSAM

VERSUS

MD. IMRAN HUSSAIN CHOUDHURY and ANR.

2:MD. IFTIKAR HUSSAIN CHOUDHURY
BOTH ARE SONS OF LATE YAKUB ALI CHOUDHURY
BY CASTE MUSLIM
VILL.MOIRABARI
MOUZA MOIRABARI
DIST.MORIGAON
ASSAM

For the Petitioner(s) : Mrs. B. Devi, Advocate

For the Respondent(s) : Mr. G. Z. Ahmed, Advocate

Date of Hearing : **14.05.2024**

Date of Judgment : **14.05.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mrs. B. Devi, the learned counsel appearing on behalf of the Appellants and Mr. G. Z. Ahmed, the learned counsel appearing 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 27.05.2013 passed in Title Appeal No.4/2011 by the Court of the learned Civil Judge, Morigaon whereby the judgment and decree dated 11.10.2010 passed by the learned Munsiff No.1, Morigaon in Title Suit No.2/2007 was reversed.

3. This Court had admitted the instant appeal on 08.11.2013 by formulating the following substantial question of law.

“Whether the Court below was justified in rejecting the plea of adverse possession on the ground that the defendant has set up the plea of purchase of the land by a registered instrument, in other words, whether there can be an alternative plea in the written statement relating to adverse possession?”

4. The question arises as to whether the said substantial question of law so formulated by this Court is involved in the instant appeal. For the said purpose, this Court finds it relevant to take note of the brief facts which led to the filing of the instant appeal.

5. The plaintiffs jointly purchased a plot of land measuring 4 Kathas 5 Lechas covered by Dag No.66 in Periodic Patta No.10 at village Sagunbahi Pathar under

Mouza Moirabari along with other portions of land of Dag No.65 (1 Bighas 2 Kathas 1 Lecha) and 2 Bighas 3 Kathas 8½ Lechas covered by Dag No.78 of the same periodic Patta No.10 by the registered Deed of Sale bearing Deed No.1666/97 from pattadar Nos.11 and 12 i.e. the Proforma Respondent Nos. 2 and 3. It was stated in the plaint that the proforma Defendant No.1 had also sold her share of land measuring 1 kathas 8 Lechas to the plaintiffs by executing a separate deed of sale bearing Deed No.1018/94 and delivered possession to the plaintiffs. After the purchase made by the plaintiffs as stated in the plaint, the plaintiffs' name were duly recorded in the Patta as Pattadar Nos. 15 and 16 pursuant to an order passed by the Circle Officer, Laharighat Circle on 06.03.1999. It was alleged in the plaint that the principal defendants i.e. the father and the son had encroached the Schedule land which is a plot of land measuring 4 Kathas 5 Lechas covered by Dag No.66 in Periodic Patta No.10 at village Sagunbahi Pothar under Mouza Moirabari in the District of Morigaon on 20.12.2004 and constructed three houses illegally by dispossessing the plaintiffs. It was further alleged that on 06.05.2005 when the plaintiffs came to their home from outside Assam and asked the defendants as to why they constructed the houses in the Schedule land, the defendants simply answered that they would remove the houses and return back the possession of the land to the plaintiffs within a period of 8 months. However, the defendants did not vacate the possession and accordingly, the suit was filed seeking a decree for declaring the right, title and interest over the schedule land; for a decree for recovery of khas possession of the schedule land by evicting the defendants removing their illegal constructions therefrom etc. The said suit was registered and numbered as Title Suit No.02/2007.

6. The defendants filed their written statement taking various preliminary

objections. It was stated in the written statement that the plaintiffs never possessed the suit land in question as they do not live in the village Moirabari or in Sagunbahi Pathar village. It was further stated that the plaintiffs never came to the possession of the suit land. The registered Sale Deeds, the mutation etc. were made behind the back of the defendants who were continuously possessing the suit land from 1993 by constructing dwelling houses of permanent nature. In addition to that, in paragraph No.12 of the written statement, it was stated that the proforma defendant Nos. 2 and 3 had verbally sold the suit land to the defendant Nos. 1 and 2 and also promised that the suit land would be transferred by way of a registered Deed of Sale. It was also mentioned that on the basis of the verbal sale being made on 02.08.1993, the possession of the schedule land was handed over to the defendants and thereupon the defendants had been possessing the said suit land since then to any objection of any people or the real owner of the land. It was also mentioned that if any right existed, the same stood extinguished by Section 27 of the Limitation Act, 1963.

7. On the basis of the above, as many as 6 issues were framed which included the issue as to whether the suit of the plaintiff was hit by the law of adverse possession. The learned Trial Court vide a judgment and decree dated 11.10.2010 dismissed the suit by coming to a finding that the plaintiffs failed to prove the Deed of Sale in the manner provided under law and consequently also held that the suit was barred in view of the adverse possession of the defendants.

8. Being aggrieved, the plaintiffs preferred an appeal before the Court of the learned Civil Judge, Morigaon which was registered and numbered as Title Appeal No.4/2011. The said Appeal was allowed vide the impugned judgment

and decree dated 27.05.2013 by setting aside the judgment and decree passed by the learned Trial Court dated 11.10.2010. It is under such circumstances, the instant appeal has been filed which has been admitted by this Court by formulating the abovementioned substantial question of law.

9. I have heard Mrs. B. Devi, the learned counsel appearing on behalf of the Appellants and Mr. G. Z. Ahmed, the learned counsel appearing on behalf of the Respondents.

10. The substantial question of law is as to whether the learned First Appellate Court was justified in rejecting the plea of adverse possession on the ground that the defendant has set up the plea of purchase of the land by a registered instrument, in other words whether there can be an alternative plea in the written statement relating to adverse possession. There is no quarrel with the proposition that an alternative plea is permissible to be taken by the defendants but the question however arises as to whether the said substantial question of law is at all involved in the instant appeal taking into account that a question of law would only be substantial if the decision made in the said question of law would have a bearing in the decision of the lis. In the instant case, the defendant took two pleas. First, a plea by which the suit land was transferred to them by the proforma defendant Nos. 2 and 3 by way of verbal sale along with delivery of possession. In terms with Section 54 of the Transfer of Property Act, 1882 read with Section 17 and Section 49 of the Registration Act, 1908, such a verbal sale is not permitted and any sale other than by way of a registered instrument would not affect the immovable property. Therefore, the first plea which has been taken by the defendants in the suit is totally misconceived.

11. The second plea so taken is that the defendants had been in possession of the suit land since 02.08.1993. Merely being in possession of any land for

however long would not constitute an adverse possession. The adverse possession has to be hostile uninterrupted, open and adverse to the true owner. Not only that, the true owner has also to know that the person asserting adverse possession is adversely possessing to his/her interest. These are specific requirements which are to be pleaded and proved to claim adverse possession. In the instant case, these particulars are missing in the written statement so filed by the defendants and as such, as there is no pleadings to that effect, there can be no question of adducing any evidence. Under such circumstances, the plea of adverse possession is totally misconceived.

12. Consequently, as both the pleas are misconceived in the facts of the instant case, the question of law so formulated is not a substantial question of law involved in the instant appeal.

13. Accordingly, this Court finds no merit in the instant appeal for which the appeal stands dismissed with cost quantified at Rs.11,000/-. In addition to that, the plaintiffs shall be entitled to costs throughout the proceedings.

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

JUDGE

Comparing Assistant