

GAHC010244052023



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

Case No. : CRP/172/2023

SMTI HIRANMAYEE DEKA (MAHANTA)
W/O LT. BABUL DEKA, R/O 1ST FLOOR, TINIALI WARD NO. 7, RANGIA
TOWN, P.S.-RANGIA, DIST-KAMRUP, ASSAM

VERSUS

ABDUL KALAM AZAD
S/O LT. AISH ALI, R/O VILL AND P.O.-BIHARPARA, P.S.-TAMULPUR, PIN-
781367, DIST-TAMULPUR, BTAD, ASSAM

For the petitioner (s) : Mr. P. Upadhyay, Advocate

For the respondent (s) : Mr. S. K. Goswami, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

31.05.2024

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the judgment and decree dated 19.08.2023 passed by the learned Civil Judge, Kamrup, Amingaon in Title Appeal No.14/2019 whereby the judgment and decree passed by the learned

Trial Court dated 25.03.2019 in Title Suit No.7/2009 was affirmed.

2. From a perusal of the plaint, it reveals that the suit so filed was a suit for ejectment of the defendant on the basis that the defendant is a tenant occupying the suit premises on monthly rent basis. However, the petitioner herein who was the defendant took a plea that the plaintiff was not the landlord having right, title and interest upon the suit premises and the defendant was not a tenant during the lifetime of Late Madhab Das and did not become a tenant under the plaintiff. It was also the specific case of the defendant that he had acquired title upon the suit premises from 01.04.1994 on the basis of adverse possession. Taking into account the said stand which has been specifically taken by the defendant thereby contesting the title of the plaintiff, the suit becomes a suit based in title. In fact, a perusal of Issue No.6 (a) shows that the learned Trial Court has framed an Issue as to whether the defendant occupied the suit premises against the will of the proforma defendant since 01.04.1994 and acquired hostile title upon the suit premises after 12 years in 31.05.2006. Be that as it may, the learned Trial Court came to a specific finding that the defendant was a tenant and accordingly decreed the suit in favour of the plaintiff vide the judgment and decree dated 25.03.2019. The defendant thereupon preferred an Appeal before the Court of the Civil Judge (Senior Division), Kamrup at Amingaon which was registered and numbered as Title Appeal No.14/2019. In the said Appeal also the defendant categorically raised the Issue of adverse possession and claimed hostile title as against the predecessor-in-interest of the plaintiff as well as the plaintiff. The learned First Appellate Court however decided the Issue No.6 (a) against the defendant holding inter-alia that as the defendant was a tenant, the question of adverse possession did not arise. The Issue No.6 (a) was also again decided against the defendant. The

learned First Appellate Court dismissed the said Appeal vide the judgment and decree dated 19.08.2023. It is against that, the instant application has been filed under Section 115 of the Code.

3. Mr. P. Upadhaya, the learned counsel for the petitioner submitted that the defendant is not a tenant of the plaintiff and the defendant claims right over the suit premises on the basis of adverse possession. The learned counsel for the petitioner further submitted that the learned Trial Court as well as the learned First Appellate Court did not decide the Issue No.6 (a) in the proper perspective, and as such, the judgment and decree passed by both the Courts below should be interfered with.

4. This Court put a specific query upon the learned counsel for the petitioner as to why the revision application has been filed invoking the jurisdiction under Section 115 of the Code and not a Second Appeal. The learned counsel for the petitioner submitted that in view of the findings of fact arrived at that the defendant is a tenant coming within the ambit of the Assam Urban Area rent Control Act, 1972 (for short, 'the Act of 1972') and in view of the bar under Section 8 of the said Act of 1972, the revision application has been filed.

5. Be that as it may, the learned counsel for the petitioner further submitted that the petitioner continues to agitate that the petitioner had acquired right over the suit premises on the basis of adverse possession, and as such, the suit which was filed was barred by limitation.

6. Taking into account the specific stand taken by the petitioner in the opinion of this Court, the said stand cannot be taken up in a proceedings under Section 115 of the Code in as much as if the question of title over the suit premises is the question, the same goes outside the purview of the Act

of 1972.

7. Considering the above, this Court therefore holds that the instant proceedings under Section 115 of the Code is not maintainable in as much as an Appeal lies under Section 100 of the Code.

8. This Court duly holds that the petitioner herein has been bonafidely litigating before this Court in the instant revision petition. Accordingly, this Court further is of the opinion that the petitioner is entitled to the benefit under Section 14 of the Limitation Act, 1963. Accordingly, this Court though dismisses the instant petition on the ground of maintainability, however liberty is given to the petitioner to file an Appeal under Section 100 of the Code subject to the same being permissible in terms with the mandate of Section 100 of the Code.

9. This Court further observes that the period from 17.10.2023 till date be excluded while computing the period of limitation if the petitioner herein files an Appeal. In addition to that, this Court grants liberty to the counsel appearing on behalf of the petitioner to file an application before the Registry of this Court for obtaining the certified copy of the judgment and decree passed by both the Courts below which are presently in the records of the instant proceedings. If such an application is being filed, the Registry shall provide the certified copies of so enclosed to the instant revision application forthwith and not later than 5 (five) days.

10. With the above, the instant petition stands dismissed.

11. Interim order if any stands vacated.

JUDGE

Comparing Assistant