



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

RSA No. 65/2024

1. Md. Sahmat Ali,
S/o Lt. Sadullah Sekh.
2. Md. Abul Hussain,
S/o Lt. Iruddin Ahmed.
3. Jiauddin Ahmed,
S/o Lt. Hasim Ali.
4. Md. Abdul Mazid,
S/o Lt. Hekmat Ali.
5. Hamzed Ali,
S/o Lt. Hatim Ali.
6. Md. Jitu Ali,
S/o Lt. Matlib Ali.
7. Md. Abubakkar Siddique,
S/o Lt. Shaumat Ali.

All are residents of village-Maroi, PS-Sipajhar,
District-Darrang, Assam, Pin-784145.

.....Appellants.

-Versus-

1. Altafuddin Ahmed Baruah,
S/o Lt. Hussainuddin Ahmed,
Resident of Vill & PO-Maroi, PS-Sipajhar,
Dist.-Darrang, Assam, Pin-784145.

.....Respondent.

2. Md. Sayad Sekh,
S/o Lt. Dulsa.
3. Md. Chariful Nessa,

- D/o Lt. Dama Sekh.
4. Md. Khorsed Ali,
S/o Lt. Saful.
 5. Md. Hussain Ali,
S/o Lt. Didar.
 6. Md. Jiyauddin Ahmed,
S/o Lt. Didar.
 7. Md. Akramuddin Ahmed,
S/o Lt. Didar.
 8. Md. Amjed Ali,
S/o Lt. Didar.
 9. Md. Mainuddin Ali,
S/o Lt. Hussain Ali.
All are residents of Village-Maroi, PS-Sipajhar,
Dist.-Darrang, Assam, Pin-784145.
 10. Mustt. Rasida Begum,
D/o Lt. Dama Sekh,
W/o Md. Najir Ali,
Resident of Bihei Gaon, PO-Dipila, PS-Sipajhar,
Dist.-Darrang, Assam, Pin-784144.
 11. Md. Riyajuddin Ahmed,
S/o Lt. Didar,
Resident of Grandland Bagisha, Mouza-Shyamabari,
PS-Dhula, Dist.-Darrang, Assam, Pin-784514.

.....Proforma Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Appellants : Mr. S. Muktar. Advocate.

For the Respondents : Mr. D.K. Bagchi. Advocate.

Date of Hearing : 21.08.2024

Date of Judgment : **11th November, 2024**

JUDGMENT AND ORDER

Heard Mr. S. Muktar, learned counsel for the appellants and also heard Mr. D.K. Bagchi, learned counsel for the respondents.

2. This regular second appeal under Section 100 of the Code of Civil Procedure, is directed against the judgment and decree dated 11.08.2022 passed in Title Appeal No.2/2022 by the learned Civil Judge, Darrang, Mangaldai. It is to be noted here that vide impugned judgment and decree dated 11.08.2022, the learned Civil Judge, Darrang, Mangaldai, has reversed the judgment and decree dated 09.11.2021, passed in Title Suit No.54/2013 by the learned Munsiff No.1, Darrang, Mangaldai.

3. The back ground facts leading to filing of the present appeal is briefly stated as under:-

“One Md. Dulesa Sekh was the original owner of a plot of land, as mentioned in Schedule-A of the plaint and the same was inherited by his three sons, namely, Didar, Saful and Sayad in equal shares. Subsequently, the share of Saful was inherited by his only son Md. Khursed Ali (proforma defendant No.3) in the title suit. The said proforma defendant No.3 sold the Schedule-‘B’ land, which is part and parcel of Schedule-‘A’ land, to the plaintiff vide registered sale deed No.2174/2007 and since then, he is under continuous possession of the same and subsequently, he started construction of a residential house upon eastern part of Schedule-‘B’ land and the land described in Schedule-‘C’ is part and parcel of Schedule-‘B’ land and the same is the suit land and the principal defendants on 10.05.2012, trespass into the suit land and started constructing a

thatched house thereon and whenever the plaintiff intervened the same, the defendants threatened him with dire consequences. Thereafter, a Miscellaneous Case, No.44/2012, was registered and the same is pending before the Sub-Divisional Magistrate and the plaintiff had approached the Circle Officer, Sipajhar for ascertaining the boundary of the Schedule-B land. But the Circle Officer could not do so because of the resistance of the defendants. Therefore, the plaintiff had instituted a suit being Title Suit No.54/2013 for a decree for declaration of right, title and interest over the suit land and for khas possession and permanent injunction, before the learned Munsiff No.1, Darrang, Mangaldai.

In the said suit, the defendants entered appearance and contested the suit by submitting written statement, stating therein that the plaintiff neither possessed the Schedule-'C' land nor constructed a house over the same and the defendants never trespassed to the same, as it was under the absolute possession of the defendants and that after the death of Dulesa Sheikh, his property was amicably settled amongst his 4(four) sons, namely, Didaruddin, Dana Sekh, Saban Ali and Sayad Ali and accordingly, Dana Sekh got 3 bigha 2 katha and 18 lechas of land and after the death of Dana Sheikh, his daughter Sarifun Nessa mutated her name in the plot of land measuring 2 katha 5 lechas covered by Dag No.432 in P.P. No.410, situated at village Part-I Mouza-Sipajhar and she had executed a gift deed before the Notary Public in favour of the Secretary, Khetangpara Maszid Committee and donated a plot of land measuring 10 lechas out of 2 katha 5 lechas of land covered by P.P. No.410 and the said plot of land has shown as Schedule-'C' land in the plaint by the plaintiff and after

execution of the gift deed, Maszid Committee took possession of the Schedule-C land. Thereafter, on the pleadings of the parties, the learned Trial Court has framed as many as 8(eight) issues:-

1. Whether there is any cause of action for the suit?
2. Whether Md. Khursed Ali on 26.10.2007 sold the Schedule-B land to the plaintiff vide registered sale deed No.2174/2007 and thereafter, handed over possession of the same?
3. Whether the defendants on 10.05.2012 trespassed into the Schedule-B land and started construction of a thatched house on the suit land (Schedule-C) and thereby dispossessed the plaintiff?
4. Whether the suit land is a part and parcel of the land possessed by Sarifun Nessa measuring about 2 katha 5 lechas and covered by Periodic Patta No.410 Dag No.432 of village Maroi, Mouza Sipajhar?
5. Whether Sarifun Nessa gifted the Schedule-C land (suit land) in favour of the Secretary, Khetangpara Maszid Committee, Maroi, by executing a gift deed bearing No.5116, dated 01.06.2012?
6. Whether the plaintiff has right, title and interest over the suit land?
7. Whether the plaintiff is entitled to the reliefs as prayed for?
8. To what other relief/reliefs the plaintiff is entitled to?

Thereafter, hearing learned Advocates of both the parties and also considering the evidence so adduced by the parties, the learned Trial Court has decided the Issue Nos.1 and 2 in affirmative and

Issue Nos.3, 4, 5, 6 and 7 in negative and thereafter, dismissed the suit.

Then being highly aggrieved, the respondents herein preferred an appeal before the learned Civil Judge (Senior Division), Darrang, Mangaldai and the learned Civil Judge (Senior Division), Darrang, Mangaldai, hereinafter the First Appellate Court, vide judgment and decree dated 11.08.2022 had decreed the suit in favour of the respondents herein. While dealing with the appeal, the learned First Appellate Court had formulated following five points for determination:-

- (i) Whether the appellant could prove his title in respect of the schedule land?
- (ii) Whether the appellant could prove that the suit land is encroached by the respondents?
- (iii) Whether the judgment and decree passed by the learned Munsiff No.1, in Title Suit No.54/2013 suffers from any kind of irregularity or illegality?
- (iv) Whether the learned Trial Court committed error in not appreciating the issues properly?
- (v) Whether interference of this Court is required against the judgment and decree passed in Title Suit No.54/2013?

Thereafter, the learned First Appellate Court has decided the Point Nos.(i), (ii) and (iii) in affirmative in favour of the appellant and Point Nos.(iv) and (v) in affirmative and thereafter, decreed the suit in favour of the appellant, the respondent herein, with cost."

4. Being aggrieved, the appellants preferred the present appeal by suggesting the following substantial question of law:-

- (i) Whether the suit is violative of Order I Rule 8(2) of the CPC as because the suit being representative suit, general notice was required to be issued and general notice was not issued?
- (ii) Whether the suit is bad for non-joinder of necessary parties and more particularly Sarifun Nessa, one of the pattadars having recorded her name under P.P. No.410 and Dag No.239 and 432 covering the suit land was not made party in the suit?
- (iii) Whether decree can be passed in respect of plot of land without having any proper and specific schedule for its identification?
- (iv) Whether the Appellate Court can travel beyond the pleading and materials on record as well as evidence of the plaintiff?
- (v) Whether the finding of the learned Court below suffers from perversity?

5. Mr. Muktar, learned counsel for the appellants submits that the suit was filed as representative suit, but no general notice was issued in the same and that the suit is bad for non-joinder of necessary parties as Sarifun Nessa, one of the pattadars, having recorded her name in the Periodic Patta No.410 and Dag No.239 and 432 covering the suit land was not made a party in the suit. According to him, Sarifun Nessa is the recorded pattadar and as such, without impleading her no decree could have been passed by the learned First Appellate Court. It is the further contention of Mr. Muktar that the suit land could not be identified and that the learned First Appellate Court has travelled beyond the pleadings and evidence of the parties and as such, the suggested substantial

questions of law are involved herein and therefore, it is contended to admit the appeal and to hear the matter.

6. On the other hand, Mr. Bagchi, learned counsel for the respondents submits that the impugned judgment and order, so passed by the learned First Appellate Court suffers from no infirmity or illegality and no substantial question of law is involved. Mr. Bagchi submits that the suit was not filed in a representative capacity and that Sarifun Nessa, the recorded pattadar has been made a party in the title suit before the learned Trial Court and that the suit land has been properly described in the schedule and the decision of the learned First Appellate Court is based on pleadings and evidence adduced by the parties and it suffers from no infirmity and nothing is shown to demonstrate that the judgment and decree so passed by the First Appellate Court is perverse and therefore, it is contended to dismiss this appeal.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the memo of appeal and the grounds mentioned therein and the substantial questions of law suggested therein and also the impugned judgment and decree passed by the learned Trial Court and also the judgment and decree passed by the learned First Appellate Court.

8. It appears that the suit was not filed as representative suit by the plaintiff. He has preferred the suit for declaration of his right, title and interest over the suit land and for ejectment of the defendants from the suit land and delivery of possession and for granting permanent injunction in his individual capacity. He has described the suit land in the plaint as Schedule-A, Schedule-B and Schedule-C and there is no ambiguity about the suit land in the said plaint.

9. Further, it appears that in the plaint of T.S. No.54/2013, Sarifun Nessa has been arrayed as a party as proforma defendant No.10 and as such, the contention of the appellant that non-joinder of necessary party, the suit is bad is not sustainable at all and the submission of the learned counsel for the appellants appears to be a misleading one. There is no material to suggest that the learned First Appellate Court has travelled beyond the pleadings and materials on record as well as evidence of the parties.

10. It appears that the learned First Appellate Court has formulated as many as 5 points and thereafter, discussed the evidence in detail and thereafter, arrived at a finding based on the evidence and pleadings of the parties and there is nothing on the record to show that the judgment, so passed by the learned First Appellate Court is perverse. The learned First Appellate Court has decided the Point Nos.(i) to (v) in affirmative and thereafter, decreed the suit in favour of the appellant. While discussing the evidence, the learned First Appellate Court has held that Issue No.6 i.e. whether the plaintiff has right, title and interest over the suit land is the crux of the Title Suit No.54/2013 and observed as under:-

The learned Trial Court again took into account the admission of the appellant in his cross-examination in regards to 1 katha land and surprisingly the learned Trial Court had mentioned that *"undoubtedly the defence too has many weaknesses in the suit but the same does not entitled the plaintiff for any decree who has to succeed on its own strength and merit"*.

The learned First Appellate Court thereafter, held that the learned Trial Court admitted that there are weaknesses in the case of the respondents and those weaknesses ought to have been discussed, but the same has not been done. It has also been held that the claim of the

appellant is on the basis of purchase and he had exhibited it as Exhibit-6, the sale deed and in the said sale deed the suit land has been mentioned and the sale deed being an instrument of highest probability having not being contradicted by the respondents is a clear indicator regarding the proof of title of the appellant. It had also found that the learned Trial Court did not took into account the evidence and the contradiction of the witnesses of the respondents and none of the witnesses of the respondents could contradict the fact that the suit land does not belong to the appellant. While the appellant took reliance upon a sale deed, respondents took reliance upon a trace map and chitha book and evidential value of the documents in question are when appreciated, clears all the doubt that the 'sale deed' which is not disputed in respect of the authenticity or admissibility gets more weightage than a trace map and chitha and the probability of the appellant was therefore more in comparison and the learned Trial Court put his brake only on the basis of certain admission of the appellant in his cross-examination, but did not further went in appreciating the fact that the sale deed when traversed beyond any doubt has greater value than that of the trace map and chitha book and these facts are not appreciated and there is no denial to the fact that opinion of the learned Trial Court that the appellant does not have right, title and interest over the suit land is incorrect. It is also held that the appellant's case in terms of his evidence was more and that benefit ought to have been accorded to the appellant and that the view of the learned Trial Court that it cannot pass any ambiguous decree on the basis of weaknesses of the defence case is an incorrect opinion as the appellant fulfilled the criteria as per provision of Order VII Rule 3 of the CPC while filing his plaint in specifying the suit land and this aspect is clearly overlooked by the learned Trial Court.

11. The learned counsel for the appellant by referring to an observation made by the First Appellate Court in paragraph No.14 of the impugned judgment, submits that in the said paragraph, the learned Court below had held that it was the duty of the learned Trial Court to go beyond such admission because the aspect as regards to dispossession of the appellant from Schedule-C land is covered by Dag No.432 under P.P. No.410 was not at all appreciated in proper manner and this suggests that the learned First Appellate Court travelled beyond the pleadings and evidence of the parties and as such, the impugned judgment is perverse.

12. This Court considered the submission of the learned counsel in the light of facts and circumstances on the record and the same left this Court unimpressed in as much as the said observation does not mean that the learned First Appellate Court had travelled beyond the pleadings and evidence of the parties.

13. It is well settled in the case of **Chandrika Singh (Dead) by LRS & Anr. v. Sarjug Singh & Anr.**, reported in (2006) 12 SCC 49, that the High Court under Section 100 CPC has limited jurisdiction. To deal with cases having a substantial question of law, this Court observed as under:-

“12. ... While exercising its jurisdiction under Section 100 of the Code of Civil Procedure, the High Court is required to formulate a substantial question of law in relation to a finding of fact. The High Court exercises a limited jurisdiction in that behalf. Ordinarily unless there exists a sufficient and cogent reason, the findings of fact arrived at by the courts below are binding on the High Court...”

14. Again, in the case of **Chacko & Anr. v. Mahadevan**, reported in (2007) 7 SCC 363, while dealing with the jurisdiction under Section 96 and 100 CPC, this Court laid down as under:-

“6. It may be mentioned that in a first appeal filed under Section 96 CPC, the appellate court can go into questions of fact, whereas in a second appeal filed under Section 100 CPC the High Court cannot interfere with the findings of fact of the first appellate court, and it is confined only to questions of law.”

15. Thus, having examined the substantial questions of law of the case in hand and also the impugned judgment and decree, so passed by the learned First Appellate Court, this Court is of the considered opinion that no substantial question of law is involved in this appeal so as to admit it. And as held in the case of **Chacko & Anr. (supra)**, the finding of fact of the First Appellate Court is binding upon this Court. Accordingly, this second appeal stands dismissed.

Sd/- Robin Phukan
JUDGE

Comparing Assistant