

GAHC010245792023



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

Case No. : RSA/211/2023

PURANDAR NATH
S/O LATE PAYARAM NATH
RESIDENT OF VILLAGE KHAS SONAPUR, MOUZA LOKRAI, PS SIPAJHAR,
PO MARUA CHOWKI, DIST DARRANG, ASSAM.

VERSUS

KHAGENDRA NATH AND ORS.
S/O SRI MANIK CHANDRA NATH,
RESIDENT OF VILLAGE KHAS SONAPUR, MOUZA LOKRAI, PS SIPAJHAR,
PO MARUA CHOWKI, DIST DARRANG, ASSAM.

2:SRI RATNESWAR NATH
S/O LATE SOMBAR NATH

RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

3:SMTI JAYMATI NATH
W/O SRI KAMLESWAR NATH

RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

4:SRI BHABENDRA CH. NATH
S/O BARIHANA NATH

RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

5:SRI LANKESWAR NATH
S/O LATE LAKHIRAM NATH

RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

6:SRI MADHU RAM NATH
S/O LATE RATNESWAR NATH
RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

7:KUNJA LATA NATH
(WIFE)
LEGAL HEIR OF RES. NO. 6
RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

8:KHANINDRA NATH
(SON)
LEGAL HEIR OF RES. NO. 6
RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM.

9:SASANKA NATH
(SON)
LEGAL HEIR OF RES. NO. 6
RESIDENT OF VILLAGE KHAS SONAPUR
MOUZA LOKRAI
PS SIPAJHAR
PO MARUA CHOWKI
DIST DARRANG
ASSAM

For the Appellant(s)	: Mr. J. Kalita, Advocate
	: Mr. N. J. Gogoi, Advocate
For the Respondent(s)	: Mr. D. Mozumdar, Sr. Advocate
	: Mr. S. Biswas, Advocate

Date of Hearing	: 19.06.2024
Date of Judgment	: 19.06.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. J. Kalita, the learned counsel appearing on behalf of the Appellant and Mr. D. Mozumdar, the learned Senior counsel assisted by Mr. S. Biswas, the learned counsel appearing on behalf of the Respondent No.1.

2. The instant appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for short "the Code") is directed against the judgment and decree dated 03.08.2023 passed by the Court of the learned Civil Judge, Darrang (for short "the learned First Appellate Court") in Title Appeal No.01/2022 whereby the appeal filed by the Appellant herein was dismissed

thereby affirming the judgment and decree dated 13.12.2021 passed by the learned Civil Judge (Junior Division) No.2, Mangaldai, Darrang (for short "the learned Trial Court") in Title Suit No.56/2013.

3. The instant appeal is being taken up at the stage of Order XLI Rule 11 of the Code to consider as to whether any substantial question of law can be formulated in terms with Section 100(4) of the Code.

4. For ascertaining as to whether the questions of law so proposed by the Appellant can at all be formulated, this Court finds it relevant to take note of the facts briefly which have led to the filing of the instant appeal.

5. For the sake of convenience, the parties herein are referred to in the same status as they stood before the learned Trial Court.

6. The Respondent No.1 herein as plaintiff had instituted a suit seeking declaration of his right, title and interest in respect to the land described specifically in Schedule-II of the plaint; a decree for recovery of khas possession from the Defendant No.1 who is the appellant herein; a decree for permanent injunction restraining the Defendant No.1 from dispossessing the plaintiff from the suit land if a decree for recovery of possession is passed in future and for other reliefs.

7. The edifice on which the suit was filed was that the predecessor-in-interest of the Defendant Nos. 1 and 2 along with Proforma Defendant No.2 were joint owners of a plot of land which have been specifically described in Schedule-I of the plaint. The said land measured 2 Bighas 4 Kathas 12

Lechas covered by Dag No.181 of K.P. Patta No.139 situated at Village Khas Sonapur in the District of Darrang and specifically bounded by boundaries stated therein.

8. It was the case of the plaintiff that in the year 1980, there was an amicable partition between the predecessor-in-interest of the Defendant Nos. 1 and 2 and the Proforma Defendant No.2 and the suit land which have been most specifically described in Schedule-II fell into the share of the Proforma Defendant No.2. Thereupon, in the year 2005, vide a registered Deed of Sale, the Proforma Defendant No.2 transferred the land which have been specifically described in Schedule-II(a) to the plaintiff vide a Registered Deed of Sale dated 12.08.2005. Subsequent thereto, vide another registered Deed of Sale dated 03.11.2005, the proforma Defendant No.2 transferred another plot of land measuring 4 Kathas 6 Lechas to the plaintiff. It is also specifically mentioned that after purchasing the plots of land, the plaintiff was possessing the suit land without any objection or hindrance from the Defendant No.1. However, on 26.02.2007, the Defendant No.1 dispossessed the plaintiff from the suit land and it is under such circumstances, the plaintiff filed a suit being Title Suit No.11/2007. However, on account of formal defects, the said suit was withdrawn with liberty to file afresh. It is under such circumstances, the suit was filed seeking the relief(s) as aforestated which was registered and numbered as Title Suit No.56/2013.

9. The Defendant No.1 participated in the said trial by filing a written statement. In paragraph No.2 of the said written statement, it was the specific contention of the Defendant No.1 that the disputed Dag is yet to be

partitioned between the Defendant No.1 and the Proforma Defendant No.2. In paragraph No.3, it was also mentioned that the description of the suit land was wrong. In Paragraph No.8, it was denied that in the year 1980, the predecessor of the Defendant Nos. 1 and 2 along with the proforma Defendant No.2 had amicably partitioned the Schedule-I land by way of family settlement and the portion of the land which was specifically described in Schedule-II to the plaint fell into the share of the proforma Defendant No.2. It was denied that on 26.02.2007, the Defendant No.1 had dispossessed the plaintiff from the suit land rather it was stated that the plaintiff did not have his feet on the suit land. In paragraph No.20 of the written statement, it was however stated that the suit land was not formally partitioned however the defendant No.1 was possessing the northern half of the suit land and gave specific boundaries to that effect.

10. On the basis of the said pleadings, as many as 7 issues were framed by the learned Trial Court. Issue No.(iii) pertained to as to whether in the year 1980, the proforma Defendant No.2 and the Defendant No.1 amicably partitioned the Schedule-I land in equal shares by way of family arrangement and if so, whether the Schedule-II land fell in the share of proforma Defendant No.2 who possessed it since then as its exclusive owner. Issue No.(v) was whether the plaintiff acquired any valid right, title and interest over the Schedule-II land by way of purchase from the proforma defendant No.2 vide two registered Deeds of Sale dated 12.08.2005 and 03.11.2005 respectively. Issue No.(vi) related to whether the plaintiff was in possession of the Schedule-II land since the date of purchase and whether he was dispossessed therefrom on 26.02.2007 by the Defendant No.1.

11. The learned Trial Court vide its judgment and decree dated 13.12.2021 decreed the suit in favour of the plaintiff. In doing so, the learned Trial Court decided the Issue No.(iii) in favour of the plaintiff after taking into account the evidence which have been adduced by the plaintiff witnesses and also taking into account that there was an admission by the Defendant No.1 in the earlier suit proceedings as regards the partition of the suit land amongst the predecessor-in-interest of the Defendant Nos. 1 and 2 with the Proforma Defendant No.2. While deciding the Issue No.(v), the learned Court also decided the same in favour of the plaintiff and more particularly taking into account the Deeds of Sale which were duly exhibited as Exhibit Nos. 2 and 3 respectively by the Plaintiff. While deciding the Issue No.(vi), the learned Trial Court also decided the same in favour of the plaintiff that the plaintiff was in possession of the Schedule-II land since the date of the purchase and the plaintiff was dispossessed by the Defendant No.1 on 26.02.2007.

12. The Defendant No.1 being aggrieved by the judgment and decree dated 13.12.2021 filed an appeal being Title Appeal No.1/2022 before the Court of the learned Civil Judge, Darrang, Mangaldai. The learned First Appellate Court had decided the said appeal issue wise and affirmed the judgment of the learned Trial Court. It is against the said, the instant appeal has been preferred.

13. This Court has duly heard the learned counsel for the Appellant who proposed two question of law which as per him can be formulated as substantial questions of law in the instant appeal.

14. Mr. D. Mozumdar, the learned Senior counsel submitted that those

questions of law so submitted under no circumstances can be said to be substantial question of law. The learned Senior counsel submitted that these are pure questions of facts and does not touch on the question of perversity and under such circumstances, the question of framing any substantial question of law under Section 100(4) of the Code does not arise.

15. This Court has given anxious consideration to the respective submissions of the learned counsels for the parties and would hereinafter analyze as to whether the questions of law so proposed by the learned counsel for the Appellant can at all be formulated as substantial question of law.

16. The first question of law which have been proposed is as to whether both the learned Courts below were justified in decreeing the suit on presumption that the plaintiff/Respondent No.1 was in possession of the suit land prior to filing of the suit. This Court has duly taken note of the judgments passed by both the Courts below. From a perusal of the said judgments, the learned Trial Court as well as the learned First Appellate Court have duly taken note of the evidence and on the basis thereof had arrived at a finding of fact that the plaintiff was in possession of the suit land as described in Schedule-II pursuant to purchase. This being a pure question of fact in the opinion of this Court cannot be said to be a question of law and more so, a substantial question of law arising in the present appeal.

17. The next question of law which have been proposed is as to whether the learned Courts below were justified in decreeing the suit holding that the plaintiff had duly executed the Sale Deed which confers exclusive right, title

and interest over the suit land without considering the possession and right to sale of the seller of the said land. The said question of law in the opinion of this Court cannot be said to be substantial question of law inasmuch as there is no challenge to the Deeds of Sale. This Court has also duly taken note of that the Deeds of Sale specifically described the boundaries which are same with the boundaries as described in Schedule-II(a) and II(b). Without challenging the said Sale Deed, the plaintiff cannot raise these questions. This Court also finds it relevant to observe that by virtue of Section 44 of Transfer of Property Act, 1882, a co-owner would be authorized and competent to sell his portion of the land. There is however no quarrel with the fact that the Proforma Defendant No.2 had sold out the land who was duly competent to do so. Under such circumstances, the questions of law so proposed cannot in the opinion of this Court be a substantial question of law which can be formulated in terms with Section 100(4) of the Code.

18. Considering the above, as there is no substantial question of law which can be formulated, this Court finds no merit in the instant appeal for which the instant appeal stands dismissed.

19. Taking into account the stage at which the instant appeal is being dismissed, this Court is not inclined to impose any costs.

JUDGE

Comparing Assistant