

GAHC010271252019



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

**Case No. : RSA/94/2021**

LEGAL HEIRS OF AINUDDIN SK. KOBAT ALI AND 6 ORS  
S/O- LATE AINUDDIN SK, R/O- VILL.- KACHARIHAT DEBATTAR HASDAHA  
PART-II, P.O. KACHARIHAT, P.S. DHUBRI, DIST.- DHUBRI, ASSAM, PIN-  
783334.

2: MOHAMMAD ALI  
S/O- LATE AINUDDIN SK  
R/O- VILL.- KACHARIHAT DEBATTAR HASDAHA PART-II  
P.O. KACHARIHAT  
P.S. DHUBRI  
DIST.- DHUBRI  
ASSAM  
PIN- 783334.

3: AZIRAN BIBI  
S/O- LATE AINUDDIN SK  
R/O- VILL.- KACHARIHAT DEBATTAR HASDAHA PART-II  
P.O. KACHARIHAT  
P.S. DHUBRI  
DIST.- DHUBRI  
ASSAM  
PIN- 783334.

4: ON THE DEATH OF MOHARUDDIN  
HIS LEGAL HEIR OPIAL SK  
S/O- LATE MOHARUDDIN  
R/O- VILL.- ROWERKUTI  
P.O. DURAHATI  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324.

5: NAZIRAN BIBI  
D/O- LATE MOHORUDDIN

W/O- AZAD ALI  
R/O- VILL.- ROWERKUTI  
P.O. DURAHATI  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324.

6: NAZIRA BIBI  
D/O- LATE MOHARUDDIN  
W/O- NABARUDDIN ALI  
R/O- VILL.- ROWERKUTI  
P.O. DURAHATI  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324.

7: SABDER ALI  
S/O- LATE MOIJUDDIN  
R/O- VILL.- SALANGDANGA  
P.O. GOLAKGANJ  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783334  
ASSA

VERSUS

LEGAL HEIRS OF LATE KASER UDDIN, SAHAD ALI AND 12 ORS  
S/O- LATE KASER UDDIN, RESIDENT OF VILL.- KUMARGATI, P.O.  
TISTERPAR, P.S. AND DIST.- DHUBRI, ASSAM, PIN- 783324, ASSAM.

2:SOBED ALI  
S/O- LATE KASER UDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

3:BABUR ALI  
S/O- LATE KASER UDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

4:KESMAT ALI  
S/O- LATE KASER UDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

5:ON THE DEATH OF SONAUDDIN  
HIS LEGAL HEIRS NABAR UDDIN  
S/O- LATE SONAUDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

6:SIRAJ UDDIN  
S/O- LATE SONAUDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

7:NABU SK  
S/O- LATE SONAUDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

8:KADAM ALI  
S/O- LATE SONAUDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

9:MOIJUDDIN SK

S/O- LATE SONAUDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

10:KOISAR ALI  
S/O- LATE SONAUDDIN  
RESIDENT OF VILL.- KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324  
ASSAM.

11:BASSU SK  
S/O- LATE KASIMUDDIN  
RESIDENT OF VILL.- CHAR KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324.

12:SUBEDAR ALI  
S/O- LATE KASIMUDDIN  
RESIDENT OF VILL.- CHAR KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324.

13:DELDAR ALI  
S/O- LATE KASIMUDDIN  
RESIDENT OF VILL.- CHAR KUMARGATI  
P.O. TISTERPAR  
P.S. AND DIST.- DHUBRI  
ASSAM  
PIN- 783324

**Advocate for the Petitioner** : MS. R CHOUDHURY, MR. P K DEKA,MR. I H LASKAR,MD. S ALOM,MR. M S ALAM,MS S S ZIA,MR D. CHAKRABORTY

**Advocate for the Respondent** : MR. M A SHEIKH,

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

**26.11.2024**

Heard Mr. P.K. Deka, learned counsel for the appellants and also heard Mr. M.A. Sheikh, learned counsel for the respondents.

2. This regular second appeal under Section 100 read with Order XLII of the Code of Civil Procedure, 1908, is directed against the judgment and decree dated 06.10.2018, passed by the learned Civil Judge, Dhubri, in Title Appeal No.61/2015. It is to be noted here that vide impugned judgment and decree dated 06.10.2018, the learned Civil Judge, Dhubri, has affirmed the judgment and decree, dated 17.08.2015, passed by the learned Munsiff No.1, Dhubri, in Title Suit No.534/2011, by which the suit of the appellants/plaintiffs was dismissed.

3. The background facts leading to filing of this second appeal is briefly stated as under:-

"A plot of land measuring 18 bigha 1 katha 3 lecha covered by Dag Nos.340, 341, 342, 343, 344, 345, 346 and 347 of Khatian No.353 of village Tistarpar stood in the names of Ainuddin Sk, Moharuddin, Sobder Ali, Koser Uddin Sk and Sona Uddin Sk. It is the claim of the appellants/plaintiffs that four branches of shares i.e. 1/4<sup>th</sup> share of 4 bigha 2 katha 15<sup>3</sup>/<sub>4</sub> lecha of late Ainuddin, the father of the appellants/plaintiffs Nos.1(a) to 1(c), Moharuddin, the father of the appellants/plaintiffs Nos.2(a) to 2(c) and Moijuddin, the father of the appellants/plaintiffs No.3, were entitled to 1/4<sup>th</sup> share and similarly, Sudu Sk., the father of late Koseruddin Sk. and Sonauddin Sk. got the remaining 1/4<sup>th</sup> share.

It is the claim of the appellants/plaintiffs that the father of appellants/plaintiffs Nos.1(a) and 1(c), Moharuddin the father of the

appellants/plaintiffs Nos.2(a) to 2(c) sold the land measuring 1 bigha to the proforma defendants and this portion of land has been shown in Schedule-'B' of the plaint. Further, claim of the appellants/plaintiffs is that except this, no other land has been either sold out or tenanted to anybody and accordingly, they were left with a land measuring 4 bigha 0 katha  $5\frac{3}{4}$  lecha of land, each and the share of appellant/plaintiff No.3 remained intact.

The appellants/plaintiffs also claimed that the said property has also not been apportioned by means of any partition, during the ongoing settlement operation. As a result, the appellants/plaintiffs and the proforma defendants together asked the respondents/defendants for partition of the suit property on several occasions. But, the same failed to yield any result and in absence of partition the appellants/plaintiffs are facing inconveniences, for which they instituted the title suit, being Title Suit No.534/2011, with a prayer for declaration of right, title, interest and apportionment of shares.

The respondents/defendants entered appearance and contested the suit by filing written statement and they have taken a stand that the suit is not maintainable and there is no cause of action and the suit is bad for non-joinder of necessary parties, etc. and they have also taken a stand that originally the suit land was owned by Boli Sk and Sudu Sk and as such, there were two branches of shareholders – one through Boli Sk and the other through Sudu Sk, Ainuddin, Moharuddin and Moijuddin, the predecessors of the appellants/plaintiffs being the sons of Boli Sk inherited  $\frac{1}{2}$  share of Schedule-'A' land and Kaseruddin and Sonauddin, the father of the defendants inherited the remaining  $\frac{1}{2}$  share. They have also taken a stand that the Schedule-'B' land, being sold, the remaining land of the share, the appellants/plaintiffs gave Pattan to different persons by executing Pattan Nama. Accordingly, the names of those persons were recorded as the rayats for the aforesaid land and the respondents/defendants purchased the land from the rayats and accordingly, the respondents/defendants are now possessing the entire land and the appellants/plaintiffs have filed several petitions from time to time

before the Assistant Settlement Officer, Dhubri, for mutation, but the same were dismissed.

The proforma defendant No.1 has filed a separate written statement, wherein he supported the claim of the appellants/plaintiffs and prayed for decreeing the suit in his favour.

Upon the pleadings of the parties, the learned Trial Court has framed the following issues:-

- 1) Whether the suit is maintainable?
- 2) Whether the suit is barred by law of limitation?
- 3) Whether the plaintiffs have any right, title, interest and possession over the land described in Schedule-'A', excluding the land described in Schedule-'B'?
- 4) Whether the plaintiffs are entitled to a decree as prayed for?
- 5) To what other relief the plaintiffs are entitled?

Thereafter, the learned Trial Court, considering the evidence of both the parties and also the documents placed on record and after hearing both the parties, dismissed the suit on contest with cost.

Being aggrieved by the judgment and decree, dated 17.08.2015, passed by the learned Munsiff No.1, Dhubri, the appellants/plaintiffs preferred an appeal, being Title Appeal No.61/2015, before the Court of learned Civil Judge, Dhubri. Thereafter, the learned Civil Judge, Dhubri, had formulated the following two points for determination:-

- (1) Whether the plaintiffs had been able to prove that the Schedule-'I' land belongs to their predecessor and the same is not partitioned?
- (2) Whether the learned Trial Court erred in reaching the findings?

Thereafter, discussing the evidence so recorded by the learned Trial Court and also considering the submission of the respective counsel of the parties, arrived at the finding that the appellants/plaintiffs have failed to prove that the Schedule-'I' land was not partitioned earlier and as such, the learned Trial Court had not erred in arriving at the finding and thereafter, dismissed the appeal.”

4. Being aggrieved, the appellants/plaintiffs preferred this second appeal under Section 100 read with Order XLII of the Code of Civil Procedure before this Court and the same was admitted vide order dated 16.11.2021 on the following substantial questions of law:-

- (i) Whether the Courts below were justified in dismissing the suit of the plaintiffs without taking into consideration of paragraph No.11 of the written statement filed by the defendants, wherein they have fully admitted that the Schedule-'I' land belonged to both Boli Sk and Sudu Sk, who were admittedly the predecessors-in-interest of both the plaintiffs and the defendants?
- (ii) Whether the Courts below were justified in shifting the burden upon the plaintiffs to prove the allegations made by the defendants to the effect that the plaintiffs have transferred their portion of the land to Rayats?
- (iii) Whether the Courts below were justified in relying upon unregistered deeds of sale i.e. Exhibits-K, L, M and N, which were otherwise not permissible under Section 17 read with Section 49 of the Registration Act, 1908 and Section 54 of the Transfer of Property Act?

5. Mr. Deka, learned counsel for the appellants/plaintiffs finally submits that the impugned judgments and decrees suffers from manifest illegality as the same was passed without taking into account the pleadings of the parties. Secondly, Mr. Deka submits that the learned Trial Court has also failed to consider Section 101 of the Evidence Act and shifted the burden upon the plaintiffs to prove the allegations made by the defendants to the effect that they have transferred their portion of land to the Rayats.

5.1 Thirdly, Mr. Deka, learned counsel for the appellants/plaintiffs further submits that the learned Trial Court had relied upon unregistered sale deeds i.e. Exhibits-K, L, M and N, overlooking the provision of Section 17 and Section 49 of the Registration Act and also of Section 54 of the Transfer of Property Act and the learned First Appellate Court had also overlooked the aforesaid aspect of the matter. Fourthly, Mr. Deka submits that the appellants/plaintiffs herein had taken a categorical stand in paragraph 11 that they along with the respondents/defendants herein have equal shares in the suit land and in his evidence the appellant herein, as DW-1, categorically stated that the appellant and the respondents/defendants had equal shares and this aspect eschewed consideration of both the learned Courts below and as such, the impugned judgment and decree so passed by the learned Trial Court suffers from perversity and therefore, it is contended to set them aside.

6. Per contra, Mr. Sheikh, learned counsel for the respondents submits that there is concurrent finding of fact by the learned Courts below and that no substantial question of law is involved herein this appeal and the learned Courts below have considered all the aspects and therefore, Mr. Sheikh contended to uphold the impugned judgments and decrees. However, Mr. Sheikh submits that the predecessor-in-interest of the appellants/plaintiffs and the respondents/defendants were Boli Sk and Sudhu Sk and both have equal right over the suit land.

7. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the judgments and decrees, so passed by the learned Trial Court as well as learned First Appellate Court and also perused the substantial questions of law so framed while admitting the appeal.

8. It is not in dispute that the learned Trial Court while decreeing the suit relied upon unregistered sale deeds, which were exhibited as Exhibits-K, L, M and N and as transfer of immovable property is involved in the suit as per requirement of Section 17 and Section 49 of the Registration Act, the same ought to have been registered and had the same

been registered document, then it would have gave a different dimension to the case of the respondents/defendants. And this aspect has also eschewed consideration from the learned First Appellate Court.

9. Moreover, it also appears that the appellants in the written statement, specially in paragraph No.11 had taken a stand that the appellants and the respondents herein both have equal shares over the suit land. But the learned Trial Court as well as the learned First Appellate Court has overlooked the evidence of DW-1, who categorically stated that being the successor-in-interest of Boli Sk and Sudu Sk, they have equal shares over the suit land. Thus, both the learned Courts below overlooked the evidence of DW-1 and arrived at an erroneous finding.

10. Under the aforementioned facts and circumstances, this Court is of the view that the matter can be remanded to the learned First Appellate Court to consider aforementioned aspect by framing appropriate point for determination and thereafter, hear the parties afresh and decide the same in accordance with law.

11. Send down the records of the learned Courts below forthwith with a copy of this judgment and order.

12. Further, the learned First Appellate Court is requested to make an endeavour to dispose of the same as soon as practicable.

13. With the aforesaid observation, the appeal stands disposed of. The impugned judgment and decree dated 06.10.2018 passed in Title Appeal No.61/2015 stands set aside and quashed. The parties are directed to appear before the learned First Appellate Court within a period of 10(ten) weeks from today.

**Sd/- Robin Phukan**  
**JUDGE**

**Comparing Assistant**