GAHC010104122019

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

Case No. : RSA/104/2019

SRI AMRIT SINGH AND ANR
S/O- LATE KARTOL SINGH, R/O- KHATKHATI BAGICHA GAON,
KHALOIGHUGRA MOUZA, P.O. MORAN KHATKHATI, DIST.- CHARAIDEO,
ASSAM.

2: SRI HARBONS SINGH @ BILLA
S/O- LATE MOHENDRA SINGH
R/O- KHATKHATI BAGICHA GAON
KHALOIGHUGRA MOUZA
P.O. MORAN KHATKHATI
DIST.- CHARAIDEO
ASSAM

VERSUS

SRI ASHOK SARMAH AND 5 ORS.
S/O- LATE DWARIKA NATH LOHAR, R/O- JHALEM GAON, SEPON MOUZA,
P.O. MORAN KHATKHATI, DIST.- DIBRUGARH, ASSAM.

2:SRI MUKTI SARMAH
S/O- LATE DWARIKA NATH LOHAR
R/O- JHALEM GAON
SEPON MOUZA
P.O. MORAN KHATKHATI
DIST.- DIBRUGARH
ASSAM.

3:SRI SIV KUMAR SARMAH
S/O- LATE DWARIKA NATH LOHAR
R/O- JHALEM GAON
SEPON MOUZA
P.O. MORAN KHATKHATI
DIST.- DIBRUGARH
ASSAM.

4:SRI DINESH SARMAH
S/O- LATE DWARIKA NATH LOHAR
R/O- JHALEM GAON
SEPON MOUZA
P.O. MORAN KHATKHATI
DIST.- DIBRUGARH
ASSAM.

5:SRI SUDHIR SARMAH
S/O- LATE DWARIKA NATH LOHAR
R/O- JHALEM GAON
SEPON MOUZA
P.O. MORAN KHATKHATI
DIST.- DIBRUGARH
ASSAM.

6:SRI RAJESH SARMAH
S/O- LATE DWARIKA NATH LOHAR
R/O- JHALEM GAON
SEPON MOUZA
P.O. MORAN KHATKHATI
DIST.- DIBRUGARH
ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : MR H RAHMAN

BEFORE

THE HON'BLE MR JUSTICE PRASANTA KUMAR DEKA
O R D E R

17. 12. 2020

Heard Ms. S Kataki, learned counsel for the appellants. Also heard Mr. R Ali, learned counsel for the respondents.

The present respondents as the plaintiffs filed T.S. No. 14/2000 in the court of learned Munsiff, Charaideo against the present appellants as the defendants seeking for recovery of khas possession in respect of the suit premises by evicting defendants appellants and for realization of future and arrear rent along with interest @ 12%. The defendants appellants

contested the suit by taking the stand that the tenancy is in respect of the land measuring 1 Bigha 3 Lechas and not in respect of the houses standing thereon. In addition to that the quantum of rent per month in respect of the tenanted premises was also disputed. Finally, the learned trial court vide judgment and decree dated 17.07.2017 decreed the suit holding that the defendants appellants are tenants in respect of the suit houses instead of their claim of the tenancy in respect of the land upon which the tenanted premises are situated. The suit was further decreed for arrear and future rent along with costs. Being aggrieved, the defendants appellants filed T.A. No. 11/2017 in the court of learned Civil Judge, Sibasagar which was accordingly dismissed by the judgment and decree dated 06.03.2019. Thereafter, this second appeal is preferred, which is taken up for hearing under Order XLI Rule 11 CPC for admission.

It is submitted by Ms. Kataki that the tenancy was in respect of the land and the learned court below failed to appreciate the evidence on record and arrived at a perverse finding while deciding the issue Nos. 3 and 7. It is the further contention of the learned counsel for the appellants that the learned court below while assessing the rent failed to consider the oral evidence inasmuch as it was disputed that the claim made by the plaintiffs respondents in respect of the rent was false. Accordingly, Ms. Kataki wanted to project that the findings of the learned court below are perverse. Mr. Ali on the other hand referred Exhibit No. 3 which is a petition filed in Misc (NJ) No. 3/2000 in the court of learned Civil Judge (Jr. Div) by the defendant appellant No. 2 with a prayer to allow the said defendant appellant No. 2 to deposit the rent in respect of two numbers of kaccha (line hotel) houses situated over the schedule land of the said petition. Upon production of the said Exhibit No. 3 it is the contention of Mr. Ali that the submission of perversity in the findings of the learned court below is not at all believable as in Exhibit 3 itself the defendants appellants admitted the tenancy in respect of two houses standing over the land covered by Dag No. 346 of periodic patta No. 33 and as such sought the leave of the court to deposit the rent in respect of the two kacha houses on the schedule land.

I have given due consideration to the submissions made by the learned counsel. On perusal of the judgment passed by the learned first appellate court and also the one passed by the learned trial court, I am convinced that the tenancy was in respect of two houses

standing over the land against the claim of the defendants appellants in respect of the land over which the two houses are standing. On perusal of the Exhibit 3, I am satisfied that the findings of the learned court below in respect of the tenancy are proper. Such being the position, I do not find any substantial question of law to be formulated in this appeal and accordingly the same is dismissed at the admission stage.

Accordingly this second appeal stands dismissed.

JUDGE

Comparing Assistant