GAHC010190592019

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

Case No. : CRP(I/O)/296/2019

DWIPEN KR. DAS
S/O- HARMOHAN DAS, R/O- VILL- THUTIKATA, MOUZA- KHETRI DHARMAPUR, P.S- BELSOR, DIST- NlbRI, ASSAM, PIN- 781304

VERSUS

HIMANI DAS AND 2 ORS
W/O- DINESH DAS, R/O VILL- THUTIKATA, MOUZA- KHETRI DHARMAPUR, P.S- BELSOR, DIST- NALBARI, ASSAM , PRESENT R/O- JONAKINAGAR, BYLANE NO.2, H NO.2, LAKHRA, GHY- 40, KAMRUP(M), ASSAM

2:GIRIBALA DAS

3:MAHINDRI DA

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : MR. S SARMA

BEFORE

THE HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

O R D E R

02. 12. 2020

Heard Mr. R Goswami, learned counsel for the petitioner. Also present Mr. S Sarma, learned counsel for the respondent No. 1 and Mr. J Deka, learned counsel for the respondent

Nos. 2 and 3 is present.

The present respondent No. 1 and the petitioner are respectively the sister and brother. The respondent No. 1 as the plaintiff filed T.S. No. 44/2018 in the court of learned Munsiff No. 1, Nalbari seeking for the relief of declaration of right, title and interest over the suit land on the strength of a sale deed No. 592/2010. Along with same, the plaintiff respondent No. 1 sought for the relief of declaration that the defendant No. 1 petitioner has no right to occupy the suit land on the strength of sale deed No. 624/2015, which is not binding upon the plaintiff respondent No. 1 and for recovery of khas possession and injunction. The plaintiff respondent No. 1 purchased the suit land by the said sale deed No. 592/2010 from the respondent Nos. 2 and 3 who are related to the defendant petitioner. As against the claim made by the plaintiff respondent No. 1, the petitioner defendant filed his written statement along with counter claim seeking for declaration of the registered sale deed No. 592/2010 on the basis of which the plaintiff respondent No. 1 made the claim over the suit land as null and void, fraudulent, fabricated etc. and other consequential relief. The claim of the defendant petitioner in respect of the suit land is on the basis of a registered sale deed bearing No. 624/2015 purportedly executed by the defendant respondent Nos. 2 and 3. The defendant respondent Nos. 2 and 3 along with defendant No. 4 filed their joint written statement in TS No. 44/2018 wherein it has been specifically stated that the said defendant respondent Nos. 2 and 3 sold 1 Katha 5 Lechas of land to the plaintiff respondent No. 1 with specific boundaries. It is also stated in the written statement that the said defendants respondent Nos. 2 and 3 further sold 1 Katha of land to the defendant petitioner other than the one sold to the plaintiff respondent No. 1. Similarly, the said defendants respondent Nos. 2 and 3 also filed their joint written statement in the counter claim filed by the defendant petitioner. In the said written statement, there is a specific statement made by the defendants respondent Nos. 2 and 3 that the land sold to plaintiff respondent No. 1 was not sold again the to the defendant petitioner in the year 2015. It is also stated in the said written statement that the boundaries shown purportedly in the sale deed bearing No. 624/2015 were not similar to the land measuring 1 Katha 5 Lechas purportedly sold by the said defendants respondent Nos. 2 and 3 to the plaintiff respondent No. 1. On the basis of the said pleadings the suit proceeded after framing of the issues by the learned court below and as submitted by the learned counsel the

suit is pending for evidence of plaintiff side. During the pendency of the suit, the defendant petitioner filed an application seeking for sending the signatures of the defendant respondent No. 3 appearing in the registered sale deed No. 592/2010 for Forensic Science Laboratory (FSL) in order to examine the veracity as to whether the said sale deed was executed by defendant respondent No. 3. The said petition was dismissed vide the impugned order dated 04.06.2019 passed in T.S. No. 44/2018 by the learned Munsiff No. 1, Nalbari. Being aggrieved, the petitioner has filed this revision petition challenging the said order dated 04.06.2019.

Mr. Goswami submits that as there is a specific allegation in the counter claim of the defendant petitioner that the defendant respondent No. 3 did not execute the registered sale deed No. 592/2010 in favour of the plaintiff respondent No. 1 rather the said signature of the defendant respondent No. 3 was put by the plaintiff respondent No. 1, accordingly, on the said pleadings the learned court below ought to have sent the said registered sale deed No. 592/2010 for FSL in order to examine the purported signatures of the defendant respondent No. 3 therein. The said submission is vehemently objected by Mr. Sarma, learned counsel for the plaintiff respondent No. 1. Producing certified copies of the written statements filed by the defendant respondent Nos. 2 and 3, it is submitted by Mr. Sarma that there is specific admission in respect of the execution of the sale deed more specifically the sale deed No. 592/2010 in favour of the plaintiff respondent No. 1 therebeing transferring land measuring 1 Katha 5 Lechas. The said land, as submitted by Mr. Sarma is well defined by specific boundaries and in the said written statement there is specific pleading by the defendants respondent Nos. 2 and 3 that a separate plot of land other than one purchased by the plaintiff respondent No. 1 was sold to defendant petitioner by way of sale deed in the year 2015. However, in the written statement against the counter claim, the defendant respondent No. 2 supported their stands taken in the written statement rather, in the said written statement against the counter claim the said respondent Nos. 2 and 3 clarified that they did not sell the land to defendant petitioner which was earlier sold to the plaintiff respondent No. 1. Mr. Deka, learned counsel representing defendants respondent Nos. 2 and 3 supported the submission made by Mr. Sarma along with the contents of the written statement.

I have given due consideration to the submissions of the learned counsel. From the

statement made by the defendants respondent Nos. 2 and 3 in written statements both in the suit and the counter claim, it is found that there is a specific admission on the part of the said executants defendant respondent No. 3 that she sold land measuring 1 Katha 5 Lechas to the plaintiff respondent No. 1 with specific boundaries whereupon the said plaintiff respondent No. 1 constructed houses allowing the defendant petitioner to possess one of the rooms. Similarly, in the written statement against the counter claim there is a specific statement made by the defendants respondent Nos. 2 and 3 that the land sold to defendant petitioner was other than the one sold to the plaintiff respondent No. 1. In view of the said pleading in the written statement by the defendants respondent Nos. 2 and 3, in my considered opinion, the learned court below rightly disallowed the said petition filed by the defendant petitioner inasmuch as the executants of the registered sale deed No. 592/2010 admitted the fact of execution of the same. However, the present defendant petitioner shall get the scope to cross-examine the defendants respondent Nos. 2 and 3 in order to demolish the pleadings of the defendant respondent No. 3. In view of the same, I do not find any merit in this revision petition, which accordingly stands dismissed. Interim order if any stands vacated. Any observation made in this revision petition shall not be taken into consideration at the time of disposal of the suit.

JUDGE

Comparing Assistant