2017:GAU-AS:13843

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

RSA No. 170/2013

On the death of Late Ram Kumar Roy, his legal heirs-

1. Priti Roy,
   W/o Late Ram Kumar Roy,
   Resident of Vill & PO-Jibongram,
   Dholai, Dist.-Cachar.

2. Rahul Roy,
   S/o Late Ram Kumar Roy,
   Resident of Vill-Gojolhat, PO-Jibongram,
   Dholai, Dist.-Cachar, Assam, Pin-788120.

3. Rupak Roy,
   S/o Late Ram Kumar Roy,
   Resident of Vill-Gojolhat, PO-Jibongram,
   Dholai, Dist.-Cachar, Assam, Pin-788120.

4. Janaki Roy,
   D/o Late Ram Kumar Roy,
   Resident of Vill-Gojolhat, PO-Jibongram,
   Dholai, Dist.-Cachar, Assam, Pin-788120.

……***Appellants***.

-Versus-

1. Shri Sailen Roy.
2. Shri Arun Roy.
3. Shri Kripesh Roy.
4. Shri Mridul Roy.
5. Shri Swapan Roy.
6. Smt. Moni Mala Roy.
7. Smt. Pori Mala Roy.

   All are sons and daughters of Late Sonamoni Roy,

Vill-Gajalghat, PO & PS-Dholai,
Dist.-Cachar, Assam.

……***Defendants/Respondents***.

8. Smt. Amla Roy,
W/o Shri Harendra Roy,
Vill-Jibangram, PO & PS-Dholai,
Dist.-Cachar, Assam.

9. Shri Rashik Roy.

10. Shri Dhanjoy Roy.

Sons of Late Grish Namasudra.

11. Struck of vide Court's Order dated 03.08.2015.

12. Struck of vide Court's Order dated 03.08.2015.

13. Struck of vide Court's Order dated 03.08.2015.

……***Respondents***

(Non-contested defendants).

For the Appellants : Mr. B.J. Ghosh. ……Advocate.

For the Respondents : Mr. S.P. Choudhury. ……Advocate.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Date(s) of Hearing :- 23.07.2026, 06.08.2026 & 11.08.2026

Date on which judgment is reserved :- 11.08.2026

Date of pronouncement of judgment :- **03.11.2026**

Whether the pronouncement is of the operative part of the judgment? :- N/A

Whether the full judgment has been pronounced? :- Yes

JUDGMENT AND ORDER

Heard Mr. B.J. Ghosh, learned counsel for the appellants and also heard Mr. S.P. Choudhury, learned counsel for the respondents.

2. This appeal, under Section 100 of the Code of Civil Procedure is directed against the judgment and decree, dated 02.04.2013, passed by the learned Civil Judge No.3, Cachar, Silchar, in Title Appeal No.35/2008. It is to be noted here that vide impugned judgment and decree, dated 02.04.2013, in T.A. No.35/2008, the learned Civil Judge No.3, Cachar, Silchar (learned Appellate Court) has upheld the judgment and decree, dated 31.10.2008 and 12.11.2008, passed in Title Suit No.340/2006 by the learned Munsiff No.1, Cachar, Silchar, (learned Trial Court) whereby the learned Trial Court had dismissed the suit of the appellants herein.

3. For the sake of clarity, the parties herein after, will be referred to by their original status in the Title Suit.

4. The background facts leading to filing of the present appeal are briefly stated as under:-

> "The case of the plaintiff is that the original owner of the suit land were one Indreswar Mohanta and Jaladhar Mohanta. And in the year 1976-77 one Girish Namasudra, the predecessor of the defendant Nos.1—7 purchased the suit land.

At the time of said purchase, Jaladhar Roy, predecessor of plaintiff No.1, was possessing the suit land as an occupancy tenant since long back, under the original owner, and after the purchase by Girish Namasudra, he also acknowledged the tenancy right of Jaladhar Roy. Since Jaladhar Roy had no issue, he brought his nephew Nirod Roy, the plaintiff No.1, to his house and began to live together. Jaladhar Roy died leaving behind his wife Chintamoni Roy and the plaintiff No.1. Subsequently, Chintamoni Roy also suffered demise in the year 1984, leaving behind the plaintiff No.1 and since then the plaintiff No.1, has been possessing the suit land without any objection.

Then in the year 1994, plaintiff No.1 sold out the jote right of the suit land to plaintiff No.2, on a valuable consideration of Rs.20,000/- by executing one unregistered Saranlipi on 04.03.1994, and delivered possession to him. Then after transfer of jote right by the plaintiff No.1, to the plaintiff No.2, the defendant No.3, elder son of Girish Namasudra also acknowledge the purchase by the plaintiff No.2 by executing a Saranlipi on 19.10.1994.

Thereafter, the defendant No.1 in collusion with the defendant No.2 had filed Title Suit No.125/1994, in the Court of Additional District Judge No.1, Silchar, against the defendant No.2 for specific performance of contract. The defendant No.2 did not file any written statement and that suit was decreed ex-parte on 20.04.1995. The boundary given in the Title Suit

No.125/1994, includes the homestead and the agricultural land of the plaintiff No.2. The defendant Nos.1 and 2 collusively filed the Title Suit No.125/1994 to dispossess the plaintiff No.2 from the suit land. Thereafter, the defendant Nos.1 and 2 fraudulently obtained the decree in Title Suit No.125/1994. And the plaintiff came to know about the said decree from the neighbours to whom the defendant No.1 told his intention. The fraudulent decree, so passed has given rise to cause of action.

And accordingly, the plaintiff filed the Title Suit No. 340 of 2006, seeking following reliefs:-

(i) A decree of declaration that the plaintiffs are occupancy tenant described in respect of the suit land described in the schedule below;

(ii) Confirmation of possession after declaration of the jote right of the plaintiffs in respect of the schedule land;

(iii) A declaration that plaintiffs are non-ejectable tenant under the landlord i.e. defendant Nos.2 to 7;

(iv) A decree directing the Collector to issue khatian in the name of plaintiffs;

(v) An injunction against the defendants and their agent, relative not to interfere with the possession of the plaintiffs in respect of suit land described in the schedule below; and

(vi) A declaration that defendant No.1 is not entitled to get khas possession on the strength of fraudulent decree dated 20.04.1995 in Title Suit No.125/1994.

The defendant No.1 has filed his written statement denying the statement and averment made by the plaintiff in the plaint. He denied that the plaintiffs' statement that Jaladhar Roy had no issue and he brought his nephew, the plaintiff No.1 to his home and began to live together with him. He stated that the suit land was paternal property of defendant No.2, and he, for want of money, agreed to sale the land to the defendant No.1 and also executed an agreement for sale. Subsequently, the defendant No.1 had filed one suit being Title Suit No. 125/1994 and obtained a decree in the same. And that the said decree is not a fraudulent decree and therefore, he has contended to dismiss the suit.

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

1) Whether there is cause of action for the suit?

2) Whether the suit is maintainable in its present form and manner?

3) Whether the suit is barred by law of limitation?

4) Whether the plaintiffs have right to seek necessary relief against the State of Assam without making State of Assam as a party in the suit?

5) **Is the suit bad for multifariousness of cause of action?**

6) **Are the plaintiffs entitled to any relief in this suit?**

Thereafter, the learned Trial Court, during the trial the plaintiff side adduced had examined 4 witnesses of the plaintiff and also examined 3 witnesses of the defendants. Then after hearing argument, decreed the suit of the plaintiff on contest, with cost, declaring that the plaintiffs are non-evictable tenant under the landlord of the defendant no. 2-7 and also confirmed the possession in favour of the plaintiff and also granted injunction as prayed for. It was also declared that the plaintiffs are not entitled for relief for issuing direction to the collector for issue of khatian in their name.

Then being aggrieved by the decree the defendant approached the learned Appellate Court by preferring an Appeal, being T.A. No. 12/2001. In the said appeal the learned Appellate Court held that proper issues have not been framed in the suit and thereafter framed two new issues as under and remanded back the Suit to the original court to decide afresh.

The two new issues are as follows:-

7) **Whether the plaintiff No.1 got social and legal recognition to claim the right over the property enjoyed by Jaladhar Roy and his wife Late Chintamoni Roy and thus acquired any right to transfer right over the property of Late Jaladhar Roy and Chintamoni Roy?**

8) **Whether the defendant No.2 collusively entered into an agreement for sale of a plot of land to defendant No.1 and whether defendant No.1 collusively filed T.S. No.125/1994 obtained a fraudulent decree in respect of the suit land?**

Thereafter, the learned Trial Court, after hearing both the parties, has decided all the issues in negative and thereafter, dismissed the suit.

Then being aggrieved, the plaintiffs had preferred an appeal, being Title Appeal No.35/2008, before the learned Appellate Court, upon which the learned Appellate Court has framed the following point for determination:-

Whether the impugned judgment and decree passed by the learned Trial Court suffers from any infirmity which requires any interference from this Court?

Thereafter, hearing both the parties and considering the materials available on record, the learned First Appellate Court had affirmed the judgment and decree, so passed by the learned Trial Court.

5. And being aggrieved, the appellants approached this Court by filing the present appeal, under Section 100 of the Code of Civil Procedure, which was admitted vide order dated 07.01.2015, on the following substantial questions of law:-

1) **Whether the Courts below fails to consider that the plaintiff No.1 inherited the status of tenancy right in respect of the suit land and**

by holding that Sri Nirode Roy i.e. plaintiff No.1 was not the adopted son of the original tenant, namely, Jaladhar Roy?

2) Whether in view of the evidence given by DW-3, the finding of the Courts below that the plaintiff No.1 is not the tenant of the original landlord is perverse?

6. Mr. Ghosh, learned counsel for the appellants submits that the learned Trial Court, as well as the learned First Appellate Court had committed material irregularity in arriving at the finding. He also submits that in view of the Order XLI Rule 23 CPC, the matter may be remanded to the learned Court below for a fresh decision. He further submits that the plaintiff No.1 is the nephew of Jaladhar Roy and Jaladhar Roy had no issues and after the death of Jaladhar Roy and his wife Chintamoni Roy, the plaintiff No.1 is entitled to inherit the property under the Hindu Succession Act. He also submits that the plaintiff No.1 was adopted by Jaladhar Roy and Chintamoni Roy and otherwise also, after the death of Jaladhar Roy and Chintamoni Roy, the plaintiff No.1 is entitled to inherit the property as per the Hindu Succession Act, being the nephew of Jaladhar Roy, who is a Class-I heir under the Hindu Succession Act. And as such the learned Trial Court as well as the learned First Appellate Court had wrongly decided the issues against the plaintiff.

6.1. Under such circumstances, Mr. Ghosh submits that the substantial question of law, as formulated by this Court is involved in this appeal and the same have to be answered in affirmative. Therefore, he has contended to allow this appeal by setting aside the impugned judgments and orders.

6.2. In support of his submission, Mr. Ghosh has referred to a decision of Hon'ble Supreme Court in the case of **Govindan vs. Subramaniam and others**, reported in **(2000) 9 SCC 510**.

7. Per contra, Mr. Choudhury, learned counsel for the respondents submits that though two substantial questions of law have been framed in this appeal, yet, none of the said two substantial questions of law are involved here in this appeal. He submits that plaintiff No.1 is not the adopted son of Jaladhar Roy. There is no evidence and the learned Trial Court has recorded a finding to that effect in the judgment dated 31.10.2008 in T.S. No. 340/2006, and that there is no document to substantiate that Jaladhar Roy and Chintamoni Roy had adopted the plaintiff No.1, and the said finding of the learned Trial Court attained finality, as the same has not been challenged by the plaintiff No.1 in the appeal.

7.1. Mr. Choudhury further submits that Nirod Roy, the plaintiff No.1 has failed to prove that he is the adopted son of Late Jaladhar Roy and Chintamoni Roy and also failed to establish that Jaladhar Roy was the occupancy tenant under the original owner of the land. And in that view of the matter, the substantial questions of law, so formulated by this Court is not at all involved and therefore, he has contended to dismiss the same.

8. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the memo of appeal and the grounds mentioned therein and also the substantial questions of law, so formulated by this Court and at the time of admitting the appeal and also gone through the record of the learned Courts below.

9. It appears that the from the record that both the substantial question of law, so formulated by this Court, are directly relates to the Additional Issue No.7 so framed by the learned Trial Court in the impugned judgment dated 31.10.2008, in T.S. No. 340/2006.

10. Notably, the learned Trial Court, in the judgment dated 31.10.2008, while dealing with the Additional Issue No.(7), framed as per direction of the Appellate Court in T.A. No.12/2001, had held that the plaintiff No.1 submitted that the original owner of the suit land was Indreswar Mahanta and Jaladhar Mahanta and in the year 1976-77, Girish Namasudra, the predecessor of the defendant Nos.1—7 purchased the suit land, and at the time of the said purchase, Jaladhar Roy, predecessor of plaintiff No.1, was possessing the suit land as an occupancy tenant since long back, under the original owner, and after the purchase, Girish Namasudra, he also acknowledge the tenancy right of Jaladhar Roy and that Jaladhar Roy has no issue and he brought his nephew Nirod Roy, plaintiff No.1, to his home and began to live together and Jaladhar Roy died leaving behind his wife Chintamoni Roy and the plaintiff No.1 and subsequently, Chintamoni Roy also died in the year 1984 leaving behind the plaintiff No.1 and since then the plaintiff No.1, possessing the suit land without any objection.

10.1. The learned Trial Court also held that first of all the plaintiff No.1 failed to lead any evidence that Jaladhar Roy was the occupancy tenant, under the original owner Indreswar Mahanta and Jaladhar Mahanta and if suppose it is presumed that Jaladhar Roy was the occupancy tenant, then the question arise as to whether the plaintiff No.1 has the right to claim over the property. The plaintiff No.1 stated that he is the nephew of

Jaladhar Roy. The burden is on the plaintiffs to prove the relationship of uncle-nephew between Jaladhar Roy and him. The plaintiff No.1 appeared as PW-1 and he deposed in his chief that Jaladhar had no issue and that is why he brought him to his house and rear up. PW-3 also in his chief, deposed that plaintiff No.1, is the nephew of Jaladhar Roy. In the plaint, the plaintiff claimed that he is the nephew of Jaladhar Roy, but in his deposition he stated that he was brought by Jaladhar Roy. And thereby, impliedly the plaintiff No.1 tries to express that he was adopted by Jaladhar Roy.

10.2. The learned Trial Court further held that the plaintiff No.1 had failed to prove that he was really adopted by Jaladhar. None of the plaintiffs' witness deposed in this line. The adoption must be recognized by the society. In the past, adoption was viewed primarily as a means for a childless married couple to normalize their relationship. The plaintiff No.1 must show at what age and how he was adopted. Moreover, the plaintiff has not specifically pressed in specific terms that he was actually adopted by Jaladhar. Mere living with a person does not create the status of an adoptive son. Adoption ordinarily terminates the rights and responsibilities of the natural parents to the child. It is not mentioned by the plaintiff as to who are his natural guardian and whereabouts them.

10.3. Thereafter, the learned Trial Court held that the plaintiff No.1 has got no social and legal recognition to claim the right over the property enjoyed by Jaladhar Roy and his wife Late Chintamoni Roy on the mere fact that he was brought up by Jaladhar Roy and thereafter, it has held that the plaintiff No.1 has not acquired any right to transfer right over the

property of Late Jaladhar Roy and Chintamoni Roy and thereafter, decided the issue in negative.

11. It also appears that the learned First Appellate Court, in the impugned judgment and order, had upheld the aforementioned finding of the learned Trial Court by holding that there is nothing to show that the plaintiff No.1 was adopted by Jaladhar Roy and no effective evidence is there to show that the plaintiff No.1 is adopted by his uncle Jaladhar Roy during his lifetime and that the learned Trial Court has rightly held that adoption must be recognized by society which was viewed primarily as means for childless married couple to normalize their relationship and the plaintiff must show as to how and when he was adopted by his so called adoptive father and mere living with a person does not create the status of adoptive son.

12. The finding so arrived at by the learned Courts below, while examined in the light of the materials available on the record and also in the light of the submission of learned counsel for both the parties, this Court finds sufficient force in the submission of Mr. Choudhury, learned counsel for the respondents. It appears that there is absence of material and evidence to suggest that Late Jaladhar Roy and Chintamoni Roy had adopted the plaintiff No.1. And in absence of any evidence as to how he is the nephew of Jaladhar Roy, and further in absence of any material or document to suggest that he was adopted by Late Jaladhar Roy, he cannot inherit the properties belonging to Late Jaladhar Roy and to transfer the same to the plaintiff Nos.2.

12.1. There is nothing on the record to show that there was any social recognition and legal recognition to the claim of the plaintiff No.1, over

the right enjoyed by Late Jaladhar Roy and his wife Chintamoni Roy. The learned Trial Court as well as the learned First Appellate Court has rightly held that the plaintiff No.1 was brought up by Jaladhar Roy, and it does not mean that he is the adopted son of them. Indisputably, the finding of the learned Trial Court that the plaintiff No.1 is not the adopted son of Late Jaladhar Roy, has not been challenged in the appeal by the plaintiff No.1. It is worth mentioning in this context that the First Appeal and this Second Appeal, both are preferred by the plaintiff No.2, namely, Late Ram Kumar Roy.

12.2. But, as submitted by Mr. Choudhury, learned counsel for the respondent that an adverse finding of the trial court against Plaintiff No. 1 (on adoption and inheritance of the tenancy/jote right) attains finality so as to bar Plaintiff No. 2 (the purchaser) from challenging it on appeal when only Plaintiff No. 2 appeals, is not the correct proposition of law. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Hemareddi (D) through LRs v. Ramachandra Yallappa Hosmani,** reported in (**2019) 6 SCC 756.**

12.3. Notably, in the said case Hon'ble Supreme Court has held that where plaintiffs (or appellants) have distinct, separate and independent rights of their own and join together only for convenience, the decree is to be viewed in substance as a combination of several decrees and not as a single joint and inseverable decree. In such a case, the failure of one plaintiff to pursue the matter (or the finality of the decree against him) does not automatically bar the other plaintiff who has an independent interest.

12.4. In the present facts, plaintiff No. 2 holds an independent proprietary interest as purchaser of the jote right. His claim, though derivative, is distinct from the personal claim of Plaintiff No. 1. The proposition laid down in the case of **Hemareddi (supra)** therefore supports the maintainability of plaintiff No. 2's appeal and the power of the appellate court to examine the findings on adoption and inheritance.

12.5. In the said case it has been held by Hon'ble Supreme Court that where there are more plaintiffs than one and the decree proceeds on any ground common to all the plaintiffs, any one of the plaintiffs may appeal from the whole decree, and the Appellate Court may reverse or vary the decree in favour of all the plaintiffs, by exercising the jurisdiction under Order XLI Rule 4 CPC, which provides that where there are more plaintiffs than one and the decree proceeds on any ground common to all the plaintiffs, any one of the plaintiffs may appeal from the whole decree, and the Appellate Court may reverse or vary the decree in favour of all the plaintiffs.

12.6. In the present case the learned Trial Court had dismissed the suit on the common ground that Plaintiff No. 1 had failed to prove adoption and consequent inheritance of the tenancy right - the very foundation of the title conveyed to Plaintiff No. 2. Plaintiff No. 2 is, therefore, entitled to invoke Order XLI Rule 4 and ask the appellate court to reverse the decree on that common ground.

12.7. Similar proposition is laid down in the case of **Govindan (supra),**so referred by Mr. Ghosh, learned counsel for the appellant, wherein it has been held that

"3. The short question is whether the High Court in the impugned judgment was justified in taking the view that Defendant 2 who was one of the appellants in the second appeal had no locus standi to maintain the same. It was held that Defendant 2 was a purchaser from Respondents 4 to 6. But it is difficult to appreciate as to how it can be said that he had no locus standi to maintain the second appeal and for demonstrating that his vendors had legal title to convey the property to him. Order 41 Rule 4 of the Code of Civil Procedure also will apply in such a case. The observation of the High Court that the appellant's vendors have not filed any appeal would therefore not come in the way. It is obvious that once they had sold out the disputed properties to the appellant-Defendant 2 they would not be interested in prosecuting the proceedings any further and the real interest would be of only Defendant 2–the appellant herein to try to show that his vendors had legal title to convey the property in question."

12.8. And accordingly, this Court is of the considered opinion that the submission of Mr. Choudhury, in this regard cannot be acceded to.

12.9. Since herein this case, the plaintiff No.1, namely, Shri Nirod Roy was not related to Jaladhar Roy and Chintamoni Roy, by mere living in the house of Jaladhar Roy does not confer any right upon the plaintiff No.1 to acquire any right and interest over the suit land. The appellant herein has failed to demonstrate before this Court how the concurrent finding of fact, as discussed herein above, by the learned Courts below is perverse warranting interference of this Court.

12.10. Under the given factual and legal matrix, this Court is of the considered opinion that the first substantial question of law, as formulated by this Court, does not flow out of the facts and circumstances on the record of the learned Courts below. Accordingly, the same stands answered.

13. Moving forward to the second substantial question of law, so formulated, this Court finds and also already held that the same also directly relates to the Issue No.7, so framed by the learned Trial Court.

13.1. It appears that the learned Trial Court, after discussing the evidence of the witnesses had held that the plaintiff No.1 had failed led any evidence that Late Jaladhar Roy was the occupancy tenant under the original owner, namely, Indeswar Mahanta and Jaladhar Mahanta. It has also been held that even if it is presumed that Jaladhar Roy was the occupancy tenant then the question arises as to whether the plaintiff No.1 has the right to claim over the property. It had further held that though

13.2. The learned Trial Court also held that the plaintiff No.1, though stated that he is the nephew of Jaladhar Roy the burden is upon him to prove the relationship of uncle-nephew between Jaladhar Roy and him and that P.W.3 also deposed to that effect and thereby, impliedly the plaintiff No.1 tries to express that he was adopted by Jaladhar Roy, he had failed to prove that he was really adopted by Jaladhar Roy and the same was also not recognized by the society and he had not specifically pressed in specific terms that he was actually adopted by Jaladhar and that mere living with a person does not create the status of an adoptive

son and that he also failed to establish as to who are his natural guardian and whereabouts them.

13.3. It is however a fact that the P.W.3, in his examination in chief stated that the plaintiff No.1 is the nephew of Jaladhar Roy, yet this piece of evidence is rebutted in cross-examination, wherein P.W.3 admitted that Nirod Roy(plaintiff No.1) was not related to Late Jaladhar Roy and Chintamoni Roy, even though he used to live at Jaladhar's house and that Nirod Roy did not buy any property and he do not know how he got the said property. In view of given factual matrix it cannot be said that the finding of the learned Trial Court is perverse in view of the evidence of P.W.3.

13.4. The learned First Appellate Court also affirmed this finding of the learned Trial Court. Thus, there is concurrent finding of facts by both the learned Courts below. And the appellant here in has failed to demonstrate any perversity in the said findings.

14. Under the given facts and circumstances, this Court is of the view that none of the two substantial questions of law, so formulated in this appeal, appears to be flown out of the records of the learned Courts below. And accordingly, this Court is of the view that there is no merit in this second appeal and consequently, the same is liable to be dismissed.

15. In the result, the appeal stands dismissed, leaving the parties to bear their own costs. Registry to send down the records of learned Courts below forthwith, with a copy of this judgment.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant