



GAHC010042222001

Page No.# 1/22



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

Case No. : RSA/66/2001

DHARAM RAJ GOALA and ORS,

VERSUS

ON THE DEATH OF DINESH KR. JAINHIS LEGAL HEIR HULAS CHAND JAIN
and ORS
C/O NIRMAL KUMAR HULAS CHAND

Advocate for the Petitioner : MR.G N SAHEWALLA

Advocate for the Respondent : MR. S ALAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

Date : 13-09-2022

Heard Mr. GN Sahewalla, the learned senior counsel assisted by Ms. S Todi, the learned counsel for the appellant and Mr. S Sahu, the counsel appearing on behalf of the respondent No.1. None has appeared on behalf of the other respondents.

2. At the outset, it is relevant to take note of the submission of the learned senior counsel appearing on behalf of the appellants that the respondent No.19 who was the co-appellant in Title Appeal No.16/1989 along with the defendant No.1, expired on 10.11.2001 during the pendency of the said Title Appeal No.16/1989 and before the completion of the hearing of the said appeal. He therefore submits that the said appeal i.e., the Title Appeal No.16/1989 in so far as the respondent No.19 herein/defendant No.30 in so far as said Appeal had abated. It is also relevant at this stage to take note of the submission of Mr. S Sahu, the learned counsel for the respondent No. 1, that by virtue of Order XLI Rule 4 of the Code, the defendant No.1/co-appellant in Title Appeal No.16/1989 can maintain the said appeal de hors the abatement of the said appeal in so far as the other co-appellant is concerned. The learned senior counsel for the appellant also submitted that as regards the Title Appeal No.14/1989 and Title Appeal No.15/1989, the matters have been already amicably resolved and as such, the instant appeal is only restricted to the adjudication in so far as the Title Appeal No.16/1989 is concerned.

3. This Court vide an order dated 31.08.2001 admitted the instant appeal by framing two substantial questions of law which are as herein under:

(i) Whether the impugned judgment passed without discussing the issues framed and recording its finding on the said issues is a judgment in accordance with the Order XIV Rule 2 of the CPC?

(ii) Whether in the case where the defendants claimed to permissive occupants/lease holder of the portion of the suit land under the plaintiffs are entitled to challenge the title of the plaintiffs to the same land?

4. At the outset, the learned senior counsel for the appellants submitted that the first substantial question of law so framed does not arise in the instant appeal and accordingly the same is not required to be taken into consideration while deciding the instant appeal. Taking into account the said submission made by the learned senior counsel appearing on behalf of the appellants, the first substantial question of law so formulated by this Court is considered as redundant, more so, taking into account that the said substantial question has been incorrectly framed in the facts of the instant case and consequently is not involved in the instant second appeal.

5. As regards the second substantial question of law, this Court is of the opinion that for adjudicating as to whether the second substantial question of law so framed is involved in the instant appeal, the facts of the instant case is required to be looked into.



6. For the purpose of convenience, the parties herein are referred to in the same status as they stood before the trial Court.

7. The plaintiff in the suit, Suresh Goala had averred in the plaint that the land of R.S. Patta No.1 which was included under Second R.S. Patta No.1, one Nagendra Chakraborty and Basdeo Kurmi were the joint owners and possessors of the entire land of the said patta in equal shares. Basdeo Kurmi was the owner and possessor of 4 bighas, 9 kathas 8 chataks of land which was half of the land of the said patta. Late Basdeo Kurmi had 7 sons and 2 daughters. Out of his sons, 4 sons died during the lifetime of their father. It has been alleged in the plaint that all the successors in interest of late Basdeo Kurmi became owners and possessors in respect to 4 bighas, 9 kathas 8 chataks of land pertaining to second R.S. Patta No.1 after the death of late Basdeo Kurmi. They sold the entire 4 Bighas, 9 kathas and 8 chataks of land to the plaintiff vide registered sale deed dated 15.09.1979 for proper consideration and delivered the possession thereof and relinquished their title thereto in favour of the plaintiff. The plaintiff thereupon obtained mutation over the said land and have been enjoying the possession thereof by regularly paying the revenue. The plaintiff thereupon wanted a partition of the estate and requested the co-sharers for the said partition, which happened sometime in the month of March,

1981. However, the co-sharers declined to accede to the request of the plaintiff. Consequently, the plaintiff filed Partition Proceedings being No.30/1981-1982 before the Collector's Court at Silchar. The said proceedings was dismissed on 21/12/1982 on the ground that Section 91(A) of the Assam Land and Revenue Regulations, 1886 stipulates that the revenue of the land should not be less than Rs.5/-, if partition was affected. It is under such circumstances that the suit was filed praying inter alia that the plaintiff has right, title and interest in respect to 4 bighas, 9 kathas 8 chataks of land out of the total land measuring 8 bighas, 19 kathas covered by Dag Nos.1/2/3/30/31 of Second RS Patta No.1, Mouza Ambitapur, Part-II Paragana, Barackpore and possession in respect thereof be confirmed; for imperfect partition in respect to the total land measuring 8 bighas, 19 kathas and separate plot of land measuring 4 bighas, 9 katha, 8 chataks be created and the plaintiff be given khas possession thereof by removing, if necessary any illegal constructions that the defendants might have thereof; for permanent injunction etc. The land in respect to which the plaintiffs sought for partition has been specifically described in the Schedule to the plaint. The said suit was registered and numbered as Title Suit No. 18/82 before the Court of the Assistant District Judge, No. 1, Cachar at Silchar.

8. In the said suit, there were four written statements filed. The defendant



No.1 who is also the respondent No.1 herein, filed a separate written statement. The defendant Nos.17 & 19 filed a joint separate written statement; the defendant No.18 filed written statement and the defendant Nos.31,32-34/35/37/38 filed jointly a separate written statement.

9. Taking into consideration that the instant appeal arises out of a judgment and decree passed in an appeal filed by the defendant No.1, this Court finds it relevant to take note of the specific stand taken in the written statement of the defendant No.1. In the said written statement of the defendant No.1, he had raised various preliminary objections as regards the maintainability of the suit. It was mentioned that the sale deed on the basis of which the plaintiff was claiming partition and declaration of right title and interest was fake, collusive and without any consideration. In the said written statement, the defendant No.1 had taken a specific stand as regards his right over the suit land. It was mentioned that Basdeo Kurmi during his lifetime vide the deed of lease dated 07.06.1973 granted lease of the Schedule 'Ka' land described in the written statement in favour of one Kishan Goala son of late Debi Prasad Goala of Chotomamda thereby allowing him to construct houses and live thereon upon receipt of proper consideration. The said Kishan Goala sold his jote title in respect thereof to one Jyotsna Kar by executing a deed dated 28.07.1967 with

the knowledge of owners. Subsequent there to, on 14.08.1968, the said Jyotsna Kar sold the same to the defendant No.1 and vide a deed dated 14.08.1968 and relinquished her title and possession there of. It was mentioned that the defendant No.1 has since been enjoying the possession of the said land on the strength of title of the previous owner by constructing his house etc thereon and by regularly paying the revenue etc. It was also mentioned that during the lifetime of Basdeo Kurmi he had given settlement of a total land measuring 2 bighas, 1 katha of Dag Nos.2/3/18 of RS Patta No.1 and Dag No.718 of Patta No.159 in favour of Ramesh Ch. Paul and his brother Krishna Ch. Paul. There was a partition between Ramesh Charan Paul and Krishna Charan Paul whereupon Ramesh Charan Paul sold his share of the land described in Schedule 'Kha' to Nabin Kr. Jain of Meherpur(the Respondent No. 19 herein) and relinquished his title and possession over the same by executing a sale deed dated 16.07.1972. It was further mentioned that late Basdeo Kurmi did not have possession of any part of the land since the time of Basdeo Kurmi; Nandalal Goala; Devi Prasad Goala, Krishna Goala etc, were in possession of some parts of the suit land on the strength of their own titles thereof and as such, the said persons should have been included as parties to the suit.

10. Further to that, it was mentioned that in respect to the remaining 4 kathas, 9 bighas and 8 chataks which was in the name of Nagendra Ch. Chakraborty and his brother Surendra Chandra Chakraborty, there was an amicable partition amongst the two brothers whereupon, Surendra Chandra Chakraborty became the sole owner and possessor of the land measuring 4 bighas, 9 kathas 8 chataks of the suit land. Thereupon by a deed dated 11.02.1968, the defendant No. 1 purchased the said land from Surendra Chandra Chakraborty and became the owner and possessor of the same. Since then, the defendant No. 1 have been in possession of the said land on the strength of the purchase. It is relevant however, to mention that the defendant No. 1 in his written statement have only given the boundaries in respect to the lands which were owned by Basdeo Kurmi and leased out but there was no boundary given in respect to the 4 bighas, 9 kathas 8 chataks of land which the defendant No. 1 claimed to have purchased from Surendra Chandra Chakraborty.

11. On the basis of the pleadings, the trial Court framed as many as 7 issues initially and thereafter two additional issues were framed. The said issues for the sake of convenience are quoted herein below:

- “1. Is there any cause of action ?*
- 2. To there any legal bar to the suit ?*



3. *Whether the suit land properly valued and requisite court fees paid ?*
4. *Is there any defect of parties ?*
5. *Whether the plaintiff any right, title and interest over the suit land and if so, what is the extent of his interest in the suit property ?*
6. *Is the suit property liable to be partitioned ?*
7. *Is the plaintiff entitled to the reliefs claimed in the suit ?*

Additional Issues :

8. *Whether the defendants have right, title and interest in the suit land ?*
9. *Whether the plaintiff is entitled to khas possession in respect of the suit land including the lands in possession of defendants Nos. 31 to 35, 37 and 38 & 19 ?”*

12. On behalf of the plaintiff there were 4 witnesses and they exhibited 28 documents. On behalf of the defendant there were 8 witnesses and they exhibited various documents.

13. The Trial Court vide a judgment and decree dated 20/9/1989 decreed the suit in favour of the plaintiff. In doing so, the Trial Court took up issue Nos. 5 and 9 together and concluded that the plaintiff had right, title and interest and possession over 3 bighas, 4 kathas 6 chataks 6 gondas and 3 koras of land and accordingly held that the suit property is liable to be partitioned and the plaintiff is entitled to khas possession in respect to the land to the said extent and the defendants except defendant Nos. 18 and 19 had no right, title and interest over the suit property. On the basis of the same, the other issues were decided accordingly.

14. At this stage, it may also be relevant herein to mention that the Trial Court



while deciding the said issue Nos. 5 and 9 also took into consideration the rights of the defendant Nos. 1 and 30 who claimed that they had purchased maliki rights of half of the suit patta from the legal heirs of Surendra Chandra Chakraborty. It was observed by the Trial Court that according to the R.S. Patta only Basdeo Kurmi and Nagendra Chakraborty were the recorded owners and it was not known as to how Surendra Chakraborty owned and possessed the suit land. It was also opined that no paper whatsoever was filed to that effect and as such the alleged purchase by the defendant Nos. 1 and 30 have not been proved. The Trial Court further observed that the defendant No.1 has also failed to prove the tenancy rights as alleged in favour of Ramesh Chandra Paul and Krishna Chandra Paul under Nagendra Chakraborty and that there was a partition that took place between Ramesh Chandra Paul and Krishna Chandra Paul. It was further observed that the defendant Nos. 1 and 30 have also failed to prove that they have any right of tenancy and ownership in any portion of the suit land and the said defendants have also not examined themselves in the suit. On the basis of the above, the Trial Court came to a conclusion that the defendant Nos. 1 and 30 had neither any right of tenancy nor ownership in any portion of the suit land. In respect to defendant No. 18, the Trial Court came to a finding that the defendant No. 18 during his cross-examination had duly admitted that he was dispossessed by the plaintiff and others on 26/1/1983 and

as such the plaintiff was in possession. It was opined that the defendant No. 18 had or has no possession over any portion of the suit patta and as such he was not entitled to any partition as prayed for.

15. As regards the defendant Nos. 17 and 19, the Trial Court observed that the defendant No. 19 sold her share to the defendant No. 19 and the defendant No. 19 inherited 8 kathas 2 chataks 4 gondas of land from Basdeo Kurmi and she had been in possession of the same and as such she prayed for separate allotment of her share in the event of allowing partition. Taking into account the admitted fact that each daughter of Basdeo Kurmi got $\frac{1}{11}^{\text{th}}$ (one eleventh) portion of the share and the plaintiff did not purchase the share of the defendant No. 19, the said defendant was entitled to get a separate allotment in respect to her share of 8 kathas 2 chataks 3 gondas of land in the suit patta in the event of partition. As regards the defendant No. 17, it was opined that the said defendant had no possession in any portion of the suit land and as such not entitled to separate partition.

16. On the basis of the above, the Trial Court passed an order to the effect that the plaintiff had right, title and possession over 3 Bighas 4 kathas 6 chataks 6 gondas 3 korus of land. It was held that the plaintiff was entitled to get khas possession over the suit land if necessary by removal of the houses thereon.

Further to that, the plaintiff was also held to be entitled to a preliminary decree of partition over the said area of the land. The defendant No. 19 is also entitled to preliminary decree of partition for 8 kathas 2 chataks 3 gondas of land in the suit patta. The Trial Court further held that the defendant No. 18 is not entitled to a preliminary decree of partition for the land he owns since he is not in possession of the suit land.

17. Being aggrieved and dissatisfied, three appeals were filed against the said judgment and decree passed by the Trial Court on 20/9/1989 in Title Suit No. 18/1982. Title Appeal No. 14/1989 was an appeal preferred by the defendant No. 18. Title Appeal No. 15/1989 was filed by the defendant No. 32 and Title Appeal No. 16/1989 was preferred jointly by the defendant No. 1 and defendant No. 30. At the cost of repetition, it is again reiterated that the defendant No. 30 did not file any written statement before the First Appellate Court and the defendant No. 30 expired during the pendency of the Appeal for which the Appeal stood abated in so far as the Defendant No. 30 was concerned.

18. The First Appellate Court allowed all the appeals thereby setting aside the judgment and decree passed by the Trial Court vide a judgment and decree dated 3/4/2001. From a perusal of the impugned judgment and decree dated 3/4/2001, it reveals that the First Appellate Court while deciding the said appeal

did not frame any point for determination.

19. Be that as it may, the First Appellate Court came to a finding that Exhibit 2 i.e. the deed of sale dated 15/9/1979 there was an admission that some portion of the suit property was under the possession of Nandalal Goala, Devi Prasad Goala and Bhugua Goala who are residing therein as permissive occupants but the area of the land in which these three persons were in occupation have not been mentioned in the deed. It was observed that while mentioning the specific area held by the aforesaid three persons, the deed itself appears to be vague and indefinite. Further to that, taking into consideration the Exhibit-4, the learned Appellate Court came to a finding that reading conjointly Exhibit 2 and Exhibit 4, an area of land measuring 6 Bighas was transferred in favour of the plaintiff which is more than the area which Basdeo Kurmi owned. It was further observed that from the cross-examination of PW-1, it was clear that Nandalal Goala, Devi Prasad Goala and Bhugua Goala were in possession of 4/5 kathas of land and have not been made parties to the suit. Further the plaintiff witnesses have upon being cross-examined had also admitted that Krishna Chandra Paul was in possession of 1/2 bighas of the suit land. Referring to Exhibit A and B and another deed executed by Krishna Charan Goala, the learned First Appellate Court observed that Krishna Chandra Paul had executed the lease in favour of Basdeo Kurmi which however, is completely contrary to Exhibit A inasmuch as it

was Basdeo Kurmi who had executed the lease in favour of Krishna Chandra Paul. It was observed that the successors of the lease holders have sold their interest to different persons, namely, Dinesh Kr. Jain and Jyotsna Kar. On the basis thereof, the learned First Appellate Court came to a finding that it was proved that Krishna Chandra Paul, Nandalal Goala and others have been possessing a substantial part of the suit land but the description of the area of land admitted by the plaintiff have not tallied with the documentary evidence i.e. Exhibit A, B and H and as such the plaintiffs have failed to ascertain their extent of interest. Further to that, the learned Appellate Court came to a finding that the plaintiff is not empowered to evict the permissive tenant, if any, in this fashion and must evict them in accordance with law. It was also observed that the plaintiff must ascertain the extent of his share in the suit for partition and not in the manner as sought for by the plaintiff. On the basis of the said finding, the First Appellate Court came to a finding that the Trial Court have not decided the issue Nos. 5 and 9 in accordance with law. Accordingly the appeals were allowed thereby setting aside the judgment and decree.

20. Feeling aggrieved and dissatisfied the present appeal was filed by the plaintiff challenging the judgment and decree dated 3/4/2001 passed in the three appeals i.e Title Appeal No. 14/1989, Title Appeal No. 15/1989 and Title Appeal No. 16/1989.

21. The learned Senior Counsel appearing on behalf of the appellant had duly submitted that the issues as regards the Title Appeal No.14/1989 and Title Appeal No. 15/1989 have already been settled between the parties and this aspect of the matter could be found from a perusal of the impugned judgment and more particularly at paragraph No. 14 wherein the appellants herein had duly submitted that they had no objection if any decree is passed in favour of the defendant No. 18 as Tetri sold her interest to the defendant No. 18. It was also relevant to take note of that on 10/11/2000 the defendant No. 30, who was a co-appellant in Title Appeal No. 16/1989 had expired and he was not substituted by his legal representatives and as such the appeal filed insofar as the defendant No. 30 is concerned had abated and thereby the judgment and decree passed by the Trial Court in so far as the defendant No. 30 is concerned have attained finality. However taking into consideration the provisions of Order XLI Rule 4 of the CPC and also taking into consideration that the claim of right by the defendant No. 1 was severable from the rights of the defendant No. 30, the First Appellate Court had rightly continued the Appeal on behalf of the defendant No. 1 who was the co-appellant in Title Appeal No. 16/1989.

22. In the backdrop of the above, let this Court take into consideration the substantial questions which have already been quoted hereinabove of law. The said substantial questions of law so formulated as to whether the defendants'

claim to be permissive occupants/lease holder of the portion of the suit land under the plaintiff are entitled to challenge the title of the plaintiff to the suit land. It would be seen that it was a suit filed for declaration of title as regards the suit land and for imperfect partition whereby the plaintiffs' share in the estate be partitioned out and given to him and for other consequential reliefs. The Trial Court on the basis of the evidence came to a finding that the plaintiff was entitled to 3 bighas 3 kathas 6 chataks, 6 gondas 3 korus of land and was also entitled to partition and for recovery of khas possession in respect to the said land.

23. The case of the defendant No. 1 as already narrated hereinabove is two fold. One was that the defendant No. 1 had purchased from the co-owner Surendra Chandra Chakraborty a plot of land measuring 4 bighas 9 kathas 8 chataks. The other claim is that the defendant No. 1 has lease hold rights over the land described in Schedule 'Ka' to the written statement having purchased the lease hold rights from one Jyotsna Kar who had purchased it from one Kishan Goala. The second claim of lease hold rights which have been purchased as claimed by the defendant No. 1 is not a proprietorship right but was a lease hold right, which would not entitle the defendant No. 1 to have a say in the partition proceeding, taking into consideration that the lessee cannot question the title of the landlord which is a well settled principle of law. The Trial Court

had categorically observed in its judgment that as regards the claim of ownership of the defendant No. 1 over 4 bighas 9 kathas 8 chataks of land which he had purchased from Surendra Chandra Chakraborty, the same could not be proved taking into account that the defendant No. 1 could not show as to how the said Surendra Chandra Chakraborty had any title over the said land of the suit patta. The First Appellate Court also however did not at all address the said question, though it was the statutory obligation cast upon the First Appellate Court being the last Court of facts and law to do so.

24. At this stage, this Court would like to refer to paragraph 15 of the judgment of the Supreme Court rendered in the case of **Santosh Hazari Vs. Puroshotham Tiwari** reported in (2001) 3 SCC 179 wherein the Supreme Court observed the duties of the First Appellate Court. Paragraph 15 being relevant is quoted hereinbelow :

“15. A perusal of the judgment of the trial court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings

supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi v. Bijendra Narain Choudhary*). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See *Madhusudan Das v. Narayanibai*) The rule is — and it is nothing more than a rule of practice — that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*) Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one.”

25. A perusal of the impugned judgment would clearly show that there was no conscious application of mind by the First Appellate Court and the findings so arrived at were not based upon the evidence on record. In a suit seeking declaration of right, title and interest and seeking partition, a tenant has no business unless the tenant claims a title against the landlord. Merely on the ground that there were some permissive occupants in the suit land, the First Appellate Court could not have dismissed the suit wherein the plaintiff sought for right, title and interest for confirmation of possession as well as for partition.

26. Now coming to the substantial question of law so formulated, it would be seen that the plaintiff had sought for right, title and interest, for confirmation of possession as well as for imperfect partition thereby claiming his portion of right which he had got on the basis of the Ext-2 i.e. the deed of sale dated 15/9/1979. Admittedly the said land which had been transferred by way of sale to the plaintiffs by the legal heirs of Late Basdeo Kurmi had no relation with the land allegedly said to have been purchased from one Surendra Chandra Chakraborty by the defendant No. 1 taking into consideration that Late Basdeo Kurmi was admittedly the owner of half of the land of the suit patta. The said land sold by the legal heirs of Basdeo Kurmi, even if had certain permissive occupants or tenants, did not disentitle the plaintiff for a declaration of right,

title and interest and confirmation of possession and for imperfect partition as sought for. Under such circumstances as the First Appellate Court completely erred in law in not taking into account that the land in respect to which the right, title and interest and imperfect partition was sought for thereby directing for separation of the estate to the extent of the suit land and the defendant No. 1's rights therein was limited to lease hold rights that too only to the extent of Schedule 'Ka' land, the suit could not have been dismissed as has been done by the First Appellate Court.

27. Considering the above, the 2nd substantial question of law which was formulated by this Court vide order dated 31/8/2001 is involved in the instant appeal. Accordingly, the impugned judgment and decree dated 3/4/2001 passed in Title Appeal No. 16/1989 stands set aside and quashed thereby the judgment and decree passed by the Trial Court dated 20/9/1989 in Title Suit No. 18/1982 stands affirmed.

28. Before concluding, this Court would however like to clarify that the decree so passed by the Trial Court is a final decree within the meaning of Order XX Rule 18 (1) of the Code thereby directing the Collector to carry out the partition in terms with Section 54 to the extent as decreed by the Trial Court i.e. the plaintiff's right, title and interest is declared in so far as 3 Bighas 4 kathas 6

chataks 6 gondas 3 korus of the suit patta and the Collector or any person designated by him in terms with Section 54 of the Code read with the provisions of the Assam Land and Revenue Regulation 1886, shall partition the suit patta as per the decree passed by the Trial Court and the amicable settlement in so far as Title Appeal No.14/1989 and Title Appeal No.15/1989 are concerned and thereafter issue a separate patta in favour of the plaintiff/appellant to the extent decreed by the Trial Court.

29. The land measuring 4 bighas 9 kathas 8 chataks as claimed by the defendant No. 1 to have purchased from Surendra Chandra Chakraborty which is outside the claim of the plaintiff, the observations made by the Trial Court to the extent that the defendant No. 1 could not prove its right in respect to the said land purchased from Surendra Chandra Chakraborty, the same stands interfered with on the ground that the same was beyond the subject matter of the suit, as the claim of the plaintiff was only limited to the share he purchased and for issuance of a separate patta in favour of the plaintiff by way of imperfect partition .

30. With the above observations and directions, the instant appeal stands allowed. The appellants shall be at liberty, after the separation of the shares and separate possession being ascertained, to file appropriate proceedings if so



advised for eviction of the tenants/permissive occupants in the said land which fall into the share of the appellants in accordance with law.

31. Send back the LCR.

JUDGE

Comparing Assistant