



GAHC010087642003

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

Case No. : RSA/40/2003

ON THE DEATH OF PRAMOD KALITA HIS LEGAL HEIRS SMTI DEBELA
KALITA (WIFE) AND ORS
R/O PATHSA TOWN WARD NO.2 P.S PATACHARKUCHI,DIST. BARPETA

VERSUS

ON THE DEATH OF SUNANDA DEKA HIS LEGAL HEIRS SMTI TARULATA
DEKA(WIFE) and ORS
R/O UDALGURI TOWN ,WARD NO.4.P.O.UDALGURI,DIST.
UDALGURI,ASSAM

Advocate for the Appellants : Mr. P. P. Baruah, Advocate.

Advocate for the Respondents : Mr. D. Choudhury, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 26.07.2022

Date of Judgment : 27.09.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. P. P. Baruah, the learned counsel for the appellants and Mr. D. Choudhury, the learned counsel appearing on behalf of the respondents.

2. This is an application under Section 100 of the Code of Civil Procedure, 1908 (for

short, the Code) against the judgment and decree dated 03.10.2002 passed in Title Appeal No.3/2002 by the Court of the Civil Judge, (Senior Division), Barpeta whereby the judgment and decree dated 21.12.2001, passed in Title Suit No.2/2000 by the Court of the Civil Judge, (Junior Division), Bajali at Pathsala was reversed thereby allowing the appeal.

3. This appeal was admitted on 25.04.2003 by formulating two substantial questions of law which are quoted herein under:-

1. Whether the lower appellate court erred in law in decreeing the suit of the respondents-plaintiffs by declaring their right, title and interest in the suit land on the basis of Ext.4, a document of transfer of possession thereof?

2. Whether the learned lower court erred in law in declaring the suit of the respondents-plaintiffs in absence of the owner of the suit land in view of the Order-1, Rule 9 of CPC?

4. For the purpose of deciding as to whether the said substantial questions of law as formulated by this Court arises/involves in the instant appeal, it would be relevant to take note of the facts of the instant case. For the sake of convenience, the parties herein are referred to in the same status as they stood before the trial court.

5. The plaintiffs, who were the successor-in-interest of one Late Mukunda Ram Deka, had instituted the suit being Title Suit No.2/2000. In the said suit, the plaintiffs have alleged that Late Mukunda Ram Deka and Late Girish Chandra Deka were the brothers and they used to reside at Pathsala Town within Mouza-Uttar Bajali in the district of Barpeta. Late Mukunda Ram Deka and Late Girish Chandra Deka were the rayats under the settlement holder in respect to a plot of land measuring 1 katha covered by Dag No.488 under rayati khatian No.50 under K.P. Patta No.344. The said land has been specifically described in Schedule-A to the plaint. There was a division amongst Late Mukunda Ram Deka and Late Girish Chandra Deka during their lifetime and the share of Late Mukunda Ram Deka was 10 lechas of the Schedule-A land. The said land falling

in the share of Late Mukunda Ram Deka was specifically described in Schedule-B to the plaint. It has been further averred in the plaint that Late Mukunda Ram Deka, during his lifetime, had rented out his house standing over the Schedule-B to different tenants. Thereafter, when Late Mukunda Ram Deka had to shift his business to Udalguri, he thought it better to rent out his house standing over the Schedule-B land to some tenants and accordingly, Late Mukunda Ram Deka rented out one room of the house to the defendant and the other room to another tenant. The room rented out to the defendant has been specifically described in Schedule-C to the plaint. It has been alleged in the plaint that the rent of the room initially was Rs.70/- but since 01.01.1998, the rent had increased to Rs.700/- per month. It was mentioned that the tenancy was oral and although there was no fixed date for payment of the rent by the defendant but the defendant used to clear the rent within the following English Calendar month. With the passage of time, the suit house had become dilapidated. Further to that, upon the death of Mukunda Ram Deka, the plaintiffs required the suit premises for construction of a new house upon the Schedule-B land by demolishing the old house and to start some shops for the plaintiffs. Out of the two tenants, one tenant left vacating the suit premises whereas the other tenant, i.e. the defendant, though initially agreed to vacate the suit premises, did not do so. Situated thus, the plaintiffs sent a notice to the defendant on 10.07.2000 demanding him to vacate the suit house. The defendant, upon receipt of the said notice, sent a reply dated 17.07.2000 through a lawyer wherein he refused to vacate the suit house as well as to pay arrear rent and also denied the title of the plaintiff over the suit house. It has been also alleged in the plaint that the defendant was a defaulter in payment of rent in as much as till 30.06.2000, the defendant was to pay Rs.1,800/- by way of house rent after deducting the stray payment of amount towards house rent. In view of the denial of the title of the plaintiffs, refusal to vacate the suit house and pay the arrear rent, the plaintiff filed the suit praying *inter-alia* for a decree of declaration that the defendant as a defaulter, a declaration that the suit house is required by the plaintiffs bonafide; khas possession of the suit land be delivered to the plaintiffs by

evicting the defendant therefrom; an amount Rs.3,200/- be decreed in favour of the plaintiffs and against the defendant by way of arrear house rent; in the circumstance the defendant denies the title of the plaintiffs over the suit land, a declaration be passed to the effect of the plaintiffs having right, title and interest over the suit land as khatiandars of the suit land under the settlement holder and that the defendant is mere trespasser in the suit land; for costs of the suit etc. The said suit was filed before the Court of the Civil Judge, Junior Division, Bajali, Pathsala and as stated herein above was registered and numbered as Title Suit No.2/2000. At this stage, it may be relevant herein to mention that the successors-in-interest of Late Girish Chandra Deka who were impleaded as proforma defendants in the said suit, filed a written statement supporting the case of the plaintiffs.

6. The defendant filed a written statement raising various preliminary objections to the effect that there was no cause of action for filing the suit; that the suit was not maintainable; that the suit is barred by the laws of limitation; that the suit is defective for non-joinder of necessary parties, i.e. the original owner (pattadar) not having impleaded in the suit for which the suit is liable to be dismissed.

7. The case of the plaintiffs was totally denied in the written statement. In paragraph No.8 of the said written statement, the defendant stated his case mentioning therein that the suit land belonged to one Surendra Nath Sarma, who was the pattadar of the suit land. It was mentioned that on 01.01.1996, the settlement holder/pattadar, i.e. Surendra Nath Sarma allowed the defendant to start business and delivered possession upon 1(one) katha of land including the suit land under PP No.344, Dag No.488 situated at Pathsala Town under Uttar Bajali Mouza. The defendant after having taken possession of the suit land started carrying on the business of curd and later on started the business of a tent house by the name of “Kalita Tent House” by constructing permanent structure of tinsali with wooden posts with pucca half brick wall and pucca floor upon the 1 (one) katha of land. It was mentioned that during the lifetime of Surendra Nath Sarma, the

defendant peacefully possessed the suit land and after his death, his sons allowed the defendant to continue the business upon the suit land until he was demanded to handover the possession as permissive occupant. It has also been mentioned that the defendant peacefully possessed the suit land for a period of more than 30 years under Surendra Nath Sarma as well as his legal heirs.

8. On the basis of the pleadings, as many as six issues were framed by the Civil Judge (Senior Division), Barpeta which are as follows:-

- 1. Whether there is cause of action for the suit?*
- 2. Whether the defendant is a tenant under the plaintiffs?*
- 3. Whether the defendant is a defaulter?*
- 4. Whether the suit house of the plaintiffs is alleged in a dilapidated condition and bonafide requirement by the plaintiffs?*
- 5. Whether the plaintiffs have right, title and interest in the suit land?*
- 6. What relief or reliefs, the plaintiffs are entitled to?*

9. During the trial, the plaintiffs adduced evidence of five witnesses and exhibited eight documents. On the other hand, the defendant adduced evidence of three witnesses. However, no documentary evidence was adduced by the defendant.

10. The trial court, i.e. the Court of the Civil Judge, (Junior Division), Bajali at Pathsala by the judgment and decree dated 21.12.2001 decided the suit against the plaintiffs. In doing so, the trial court while deciding the Issue No.5 which related to as to whether the plaintiffs have right, title and interest in the suit land, the trial court came to a finding that from the documents on record, the plaintiffs has failed to exhibit proper documents showing the title. In view of the decision in Issue No.5, the other issues were decided against the plaintiffs.

11. Feeling dissatisfied and aggrieved, the plaintiffs preferred an Appeal before the Court of the Civil Judge (Junior Division), Barpeta which was registered and numbered

as Title Appeal No.3/2002.

12. The First Appellate Court, after taking into account the grounds of objections, framed the point for determination to the effect as regard the correctness or otherwise of all the findings of the trial court made in Issue Nos. 2 to 6. While deciding the Issue No.5, the First Appellate Court came to a finding that the plaintiffs have been able to successfully establish their right, title and interest over the suit land/suit room. On the Issue No.2, as to whether the defendant was a tenant under the plaintiffs, the First Appellate Court came to a finding that the defendant has been occupying the suit room as monthly tenant of the plaintiffs. On the Issue No.3, as to whether the defendant was a defaulter, the First Appellate Court came to a finding that as the defendant failed to establish his plea that he was not a tenant and there was no evidence adduced to the effect that the defendant had paid and tendered rent to the plaintiffs he was held to be a defaulter in payment of rent in respect to the suit room. On the Issue No.4, as to whether the suit premises was in a dilapidated condition and bonafide required by the plaintiffs, the First Appellate Court came to a finding that the suit room was in a dilapidated condition and was required bonafide by the plaintiffs to start construction work of a new building.

13. On the basis of the above findings, the First Appellate Court allowed the appeal and thereby declared that the defendant is defaulting tenant of the plaintiffs; that the suit room was bonafide required by the plaintiffs; that the defendant is liable to be evicted from the suit room and khas possession is required to be delivered to the plaintiffs thereon; that the plaintiffs are entitled to realized the sum of Rs.3,200/- from the defendant as arrear house rent; that the plaintiffs have right, title and interest over the suit land as khatiyandars under the settlement holder and the defendant is an illegal occupier of the suit land.

14. Feeling aggrieved and dissatisfied, the present appeal has been preferred under Section 100 of the Code assailing the judgment and decree dated 03.10.2002, passed in

Title Appeal No.3/2002. As noted above, the instant appeal was admitted by formulating two substantial questions of law.

15. In the backdrop of the above, let this Court take into consideration the two substantial questions of law involved in the instant appeal. The first substantial question of law relates to as to whether the First Appellate Court was justified in decreeing the suit of the plaintiffs by declaring their right, title and interest in the suit land on the basis of Ext.4, a document of transfer of possession thereof. In the opinion of this Court, the said substantial question of law is misconceived in as much as a perusal of the First Appellate Court's judgment would show that the declaration of the plaintiffs' right, title and interest over the suit land was declared as a khatiyandar under the settlement holder and not a declaration of right, title and interest in respect to the suit land on the basis of ownership. Furthermore, a perusal of paragraph Nos.8 & 9 would show that the First Appellate Court had taken into consideration Ext.5 which was khatiyani No.50 wherein the names of Late Mukunda Ram Deka and Late Girish Chandra Deka were recorded. The First Appellate Court, thereafter, took into consideration Ext.6 which was the certificate issued by the Pathsala Town Committee in respect to holding No.179 of Ward No.2 of Pathsala Town in the name of one of the plaintiffs; Ext.7 was the taxpaying receipt in respect to holding No.179 under Ward No.2 of Pathsala Town in favour of one of the plaintiffs; Ext.8 is the assessment of ASEB tariff bill issued in favour of the one of the plaintiffs in respect to Meter No.10/99534. Further to that, the First Appellate Court also took into consideration that during the cross-examination, the defendant had duly admitted that Late Mukunda Ram Deka and Late Girish Chandra Deka were issued the Khatiyani No.50 in respect to the suit land. It is on the basis of the said documents exhibited and the failure on the part of the defendant to produce any documentary evidence or the evidence of the family members of the original owner Late Surendra Nath Sarma to substantiate the plea of the defendant, the First Appellate Court made the declaration as regards the right, title and interest of the plaintiffs as khatiyandars of the



settlement holders. In that view of the matter, the first substantial question of law so formulated by this Court, does not arise and/or is involved in the instant appeal.

16. The second substantial question of law is as to whether the First Appellate Court erred in declaring the suit of the plaintiffs in absence of the owner of the suit land in view of Order I Rule 9 of the Code. In the opinion of this Court, the said substantial question of law also does not arise and/or involved in the instant appeal, taking into consideration that the declaration sought for was as regards the right, title and interest of the plaintiffs as khatiyandars under the settlement holder and as such the settlement holder is not a necessary party. Furthermore, a perusal of the plaint would show that it was a case for eviction of the defendant who was a tenant of the plaintiffs and consequently, the settlement holder was not a necessary party to the instant proceedings. Under such circumstances, the provision of Order I Rule 9 of the Code is not attracted. Consequently, the second substantial question of law, in the opinion of this Court, therefore, does not arise and/or involved in the instant appeal.

17. In that view of the matter, as there arises no substantial question of law which is involved in the instant appeal, the instant appeal stands dismissed. However, in the fact of the instant case, there shall be no cost.

18. Send back the LCR.

JUDGE

Comparing Assistant