



GAHC010097182008

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

**Case No. : RSA/110/2008**

BHOGRAM GOHAIN  
S/O LT. HARUMONI GOHAIN.

2: PURNA GOHAIN

3: RANJIT GOHAIN

BOTH SONS OF BHOGARAM GOHAIN  
ALL RERSIDENTS OF KAWAIMARI GAON  
MOUZA-KHOWANG  
PS. MORAN  
DIST. DIBRUGARH  
ASSA

VERSUS

NEE KANTA BORGOHAIN  
S/O LT. BHOLANATH BORGOHAIN, R/O CHAKALIA GAON, MOUZA-  
KHOWANG, PS. MORAN, DIST. DIBRUGARH, ASSAM

**Advocate for the Petitioner : MR.MD ASLAM**

**Advocate for the Respondent : DR. B AHMED**

**BEFORE**  
**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**



For the Appellant : Mr. GN Sahewalla, Senior Advocate  
Ms. S Todi, Advocate

For the Respondent : None appears

Date of Hearing :21.03.2023

Date of Judgement :21.03.2023

**JUDGEMENT & ORDER (ORAL)**

1. Heard Mr. GN Sahewalla, learned Senior counsel assisted by Ms. S Todi, learned counsel for the appellant. None appears for the respondent though name of the learned counsels is shown.
2. The present appeal is directed against the judgment and decree dated 28.02.2007 passed by the learned Civil Judge, Dibrugarh in TA No. 06/2003 whereby the judgment and decree dated 22.01.2003 passed in TS No. 61/1989 dismissing the suit, was reversed.
3. The present second appeal was admitted on the following substantial questions of law:

*“1. Whether the fraudulent mutation obtained in collusion with revenue authority in the record of right maintained by revenue authority can give right, title and interest in favour of such person without there being transfer by way of title deed?”*

*2. Whether judgment of the court below is perverse in not considering the earlier record of rights where the name of predecessor-in-interest of the appellant finds place and in considering the subsequent Jamabandi only where the collusive mutation was there?”*

4. For determination, whether any substantial question of law as has been framed are involved in the present appeal, let this court summarize the background fact leading to filing of the present second appeal, which are as follows:
- I. The respondent as plaintiff filed a suit for declaration and for confirmation of absolute possession over the scheduled land.
  - II. The basic case pleaded by the plaintiff was that the plaintiff along with one Tankeswar Gohain, son of Late Tileswar Gohain are joint pattadars and absolute owner of a plot of land measuring 7 Bighas 2 Kathas and 5 Lechas covered by Dag No. 111 of periodic patta No. 11 situated at Chakalia Gaon under Mouza Khowang in the district of Dibrugarh.
  - III. It was the further case that co-pattadar Tankeswar Gohai died intestate a few years ago and after his death by right of in-heritance and possession, the plaintiff became the absolute owner of the aforesaid plot of land.
  - IV. It is the further case that for a period of two years the defendant was allowed to cultivate over the aforesaid suit land, however, subsequently, the plaintiff refused to continue the cultivation and therefor, the defendant attempted to encroach the land twice and was unsuccessful.
  - V. The defendant filed written statement denying that the plaintiff is the absolute owner of the scheduled land after



death of Tankeswar Gohain. The defendant also denied being a cultivator on Adhia basis under the plaintiff.

- VI. Thus, the defendants claim that the originally the land belongs to one Rasiram Gohain and Horumoni Gohain. Rasiram Gohain is the father of the defendants and Horumoni Gohain had two sons, namely, Bhola Gohain and Tileswar Gohain. After death of Bhola Gohain and Tileswar Gohain, the half portion of the land was inherited by plaintiff and Late Tankeswar Gohain.
- VII. Thus, after death of Tankeswar Gohain entire land was mutated in the name of the plaintiff in exclusion of Horumoni Gohain and it is the further claim of the defendants that on the basis of such falsification the plaintiff was trying to dispossess the defendants from their suit land.
- VIII. It is the further case of the defendant that when the defendant came to learn that the plaintiff is claiming absolute ownership over the scheduled land, they took immediate steps to obtain copy of the Jamabandi of the land in question and after obtaining Jamabandi, the defendant could learn that in the Jamabandi prepared in the year 1973-74 though rightly reflects the name of the father of the defendants, the original pattadar, however, when the Jamabandi for the year 1993-94 was prepared, the name of the father of the defendant, Horumoni Gohain had been omitted therefrom and the entire land measuring 7 Bighas 2 Kathas 5 Lechas had been mutated in the name of the plaintiff. The defendant also preferred a



counter claim in view of the claim by the plaintiff. The said counter claim was not entertained by the learned trial Court.

5. The learned trial court below framed as many as eight issues, which are reproduced hereinbelow:

*“1. Whether suit is maintainable?*

*2. Whether plaintiff has right to sue?*

*3. Whether plaintiff is the absolute owner of suit land and allowed the defendant to cultivate the same temporarily for two years on Adhi System?*

*4. Whether the predecessor-in-interest of plaintiff and defendants i.e. Rasiram Gohain and Harumoni Gohain were the co-owner and joint pattadar of entire 7 Bighas, 2 Kathas, 5 Lechas of land including suit land and had been possessing equal portion of land measuring 3 Bighas, 3 Kathas, 12 ½ Lechas of land?*

*5. Whether defendants have been possessing the suit land as right of inheritances from the share of their predecessor-in-interest Late Horumoni Gohain?*

*6. Whether record of right maintained by the collector is wrong as plaintiff manipulated the land revenue record by mutating his name with collusion of land revenue office concerned?*

*7. Whether plaintiff is entitled for relief as was claimed?*

*8. What relief/ reliefs parties are entitled for?”*

6. The plaintiff examined as many as three witnesses and exhibited five

documents including the patta of the land, certificate of the SDC, revenue paying receipt and one ejahar. The defendant also examined three witnesses and exhibited three documents i.e. written statement filed by the plaintiff to the counter claim filed by the defendant, the chitha of the land and the Jamabandi.

7. The issue No.4 was the vital issue for the determination of the claim of the plaintiff and the defense raised by the defendant i.e. whether predecessor-in-interest of the plaintiff and defendants were co-owners and co-pattadars of the entire scheduled land and after their death both the plaintiff and defendants are possessing equal portion of land i.e. 3 Bighas 3 Kathas and 12 ½ Lechas.
8. The learned trial court answered the same in favour of the defendants. Coming to such conclusion, the learned trial court below considered certain evidences and came to certain finding of facts, which are discussed as under:
  - (I) The plaintiff as PW2 in his cross-examination admitted that Horumoni Gohain and Rasiram Gohain were the brothers and they were living separately.
  - (II). The Ext. K, Chitha and Kha, Jamabandi show that Rasiram Gohain and Horumoni Gohain were the original owner of 7 Bighas 2 Kathas and 5 Lechas of land in patta 20 of Dag No. 81.
  - (III). PW3, who is the record keeper of the revenue office (DC office), in his evidence confirmed that patta No. 20 became new patta No. 11 and Dag No. 81 became the new Dag No. 111.
  - (IV). The plaintiff as PW2 had neither denied the exhibit 'Ka', Chitha or



exhibit 'Kha', the Jamabandi nor challenged the said document by forwarding any suggestion thereon.

- (V). The other exhibits i.e. written statement filed by the plaintiff to the counter claim of the defendants, at paragraph 5, the plaintiff had admitted that Rasiram Gohain and Horumoni Gohain were the original pattadars of the land.
- (VI). DW1 in his evidence stated that they have been possessing the suit land since the day of their predecessor in interest late Horumoni Gohain.
- (VII). The evidence of DW1 has been supported by his neighbor DW2. DW2 categorically stated that predecessor of plaintiff and defendants had the land measuring 7 Bighas 2 Kathas 5 Lechas and they have been possessing the same in equal portion and after their death the said respective share has been possessed by their heirs i.e. the present plaintiff and defendants.
- (VIII). The evidence of DW2 remained unshaken as plaintiff failed to rebut the evidence of DW2 rather in the cross-examination, DW2 confirmed that predecessor-in-interest of the plaintiff and defendants had partitioned the said 7 Bighas 2 Kathas and 5 Lechas of land from east to west and each of them have been possessing  $\frac{1}{2}$  of the said land after their death.
- (IX). The plaintiff had failed to prove that he is the absolute owner of the entire suit land. The plaintiff to prove his possession over such land exhibited two revenue receipts but revenue receipts are not the evidence of possession of the land and entries in Jamabandi is also

not proof of title.

9. Such finding of facts was reversed by the learned Appellate Court. While dealing with the issue No. 4, the First Appellate Court concluded the following:

*“10. Now the moot point arises there whether the entire aforesaid 7 Bighas 2 kathas 5 Lechas of land including the suit land equally partitioned between the parties and they possessed their respective share and whether the judgment passed by the learned lower court is not sustainable and liable to be set aside.*

*11. On careful perusal of the entire evidence on record as well as the impugned judgment and decree of the learned Lower court, it reveals that originally plaintiff Nilakanta Gohain and Tankeswar Gohain, the son of Late Tileswar Gohain are joint pattadars and absolute owner of the entire 7 Bighas 2 kathas 5 Lechas of land including the suit land and after the death of Tankeswar Gohain, who died intestate, plaintiff/ appellant become the absolute owner of the sand and he was possessing the suit land by cultivating paddy thereon and paying land revenue regularly. He is the recorded pattadar of the suit land. His name is recorded in the Jamabandi. Regarding this the learned counsel for the respondent relied on a decision in a case of paremeswar Sarma vs Islam Ali and Others reported in 2000(3) GLT 453, in which it is held that entries in the record of right in Jamabandi based on chitha are to be founded on the basis of actual possession raised presumption. Regarding possession in favour of the recorded pattadar unless rebutted.”*





10. From the aforesaid and also from the paragraph 12 though the learned court has come to the aforesaid conclusion after careful perusal of the entire evidence on record, however, this court is unable to find any reason for coming to such conclusion. No reasons had been recorded, why the appellate Court has discarded the admission of PW2, the plaintiff in his cross examination regarding original owner of the land. No reason has also been given why the Ext. K, Chitha and Kha, of Jamabandi of 1973-74 showing name of both the predecessor in interest of the plaintiff and defendants as Pattadars has been not relied on. Further, no mention is there regarding the deposition of PW3, who is the record keeper. Thus the learned First Appellate court has not discussed anything about evidences, upon which, the learned trial court placed reliance. The learned Appellate Court has also not discussed anything regarding proof of title except, the name of the plaintiffs recorded in the revenue record subsequently and declared the title.
11. Law is by now well settled that the First Appellate Court is to reflect in its judgment the conscious application of mind to the finding recorded by the court of first instance. It is also equally well settled that right to appeal under Section 96 of the CPC, 1908 is valuable right and the appellate court exercising power under Section 96 has a duty to decide the appeal both on question of fact and law and therefore, it is a bounden duty of such appellate court to re-appreciate the evidences and materials available on record in respect of the contentions raised by the parties, more particularly when such judgment intends to reverse the finding of fact arrived at by the court of first instance. The Hon'ble Apex court in the case of ***Santosh Hazari vs Purushottam Tiwari*** reported in **(2001) 3**

**SCC 179** held that while writing a judgment of reversal, the appellate court is required to follow two fundamental principles i.e. firstly finding of fact based on conflicting evidence arrived at by the learned trial court must weigh with the appellate court, and if on appraisal of the evidence, the appellate court comes to a conclusion that the decision of the court of first instance suffers from material irregularity or based on inadmissible evidence, the appellate court can interfere with such finding of fact. Second and the most important principle is that while reversing a finding of fact, it is a bounden duty of the appellate court to show its own reason. Such settled proposition of law is also reiterated by the Hon'ble Apex Court in the case of ***H.K.M. Swami vs Irshad Basith (Dead) by Lrs. reported in (2005) 10 SCC 243*** and in ***Vinod Kumar Vs Gangadhar*** reported in ***(2015) 1 SCC 391***.

12. Coming to the case in hand, learned trial court as discussed at paragraph 8 hereinabove, had a detailed discussion on the evidence laid by the parties, both oral and documentary and came to definite finding by giving due reason relatable to the evidences laid. However, as discussed at paragraph 9 and 10 hereinabove, it is clear that the learned appellate court while coming to its finding in reversing the judgment of the trial court, has not given any reason nor the evidences have been re-appreciated. There is also no finding that judgment of the learned trial court suffers from any material irregularity or based on inadmissible evidence.
13. On the other hand, on perusal of the material available on record, this court does not find any infirmity on the finding of the learned trial court below. The finding of facts as arrived at by the learned trial

court and summarized at paragraph 8 cannot be said to be perverse or based on no evidence. The learned Appellate Court straightway concluded that the record reveals that plaintiff Neel Kanta Borgohain and Tankeswar Gohain are the joint pattadars and absolute owners of the entire 7 Bighas 2 Kathas 5 Lechas of land, however, the entire judgment of the 1<sup>st</sup> Appellate Court is totally silent on what basis and on what material evidence, learned Appellate Court has come into such a conclusion or why the finding of the learned trial Court is bad.

14. Thus, it is clear that the learned Appellate Court ignored the material evidence as discussed at paragraph 8 of this judgment and relied on irrelevant material and reached a conclusion. The original record of the rights, which clearly shows that the predecessor-in-interest of the appellant was a recorded pattadar has been ignored and subsequent record incorporating the name of the plaintiffs has been relied on and decreed the suit.
15. In that view of the matter, both the substantial questions of law are answered in favour of the Appellant. Accordingly, it is held that the finding of the learned Appellate Court below is perverse in not considering the earlier records of right where the name of the predecessor-in-interest of the appellant finds a place inasmuch as the learned Appellate Court failed to rely on any evidence to hold that the plaintiff is the absolute owner over the entire plot of land.
16. In view of the aforesaid finding, this second appeal stands allowed by setting aside the judgment and decree dated 28.02.2007 passed by the learned Civil Judge, Dibrugarh in TA No. 06/2003 upholding



the judgment and decree dated 22.01.2003 passed in TS No. 61/1989 by the learned Trial Court below.

17. Parties to bear their own cost.

**JUDGE**

**Comparing Assistant**