



GAHC010186932011

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

Case No. : RSA/8/2011

JAYANTA KUMAR and 2 ORS
S/O LATE PRADIP KUMAR

2: SMTI. APESWARI KUMAR

W/O LATE PRADIP KUMAR

3: SMTI. PAHESWARI KUMAR

D/O LATE PRADIP KUMAR
ALL ARE RESIDENTS OF VILL. KUMARPARA
MOUZA-SARABARI
MANGALDOI
DIST. DARRANG
ASSAM

VERSUS

HARENDRA KUMAR NATH
S/O LATE RAMESWAR NATH, R/O GARUKHUTI, MOUZA-SIPAJHAR, P.S.
SIPAJHAR, DIST. DARRANG, ASSAM.

For the Petitioner(s) : Mr. M. K. Choudhury, Sr. Advocate
: Mrs. N. Dutta, Advocate
For the Respondent(s) : Mr. B. Islam, Advocate

Date of Hearing : **21.03.2024**

Date of Judgment : **21.03.2024**



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. K. Choudhury, the learned Senior counsel assisted by Mrs. N. Dutta, the learned counsel appearing on behalf of the Appellants and Mr. B. Islam, the learned counsel appearing on behalf of the Respondent.

2. The instant appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 16.09.2009 passed by the learned Civil Judge, Darrang, Mangaldoi in Title Appeal No.05/2001 whereby the judgment and decree dated 30.05.2001 passed by the learned Civil Judge, (Junior Division), Mangaldoi in Title Suit No.58/85 was set aside.

3. This Court had admitted the instant appeal on 19.01.2011 by formulating two substantial questions of law which are reproduced herein under:

“1. Whether the learned first appellate court committed error of law in decreeing the suit for the land in the schedule of the plaint which is different from the land in the sale deeds, Ext.1 and Ext. 2.

2. Whether the courts below erred in law in holding that Pradip Kumar had saleable right notwithstanding the gift deed executed earlier by him on the basis of which the defendants claimed protection under Section 53-A of the Transfer of Property Act.”

4. For deciding as to whether the said two substantial questions of law

above mentioned are involved in the instant appeal, this Court finds it relevant to take note of the facts leading to the filing of the instant appeal.

5. The Respondent herein had filed a suit in the Court of the Munsiff at Mangaldoi. The said suit was initially numbered as Title Suit No.41/81 and subsequently was renumbered as Title Suit No.57/85. The case of the plaintiff in brief is that the Proforma Defendant No.4 owned and possessed 10 Bighas 3 Kathas 6 Lechas of land covered by Dag No.594/671 of Period Patta No. 7 (new)/80 (old) of village Kharkhowapara in Sarabari Mouza in the District of Darrang. On 25.09.1978, the Proforma Defendant No.4 sold 1 Bigha of land from that plot at Rs.2,000/- to the plaintiff by executing a registered Sale Deed and delivered the possession. This land which was sold vide the registered Sale Deed dated 25.09.1978 have been fully described in Schedule-Ka(1) to the plaint. Subsequent thereto, on 28.03.1979, the Proforma Defendant no.4 proposed to sell 2 Kathas 10 Lechas of land from the remaining plot of 10 Bighas and the plaintiff agreed to purchase it as it was contiguous plot of his purchased land. The said land is most specifically described in Schedule Ka(2). Accordingly, the plaintiff purchased it at Rs.1,000/- by a registered Sale Deed and got delivery of possession. After taking delivery of possession, the plaintiff dug "nalla" (ditch) around the entire 1 Bigha 10 Lechas of land and constructed a thatched house over it for his dwelling purpose. The plaintiff also got mutation in respect to the said purchased land.

6. It was further the case of the plaintiff that in the month of February, 1980, the Defendant Nos. 1, 2 and 3 applied for mutation of their names by cancelling the names of the proforma Defendant No.4 and the plaintiff in



respect of 23 Bighas 2 Kathas 1 Lechas of land including the suit land. The Revenue Authorities issued notice to the plaintiff and the plaintiff appeared before the Revenue Authority on 12.02.1980 and filed objection. The Defendant No.1 was present in the Office of the Revenue Authority and he threatened the plaintiff with dispossession. It has also alleged in the plaint that subsequently, on that date, the Defendant Nos. 1, 2 and 3 set fire to the thatched roofed house of the plaintiff and thus occupied the suit land described in Schedule Ka(1) and Ka(2) to the plaint by dispossessing the plaintiff. It is under such circumstances, the plaintiff filed a suit for recovery of possession on the basis of title and for permanent injunction.

7. The Defendant Nos. 2 and 3 filed a joint written statement contesting the suit and the Defendant No.1 filed a separate written statement through his guardian adlitem to contest the suit. It was mentioned that the principal defendants namely the Defendant Nos. 1, 2 and 3 are the sons and daughters of the Proforma Defendant No.4 i.e. Shri Pradip Kumar. The Defendant No.1 is the son while the Defendant Nos. 2 and 3 are the daughters. Various pleas were taken as regards the maintainability of the suit. It was also stated that the defendants are protected under Section 53A of the Transfer of Property Act, 1882 (for short "the Act of 1882"). On merits, it was stated that the case of the defendants was that the proforma defendant No.4, Shri Pradip Kumar was the owner and possessor of 10 Bighas 3 Kathas 3 Lechas of land including the suit land and he himself cultivated it. The proforma Defendant then took a second wife about 6 years back and left his son and daughters and his first wife in helpless condition and he was residing at Amjuli. It was alleged that it was the Defendant Nos. 1, 2 and 3 who had cultivated the paddy over it. Further to that, it was

alleged that on 16.03.1978, Shri Pradip Kumar gifted the suit patta land by an unregistered gift deed to Smti Paheswari, Smti Thageswari, Smti Nilima and Smti Dipamani Kumar out of love and affection and delivered possession. On the basis thereof, the donees have been possessing the suit patta land including the suit land by their own right. The Defendants further denied that the proforma Defendant Shri Pradip Kumar sold the suit land to the plaintiff by registered sale deed and delivered possession. It was alleged that the plaintiff obtained those forged documents fraudulently and collusively and on the basis of those collusive documents, got his name mutated and as such the plaintiff acquired no right, title and interest over the suit land. It was also alleged that as the suit land was in possession of the defendants, the plaintiff could never had taken the possession of the same. It was also alleged that the plaintiff falsely started G.R. Case No.829/80 alleging that they had set fire to the house built over the suit land however, the Defendants got acquitted from the false case.

8. In addition to the written statement, the defendant Nos. 2 and 3 had also filed a counter claim challenging registered deeds of sale dated 25.09.1978 and 12.02.1980 made in favour of the plaintiff.

9. On the basis of the above pleadings, the learned Trial Court framed as many as 9 issues which included the Issue No.4 and 5 which were to the effect as to whether the proforma Defendant Nos. 4 had any valid title over the suit land at the time of sale of the suit land to the plaintiff and as to whether the plaintiff had acquired any right, title or interest over the suit land by virtue of the registered sale deeds and was in possession of the suit land. The issue No.6 pertains to as to whether the suit land was transferred

to the defendants by a katcha gift deed prior to the alleged registration by Shri Pradip Kumar i.e. the proforma defendant No.4. The Issue No.8 was in respect to as to whether the rights of the defendants are protected under Section 53A of the Act of 1882.

10. The plaintiff examined 4 witnesses and exhibited some documents in support of his case. The Defendants examined three witnesses in support of their case.

11. The learned Trial Court vide a judgment and decree dated 16.05.1986 decreed the suit in favour of the plaintiff. However, in doing so, the counter claim was not at all decided. Under such circumstances, an appeal was preferred being Title Appeal No.36/1987 before the Court of the Assistant District Judge, Darrang at Mangaldoi. The said judgment and decree dated 16.05.1986 passed by the learned Trial Court was set aside and the suit was remanded for fresh disposal along with a counter claim primarily on the ground that the suit was decided without deciding the counter claim. Thereupon, the learned Trial Court vide a judgment and decree dated 30.05.2001 dismissed the suit with cost and decreed the counter claim in favour of the defendants. Being aggrieved, the plaintiff preferred an appeal which was registered and numbered as Title Appeal No.05/2001. Thereafter, the said appeal underwent various proceedings from appeal to this Court which was remanded back again to decide.

12. The learned First Appellate Court vide impugned judgment and decree dated 16.09.2009 allowed the appeal by setting aside the judgment and decree passed by the learned Trial Court in Title Suit No.57/85 dated 30.05.2001 thereby granting the reliefs as sought for in the suit. This Court



has duly taken note of the impugned judgment passed by the learned First Appellate Court and upon a perusal thereof, it reveals that the learned First Appellate Court had framed the point of determination as to whether the impugned judgment and decree was legally sustainable.

13. The learned First Appellate Court while deciding the said First Appeal opined that both the Sale Deeds exhibited as Exhibit-1 and 2 were duly proved and had also observed that the defendants never denied that Proforma Defendant No.4 Shri Pradip Kumar had no saleable right over the suit land inasmuch as on the basis of such saleable right, the Defendants claimed that the proforma defendant No.4 had transferred the same to the Defendant Nos. 1, 2 and 3 by a kacha gift deed. The learned First Appellate Court also took into account as to whether the defendants' possession was protected under Section 53A of the Act of 1882. The learned First Appellate Court took into consideration that as per the Act of 1882, a gift of an immovable property can only be made by way of a registered document and duly attested at least by two witnesses. Under such circumstances, the said deed of gift as per the learned First Appellate Court could not have conferred any right over the defendants. In addition to that, the learned First Appellate Court had also observed that Section 53A of the Act of 1882 cannot be made applicable as it was the specific case of the defendants that the suit land was gifted to the said defendants vide the unregistered gift deed. It was also observed that the Defendants failed to prove that the Sale Deeds exhibited as Exhibit Nos. 1 and 2 had been obtained illegally, fraudulently and collusively as claimed in the counter claim and accordingly, the suit was decreed in favour of the plaintiff and the defendants' counter claim was dismissed. It was further observed by the learned First Appellate Court that



the plaintiff had right, title and interest over the suit land described in Schedule-Ka(1) and Schedule-Ka(2) and also entitled for recovery of possession with permanent injunction against the defendants.

14. Being aggrieved, the instant appeal has been preferred which has been admitted by formulating the two substantial questions of law as above mentioned.

15. This Court has duly heard the learned counsels appearing on behalf of the Appellants as well as the Respondent and given anxious consideration to their submissions.

16. In the backdrop of the above, let this Court therefore take note of as to whether the said substantial questions of law so formulated are involved in the instant appeal.

17. The first substantial question of law pertains to whether the learned First Appellate Court committed error of law in decreeing the suit for the land in the Schedule of the plaint which is different from the land in the sale deeds i.e. Exhibit-1 and 2. For deciding the said substantial question of law, this Court finds it relevant to take note of that in the plaint, the plaintiff categorically described both the lands at Schedule-A1 and Schedule-A2. It was further mentioned in the plaint that in the sale deed, the old patta number was written as new patta number and the new patta number was written as old patta number whereas the dag number was correctly written. At Paragraph No.7 of the written statement, it was mentioned that the plaintiff in his deed dated 25.09.1978 had mentioned old Patta No.7 and new patta number 80 which is not correct. It was further stated that unless the

sale deed is corrected, the plaintiff cannot acquire any right, title over the same. Be that as it may, the defendants challenged both the deeds of sale dated 25.09.1978 and 12.02.1980 on the ground that the sale deeds were in respect of the land which they claimed were a part of the gift by the proforma Defendant No.4. It is also seen that the land as per the Schedule-A1 and Schedule-A2 was duly mutated in favour of the plaintiff in new Patta No.7.

18. This Court further finds it relevant to take note of Exhibit-1 which is the deed of sale bearing Deed No.7572 dated 25.09.1978 wherein the land which was conveyed was a plot of land measuring 1 Bigha out of 10 Bighas 3 Kathas 6 Lechas belonging to the proforma Defendant No.4 contained in Patta No.7(old)/80(new) with the corresponding Dag No.594(old)/671(new). The said deed categorically described the four boundaries. I have examined those boundaries which tallies with what has been stated in Schedule-A1 of the plaint.

19. Exhibit-2 is the Deed of Sale bearing Deed No.3686 dated 28.03.1979 whereby a plot of land measuring 2 Kathas 10 Lechas was transferred out of the remaining land of the proforma Defendant No.4 in Patta No.80(old)/7(new) with the corresponding Dag No.594(old)/671(new). This Court has also perused the boundaries mentioned in the said Deed of Sale marked as Exhibit-2 with the boundaries mentioned in Schedule-A2 of the plaint wherein both the boundaries are exactly similar. It is also very pertinent to mention that on the south of the Schedule-A2 land, it was shown as the land of Shri Biju Sharma and Shri Harendra Kumar Nath. The said Shri Harendra Kumar Nath happened to be the plaintiff to whom the



Schedule-A1 land was sold vide the deed of sale dated 25.09.1978.

20. This Court further finds it very pertinent to take note of the judgment of the Supreme Court in the case of ***Pratibha Singh and Another Vs. Shanti Devi Prasad and Another reported in (2003) 2 SCC 330*** wherein it was observed that Order VII Rule 3 of the Code requires where the subject matter of the suit is an immovable property, the plaint shall contain a description of the property sufficient to identify it. It was observed that such description enables the Court to draw a proper decree as required under Order XX Rule 3 of the Code. It was further observed that in case such property can be identified by boundaries or number in the record for settlement of survey, the plaint shall specify such boundaries or numbers. The Supreme Court opined that the default or carelessness of the parties to provide a properly identified boundary did not absolve the Trial Court of its obligation which it should have, carried out while scrutinizing the plaint and thereby pointing out the omission on the part of the plaintiffs or should have insisted on a map of the immovable property forming the subject matter of the suit being filed.

21. This Court also finds it relevant to take note of the judgment of this Court which has specific relevance to the substantial question of law formulated i.e. the case of ***Abdul Mannan Mazumdar Vs. Alauddin Laskar reported in (2014) 1 GLR 514*** wherein it was categorically observed taking into account the provisions of Order VII Rule 3 of the Code that if the plaintiff's claims title in respect to specific immovable property, it should be suitably identified either by boundaries or by revenue index i.e. Dag Numbers and Patta Numbers. In paragraph No.8 of the said judgment, this



Court held that if there is any dispute with regard to the identity of a land from the stand point of Dag Numbers and Patta Numbers with that of the boundaries, the boundaries shall prevail over the revenue index and Patta Number. Paragraph Nos. 7 and 8 of the said judgment are quoted herein under:

“7. Order VII Rule 3 of the Code of Civil Procedure only requires that if plaintiff’s claim title in respect of specific immovable property, it should be suitably identified either by boundaries or by revenue index, i.e. dags and pattas.

8. The law is settled by now that if there is any dispute with regard to identify of a land from the stand point of dag Nos. and patta Nos. with that of the boundaries, the boundaries shall prevail over the revenue index and patta No. Here, in this case, sale deed dated 14.9.1995 specifically mentioned the four boundaries of the land in question. I have compared the land with the plaint and found the boundaries of Ext. 4 and the land in schedule to the plaint are identical and there is no variation whatsoever. The findings of the learned Courts below particularly trial Court, that there is no mention about delivery of possession in Ext. 4, also appears to be perverse inasmuch as, there is specific recital in Ext. 4 that the same land is handed over to the vendee within the specific boundary mentioned in the deed. This finding of the Courts below as to variance of boundaries of schedule and that of the plaint along with observation as to the absence of the recital that possession was handed over to the vendee, therefore, are clearly perverse which gave rise to substantial questions of law within the meaning of Section 100 of the Code of Civil Procedure. In this view of the matter, the substantial question No.1 is decided in favour of the appellant. As observed above, a suit for declaration of title along with recovery of possession with a prayer for partition cannot be failed without joinder of co-pattadars. There is a registered sale deed in favour of the petitioner which is executed duly and validly in respect to the suit land. Having regard to the observations made above, the second substantial question of law is also liable to be decided in favour of the



appellant /plaintiff.”

22. In the instant case, it would be seen that the boundaries mentioned in the plaint in Schedule-A1 and Schedule-A2 with that of Exhibit-1 and Exhibit-2 respectively are same. There is only an incorrect recording of the patta number in Exhibit-1 wherein it should have been 7(new)/80(old) but the Dag Number was the same. Further, the proforma Defendant No.4 could have transferred the land only in Patta No.7(new)/80(old) of the corresponding Dag. Exhibit-2 which was executed by the proforma Defendant No.4 also categorically mentions that to the south of the land conveyed by Exhibit-2 is the land conveyed to the plaintiff vide Exhibit-1. Under such circumstances, in view of the above, this Court is of the opinion that the substantial question of law so formulated cannot be a substantial question of law involved in the instant appeal more so taking into account that the defendants had filed the counter claim challenging the deeds of sale exhibited as Exhibit Nos.1 and 2 on the ground that it was the land of the proforma Defendant No.4 which was gifted to them vide an unregistered deed of gift.

23. The second substantial question of law pertains to as to whether the learned First Appellate Court erred in law in holding that Pradip Kumar had saleable right notwithstanding the gift deed executed earlier by him on the basis of which the defendants claimed protection under Section 53A of the Act of 1882. As already stated hereinabove, the gift deed on the basis of which the appellants herein claimed any right is an unregistered deed of gift and as per the provisions of Section 123 of the Act of 1882, no right stood conferred on the basis of the said deed. The said gift deed did not affect any



immovable property. The question of application of Section 53A of the Act of 1882 is totally misconceived inasmuch as the said provision would only be applicable when any person contracts to transfer for consideration of any immovable property by writing signed by him or on his behalf. When the defendants/appellants themselves have claimed that the said unregistered deed is a gift deed, the question of contracting to transfer or involvement of consideration do not come and as such Section 53A of the Act of 1882 had no application to the facts of the instant case. This Court had taken note of that the learned First Appellate Court had duly addressed the above aspects in the impugned judgment. Under such circumstances, the second substantial question of law so formulated is not a substantial question of law involved in the instant appeal.

24. Accordingly, the instant appeal being devoid of any substantial question of law, stands dismissed.

25. Any order of stay so passed stands vacated.

26. This Court imposes a cost of Rs.10,000/- upon the appellants as the cost of the instant Appeal. The Respondent/Plaintiff shall be entitled to costs throughout the proceedings.

27. The Registry is directed to forthwith return the LCR to the Court below.

JUDGE

Comparing Assistant