GAHC010190542011

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

**Case No. : RSA/50/2011**

SMT. RAJU BALA DEKA and 9 ORS,

2: DIGANTA DEKA

3: GANESH DEKA

4: SMT. BOBY DEKA

5: SMT. JULI DEKA
NO. 1 IS THE WIFE AND NO. 2 TO 6 ARE THE SONS AND DAUGHTER OF LATE HARENDRA NATH DEKA
ON THE DEATH OF RAJENDAR NATH DEKA HIS LEGAL HEIRS

6: SMT. HARESWARI DEKA

7: DILIP DEKA

8: SMT. BHANITA DEKA

9: SMT. CHITRA DEKA
NO. 6 I IS THE WIFE AND 6 II TO 6 IV ARE THE SONS AND DAUGHTERS OF LATE RAJENDRA NATH DEKA. ALL ARE RESIDENTS OF VILL. BEJERA
MOUZA BARBANGSHAR
P.O. BEJERA
DIST. KAMRUP
ASSAM

VERSUS

KANDARPA DEKA and ORS,
ON THE DEATH OF ANANTA DEKA HIS LEGAL HEIRS

2:DHIRESWAR DEKA

3:PARESH DEKA
ON THE DEATH OF RABINDHAR DEKA
HIS LEGAL HEIRS

4.1:SMTI LIPIKA DEKA
W/O LATE RABIDHAR DEKA
RESIDENT OF VILLAGE BEJERA
P.O BEJERA
DIST KAMRUP
ASSAM
PIN CODE - 781121

4.2:SMTI JIGYASHA DEKA (MINOR DAUGHTER)
D/O LATE RABIDHAR DEKA
RESIDENT OF VILLAGE BEJERA
P.O BEJERA
DIST KAMRUP
ASSAM
PIN CODE - 781121

ON THE DEATH OF NABIN CH. DEKA HIS LEGAL HEIRS

5:SMT. MOINA DEKA

6:SMT. JAMUNA DEKA

ON THE DEATH OF NABIN CH. DEKA HIS LEGAL HEIRS

7:SMT. HEMOPRABHA DEKA

8:ON THE DEATH OF MOTI RAM DEKA
HIS LEGAL HEIRS
NAMELY

8.1:SMTI ANIMA DEKA
W/O LATE MOTI RAM DEKA

RESIDENT OF VILLAGE BEJERA
P.O BEJERA
DIST KAMRUP
ASSAM
PIN CODE - 781121

8.2:SMTI BHANITA DEKA
D/O LATE MOTI RAM DEKA

RESIDENT OF VILLAGE BEJERA
P.O BEJERA
DIST KAMRUP
ASSAM
PIN CODE - 781121

8.3:SMTI NIPASHRI DEKA (MINOR DAUGHTER)
D/O LATE MOTI RAM DEKA

RESIDENT OF VILLAGE BEJERA
P.O BEJERA
DIST KAMRUP
ASSAM
PIN CODE - 781121

8.4:SRI DIPANKAR DEKA (MINOR SON )
S/O LATE MOTI RAM DEKA

RESIDENT OF VILLAGE BEJERA
P.O BEJERA
DIST KAMRUP
ASSAM
PIN CODE - 781121

ON THE DEATH OF DHARJYA DEKA
HIS LEGAL HEIRS

9:TANU RAM DEKA

10:NAROPATI DEKA

11:NANDESWAR DEKA

12:SMT. DALIMI DEKA

13:SMT. HIREN DEKA

NO. 2 I IS THE WIFE AND NO. 2 II TO 2 VII ARE THE SONS AND DAUGHTERS OF LATE NABIN CH. DEKA

ON THE DEATH OF DHARJYA DEKA
HIS LEGAL HEIRS

14:SMTI. BIJAYA LAKSHMI DEKA

15:SMT. BIRAJA BALA DEKA

16:DIPEN CH. DEKA

17:GAGAN CH. DEKA

18:TAPAN CH. DEKA

19:SMT. SATYA BALA DEKA
NO. 3 I IS THE WIDOW AND NO. 3 II TO 3 VI ARE THE SONS AND DAUGHTERS OF LATE DHARJYA DEKA
ALL ARE RESIDENTS OF VILL. BEJERA
P.O. BEJERA
DIST. KAMRUP
ASSAM

**Advocate for the Petitioner** : MR.B DEKA

**Advocate for the Respondent** : MR.S ALI

**BEFORE**
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Advocate for the appellants : Mr. BD Deka
Mr. A Bhatra

Advocate for the respondents : Mr. S Ali

Date of hearing & Judgment : **04.04.2024**

**JUDGMENT & ORDER (ORAL)**

The instant appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code) is directed against the judgment and decree dated 20.09.2008 passed in Title Appeal No.9/1998 by the learned Civil Judge No.1, Kamrup at Guwahati (for the sake of convenience to be referred to as the 'learned 1st Appellate Court') whereby the appeal filed by the appellants was dismissed and the judgment and decree dated 27.01.1998 passed in Title Suit No.141/1992 by the Court of the learned Civil Judge (Jr. Div) No.1, Kamrup at Guwhati (for the sake of convenience to be referred to as the 'learned Trial Court') was confirmed.

2. This Court vide order dated 11.03.2011 admitted the appeal by formulating four substantial questions of law which reads as under:

*(i). Whether the learned courts below committed illegality in holding that Article 65 and 66 are applicable although the act of violation of the terms of tenancy in Schedule A took place in the year 1975 and the act of trespass into the Schedule B land by the defendants also took place in the year 1975 and the suit having been filed in 1992 is barred by limitations?*

*(ii). Whether the issue as to the questions of tenancy and entitlement and the issue of eviction having already been decided in T.S.No.44/85 and T.A.No.49/85, the present suit is hit by Section 11 read with Order 2 Rule 2 of the CPC?*

*(iii). Whether the defendants' possession in Schedule B land is adverse irrespective of whether or not they are tenants in Schedule A land?*

*(iv). Whether the learned First Appellate Court erred in granting relief of eviction over the Schedule B land without determining the question of title over the same and in absence of any relief for declaration of title over it being by the plaintiffs?*

3. The question as to whether the above four substantial questions of law, which have been formulated by this Court are involved in the instant appeal, this Court finds it relevant to take note of the background which led to the filing of the instant appeal.

4. The predecessor-in-interest of the respondents herein filed a suit before the Court of the learned Munsiff at Guwahati which was registered and numbered as Title Suit No.141/1992 against the appellants herein. The plaintiffs in the said suit claimed to be joint owners and pattadars of a plot of land measuring 1 katha, 19 lessas covered by Dag No.693 of Kheraj Periodic Patta No.43 situated at village Bejera under Mouza Barbangshor in the district of Kamrup. The plaintiffs claimed that they had constructed three thatched houses upon the said plot of land and let out the same to various tenants on monthly rental basis. It was mentioned in the plaint that the defendants in the said suit were the sons and daughters of one Harendra Nath Deka (since deceased) who

took two out of the three thatched house from the plaintiffs on an oral agreement to pay monthly rental of Rs.40/-. The said tenancy commenced from the month of January, 1973. During that period of time, Late Harendra Nath Deka used those tenanted premises for the purpose of running a tea stall. Thereupon, after the death of Late Harendra Nath Deka, the defendants continued to be in occupation of the two houses as monthly tenant under the plaintiffs. The said thatched houses have been more specifically described in Schedule-A to the plaint. It was further alleged in the plaint that sometime in the month of August 1975, the predecessor-in-interest of the defendants defaulted in payment of the monthly rent. Subsequent to the death of Late Harendra Nath Deka, the defendants stopped making payment in respect to the Schedule-A houses since the month of August, 1975 and as such it was stated that the said defendants were defaulters. It was also mentioned in the plaint that the defendant Nos.1 to 6 illegally and unauthorizedly affixed asbestos sheets on the roof of one of the thatched houses and also illegally constructed on 15.08.1975, two thatched houses upon the vacant plot of land measuring about 8 lessas, which was a part of the land measuring 1 katha 19 lessas belonging to the plaintiffs. This 8 lessas of land has been specifically described in Schedule B to the plaint. It was also mentioned that during the lifetime of Late Harendra Nath Deka, he along with the defendant No.7 entered into a collusion with the land record staff and surreptitiously obtained a khatian in respect of the entire land, over which the tenanted houses stood. When it came to the notice of the plaintiffs, about the issuance of the illegal khatian obtained by Late Harendra Nath Deka and the defendant No.7, the plaintiffs instituted a Title Suit being T.S.No.44/1985 in the Court of the learned Munsiff No.2, Guwahati against the defendants for cancellation of the said Khatian and also

for eviction of the defendants from the tenanted premises described in the Schedule A to the plaint. During the pendency of the said suit, the said Harendra Nath Deka expired and, therefore, the defendant Nos.1 to 6 continued to occupy the land and houses standing on Schedule-A land.

5. Before continuing with the narration of the case of the plaintiffs it is apposite herein to take note of the Title Suit No.44/1985 filed by the plaintiffs as the same has substantial significance to the instant dispute. The learned Trial Court vide judgment and decree dated 19.10.1985 in Title Suit No.44/1985 partly allowed the said suit. It is relevant to take note of that in the said suit, four issues were framed which included as to whether the defendants were tenants under the plaintiffs for the houses, in question and whether the defendants were tenants under the plaintiffs as per the *Assam (Temporarily Settled. Areas) Tenancy Act, 1971* (for short, the Act of 1971). The learned Trial Court while jointly deciding the issue Nos.2 and 3 came to an opinion that the khatian which was the subject matter of challenge could not have been issued as the land was used for business purpose by running a tea stall and by letting out the house constructed thereon as was apparent from the evidence of the defence witnesses. The learned Trial Court further arrived at a conclusion on the basis of the evidence that the defendants were in possession of the plot of land as a permissive occupier, but no terms of tenancy appeared to have been created between the parties.

6. Being aggrieved, the defendants herein preferred an appeal against the judgment and decree dated 19.10.1985 passed in T.S. No.44/1985 before the Court of the learned Assistant District Judge No.1, Guwahati. The said appeal

was registered and numbered as Title Appeal No.49/1985. The learned 1st Appellate Court affirmed the judgment and decree passed by the learned Trial Court vide its judgment and decree dated 27.10.1990. In dismissing the appeal, the learned 1st Appellate Court held that the issuance of the tenancy khatian in favour of the defendants was without any basis of law. It was categorically observed that the defendants were put in possession of the houses by the plaintiffs for doing the business of running a tea shop and it was on a monthly rent basis. However, on account of non-splitting the land on monthly tenancy and the land of trespass and the land under Suren Bez, it was opined that the relief for eviction on the trespassed land separately cannot be passed as there was no notice for evicting the defendants from the monthly tenanted premises. Under such circumstances, the learned 1st Appellate Court held that the learned Trial Court was, therefore, justified in not granting the relief of eviction and granting the relief on the illegality of the khatian.

7. It has also been brought to the notice of this Court that a second appeal was preferred being RSA No.52/1991 before this Court which was, however, dismissed by this Court by the judgment and decree dated 17.07.1996 without interfering with the judgment and decree passed by the learned 1st Appellate Court. The judgment of the learned 1st Appellate Court, which has been exhibited as Exhibit-2, in the present suit, it was clear that the granting of the khatian under the Act of 1971 in favour of the defendants was illegal on the ground that the land was not an agricultural land and further the finding of fact arrived at that the defendants in those proceedings who are also the defendants herein were put in possession of a house by the plaintiffs for doing business of

running a tea shop and it was on monthly rent basis.

8. In the backdrop of the above, let this Court further proceed with the case of the plaintiffs in the plaint. It further appears form a perusal of the plaint that on 09.03.1992, the plaintiffs issued a notice asking the defendants to quit and vacate the house and premises described in Schedule A to the plaint, thereby removing the illegally constructed two thatched houses upon the land over the Schedule B to the plaint and also to pay an amount of Rs.7920/- on account of arrear rent in respect to the tenanted premises. Subsequent thereto, as nothing materialized on the basis of the said legal notice issued on 09.03.1992, thereby determining the tenancy, the suit was filed seeking a decree for eviction of the defendant Nos.1 to 7 from the houses described in the Schedule-A to the plaint; a decree for eviction of the defendant Nos.1 to 7 etc., from the land described in Schedule-B to the plaint by demolishing and removing the houses standing thereon; a decree for arrear rents, etc.

9. Pursuant to the receipt of the summons, the defendant Nos.1, 2, 5 and 7 only participated in the Trial by filing a joint written statement. From a perusal of the written statement, all facts were denied including the statement made in paragraph 4 to the plaint. The importance of the same would be seen in the later part of the instant judgment. At the time of filing of the written statement, the Second Appeal being RSA No.52/1991 which was filed against the judgment and decree dated 27.10.1990 in Title Appeal No.49/1985, passed by the learned 1st Appellate Court was stated to be pending. In paragraph 11, the defendants duly admitted that the learned Trial Court in Title Suit No.44/1985 only decreed

for cancellation of the khatian. It was also admitted that the learned 1st Appellate Court held that the land comprises of a tenanted portion, while the other portion was under the forceful occupation of the defendants and there has been no splitting up of the said lands. It was also stated that the defendants did not receive the alleged notice dated 09.03.1992 and denied the allegations made in the alleged notice.

10. Taking into account the substantial questions of law which have already been formulated by this Court, it very pertinent to take note of paragraphs 12 and 14 of the said written statement. In paragraph 12, the defendants stated that they had been occupying the land from time of their forefathers for more than 30 years on their own right and adversely to the plaintiffs and as such the plaintiffs' suit is barred by Article 65 of the Limitation Act, 1963. In paragraph 14, it was further averred that the predecessor-in-interest of the defendants occupied the suit land by constructing houses thereon and by cultivating a portion thereof. It was stated that the plaintiffs had no houses on the suit land and the defendants did not take any house of the plaintiffs on monthly rental basis. It was further mentioned that the defendants are not tenants in respect of any houses of the plaintiffs and as such, they are not liable to pay any arrear rent. In addition to that it was averred that the houses were constructed by the defendants and their predecessor and they own the same and those defendants have been occupying the suit land on their own right by constructing houses thereon for more than 30 years on their own right openly and adversely to the plaintiffs. Therefore, from the very stand taken by the defendants, it appears that no plea of any forfeiture or breach of a condition which are necessary pre-requisites to come within the ambit of under Article 66 of the Limitation Act,

1963 were pleaded.

11. Moving forward, this Court finds it relevant to take note of that on the basis of the pleadings as many as 8(eight) issues were framed. The issue No.2 related to as to whether the suit was barred by limitation? The issue No.3 pertained to as to whether the plaintiffs had any house over the suit land and whether the defendants had taken any such house on monthly rented basis? The issue No.4 & 5 were as to whether the defendants were monthly tenants in respect of the suit house described in Schedule-A and as to whether they were defaulters. The issue No.6 related to as to whether the predecessor of the defendant Nos.1 to 6 illegally constructed two thatched houses upon the suit land described in Schedule-B in violation of the terms of the monthly tenancy? The issue No.7 was as to whether the notice terminating the tenancy of the defendants was duly served upon them?

12. From a perusal of the records of the suit, it reveals that both the plaintiffs as well as the defendants adduced their evidence. The learned Trial Court vide judgment and decree dated 27.01.1998 decreed the suit in favour of the plaintiffs. This Court finds it very pertinent now to take note of that while deciding the issue No.2, which is an issue pertaining to limitation, the learned Trial Court decided the issue on the basis of Article 65 and came to the opinion that the question of applying Article 65 did not arise, in view of the established landlord tenant relationship between the plaintiffs as well as the defendants. While deciding the issue Nos.3 and 4, the learned Trial Court basing upon the evidence decided the said issues in favour of the plaintiffs. The issue No.5 as to whether the defendants were defaulters, the said issue was also decided in

favour of the plaintiffs. In respect to the issue No.6, which pertained to as to whether the predecessor of defendant Nos.1 to 6 had illegally constructed two thatched houses upon the suit land, the said issue was also decided in the affirmative.

13. Being aggrieved by the judgment and decree dated 27.01.1998 in Title Suit No.141/1992, an appeal was preferred by the defendants which was registered and numbered as Title Appeal No.09/1998 before the learned 1st Appellate Court. This Court has duly perused the Memo of Appeal wherein various grounds of objections were taken primarily on facts and on the question of limitation. The ground of objection on limitation so taken was only in respect to Article 65 of the Limitation Act, which is apparent from ground No.7 and 9 of the Memo of Appeal.

14. The learned 1st Appellate Court vide its judgment and decree dated 20.09.2008 affirmed the judgment and decree passed by the learned Trial Court. It is very pertinent to take note of that while deciding the said appeal, the learned 1st Appellate Court also took up the question as to whether the suit was barred in view of the provisions of Order II Rule 2 of the CPC and came to a categorical finding that the suit was not barred *inasmuch as*, the subsequent suit i.e. the suit in question was filed after termination of the lease by valid notice on a different cause of action, unlike the previous Title Suit No.44/1985. The learned 1st Appellate Court also held that the subsequent suit was not barred in view of Explanation V of Section 11 of the Code.

15. Being aggrieved, the present appeal has been filed which has been admitted by this Court vide the order dated 11.03.2011 by formulating the four substantial questions of law. In the backdrop of the above, let this Court, therefore, consider as to whether the four substantial questions of law so formulated are actually involved in the instant appeal.

16. The first substantial question of law so formulated is as to whether the learned courts below committed illegality in holding that Articles 65 and 66 are applicable, although the act of violation of the terms of tenancy in Schedule A took place in the year 1975 and the act of trespass into the Schedule B land by the defendants also took place in the year 1975 and the suit having been filed in 1992 was barred by limitation? For deciding as to whether the said substantial question of law is involved in the instant appeal or not, let this Court first take up Article 66 of the Limitation Act. The said Article stipulates a period of 12 years in respect to a suit for possession of the immoveable property when the plaintiffs has become entitled to possession by reason of any forfeiture or breach of any condition and the period of 12 years shall start when the forfeiture is incurred or the condition is broken. For the purpose of invoking the defence of Article 66 of the Limitation Act, there is a requirement of pleadings by the defendants. As already stipulated hereinabove, the written statement filed by the defendant is completely bereft of any such pleadings. The reason being that the entire case of defendants is based upon Article 65. During the course of arguments, the learned counsel for the appellant tried to draw the attention of this Court to paragraph 4 of the plaint, wherein the plaintiffs had stated that the defendants had illegally constructed and unauthorizedly affixed asbestos sheets on the roof of one of the thatched houses and besides illegally

and unauthorizedly constructed on 15.08.1975, two thatched houses upon the vacant plot of land measuring about 8 lessas, which has been more specifically described in Schedule B to the plaint. This Court, however, finds it very pertinent to take note of paragraph 9 of the written statement, wherein the said statements were denied by the defendants. Not only that in paragraphs 12 and 14 of the written statement, it is a categorical stand of the defendants that they had only constructed the houses standing on the suit land.

17. At this stage, this Court finds it very pertinent to observe that in order to take the defence under Article 66 as already stated hereinabove, it is the defendants who had to prove forfeiture of the tenancy prior to the expiry of the lease period. The defendants having not admitted the tenancy in their pleadings and on the other hand having raised the claim of title on the basis of Article 65, in the opinion of this Court, the entire defence in terms of Article 66 is totally misconceived. Not only that, it is also very pertinent to observe that the defendants never raised a plea as regards Article 66 throughout the proceedings, till the second appellate stage. It is a well settled principle of law as has been held in the case of Santosh Hazari vs Purushottam Tiwari (Dead) By Lrs. reported in *(2001) 3 SCC 179,* that in order to be a substantial question of law involved in the appeal, there must be a foundation laid in the pleadings and the question should emerge from the substantial findings of facts arrived at by the Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. As there was no foundational facts raised in the pleadings as well as also during the course of the entire proceedings, till the second appellate stage, the question of applying Article 66 at this stage does not arise.

18. In the backdrop of the above, now let this Court take up, Article 65 of the Limitation Act. A reading of Article 65 would show that in respect to a suit for possession of an immoveable property or any interest thereon, based on title, the period of limitation is 12 years, when the possession of the defendant becomes adverse to the plaintiff. Now, the question arises is as to how, a plea of adverse possession can be proved. In the opinion of this Court to prove the plea of adverse possession, the following conditions have to be satisfied:

(a). The defendant must plead and prove that he was claiming possession adverse to the true owner;

(b). The defendant must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c). The defendant must also plead and establish when he came into possession; and

(d). The defendant must establish that his possession was open and undisturbed.

The above is based upon when the defendant takes the plea of adverse possession. However, in a case when a suit is filed by the plaintiff seeking title on the basis of adverse possession, it would be for the plaintiff to prove so.

19. It is also a well settled principle of law that by pleading adverse possession the party seeks to defeat the right of the true owner and, therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, it is of utmost importance that the facts constituting the ingredients of adverse

possession must be pleaded and proved by the party claiming adverse possession.

20. In the instant case, the plea of adverse possession was taken at paragraphs 12 and 14 of the written statement which this Court had referred to in details in the previous segments of the instant judgment. The statements made in the said paragraphs do not show when the defendants entered into possession, though they claimed that they were adversely possessing to the rights and interest of the plaintiffs. In other words, the defendants duly admitted the title of the plaintiffs over the land as the true owners of the land.

21. Now, let this Court take note of a very relevant aspect of the matter, which touches on the previous litigations. The Act of 1971 is an Act enacted to regulate the relationship of landlord and tenant in the temporarily settled areas in Assam. The grant of the khatian to the predecessor of the defendants, Late Harendra Nath Deka along with the defendant No.7 are rights as occupancy tenants. In fact in paragraph 10 of the written statement, the defendants categorically admitted that they are agricultural tenants. This khatian which was issued in favour of the predecessor-in-interest of the defendant Nos.1 to 6 and the defendant No.7 was put to challenge by the plaintiffs in the year 1985 and the defendants even after the decree passed by the learned Trial Court continued to agitate their rights that they were rightly granted the khatian till the Second Appeal being RSA No.52/1991 was dismissed vide judgment and order dated 17.07.1996. It is also very relevant that when the defendants continued to claim rights on the basis of the illegal khatian, they by themselves claimed occupancy tenants and thereby acknowledge the plaintiffs as their

landlords. It is a different aspect of the matter that the Court held that they were not occupancy tenants or had no rights to be granted the khatian. But the fact remains that the defendants continued to acknowledge the plaintiffs as their landlords which completely destroys their defence of adverse possession. It is reiterated again that the right flowing on the basis of a khatian or for that matter, an occupancy tenant cannot de hors a landlord. In view of the fact that the defendants continued to fight for the said khatian, which stood culminated only in the year 1996 and the present suit was filed in the year 1992, the question of the defendants agitating the rights, on account of adverse possession or taking a defence under Article 65 is totally misconceived. Therefore, in the opinion of this Court no rights accrued upon the defendants under Article 65 or Article 66 of the Limitation Act. The learned Trial Court as well as the learned 1st Appellate Court had, therefore, correctly opinioned while deciding the issue No.2. Under such circumstances, the first substantial question of law so formulated is not involved in the instant appeal.

22. The second substantial question of law pertains to as to whether the issue as to the question of tenancy and entitlement and the issue of eviction having already been decided in Title Suit No.44/85 and Title Appeal No.49/85, the present suit is hit by Section 11 read with Order 2 Rule 2 of the CPC? The said substantial question of law so formulated cannot be regarded as a substantial question of law as there was no foundation laid in the pleadings. Even otherwise, the rights of the plaintiffs over the suit property continued and with the issuance of notice on 09.03.1992, a fresh cause of action accrued. Under such circumstances, the substantial question of law so formulated cannot be said to be involved in the instant appeal.

23. The third substantial question of law as to whether the defendants' possession in Schedule B land is adverse irrespective of whether or not they are tenants in Schedule A land had already been decided by this Court while dealing with the first substantial question of law and as such, it is the opinion of this Court that the third substantial question of law is not involved in the instant appeal.

24. The fourth substantial question of law is as to whether the learned First Appellate Court erred in granting relief of eviction over the Schedule B land without determining the question of title over the same and in absence of any relief for declaration of title over it being made by the plaintiffs? From the narration of the facts above and the respective pleadings, it is clear that the defendants have duly admitted the ownership of the plaintiffs over the suit land by claiming adverse possession against the plaintiffs. The suit land described in Schedule-A is inclusive of Schedule-B land, whereupon the defendants claim to be in adverse possession. The statement made that the defendants are agricultural tenants, makes it clear that the defendants had duly admitted that the plaintiffs are the landlords. The fact that no declaration independently was sought for cannot be a ground to non-suit the plaintiffs, more particularly, when from the perusal of the plaint, it clearly reveals that the plaintiffs claimed that they are the owners of the land described in Schedule-A. It is well settled that for deciding the nature of the suit, the entire plaint has to be read and not merely the relief portion. The judgment of the Supreme Court in *the Corporation of the City Of Bangalore Vs. M. Papaiah And Anr.,* reported in *(1989) 3 SCC 612,* categorically supports the above proposition. Paragraphs 4

and 5 of the said judgment being relevant are reproduced hereunder:

> *"4. So far the scope of the suit is concerned, a perusal of the plaint clearly indicates that the foundation of the claim of the plaintiffs is the title which they have pleaded in express terms in para 2 of the plaint. It has been stated that after cancelling the acquisition of the suit property for a burial ground the land was transferred to Guttahalli Hanumaiah under G.O. No. 3540 dated 10-6-1929 on payment of upset price. In paras 3 and 5 the plaintiffs have reiterated that the first plaintiff was the owner-in-possession. It is well established that for deciding the nature of a suit the entire plaint has to be read and not merely the relief portion, and the plaint in the present case does not leave any manner of doubt that the suit has been filed for establishing the title of the plaintiffs and on that basis getting an injunction against the appellant Corporation. The court fee payable on the plaint has also to be assessed accordingly. It follows that the appellant's objection that the suit is not maintainable has to be rejected. The Additional Civil Judge, who heard the appeal from the judgment of the trial court, examined the question of plaintiffs' title and rejected their case. The question of possession was also separately taken up, and it was found that the plaintiffs had failed to prove their possession until 24-8-1973 when they allege that the appellant Corporation trespassed. Accordingly, the appeal was allowed and the suit was dismissed."*

> *"5. In reversing the decision of the first appellate court the High Court committed several serious errors of law. The High Court appears to have been confused on the question whether the issue of title to the disputed property was involved in the suit or not. The judgment shows that the High Court has made several inconsistent observations. By way of illustration, the following passage at page 13 of the paper book (of this Court) may be seen:*
>
> > *"This Court must accept this argument in view of the circumstances that there was no issue involving the title. The title has been satisfactorily established by the appellants and the respondent has failed to establish its title. Therefore, the first appellate court is wholly wrong in raising issues which did not arise in the case and reaching the conclusion that the suit was bad since the appellants did not seek the relief of declaration of title and possession."*
>
> *We do agree that the suit cannot be dismissed on the ground that the relief of declaration of title and possession has not been specifically mentioned in the plaint. But the observations on the question whether the issue of title is involved in the suit or not are clearly discrepant. In some other part of the judgment the High Court has mentioned a portion of the relevant evidence on the question of title and possession and made adverse comments against the findings of fact recorded by the first appellate court without giving any valid reason therefor. So far the revenue records are concerned, the appellate court considered the same and held that they did not support the plaint. The High Court has reversed the finding saying that the interpretation of the first appellate court was erroneous. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law. These errors have seriously vitiated the impugned judgment of the High Court which must be set aside."*

25. From the above discussion, it would show that the fourth substantial question of law is not involved in the present appeal.

26. In that view of the matter, as the substantial questions of law so formulated do not arise in the instant appeal, the instant appeal, therefore, stands dismissed with costs quantified @ Rs.35000/- for the instant proceedings. The plaintiffs further would be entitled to the cost throughout the proceedings.

27. With the above observations, this regular second appeal stands disposed of.

28. Registry to send back the LCR.

**JUDGE**

**Comparing Assistant**