



GAHC010012342014

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

Case No. : RSA/193/2014

DIPTI DAS and 4 ORS.
W/O LATE SUSHIL KANTA DAS

VERSUS

ON THE DEATH OF SUSHIL BHUSAN DAS HIS LEGAL HEIRS SRI
PRIYABRATA DASSON and 8 ORS.
III SRI SUBRATA DASSON III SRI DEBASHIS DASSON IV SMTI MINAKSHI
DASD ALL ARE RESIDENT OF NABA KUMAR LANE, NILAMOI ROAD,
KARIMGANJ, P.O. AND P.S. KARIMGANJ, ASSAM

Advocate for the Appellants : Mr. Sheeladitya, Advocate.

Advocate for the Respondents : Mrs. R. Choudhury, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 23.06.2022

Date of Judgment : 30.06.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. Sheeladitya, the learned counsel for the appellants and Ms. R. Choudhury, the learned counsel appearing on behalf of the respondents.

2. The present appeal was admitted on 23.07.2014 by framing one substantial question of law which reads as under:

Whether the suit of the plaintiff is barred by limitation?

3. As the substantial question of law so formulated relates to whether the suit of the plaintiff was barred by limitation, this Court for the purpose of the instant appeal finds it appropriate to deal with the relevant facts which are necessary for adjudication. For the purpose of convenience, the parties herein are referred to in the same status as they stood before the trial court.

4. The plaintiffs filed a suit seeking declaration that the plaintiffs have land holder rights over the suit land which have been described in Schedule-2 (the suit land) of the plaint; for recovery of khas possession of the suit land by evicting the principal defendant Nos. 1 to 5, their men, servants and agents therefrom; for permanent injunction restraining the principal defendant Nos. 1 to 5 from dispossessing the plaintiffs from the suit land in any manner whatsoever after the plaintiffs got khas possession of the same as per the decree of the court; for costs etc. the suit was registered and numbered as Title Suit No.40/2005 and was initially filed before the Court of the Civil Judge (Senior Division), Karimganj. At this stage, it may be relevant to mention that on account of the change of the pecuniary jurisdiction of the courts, the said suit was transferred to the Court of the Munsiff No. 2, Karimganj and was re-registered as Title Suit No.79/2006.

5. The case of the plaintiffs in the said suit was that the Schedule-1 land which measures 1 kedar 2 powas 1 jasti and 2 pons originally belonged to one Sunil Kanta Das (since deceased) and the proforma defendant No.12, Shri Dwijendra Kumar Das. It has been claimed in the plaint that the proforma defendant No.12 got right over the Schedule-2 land which is the suit land. By a registered Kobala registered on 21.05.1986 as document No.2530, the said Dwijendra Kumar Das sold his half portion of the Schedule-2 land in favour of



the plaintiff No. 1 and vide another Kobala registered on 21.05.1986 as document No.2531, the remaining half portion of the Schedule-2 land was transferred to the plaintiff No. 2.

6. After the said deeds of sale were executed and registered, a Title Suit was filed by the principal defendant Nos.1 to 5 before the Court of the Assistant District Judge, Karimganj which was registered and numbered as Title Suit No.5/1987 against the plaintiff Nos.1 & 2, proforma defendant No. 12 and one Sri Amarjit Das. In the said suit, the principal defendant Nos. 1 to 5 prayed for declaration of their title over the suit land; confirmation of their possession therein, for cancellation of the registered Kobala Nos. 2530 & 2531, both dated 21.05.1986 and for other relief. The said suit, i.e., Title Suit No.5/1987 on account of the change of the pecuniary jurisdiction was transferred to the Court of the Civil Judge (Junior Division) No.1, Karimganj where the suit was re-registered and re-numbered as Title Suit No.147/1994. The said suit was dismissed by the judgment and decree dated 14.09.1995. The principal defendant Nos. 1 to 5 thereafter preferred an appeal before the Court of the Civil Judge (Senior Division), Karimganj which was registered and numbered as Title Appeal No.51/1995. In the said appeal, a cross-objection was filed by the plaintiffs herein. The Court of the Civil Judge (Senior Division), Karimganj dismissed the Title Appeal No.51/1995 on contest vide the judgment and decree dated 23.08.2001. However, no order was passed in the cross-objection filed by the plaintiffs. Thereupon, an appeal was preferred under Section 100 of the CPC before this Court by the principal defendant Nos. 1 to 5 which was registered and numbered as RSA No.15/2002. At the time of filing of the suit, the said appeal was pending. However, from the documents exhibited by the plaintiffs it would show that by the judgment and decree dated 12.12.2007, the said appeal

preferred by the principal defendant Nos. 1 to 5 was dismissed thereby affirming concurrent findings of facts by both the courts below.

7. It further transpires from a reading of the plaint, and more particularly, the paragraph No.13 of the plaint that prior to 06.02.1987, the principal defendant Nos. 1 to 5 had no possession over the suit land. However, during the pendency of Title Suit No.5/1987 which was subsequently re-registered as Title Suit No.147/1994, the plaintiffs were dispossessed from the suit land on 06.02.1987 for which the plaintiff No.1 initiated a proceeding being CR Case No.312/1987 against the principal defendant Nos. 1 to 5 in the Court of the learned Judicial Magistrate, Second Class, Karimganj. The said CR Case was however dismissed in view of the pendency of the civil suit. It further appears from a perusal of paragraph No. 13 of the plaint that it has been mentioned that the principal defendant No.1, through her mason, forcibly started construction of the eastern and the western pucca boundary walls on the suit land from 24.04.2002 in spite of strong protest raised by the plaintiffs. In that regard, the plaintiffs also submitted a petition dated 24.04.2002 to the Chairman, Karimganj Municipal Board to stop construction work of the said pucca boundary walls. However the Chairman, Karimganj Municipal Board did not take any action on the petition filed by the plaintiff No. 1, and consequently, the Principal defendant No.1 was successful in completing the construction work of pucca brick walls by 30.04.2002. The action of the defendants to raise the construction walls had clouded the title of the plaintiffs for which the suit was filed. It would be apparent from a perusal of the plaint that the said suit was filed on 18th of June, 2005.

8. The principal defendant Nos. 1 to 5 filed their written statement wherein various preliminary objections were taken as regards the maintainability of the

suit. Relevant to mention that an objection was taken that the suit was barred under the law of limitation, waiver, estoppel and acquiescence. In paragraph Nos.12 of the written statement and more particularly in the sub-paragraph therein it has been categorically mentioned while dealing with paragraph No. 13 of the plaint that the statements made in paragraph No. 13 of the plaint were completely false and made on suppression of facts. It was averred that the suit land was never in possession by the plaintiffs and the question of dispossessing them by the principal defendant Nos. 1 to 5 on 06.02.1987, did not arise. The CR Case so filed by the plaintiff No.1 was not based on fact and it was falsely instituted just to grab the property of the principal defendant Nos. 1 to 5. In paragraph No. 13 of the written statement, more particularly sub-para (b) & (c) it was categorically mentioned that late Sunil Kanta Das and Dwijendra Kumar Das were brothers and who mutually partitioned their homestead land in the long past and out of the said mutual partition, the southern half measuring an area of 3 pawas 9 pons which is the suit land fell in the share of late Sunil Kanta Das which he enjoyed the land till his death as part of his homestead in assertion of his sole and absolute right and title thereto and adversely to the interest of all or other persons. It was further averred in sub-para (c) of paragraph No. 13 of the plaint that as Dwijendra Kumar Das did not have a saleable right for which the documents executed by him and registered as sale deed on 21.05.1986 bearing document Nos.2530 & 2531 before the Karimgnaj Sub-Registry Office are collusive, fraudulent and illegal documents and on the strength of those documents, the plaintiffs did not acquire any right or title in the suit land nor did they ever possess.

9. On the basis of the pleadings, as many as seven issues were framed which are stated herein below:-

- i) Is there any cause of action for the suit?*
- ii) Whether the suit is maintainable?*
- (iii) Whether the suit is barred by limitation?*
- iv) Whether the suit is bad for defect of points?*
- v) Whether the plaintiffs have right, title, interest over the suit land?*
- vi) Whether the plaintiffs are entitled to the recovery of khas possession of the suit land?*
- vii) Whether the plaintiffs are entitled to the decree/reliefs as prayed for?*

10. The plaintiffs' side examined one witness and exhibited 17 documents whereas the defendants' side examined three witnesses and exhibited 4 documents. It is relevant to take note of that Ext.3 and Ext.4 were the registered Kobala in original bearing Nos.2530 & 2531.

11. The trial court, by the judgment and decree dated 10.05.2010, dismissed the suit on the ground of limitation. At this stage, it may be relevant herein to take note of that while deciding the Issue No. (v), as to whether the plaintiffs had right, title, interest over the suit land, the trial court after taking into account the evidence on record came to a finding that the proforma defendant No.12, Dwijendra Kumar Das had saleable interest over the suit land land at the time of sale and Ext.3 and Ext.4, i.e., the deeds of sale were genuine. It was further held that the principal defendant Nos. 1 to 5 had only disputed the saleable interest of the proforma defendant No.12 and on the basis thereof had claimed that Ext.3 and Ext.4 were collusive and illegal and as the principal defendant Nos. 1 to 5 had failed to prove the collusiveness of the documents, the trial court held that the plaintiffs had right, title and interest over the suit land. However, while deciding the Issue No. (iii), the trial court held that the plaintiffs, after being dispossessed from the suit land by the defendants, failed



to file any suit within the period and even also failed to file any counterclaim in the previously instituted suit. Under such circumstances, the trial court came to a finding that the suit was barred by limitation. In view of the findings, as regards Issue No. (iii), the trial court while deciding the Issue No. (vi) & (vii) came to a finding that though the plaintiffs established their right, title and interest over the suit land and also proved their dispossession but as the suit was not filed within the purview of limitation, the plaintiffs were not entitled to get any relief.

12. Being aggrieved and dissatisfied, the plaintiffs preferred an appeal before the Court of the Civil Judge, Karimganj which was registered and numbered as Title Appeal No.29/2010. In the said appeal, the principal defendant Nos. 1 to 5 filed their cross-objection.

13. Relevant herein to note that the appeal filed by the plaintiffs was primarily challenging the decision in Issue No. (iii) for which the suit was dismissed. On the other hand, the cross-objection so filed by the principal defendant Nos. 1 to 5 related to the decision in respect to Issue No.(v) wherein the Trial Court held that the plaintiffs had right, title and interest over the suit land. It is pertinent to mention that in terms with Order XLI Rule 22 of the Code, the cross-objection would have the same effect as an appeal filed under Order XLI read with Section 96 of the Code. The First Appellate Court by the judgment and decree dated 21.06.2013 allowed the appeal filed by the plaintiffs by holding that the suit was filed within limitation. The cross-objection filed by the principal defendant Nos. 1 to 5 was dismissed. Consequently, the First Appellate Court declared the right, title and interest of the plaintiffs over the suit land. It was further held that the plaintiffs were entitled to get recovery of khas possession by evicting the defendants therefrom and permanent injunction was

also granted against the defendants from interfering with the possession of the plaintiffs over the suit land after its recovery.

14. Feeling aggrieved and dissatisfied, the principal defendants as appellants have approached this Court under Section 100 of the CPC by filing the present appeal and as already stated hereinabove, this Court vide the order dated 23.07.2014 admitted the instant appeal by formulating a substantial question of law to the effect as to whether the suit of the plaintiff was barred by limitation?

15. For deciding the said substantial question of law, it would be relevant to take into account the scope of the suit for recovery of possession. Article 64 of the Limitation Act, 1963 (for short, the Act) prescribes the period of limitation in respect to a suit for recovery of immovable property based on previous possession and not on title. The period of limitation is 12 years from the date of dispossession of the plaintiff while in possession of the property. Article 65 of the Act stipulates the period of limitation for a suit for recovery of possession based upon title. It stipulates that for possession of an immovable property or any interest thereon based on title it shall be 12 years when the possession of the defendant becomes **adverse** to the plaintiff. Therefore, mere possession whatsoever long does not necessarily mean that it is adverse to the true owner, the possession has to be adverse to the true owner and from that time, the period of limitation would start. The present suit is a suit for recovery of possession based upon title and as such Article 65 of the Act would be applicable.

16. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non use of a property by the owner even for a long time will not affect his title. But the position will be alter when another person takes possession of the property and asserts a right over it

hostile to the right of the true owner. The concept of adverse possession means a hostile possession by clearly asserting hostile title in denial of the title of the true owner.

17. Therefore in order that the title to be hostile, the person claiming right by way of adverse possession has to show that the person recognises the ownership of the true owner and despite that he asserts his title over the suit land for more than the statutory period and as such he has perfected his title over the land by way of adverse possession. It is a well- settled principle of law that a party claiming adverse possession must prove that his possession is *nec vi, nec clam, nec precario* , that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of claim of adverse possession. It is well settled that the plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. As a plea of adverse possession is not based on equity as the person is trying to defeat the right of the true owner, it is for him to clearly plead all facts necessary to establish his adverse possession. The concept of animus possidendi is very relevant for the purpose of the instant case inasmuch as it means the intention



to possess the land in denial to the title of the true owner. Claiming the right over the land on the basis of parallel title to true owner and not on the basis of possession would not come within the ambit of adverse possession inasmuch as to satisfy the plea of adverse possession, the person claiming adverse possession has to recognize that the plaintiff had title over the immovable property but the person has openly, hostilely and continuously in denial to the title of the plaintiff have been possessing the immovable property for a period more than statutory period.

18. In the backdrop of the above, let this Court take into consideration the facts of the instant case. The plaintiffs in paragraph No.13 of the plaint have categorically admitted that on 06.02.1987, during the pendency of Title Suit No.5/1987, they were dispossessed forcibly by the principal defendant Nos. 1 to 5. The suit, i.e., Title Suit No.5/1987 admittedly was a suit filed for declaration of right, title and interest of the principal defendant Nos. 1 to 5 for confirmation of possession as well as for declaration and cancellation of the registered deeds of sale bearing deed Nos.2530 & 2531, both dated 21.05.1986. As such, it would be seen that the principal defendant Nos. 1 to 5 were claiming title over the suit land based on a title devolved from their predecessors. The said suit was dismissed by the judgment and decree dated 14.09.1995. The appeal thereagainst, i.e., Title Appeal No.51/1995 was dismissed by the judgment and decree dated 23.08.2001. The second appeal so filed by the principal defendant Nos. 1 to 5 was also dismissed on 12.12.2007 and as such, the claim of the principal defendant Nos. 1 to 5 of their right, title, interest, confirmation of possession and for declaration that the deed for sale bearing deed Nos.2530 & 2531, dated 21.05.1986 had attained finality. It is also relevant to take note that till the decision in RSA No.15/2002, dated 12.12.2007, the principal defendant



Nos. 1 to 5 claimed an independent title over the suit land on the basis of partition and inheritance from its predecessor late Sunil Kanta Das and never recognized the plaintiffs as the owner over the suit land. In order to take the plea of adverse possession, it is the requirement of law that the said pleadings should contain specific details as already observed herein above. However, on a perusal of the written statement filed by the principal defendants it would show that the case of the principal defendants was that late Sunil Kanta Das got the suit land in view of the partition with the proforma defendant No.12 and thereupon late Sunil Kanta Das was in possession of the suit land all along till his death, and thereafter, the principal defendants have been possessing and enjoying the suit land. There is no specific plea being taken in the written statement that late Sunil Kanta Das, during his lifetime or the principal defendant Nos. 1 to 5 have been possessing the suit land openly, hostilely and continuously in denial of the title of the plaintiffs who are the owners of the suit land. Only a statement has been made that late Sunil Kanta Das enjoyed the suit land till his death in assertion of his sole and absolute right and title thereto and adversely to the interest of all or any other person. That statement, in the opinion of this Court, is not sufficient for raising a plea of adverse possession inasmuch as for raising a plea of adverse possession, there has to be pleadings to that effect that the immovable property was possessed openly, hostilely and continuously by denying the title of the true owner. As no such pleadings have been asserted in the written statement and it being a specific case of the principal defendant Nos. 1 to 5 that their right over the suit land is based upon the title devolved upon them on the basis of a partition, this Court is of the opinion that the possession of the principal defendant Nos. 1 to 5 over the suit land cannot be said to be adverse at the time of filing the present suit.



Consequently, the bar under the Article 65 of the Schedule to the Act of 1963 cannot be applied to the facts of the instant case. Consequently, this Court is of the opinion that the substantial question of law so formulated by this Court vide order dated 23.07.2014 is not a substantial question of law involved in the instant appeal.

19. Accordingly, this Court dismisses the appeal on the ground that there is no substantial question of law involved in the instant appeal thereby affirming the judgment and decree dated 21.06.2013, passed by the Court of the Civil Judge, Karimganj in Title Appeal No.29/2010.

20. The respondents herein shall be entitled to the costs of the instant proceedings. Prepare the decree accordingly.

21. Send back the LCR.

JUDGE

Comparing Assistant