



GAHC010077542019

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

Case No. : RSA/156/2019

SMTI. REKHAMONI DEVI KAKATI AND 6 ORS.
W/O- SHRI PRASANTA KAKATI

2: SHRI PRASANTA KAKATI
S/O- SRI BALLADEV KAKATI
BOTH ARE RESIDENTS OF RAJAGAON
WARD NO. 1
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105

3: SRI GOBIN MEDHI @ KALITA
S/O- LATE RAGHU KALITA
R/O- VILL.- RAJAGAON
WARD NO. 1
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

4: SMTI. RUMI KALITA
W/O- NARENDRA KALITA
R/O- VILL.- RAJAGAON
WARD NO. 1
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105

5: SMTI. MUNMI KALITA
D/O- LATE NARENDRA KALITA
R/O- VILL.- RAJAGAON
WARD NO. 1



P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

6: SMTI. BHANIMA KALITA
D/O- LATE NARENDRA KALITA
R/O- VILL.- RAJAGAON
WARD NO. 1
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

7: SMTI. KUMKUM KALITA
D/O- LATE NARENDRA KALITA
R/O- VILL.- RAJAGAON
WARD NO. 1
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105

VERSUS

SHRI JUGAL CHANDRA SAIKIA AND 5 ORS.
S/O- LATE KESHARAM SAIKIA, R/O- VILL.- BAKULGURI, P.O.
TAMULIGURI, P.S. MIKIRBHETA, DIST.- MORIGAON, ASSAM, PIN- 782105.

2:ON THE DEATH OF MEKURI KALITA
HIS LEGAL HEIRS SHRI HIREN KALITA
S/O- LATE MEKURI KALITA
R/O- VILL.- RAJAGAON
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

3:SHRI HIREN KALITA
S/O- LATE MEKURI KALITA
R/O- VILL.- RAJAGAON
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

4:SHRI MINTU KALITA
S/O- LATE MEKURI KALITA



R/O- VILL.- RAJAGAON
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

5:SHRI SARUBHAI KALITA
S/O- LATE MEKURI KALITA
R/O- VILL.- RAJAGAON
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

6:SMTI. RAHILA KALITA
W/O- LATE MEKURI KALITA
R/O- VILL.- RAJAGAON
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105

Advocate for the Petitioner : MR. A K PURKAYASTHA

Advocate for the Respondent : MR B KAUSHIK

Linked Case : RSA/138/2022

REKHAMONI DEVI AND 6 ORS.
W/O SRI PRASANTA KAKATI

RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105

2: SRI PRASANTA KAKATI
S/O SRI BALLADEV KAKATI
RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105

3: SRI GOBIN MEDHI @ KALITA



S/O LATE RAGHU KALITA
RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105

4: SMTI RUMI KALITA
W/O SRI NARENDRA KALITA
RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105

5: SMTI MUNMI KALITA
D/O LATE NARENDRA KALITA
RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105

6: SMTI BHANIMA KALITA
D/O LATE NARENDRA KALITA
RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105

7: SMTI KUMKUM KALITA
D/O LATE NARENDRA KALITA
RESIDENT OF VILLAGE RAJAGAON
WARD NO. 1
PO
PS AND DIST MORIGAON
ASSAM 782105
VERSUS

JUGAL CHANDRA SAIKIA AND ORS.
S/O LATE KESHARAM SAIKIA
RESIDENT OF VILLAGE BAKULGURI
PO TAMULIGURI
PS MIKIRBHETA
DIST MORIGAON
ASSAM 782105



2.1:ON THE DEATH OF MEKURI KALITA
HIS LEGAL HEIRS SHRI HIREN KALITA
S/O LATE MEKURI KALITA
RESIDENT OF VILLAGE RAJAGAON
PO
PS AND DIST MORIGAON
ASSAM 782105
2.2:SHRI MINTU KALITA
S/O LATE MEKURI KALITA
RESIDENT OF VILLAGE RAJAGAON
PO
PS AND DIST MORIGAON
ASSAM 782105
2.3:SHRI SARUBHAI KALITA
S/O LATE MEKURI KALITA
RESIDENT OF VILLAGE RAJAGAON
PO
PS AND DIST MORIGAON
ASSAM 782105
2.4:SHRI SUNTI KALITA
S/O LATE MEKURI KALITA
RESIDENT OF VILLAGE RAJAGAON
PO
PS AND DIST MORIGAON
ASSAM 782105
2.5:SMTI RAHILA KALITA
W/O LATE MEKURI KALITA
RESIDENT OF VILLAGE RAJAGAON
PO
PS AND DIST MORIGAON
ASSAM 782105

Advocate for the appellants : Mr. I. Iqbal, Advocate.

Advocate for the Respondents : Mr. B. D. Deka, Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 30.09.2022

Date of Judgment : 30.09.2022

JUDGMENT AND ORDER (ORAL)

Heard Mr. I. Ikbal, the learned counsel for the appellants and Mr. B. D. Deka, the learned counsel appearing on behalf of the respondent No.1.

2. Both the appeals, i.e. RSA No.156/2019 and RSA No.138/2022 are taken up together for disposal taking into account that the appeals herein arises out of the same suit, i.e. Title Suit No.22/2011.

3. This Court is taking up both the appeals at the stage of Order XLI Rule 11 of the Code of Civil Procedure, 1908 (for short, the Code) to consider as to whether the questions of law so proposed by the learned counsel for the appellants are substantial questions of law involved in the instant appeal. For ascertaining as to whether the said questions of law are substantial questions of law involved in the instant appeal, it would be relevant to take note of the brief facts of the case. For the sake of convenience, the parties herein are referred to in the same status as they stood before the trial court.

4. The respondent No.1 herein as plaintiff in Title Suit No.22/2011 filed the suit seeking declaration of his right, title and interest in respect to the land described in Schedule-Kha of the plaint by evicting the principal defendant Nos.1 & 2 from the said land; a decree for temporary injunction; a decree for permanent injunction restraining the principal defendant Nos. 1 & 2 from making any construction of houses over the Schedule-Kha land and also from digging the soil over the suit land and constructing any latrine over the suit land; for cost of the suit etc.

5. The case of the plaintiff as sets out in the plaint is that land measuring 2 kathas out of 4 bighas 4 kathas 9 lechas covered by Dag No.49, PP No.442 of 1969-70 settlement year situated at village-Morigaon under Mouza-Morigaon was sold to the plaintiff by one Raghu Kalita during his lifetime by executing a registered Sale Deed No.1794 in the Office of the Sub-Registrar, Morigaon on 26.11.1990 and further delivered the

possession of the said land to the plaintiff. It is the further case of the plaintiff that after taking physical possession of the Schedule-Kha land which is the suit land, the plaintiff erected four numbers of pucca pillars and bamboo fencing on the boundary of the said land and started to occupy and possess the said land by paying the requisite land revenue to the Government. It has been mentioned that vide the order dated 05.12.2005, passed by the Circle Officer, Morigaon Revenue Circle in connection with Mutation Case No.114 (Ka)/2005-06, the Plaintiff obtained necessary mutation of his name in respect to the said two kathas of land. It is the further case of the plaintiff that the plaintiff was in continuous possession of the suit land as described in Schedule-Kha to the plaint. However, the proforma defendant No.14, without having any right, title, interest and possession over the suit land and behind the back of the plaintiff, that too after the death of the pattadar Raghu Kalita, obtained mutation in his name in respect of 2 kathas 2 lechas of land out of 4 bighas 4 kathas 9 lechas in collusion with the revenue staff and thereafter sold 2 kathas of land to the principal defendant No.1. It is the further case of the plaintiff that the principal defendant Nos.1 & 2, in collusion with the proforma defendant No.14, taking advantage of the absence of the plaintiff, trespassed into the suit land, i.e. the Schedule-Kha land on 11.01.2011 and constructed a temporary shed/roof made of C.I. sheets and thereby dispossessed the plaintiff from the suit land. The plaintiff thereafter raised objection on 12.01.2011 against such unauthorized act of construction. However, the principal defendant Nos.1 & 2 denied the title of the plaintiff over the suit land. As such, the said suit was filed claiming relief(s) as already mentioned herein above.

6. At this stage it may be relevant herein to mention that the Schedule-Kha land has been specifically described in the plaint and for the sake of convenience, the same is reproduced herein below:-

SCHEDULE "Kha"

A land measuring about 2 katha covered by Dag No.49 of P.Patta No.442 situated in Morigaon Revenue Town Kissam under Morigaon Mouza with the local jurisdiction of Morigaon Police Station and an Office of the Sub-Registrar, Morigaon in the district of Morigaon. The said is bounded by:-

East: (1) Shri Nirmal Kalita (Present Proforma Defendant No.8),

(2) Shri Bhupendra Nath Bordoloi,

West: Own land of Vendor (Shri Prabhat Chandra Nath),

North: Shri Rohini Sarma,

South: Shri Bogamoni (Presently the legal heirs of Bogamoni, namely, Shri Kanak Medhi and Shri Basanta Kumar Deka).

7. The principal defendant Nos.1 & 2 along with the proforma defendant Nos.4 (i), 6 & 14 submitted a joint written statement-cum-counterclaim. In the said written statement, it was mentioned that the suit land as described in Schedule-Kha, differs from the land as described in the registered Sale Deed No.1794 dated 26.11.1990 taking into consideration that the boundaries on the east and west are different. It has been mentioned that the alleged purchase by the plaintiff of the Schedule-Kha land by the registered Sale Deed No.1794 dated 26.11.1990 though may have been executed but the plaintiff did not enter into the possession of the suit land after his purchase and also did not mutate his name in the suit patta within the period of 12 years but he had mutated his name on 05.12.2005 which is after 15 years. It was mentioned that the Schedule-Kha land, i.e. 2 kathas of land belongs to the principal defendant No.1 which she purchased by two registered Sale Deeds from the pattadar Sri Narendra Nath Kalita, the proforma defendant No.14 legally. In paragraph No.4 of the written statement it has been alleged that the registered Sale Deed of the plaintiff is a forged registered Sale Deed for which the plaintiff did not take possession of the purchased land and also did not mutate his name. It was mentioned that the plaintiff after a period of 15 years of registration of the



registered Sale Deed No.1794 dated 26.11.1990 with the collaboration in the Revenue Authority illegally mutated his name in the suit patta and the alleged mutation of the plaintiff is barred under Section 136 of the Limitation Act as the plaintiff did not file the mutation case for recording his name in the suit patta within the period of 12 years and hence, the mutation of the plaintiff dated 05.12.2005 on the basis of the Mutation Case No.114(Ka)/05-06 and the correction of the same on the revenue records on 10.10.2006 has no force at all and the same was liable to be cancelled.

8. In paragraph No.13, the defendants stated their case stating *inter-alia* that the suit land measuring 2 kathas out of 4 bighas 4 kathas 9 lechas of land covered by Dag No.49 of PP No.442 of village-Morigaon, Revenue Town-Kissam under Mouza-Morigaon in the district of Morigaon, Assam previously was the part of the land of Dag No.267 of PP No.170 of village Rajagaon, Kissam under Mouza-Niz Tetelia in the undivided district of Nagaon, Assam. Subsequently, the PP No.170 of the aforesaid Kissam was changed to PP No.442 and Dag No.267 changed to Dag No.49. It was mentioned that one Sonaram Kalita, son of Patiram Kalita was the original pattadar of the suit patta while the suit patta was PP No.170 as would reveal from the certified copy of the Jamabandi of the PP No.170 for the year 1930-31. After the death of Sonaram Kalita, the suit land was mutated vide order dated 12.06.1944 in the name of Maghua Kalita, Bijoy Kalita, Birendra Kalita and Priti Kalita by way of inheritance. It was further mentioned that one Dutta Kalita had two sons, namely, Priti Kalita and Tulshi Kalita of which Priti Kalita was elder than Tulshi Kalita and the land was mutated in the name of Priti Kalita alone. However, the younger brother of Priti Kalita, namely, Tulshi Kalita also had equal share even though his name was not mutated in the suit patta and was possessing the said share. Subsequently, Priti Kalita died and after his death, the suit patta land was mutated in the name of Nirmal Kalita by an order dated 26.01.1947 by way of inheritance in place of Priti Kalita and the said Nirmal Kalita was possessing the share of his father. Similarly, Tulshi Kalita was possessing his share without mutating his name in the suit

patta. After the death of Tulshi Kalita his share of land was possessed by his three sons, namely, Abani Medhi @ Kalita; Lohit Medhi @ Kalita and Narendra Medhi @ Kalita. The elder brother of Sri Narendra Nath Kalita, namely, Abani Medhi and Lohit Medhi died unmarried and after their death, the entire land of Tulshi Kalita was possessed by Narendra Nath Kalita. It was further mentioned that in Dag No.49 of the Periodic Patta No.442, the shares of Bijoy Kalita, Birendra Kalita and Tulshi Kalita was 1 bigha 1 katha 2 lechas. The original pattadar Maghua Kalita did not take any share in the suit patta as he received his share in Dag No.90 of PP No.639 of Morigaon Revenue Town, Kissam. So, the share of land of Maghua Kalita was possessed by Tulshi Kalita. After the death of Maghua Kalita, the suit patta land was mutated in the name of his three sons, namely, Raghu Kalita, Dhan Kalita and Mekuri Kalita. But they had no possession. It was also mentioned that Raghu Kalita, Dhan Kalita and Mekuri Kalita who were the sons of Maghua Kalita but they had no possession over any part of the suit patta even though their names had been recorded as pattadars of the suit patta and as per their family partition their shares of land was possessed by the proforma defendant No.14, Narendra Nath Kalita. In the meantime, Dhan Kalita died and for which the proforma defendant No.6, Mekuri Kalita and Raghu Kalita jointly mutated the name of the proforma defendant No.14 as sharer of the suit patta by an order dated 20.04.2007 in Mutation Case No.190/06-07 by the Circle Officer of Morigaon Revenue Town Circle and to which the legal heirs of Dhan Kalita also consented. The proforma defendant No.14 Narendra Nath Kalita, son of Late Tulshi Kalita sold 2 kathas of land out of 4 bighas 4 kathas 9 lechas covered by Dag No.49 of the Periodic Patta No.442 for a consideration of Rs.1,00,000/- by executing two separate registered Sale Deeds to the principal defendant No.1, Smti. Rekhmoni Devi Kalita before the Sub-Registrar Office, Morigaon on 22.06.2007 of which one is registered Sale Deed No.1362 dated 22.06.2007 by which the proforma defendant sold 1 katha of land to the principal defendant No.1 and another is registered Sale Deed No.1362 dated 22.06.2007 by which the proforma defendant sold 1 katha of land to the principal defendant No.1 and



delivered the possession of the said 2 kathas of land to the principal defendant No.1 on the date of execution of the registered Sale Deed. Thereafter, on 21.07.2007, the principal defendant Nos.1 & 2 constructed two temporary residence/residential houses over the suit land described in Schedule-Kha of the plaint and since then the principal defendant Nos.1 & 2 have been possessing the suit land by living therein by planting betelnut plants around the boundary and also cultivating in some portion of the land and producing vegetables. It was mentioned that the Schedule-Kha land was mutated in the name of the principal defendant No.1 by an order dated 13.10.2007 passed by the Circle Officer of Morigaon Revenue Circle in Mutation Case No.6/07-08 as it would reveal from the note 'Ta' of the certified copy of the Jamabandi of the Periodic Patta No.442 of village-Morigaon, Revenue Town-Kissam under Mouza-Morigaon in the district of Morigaon, Assam. Further to that it has been mentioned that the principal defendant No.1 took steps for permanent constructions over the Schedule-Kha land and in that regard also had obtained permission. While the said construction was going on as regards the wall, the principal defendant No.1 on 20.04.2011 at around 3:00 PM received the summons and *status-quo* order from the Court of the Munsiff No.1, Morigaon and on receiving the said summons and *status-quo* order of injunction petition, the principal defendant was compelled to stop the construction of the house. It was also mentioned that the Schedule-B (i) land of the counterclaim and the Schedule-Kha land of the plaint is the same plot of land of the principal defendant No.1 which she had purchased from the proforma defendant No.14. Further to that, in paragraph Nos.11 & 13 of the written statement the registered Sale Deed No.1794 dated 26.11.1990 was alleged to be forged. It further appears from the written statement that the counterclaim was also filed along with it.

9. At this stage, this Court deems it proper to refer to the provisions of Order VIII Rule 6A (4) of the Code which stipulates that the counterclaim shall be treated as a plaint and governed by the Rules applicable to the plaint. A further perusal of Order VII

of the Code would show that these are the Rules which are applicable in respect to a plaint. Order VII Rule 1 of the Code stipulates the particulars to be contained in the plaint. In the backdrop of the above, if this Court takes into consideration the counterclaim so filed along with the written statement it would be seen that there was nothing mentioned in the counterclaim in terms with the requirement of Order VII Rule 1 (a), (b), (c), (d), (e), (f), (g) & (i). The counterclaim only contained the relief sought for. Even there was no statement that the statements made in the written statement be treated to be a part of the counterclaim. The plaintiff, pursuant to the filing of the said counterclaim, filed a written statement stating *inter-alia* that the counterclaim was not in accordance with Order VIII Rule 6A (4) read with Order IV Rule 1 of the Code. Further it was mentioned that as the counterclaim did not disclose any cause of action, the same was required to be rejected.

10. On the basis of the said pleadings, as many as 13 (thirteen) issues were framed, which for the sake of convenience are reproduced herein below:-

- 1) *Whether there is any cause of action for the suit?*
- 2) *Whether the suit is barred by law of limitation?*
- 3) *Whether the suit has been properly valued and stamped and whether proper court fees has been paid by the plaintiff?*
- 4) *Whether the suit is maintainable in its present form?*
- 5) *Whether Raghu Kalita had acquired right, title and interest over the schedule Kha land?*
- 6) *Whether the plaintiff has got any right, title and interest over Schedule Kha land by dint of execution of registered Sale Deed No.1794 dated 26.11.1990 by Raghu Kalita?*
- 7) *Whether the registered Sale Deed No.1794 dated 26.11.1990 executed by Raghu Kalita is a forged one and liable to be cancelled?*
- 8) *Whether the plaintiff has been possessing the suit land since the date of his purchase till 11.01.2011 when he was dispossessed therefrom?*



9) *Whether there is any cause of action for the counter claim?*

10) *Whether the counter claim is maintainable in its present form and manner?*

11) *Whether the defendant No.14 had acquired any right, title and interest over the schedule B(i) land?*

12) *Whether the defendant No.1 got right, title and interest over Schedule B(i) land on strength of Regn. Deed Nos.1361/1362/347/348 dated 22.06.2007 and 04.03.2011 respectively?*

13) *To what relief/reliefs parties are entitled to?*

11. The Issue Nos.5, 6 & 7 relate to the rights of the plaintiff over the Schedule-Kha land and the Trial Court decided the Issue Nos.5 & 6 against the plaintiff holding that Raghu Kalita's right over the Schedule-Kha land was not proved. The Trial Court further held that the Sale Deed No.1794 dated 26.11.1990 was not proved in accordance with Section 67 of the Indian Evidence Act, 1872. However, surprisingly in the judgment there was no mention as to why the Trial Court came to that opinion. As regards the Issue No.7 as to whether the registered Sale Deed No.1794 dated 26.11.1990 executed by Raghu Kalita is forged one and liable to be cancelled, it was held that as the defendants failed to prove that the said Sale Deed was forged for which the said Issue was decided in favour of the plaintiff. As regards the Issue No.8 as to whether the plaintiff have been possessing the suit land since the date of his purchase till 11.01.2011 when he was dispossessed, the Trial Court came to a finding that the plaintiff could not prove the said aspect that the plaintiff had been in possession of the suit land since the date of purchase till 11.01.2011 when he was dispossessed.

12. On the question of the counterclaim, i.e. the Issue Nos.11 & 12, the Trial Court came to a finding that Narendra Nath Kalita was not having right, title and interest over the Schedule B (i) land of the counterclaim and thus the defendant No.1 had not acquired any valid right, title and interest over the Schedule-B (i) land on the strength of registered Sale Deed Nos.1361 & 1362 dated 21.06.2007 and the Deed of Rectification

bearing Nos. 347 and 348 dated 04.03.2011. At this stage it may also be relevant to mention that the Deed of Sale Nos.1361 & 1362 dated 21.06.2007 was rectified by two rectification deeds being Deed No.347 & 348 dated 04.03.2011 respectively.

13. On the basis of the above, the Trial Court dismissed the suit of the plaintiff as well as the counterclaim of the defendants. Being aggrieved, the plaintiff filed an appeal before the Court of the Civil Judge at Morigaon which was registered as Title Appeal No.8/2016. The contesting defendants who had filed a written statement as well as the counterclaim had filed another appeal which was registered and numbered as Title Appeal No.10/2016.

14. The First Appellate Court decided each Appeal separately Vide the judgment and decree dated 17.12.2018 passed in Title Appeal No.8/2016, i.e. the said Appeal filed by the plaintiff was allowed. In doing so, the First Appellate Court took into consideration the various grounds of objection and framed the following point of determination:-

“Whether the learned Trial Court is justified in dismissing the suit of the plaintiffs and whether the impugned judgment and decree passed by the learned Trial Court needs interference in this appeal?”

15. The First Appellate Court came to a finding that Sonaram Kalita died leaving behind Maghua Kalita, Bijoy Kalita, Birendra Kalita and Priti Kalita who inherited their father’s land. It was observed that Maghua Kalita had three sons, namely, Raghu Kalita, Dhana Kalita @ Dhan and Mekuri Kalita who inherited their father’s land. The suit patta, i.e. Periodic Patta No.442 of Dag No.49 had 4 bighas 4 kathas 9 lechas of land and it was observed that it appeared from the Ext.1 & Ext.A Jamabandi that Nirmal Kalita, Raghu Kalita, Mekuri Kalita, Bogamoni Kalita, Kanak Medhi (descendant of Birendra Kalita) (descendant of Boga Medhi) sold their respective shares to different purchasers on different points of time. From the said two Jamabandis, it also appeared as observed by the First Appellate Court that the plaintiff mutated his land in respect of 2 kathas of land purchased from Raghu Kalita. It was observed that in the said two Jamabandis,



Narendra Nath Kalita, son of Tulshi Kalita sold 2 kathas of land to the defendant No.1 who too mutated her name in respect to her purchased land. It was further observed that from the documentary as well as oral evidence on record that there is no material to show that Tulshi Kalita was the brother of Priti Kalita who allegedly possessed his share and his name was not mutated after his death and that his share devolved upon the three sons, namely, Abani, Lohit and Narendra. It was also observed that there was no evidence on record to show that Abani and Lohit died unmarried and that their shares were possessed by Narendra Nath Kalita. It was observed that Ext.C, Jamabandi showed that the names of Priti Kalita along with Maghua, Bijoy and Birendra were mutated by way of inheritance in place of Sonaram in 1944 and there was nothing on documentary evidence to show that Tulshi Kalita was the younger brother of Priti Kalita who allegedly possessed his share of land. It was further observed that there was nothing forthcoming and in what manner the share of Maghua Kalita was possessed by Tulshi Kalita and that Maghua Kalita did not take share in the suit patta rather received his share of land in Patta No.639 of Dag No.90. It was also observed that there was nothing to show in what manner Mekuri and Raghu Kalita legally transferred their land to Narendra Nath Kalita. The First Appellate Court taking into consideration Section 44 of the Transfer of Property Act, 1882 observed that when a property is jointly owned by two or more persons and where a co-owner transfers his share, the transferee is substituted in the property to the extent of the share transferred to him and in the instant case, the plaintiff took the share of Raghu Kalita who had transferred his share. The First Appellate Court reversed the findings of the Trial Court holding that the signature of Raghu Kalita in Ext.1, Sale Deed being not marked as an Exhibit cannot be accepted on the ground that the plaintiff had led oral as well as documentary evidence as to the execution of the Sale Deed by the vendor Raghu Kalita. It was held that Ext.1, Sale Deed No.1794 dated 26.11.1990 was a registered instrument and the Registering Authority had given the certificate and endorsement as registered under the law. It was further observed that the defendants could not rebut the presumption to be drawn against

the due execution of the Sale Deed by cogent evidence and coherent defence evidence. Further, the defendants also failed to show as to how and in what manner the Ext.1 was forged as alleged. Further, the First Appellate Court also held that the reason of discarding the Ext.1 in the manner done by the Trial Court was not in accordance with law. Apart from that, the First Appellate Court appreciating the evidence , i.e. Ext.2, Jamabandi came to an opinion that the plaintiff was able to probabalise his right, title and interest in respect to the Schedule-Kha land and thereby reversed the findings as regards the Issue Nos.5 & 6. On the Issue No.8, the First Appellate Court held that from the evidence on record itself apparent that the plaintiff was possessing the suit land since the date of purchase till 11.01.2011 when he was dispossessed therefrom. Primarily on the basis of the decision as regards Issue Nos.5, 6 & 8 being reversed, the First Appellate Court allowed the appeal thereby declaring that the plaintiff had right, title and interest over the Schedule-Kha land and that the plaintiff was entitled to recovery of khas possession of Schedule-Kha land by evicting the defendants therefrom. The defendants were further restrained by way of permanent injunction from carrying any construction of any manner upon the suit land.

16. As regards the other appeal which was filed by the contesting defendants and registered as Title Appeal No.10/2016, the First Appellate Court vide a separate judgment and decree dated 17.12.2018 dismissed the said appeal on contest. While doing so, the First Appellate Court framed a point of determination which is quoted herein below:-

“Whether the learned Trial Court is justified in dismissing the counter-claim and whether the impugned judgment and decree passed by the learned Trial Court needs interference in this appeal?”

17. The First Appellate Court, on the basis of the decision in Issue No.5 & 6 and the discussions in the judgment and decree dated 17.12.2018 in Title Appeal No.8/2016, came to a finding that Narendra Nath Kalita had no semblance of any right over the suit



land and as such could not have sold it to the defendant No.1 on 22.06.2007 as the plaintiff had already mutated his land over the suit land on 05.12.2005. It was observed that the subsequent sale of the suit land by Narendra Nath Kalita to the defendant No.1 could not have been effected as it was possessed by the plaintiff upon his purchase from Raghu Kalita, who was the real owner. On the basis of the said, the counterclaim filed by the contesting defendants, who were appellants in Title Appeal No.10/2016, was dismissed.

18. Being aggrieved and dissatisfied, the contesting defendants as appellants have preferred the two appeals against the judgment and decree passed in Title Appeal No.08/2016 and Title Appeal No.10/2016 both dated 17.12.2018.

19. The learned counsel for the appellants submitted that in RSA No.156/2019 which was an appeal arising out of the judgment and decree dated 17.12.2018 in Title Appeal No.10/2016 there arises two questions of law which he proposed. The learned counsel for the appellants further submitted that in respect to RSA No.138/2022 which was against the judgment and decree dated 17.12.2018 in Title Appeal No.8/2016, he further proposed three questions of law to be substantial and involved in the said Appeal.

20. Let this Court first take up RSA No.138/2022. In the said second appeal, the learned counsel for the appellants proposed the following three questions of law to be substantial and involved in the instant appeal which are quoted herein under:-

(i) Whether the learned Appellate Court below travelled beyond pleadings by laying the burden of proof on the appellants/defendants in reversing the judgment and decree passed by the learned Trial Court?

(ii) Whether mere registration of a Sale Deed (Ext.-1) can be held to be sufficient proof of its execution?

(iii) Whether the learned First Appellate Court's judgment suffers from perversity in deciding issue No.8?

21. Let this Court take into consideration each of the question of law one at a time.

The first question of law so proposed is as to whether the First Appellate Court travelled beyond the pleadings by laying the burden of proof on the appellants/defendants in reversing the judgment and decree passed by the learned Trial Court. On a specific query being made as to why the said questions of law have been proposed as substantial question of law involved in the instant appeal, the learned counsel for the appellants submitted that the learned First Appellate Court placed the burden upon the appellants who were the defendants in the suit to prove that they have failed to prove that Maghua Kalita or his sons did not have right, title and interest over the suit property. In the opinion of this Court, the said question of law cannot be considered to be a substantial question of law that can be formulated taking into consideration that it was an admitted fact in the written statement filed by the defendants that one Sonaram Kalita was the original pattadar of the land and he had four sons, namely, Maghua Kalita, Bijoy Kalita, Birendra Kalita and Priti Kalita. Admittedly, Maghua Kalita had three sons who were Raghu Kalita, Dhan Kalita and Mekuri Kalita. Said Raghu Kalita transferred his share of land to the plaintiff. It is the defendants' case that Maghua Kalita, during his lifetime had in exchange of the land that he took in Dag No.90, PP No.369 of Morigaon gave up his right in respect to the suit land. Under such circumstances, the First Appellate Court had rightly put the burden upon the appellants/defendants to prove that Maghua Kalita gave up his right over the suit land in as much as it was an admitted case of the defendants that the original pattadar of the suit land was Sonaram Kalita and right to the suit land was inherited by his four sons including Maghua Kalita. Under such circumstances, the said question of law so proposed cannot be a substantial question of law involved in the instant appeal.

22. The second question of law so proposed as to whether mere registration of the Sale Deed, Ext.1 can be held to be sufficient proof of his execution. The learned counsel for the appellants submitted that the Sale Deed, i.e. Ext.A (i) though was registered document but it is the duty of the plaintiff to prove its due execution which the plaintiff

had failed to prove in accordance with Section 67 of the Indian Evidence Act, 1872.

23. The learned counsel for the respondent No.1, on the other hand, submitted that taking into account that the said document is a registered instrument there is always a rebuttable presumption in favour of the said document being duly executed and registered. The learned counsel for the respondents further submitted that from the evidence of PW8 and PW9 it would be seen that the said document was duly proved and this very aspect of the matter was duly taken into consideration by the First Appellate Court. While taking into consideration the said contention so raised by the parties, it is also relevant to take note of the stand of the defendants/appellants in the suit wherein they alleged that Raghu Kalita did not have the title. Secondly, it was also alleged that the said document was fraudulently executed. Both these aspects have been turned down by the First Appellate Court in as much as the Trial Court came to a categorical finding while deciding the Issue No.7 that the defendants failed to prove that the Deed of Sale, Ext.A (i) was a forged document. The First Appellate Court also upon taking into account the evidence on record has come to a categorical finding that the Ext.A (i) was duly proved. The appellants have failed to show any perversity in the said finding for which this Court under Section 100 of the Code cannot interfere with the said findings of final Court of facts. Be that as it may, the evidence of PW 8 & 9 also shows that there was compliance to Section 67 of the Indian Evidence Act, 1872. Apart from that it is also relevant to take note of that Raghu Kalita's son was one of the defendants in the suit who also filed the counterclaim. During his cross-examination, he made it clear that he did not know anything about the dispute that too as regards any illegalities in the execution of the Deed of Sale. It is also relevant to note that the allegation of Sale Deed being forged is on account of the mutation being not done immediately but after a long passage of time. It is the opinion of this Court that merely because mutation was not done immediately, the same cannot be a reason to hold that the Sale Deed is forged. Considering the above, this Court is of the opinion that the second question of law so

proposed is not a substantial question of law involved in the instant appeal.

24. The third question of law so proposed is a question as regards the perversity in deciding the Issue No.8 whereby the First Appellate Court came to a finding that from the date of the purchase by the plaintiff till 11.01.2011, the plaintiff was in possession of the suit land.

25. From the discussion made herein above, the plaintiff had been able to prove his title over the suit land. In view of the fact that the plaintiff has right, title and interest over the suit land, the next question, therefore, arises as to whether the defendants have been able to show any justifiable reasons to remain in possession when the plaintiff has right, title and interest over the suit land. The defendants have not been able to prove adverse possession against the plaintiff and the only basis on which the defendants sought to remain in possession is the sale made in favour of the defendant No.1 by one Narenadra Nath Kalita. The First Appellate Court, having declared that the plaintiff has right, title and interest over the 2 Kathas of land as described in Schedule-Kha, this Court being of the opinion that the plaintiff has right, title and interest over the Schedule-Kha land, the reasons assigned by the defendants/appellants to remain in possession being in conflict with the rights of the plaintiff, the third question of law so framed as regard the Issue No.8 loses significance and as such the same cannot be considered to be a substantial question of law involved in the instant appeal in as much as any decision in Issue No.8 would not change the decision in the instant case.

26. Considering the above, this Court is of the view that the third question so proposed cannot be formulated as substantial question of law in terms with Section 100 (4) of the Code.

27. In the backdrop of the above, let this Court take into consideration the two questions of law as has been proposed by the counsel for the appellants to be substantial questions of law involved in the RSA No.156/2019. For the sake convenience, the said two questions of law are reproduced herein below:-



1. Whether the judgment and decree suffers from misreading, non-reading of the pleadings and evidence as well as misinterpretation of the documents adduced by the parties and as such resulted in wrong and perverse findings in dismissing the counterclaim of the appellant/defendant Nos.1 & 2?

2. Whether the learned court below was justified in framing the Issue No.11 and thereby dismissing the counterclaim of the appellants on the basis of the said issue although the plaintiff did not deny, rebut and refute specifically any of the pleadings made in the counterclaim?

28. As already observed herein above, the counterclaim so filed by the defendants/appellants herein was not in accordance with Order VIII Rule 6A (4) read with Order VII Rule 1 of the Code taking into account that in the said counterclaim there was only the reliefs mentioned. There was no compliance to the provisions of Order VII Rule 1 of the Code, more particularly to Clause (a), (b), (c), (d), (e), (f), (h) & (i) of Rule 1 of Order VII of the Code. Further to that, it is also relevant to take note of that in the foregoing paragraphs of the instant judgment, this Court has already held that the plaintiff has been able to prove their right, title and interest over the Schedule-Kha land.

29. In the backdrop of the above, if this Court takes into consideration the two questions of law which have been proposed, the said in the opinion of this Court, does not at all arise as there has been no pleadings in the said counterclaim except the reliefs which have been sought for. It is trite that to be a substantial question of law, there has to be a foundation laid in the pleadings. However, in the instant case it would be seen that in the counterclaim there are no pleadings and even there is also no mention whatsoever that the statement made in the written statement should be treated as a part of the counterclaim. Under such circumstances, the question of misreading/non-reading of the pleadings and evidence as well as misinterpretation of the documents adduced by the parties which have led to the perverse findings cannot be considered to be a substantial question of law involved in the instant appeal. Similarly, the question of not rebutting the allegations made in the counterclaim as has been proposed to be a substantial



question of law does not arise taking into account that there is no pleading except the reliefs sought for in the counterclaim. In that view of the matter, the two questions of law which have been proposed cannot be formulated as substantial questions of law in terms with Section 100 of the Code.

30. Accordingly, as in both the appeals there arise no substantial question of law which can be formulated under Section 100 (4) of the Code, both the appeals stands dismissed.

31. Registry is directed to prepare the decree accordingly.

JUDGE

Comparing Assistant