

GAHC010007612014



2026:GAU-AS:114

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

Case No. : RSA/92/2014

ABDUL REJAK and ANR.

2: MD.MAFIZUDDIN

BOTH ARE SONS OF LATE KEMU MIA ALIAS KERAMAT ALI
BOTH ARE RELIGION MUSLIM
BY OCCUPATION
CULTIVAOR
R/O VILL. RANGALAU
MOUZA KATHAIATALI
P.O. RANGALAU
DIST. NAGAON
ASSAM

VERSUS

ABUL HUSSAIN and 5 ORS.

2:MD. ABU TALAB

3:ABU BAKKAR

ALL ARE SONS OF ANFAR ALI

4:MD. SOFIRUDDIN

S/O LATE ADAM ALI

5:MD. AMIRUDIN

S/O LATE AIAS ALI

ALL ARE BY RELIGION MUSLIM
BY OCCUPATION CULTIVATOR
R/O VILL. RANALU
MOUZA KATHIATALI
P.S. KAMPUR
P.O. RANALU
DIST. NAGAON
ASSAM.

6:DHANSING MIKIR

S/O LATE SARUMON MIKIR
R/O DENGAN
MOUZA NAMATI
P.S. HOWRAGHAT
DIST. KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR.B HALDAR, MR.A C SARMA,MR.P CHAKRABORTY

Advocate for the Respondent : MRA K AHMED R-3(i)to3(vii), A SARMA (R-1,2,4,5),MR. B CHAKRAVARTY(R-1,2,4,5),MS.M DEKA(R-3(i)to3(vii)),MR.M H TALUKDAR(R-3(i)to3(vii)),MR.A R SIKDAR(R-3(i)to3(vii))

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellant : Mr. A.C. Sarma,
Senior Advocate.

Advocate(s) for the Respondents : Mr. B. Chakravarty,
Advocate.

Date on which judgment is reserved : 02.09.2025.

Date of pronouncement of judgment : 06.01.2026.

Whether the pronouncement is of the
operative part of the judgment? : YES.

Whether the full judgment has been
pronounced? : YES.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.C. Sarma, learned senior counsel appearing for the appellants as well as Mr. B. Chakravarty, learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) whereby the judgment dated 25.11.2013 passed by the court of learned Civil Judge, Nagaon, Assam in Title Appeal No.02/2010 affirming the judgment and decree dated 22.12.2009 passed in T.S. No.01/2000 by the learned Munsiff No.1, Nagaon.
3. The appellants were the plaintiffs before the trial court. The suit land consists of 1 bigha of land out of 3 bigha 3 katha 13 lechas covered by dag No.111, P.P. No.34 of Rangulu, Kissamat under Kathiatoli Mouza in the district of Nagaon. The said land was earlier covered by P.P. No.109 and Dag No.95 of 1930-31 settlement period and originally owned by Rupa Gaonburah Mikir and Saruman Mikir. On 06.03.1962, Saruman Mikir sold 2 bighas of lands to Mofijuddin, S/o. Monuar Ali and handed over possession. In the meantime, the said Mofijuddin appointed Jamini Mohan Paul as his Attorney. The Attorney was appointed to look after and also to sale the land. On 08.07.1983, Jamini Mohan Paul sold the said land to the appellants by executing a registered sale deed No.575 and also delivered possession of the same. Since then, the appellants are in possession of the land. They mutated their names in respect of the said lands.
4. It may be mentioned that in the aforesaid sale deed, it was not mentioned that Jamini Mohan Paul was an Attorney of Mofijuddin. Therefore, a rectification deed being Deed No.854 dated 13.08.1999 was executed.
5. The remaining 1 bigha of land remained in possession of Rupa Gaon Burah Mikir and he sold the said 1 bigha of land to the appellants on 06.10.1982 by executing the sale deed no.2112. Possession of the land was also delivered.
6. The respondents had their lands on the eastern boundary of the aforementioned plot of lands. The revenue authorities had clearly demarcated the said boundary.
7. On 03.06.1997 and on 09.07.1997, the respondents allegedly constructed thatched houses over the suit land. At the behest of the appellants, the learned Executive Magistrate exercising power under Section 107 of the CrPC, attached the suit land and directed the parties to approach the civil court for seeking relief. Accordingly, the suit was filed.
8. The respondents contested the suit by filing the written statement. According to the respondents, as per 1930-31 settlement operation, a person called Amori Mikir, S/o. Boga Mikir was the owner of the suit land. After his death, his sons Rupa Gaon Burah Mikir and Saruman Mikir, inherited the land, each having equal share over the land.
9. At one point of time, Rupa Gaon Burah Mikir was in need of money. Therefore, he handed over the possession of 1 bigha 3 kathas and 13 lechas of land to the father of the present respondents at as price of Rs.350/- and after executing an agreement for sale. Rupa Gaon Burah Mikir also took another amount of Rs.150/- from Anfor Ali, the father of the present respondents.
10. Before execution of any sale deed, Rupa Gaon Burah Mikir, died on 05.02.1972 without leaving any heir. But Anfor Ali, the father of the respondents continued to possess the said plot of land till his death.
11. The respondents claimed that Anfor Ali had become the owner of the land and the appellants have

no right, title and interest over the said land.

12. On the basis of the pleadings of the parties, the trial court framed the following issues:

1. Whether there is any cause of action for filing the suit?
2. Whether the suit is maintainable?
3. Whether the suit is barred by waiver, estoppels and acquiescence?
4. Whether the defendants No.1, 2 and 3 are entitled to protection under Section 53A of the Transfer of Property Act?
5. Whether the plaintiff is entitled to decree as prayed for?
6. Whether the plaintiff has right, title and interest over the suit land?

13. During the trial, both sides adduced oral as well as documentary evidence.

14. Finally, the trial court dismissed the suit holding that the appellants had no right, title and interest over the suit land.

15. They preferred an appeal. The appellate court confirmed the judgment of the trial court.

16. I have considered the submissions of the learned counsel of both sides.

17. After the hearing of evidence and at the stage of argument, the trial court framed the 6th issue being “Whether the plaintiff has right, title and interest over the suit land?” The trial court held that this is the most important issue in the suit.

18. The issue “Whether the plaintiff has right, title and interest over the suit land?” is an issue of fact as well as law? Both the parties were not given an opportunity to adduce evidence on this issue. This Court is of the opinion that the evidence adduced by the parties were for other issues which are not at all similar to this issue. It appears that the trial court passed the judgment on the aforesaid issue without any evidence. Therefore, the judgment of the trial court and the judgment of the appellate court, which affirmed the judgment of the trial court, are bad in law and are set aside.

19. Therefore, the appeal is allowed. The case is remanded to the trial court of Munsiff No.1 at Nagaon to give opportunities to the parties to adduce evidence on Issue No.6 and thereafter, the trial court shall pass a fresh judgment on all issues.

With the aforesaid direction the appeal is disposed of.

JUDGE

Comparing Assistant