

GAHC010012262016



2026:GAU-AS:575

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

Case No. : RSA/93/2016

SRI HAREN SARMA and 3 ORS
S/O LATE UMA SARMA

2: SRIMATI NILIMA DEVI
W/O SRI HAREN SARMA

3: DIPAK CH. SARMA

S/O SRI HAREN SARMA

4: DR. PRADIP SARMA

S/O SRI HAREN SARMA
R/O VILL. DHAPGURI
MOUZA-BHABGAON
P.S. SIKARHATI
P.S. MIRZA PALASBARI
DIST. KAMRUP
ASSAM

VERSUS

SRI NARAYAN MAHANTA and 2 ORS

2:MADHAB MAHANTA

3:HARKANTA MAHANAT
ALL ARE S/O LATE RAJEN MAHANTA
R/O SIKHARHATI
MOUZA-BHALA GAON
P.O. SIKHARHATI
P.S. MIRZA

DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR. SHEELADITYA,

Advocate for the Respondent : MR S KHAN, MR. T C DAS,MR. O P BHATI,FOR
CAVEATOR,MR. P SARMA

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellants : Mr. Sheeladitya,
Advocate.

Advocate(s) for the Respondent(s) : Mr. O.P. Bhati,
Advocate.

Date on which judgment is reserved : 11.11.2025.

Date of pronouncement of judgment : 20.01.2026.

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

Whether the full judgment has been
pronounced? : YES.

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JUDGMENT AND ORDER (CAV)

Heard Mr. Sheeladitya, learned counsel appearing for the appellants as well as Mr. O.P. Bhati, learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) where the judgment and decree dated 13.03.2015 passed by the learned Civil Judge, Amingaon, Kamrup in Title Appeal No.94/2014 setting aside the judgment and decree dated 15.12.2010 passed by the Munsiff No.2, Kamrup in T.S. No.173/2006 (new) is under challenge.

3. In the year 1961 late Rajen Mahanta, the father of the present respondents died and at that time the respondents were minor children. Late Rajen Mahanta left behind 2 Bighas 3 Kathas 19 Lechas of land. This land was covered by periodic patta.

4. Apart from the said land, the respondents also had two other plots of lands, one measuring 1 Katha 10 Lechas and the other measuring 2 Kathas 16 Lechas under Dag No.43 and 44. This land was covered by annual patta.

5. Both the plots of lands are agricultural lands. During his lifetime, late Rajen Mahanta cultivated crops there.
6. After the death of Rajen Mahanta, the respondents cultivated the said lands through labourers. In the meantime, the respondent Narayan Mahanta became a major and his four sisters were also major. Narayan Mahanta had arranged their marriages with the help of his uncle late Kamala Kanta Mahanta.
7. It may be mentioned that during rainy seasons, the appellant Haren Sarma used to go to his own land through the aforementioned 2 Bighas 3 Kathas and 19 Lechas of lands of the respondents. In fact, late Ambali Mahanta, the mother of respondent Narayan Mahanta and others had allowed the present appellant to use the said passage during rainy season. The respondents Narayan Mahanta and others and their uncle Kamal Kanta Mahanta did not agree with the decision of Smt. Ambali Mahanta. After the death of Kamala Kanta Mahanta, the appellant Haren Sarma influenced Smt. Ambail Mahanta. This incident happened in the year 1965.
8. Thereafter, the respondent Hara Kanta Mahanta, son of the aforesaid late Rrajen Mahanta approached the appellant Haren Sarma on 7th January, 2002 to take paddy as remuneration for cultivation of the land cultivated by agricultural labourers. Haren Sarma refused to give paddy to Hara Kanta Mahanta. He claimed that he had purchased the said land.
9. The respondents made an inquiry in the Revenue Circle Office and came to know that aforementioned plots of lands were mutated in the land records in the name of the appellant Sri Deepak Ch. Sarma, son of the other appellant Haren Sarma.
10. The appellant Haren Sarma was allowed by Smt. Ambali Mahanta to cultivate both the plots of lands by employing labourers when the respondents were minors. The appellant also obtained rayoti khatian in respect of the aforementioned 2 plots of lands, one measuring 1 Katha 10 Lechas and the other measuring 2 Kathas 16 Lechas. These are annual patta land.
11. Narrating the aforesaid facts, the respondents filed the suit praying for declaration of their right, title and interest over both periodic patta and annual patta land. They also prayed for recovery of possession of those lands.
12. The present appellants contested the case by filing written statement. They denied all the averments of the plaint. The appellants admitted that the aforesaid lands measuring 2 Bighas 3 Kathas 10 Lechas was owned by late Rajen Mahanta, the father of the respondents. They also admitted that Rajen Mahanta was the owner of the aforementioned two plots of lands measuring 1 Katha 10 lechas and 2 Kathas and 16 lechas. They claimed that after the death of Rajen Mahanta in the year 1961, the appellant Haren Sarma had approached Ambilika Mahanta, the wife of late Rajen Mahanta and prayed for permission to cultivate the aforesaid two plots of lands covered by annual patta. Permission was granted and in that way, Haren Sarma became a tenant of the annual patta lands.
13. In the month of July, 1965, Haren Sarma took possession of the other periodic patta land measuring 2 Bighas 3 Kathas 18 Lechas in spite of protests raised by Narayan Mahanta. Since then, Haren Sarma has been in possession of the periodic patta lands as well as the annual patta lands. He claimed that he has been openly and adversely possessing the said lands and acquired title by way of adverse possession.
14. On the basis of the pleadings, the trial court framed the following issues:
 - i. Whether there is any cause of action for this suit?
 - ii. Whether the suit is maintainable as per the provisions of CPC?
 - iii. Whether the suit is barred by limitation?

- iv. Whether the suit is properly valued and proper court fee paid?
- v. Whether the plaintiffs have got right title and interest over schedule A and B land?
- vii. Whether the plaintiffs are entitled to get their recovery of Khas possession of schedule?
- vii. Whether the plaintiffs are entitled to get mesne profit as prayed for?
- viii. To what relief reliefs the parties are entitled to?

15. At the time of hearing, both sides examined witnesses. On the basis of the evidence on record, the trial court dismissed the suit.

16. The respondents filed an appeal in the court of the learned Civil Judge, Kamrup at Amingaon. The appellate court allowed the appeal and decreed the suit declaring right title and interest in favour of Narayan Mahanta and others over the periodic patta land as well as annual patta land. The appellate court directed recovery of possession of the lands by evicting Haren Sarma and others.

17. The present appeal was admitted for hearing upon the following substantial question of law:

- i. Whether eviction decree passed by the learned First Appellate Court is in contravention of the provisions of Section 51(1) of the Assam (Temporarily Settled Areas) Tenancy Act, 1971?

18. At this stage, a brief visit to Section 51 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 would be fruitful. It reads as follows:

“51. (1) An occupancy tenant shall not be ejected by his landlord from his holding except in execution of a decree for ejectment passed on the ground that he has used the land comprised in his holding in a manner which renders it unfit for the purpose of the tenancy.

(2) Any tenant, not being an occupancy tenant, shall not be ejected from the land of his tenancy except in execution of a decree for ejectment passed on any one or more of the following grounds, namely:-

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy ;

(b) that he has broken a condition of his tenancy consistent with the provisions of this Act, and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected ;

(c) that he has failed to pay the arrear of rent; and

(d) that the land is bonafide required by the landlord for his personal cultivation. No suit for ejectment on this ground shall be entertained before the expiry of 12 months or after the expiry of 15 months for the date of creation of tenancy:

Provided that if the tenant has elsewhere got no land or has lands less than 10 bighas in area, then he shall not be ejected on this ground unless he has been left with so much area as will make the total of his holding equal to 10 bighas:

Provided further that if the landlord does not cultivate the land personally within one year of the date of ejection of the tenant then the tenant shall be restored to his possession.”

19. An occupancy tenant can be evicted by his landlord if he uses the land in his possession in a manner which renders it unfit for the purpose of the tenancy. Even a non-occupancy tenant shall not be ejected by his landlord except in execution of a decree for ejectment passed only on one ground that the tenant used the land comprised in his holding in a manner which rendered it unfit for the purpose of

tenancy. This view was taken by this Court in *Haridwar Upadhyay v. Jitendralal Roy*, reported in 1991 (2) GLR (NOC) 4.

20. There is no dispute that Haren Sarma and others are occupancy tenants under the landlord Narayan Mahanta and others. In the case in hand, there is no allegation that Haren Sarma and others had used the land under their holding in a manner which rendered it unfit for the purpose of tenancy. It has to be proved that the tenants have used the land in a manner which makes it unfit for tenancy.

21. For the aforesaid reasons, this Court is of the opinion that the learned appellate court had erroneously oriented itself and arrived at an incorrect finding.

22. The appeal is allowed. The impugned judgment and decree dated 13.03.2015 passed by the learned Civil Judge, Amingaon, Kamrup in Title Appeal No.94/2014 setting aside the judgment and decree dated 15.12.2010 passed by the Munsiff No.2, Kamrup in T.S. No.173/2006 (new), is set aside.

With the aforesaid direction, the present appeal is disposed of. Send back the trial court record(s).

JUDGE

Comparing Assistant