

GAHC010035502025



2026:GAU-AS:182

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

Case No. : RSA/38/2025

THANU LAHON
S/O LATE LALIT CHNDRA LAHON, R/O ABHAYAPUR GAON, NEAR
ABHAYAPUR STADIUM, MORAN, DIST. DIBRUGARH, ASSAM, PIN 785670

VERSUS

KIRITMOTI SATNAMI AND 2 ORS
W/O LATE RUNGU SATNAMI, D/O LATE AM BHAGAT SATNAMI, R/O NO 2
DIGHALIA VILLAGE, P.O. BAMUNBARI, P.S. TINGKHONG, DIST.
DIBRUGARH, ASSAM, PIN 786613

2:SMTI MONI SATNAMI

D/O LATE RAM BHAGAT SATNAMI
R/O NO 2 DIGHALIA VILLAGE
P.O. BAMUNBARI
P.S. TINGKHONG
DIST. DIBRUGARH
ASSAM
PIN 786613

3:SMTI PINKI SATNAMI
W/O LATE NARESH SATNAMI
R/O KHAGRIJAN TEA ESTATE SAPEKHATI
P.O. AND P.S. SAPEKHATI
DIST. CHARAIDEO
ASSAM
PIN 78570

Advocate for the Petitioner : MR. A BISWAS, S PAUL,MR P K BASU,MR N P DAS

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 06.01.2026

Heard Mr. A. Biswas, learned counsel for the appellant.

2. In this appeal, under Section 100 of the CPC, the appellant has put to challenge the correctness or otherwise of the judgment and decree, dated 22.11.2024, passed by the learned Civil Judge (Sr. Division), Dibrugarh (First Appellate Court, hereinafter), in Title Appeal No. 08/2012.

3. It is to be noted here that vide impugned judgment and decree, dated 22.11.2024, the learned first appellate Court had allowed the Title Appeal No. 08/2012 and thereby upheld the judgment and decree, dated 19.12.2011, passed by the learned Munsiff No.1, Dibrugarh (Trial Court hereinafter), in Title Suit No. 81/2009, whereby the learned trial Court had decreed the suit in favour of the plaintiffs/respondents herein.

4. Herein, the status of the parties, as indicated in the Title Suit No. 81/2009, is adopted for the purpose of convenience and to avoid confusion.

Background Facts:-

5. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

Late Nanka Satnami, the mother of the plaintiffs and proforma defendant No 6 and mother-in-law of the defendant No. 1, was the

owner of the land measuring 4 bigha 3 katha covered by dag No. 132, and 6 bigha 2 lecha covered by dag No. 133 of both P. P. No. 43 of No.2 Digholia Gaon, land of 2 bigha 2 katha in dag No. 138, land measuring 1 bigha 13 lecha in dag No. 131 of P.P. No. 201 of No.2 Digholia Gaon. Nanka Satnami sold 4 bigha land from the dag No. 133 of P.P.No.43 of No.2 Digholia Gaon.

Late Nanka Satnami, died leaving behind the plaintiffs and proforma-defendant No. 6, on 6/1/1999. During his lifetime, Naresh Satnami, the husband of defendant No.1, depriving other legal heirs illegally mutated his name in the record of rights showing himself as the sole legal heir of Late Nanka Satnami, without knowledge of plaintiffs. The defendant No.1 further illegally mutated her name in place of her Late husband -Naresh Satnami leaving aside the other legal heirs of original pattadar Late Nanka Satnami, without issuing notice to the plaintiffs. The defendant No.1 had also sold a plot of land of 2 bigha from dag No. 132 of P.P. No.43 and another plot of land measuring 1 bigha 13 lecha from dag No. 131 of P.P. No. 201 to defendant No. 2 illegally, stealthily which is the suit land.

To this effect the plaintiff had filed complaint before Circle Officer on 5/12/2008, to stop mutation in the name of defendant No.1 and to restore name of legal heirs of Late Nanka Satnami, but the Circle Officer did not pay any heed. Thereafter, on 03/01/2009, the plaintiff had served legal notice to the Deputy Commissioner, Chief Secretary, Circle Officer for redressal of their grievance. Thereafter, on 02/01/2009, the defendant No.2 threatened the plaintiff with dire consequences and by force ploughed the suit land and dismantled

the kutcha house with help of his employees and trying to encroach the suit land and obstructing the plaintiffs in their peaceful possession and are plucking tea by force.

Thereafter, the plaintiff had instituted the suit for declaration of right, title, possession, for injunction, for cancellation of sale deed, mutation and for getting mutation.

The defendant No.1 and 2 had filed written statement, raising the issue of maintainability and denied the case of the plaintiff, by stating that Late Nanka Satnami was the recorded pattadar of the land of 2 bigha of dag No.133 and total land measuring 4 bigha covered by P.P. No.43, situated at No. 2 Digholia Gaon, and during lifetime, Late Nanka Satnami, along with her son Naresh Satnami, was cultivating and possessing the said land of 4 bigha without any hindrance and after death of Nanka Satnami, her son Naresh, became the owner and occupied the land and said Naresh was also in occupation of other land of 1 bigha 13 lecha of dag No. 131 and 2 bigha 2 katha of dag No. 138, covered by P.P. No. 201 situated at No. 2 Digholia Gaon as the land were earlier annual patta land and converted into periodic patta in 1999, in the name of Naresh with Knowledge of plaintiffs. Thereafter, Naresh Satnami became the owner of the suit land after death his mother and after his death, the defendant No.1 became the owner and got her name mutated on 15/1/2008, and sold out the suit land to defendant No. 2 by sale deed on 22/12/2008 and delivered him possession. The other legal heir of Nanka Satnami are enjoying other land as the suit land is the share of the deceased husband of defendant No. 1, where she is in

exclusive possession. They also denied any tea plantation of plaintiffs over land of dag No. 132 of P.P. No. 43, and as the plaintiffs were never in possession of the land at any time. Then on 28/01/2009, as the plaintiffs illegally trespassed into the suit land forcefully dug nalalh and threatened the defendant No. 1 to kill for which the defendant No. 1 had to fled away to her brother's house. Therefore, it is contended to dismiss the suit.

The defendants' No. 4 and 5 had filed their written statement denying case and submits that the name of Naresh Satnami was mutated in place of original pattadar Nanaka Satnami. Hence they had prayed for dismissal of the suit.

Upon pleadings of the parties, the learned trial Court had framed following issues:-

- 1) Whether the suit is maintainable in law and in facts including point of non-joinder of parties and limitation?
- 2) Whether there is a cause of action for the suit?
- 3) Whether the plaintiffs have right, title, interest and possession over the suit land?
- 4) Whether the mutation of the name of defendant No.1 alone over the suit land was done in due procedure of law?
- 5) Whether the impugned sale deeds were legally made?
- 6) Whether the plaintiffs are entitled to the relief's claimed for?
- 7) To what reliefs the parties are entitled to in the facts and circumstances of the case?

Thereafter, the learned trial Court had examined four witnesses of the plaintiffs and four witnesses of the defendants and thereafter,

hearing learned counsel for both the parties had decided all the issues in favour of the plaintiffs and vide judgment dated 19.12.2011, had decreed the suit.

Being aggrieved, the defendants had preferred Title Appeal No. 08/2012, before the learned first appellate Court. The learned first appellate Court had admitted the same for hearing and formulated a point for determination as under:-

- (i) Whether the findings of the learned Trial Court are justified and proper or needs any interference?**

Thereafter, hearing learned counsel for both the parties, the learned first appellate Court had dismissed the appeal and thereby, upheld the judgment and decree, dated 19.12.2011, passed by the learned trial Court in Title Suit No. 81/2009.

6. Being aggrieved, the defendants preferred the present appeal under Section 100 CPC, putting challenge to the correctness or otherwise of the judgment and decree, dated 22.11.2024, passed by the learned first appellate Court in Title Appeal No. 08/2012, suggesting following substantial question of law:-

- (i) Whether in view of the fact that the legal heirs of Late Nanka Satnami wife of Late Ram Bhagat Satnami which included the respondents/plaintiffs and the proforma respondent No. 3/defendant No.1 (in her capacity of being the wife of Late Naresh Satnami) and also the proforma defendant No.6 were all governed by the Mitaksara Hindu Law of Inheritance and also in view of the fact that Late Nanka Satnami wife of Late Ram Bhagat Satnami was admittedly the owner of 9 Bighas 2 Katha 15 Lechas, both the learned courts below were**

justified in setting aside both the sale deeds executed by the defendant No.1 (i.e. Pinki Satnami) in favour of the appellant/defendant No.2 by way of merely holding that the proforma respondent No. 3/defendant No.1 had no legal right to get only her name mutated in respect to the lands of Late Nanka Satnami without first determining the shares of the parties in respect to the said land of Late Nanka Satnami as per the Mitaksara Hindu Law of Inheritance?

(ii) Whether the Learned Courts below were both justified in setting aside both the Sale Deeds executed by Pinki Satnami i.e. proforma respondent No. 3/defendant No.1 in favour of the Appellant merely on the purported ground of irregularity in the mutation of the name of the vendor (i.e. Smti Pinki Satnami the proforma respondent No. 3/defendant No.1 herein) in respect to the suit land when it was never disputed by the plaintiffs themselves that vendor (i.e. Smti Pinki Satnami proforma respondent No. 3/defendant No.1 herein) not one of the legal heirs of Late Nanka Satnami wife of Late Ram Bhagat Satnami and thus entitled to a share of the said properties left behind by Late Nanka Satnami wife of Late Ram Bhagat Satnami as per the Mitaksara Hindu Law of Inheritance?

(iii) Whether in a suit involving properties belonging to persons whose right of inheritance is governed by the "Mitaksara Hindu Law of Inheritance" only the wife, sons and daughters of the said land owner are required to be impleaded as parties or whether all the legal heirs of the sons and daughter of the said land owner are also required to be impleaded as parties along with the wife, sons and daughters of the said land owner?

- (iv) Whether in absence of the impleadment of all the Legal Heirs of the Son and daughter of the said land owner a suit involving the declaration of the right, title and interest over the said land belonging to the said land owner who was governed by the Mitaksara Hindu Law of Inheritance can be said to be maintainable?
- (v) Whether in view of the fact that the respondents No. 1 and 2 herein as the plaintiffs in TS 81/09 having only sought declaration of their right, title and interest over the suit land which originally belonging to Late Nanka Satnami wife of Late Ram Bhagat Satnami who were the parents of the respondents/plaintiffs and the husband of the proforma respondent No. 3/defendant No.1 and proforma defendant No.6 in TS 81/09 without having sought the further relief of partition of the suit lands amongst the Legal Heirs of Late Nanka Satnami wife of Late Ram Bhagat Satnami the suit filed by the respondents as the plaintiffs was hit by the proviso of Section 34 of the Specific Relief Act, 1963 thereby rendering the said suit not maintainable in law?
- (vi) Whether the learned courts below have while deciding upon the correction of the mutation of the name of the proforma respondent No.3/defendant No.1 (i.e. Pinki Satnami) in respect to the plots of land belonging to Late Nanka Satnami wife of Late Ram Bhagat Satnami had transgressed upon the powers conferred upon the revenue authorities such as the District Commissioner, Additional District Commissioners, Circle Officers and even the Board

of Revenue as prescribed under the Assam Land and Revenue Regulation, 1886?

7. Mr. Biswas, the learned counsel for the appellant has advanced two fold arguments. Firstly, Mr. Biswas submits that the appellant/defendants are governed by Mitaksara School of inheritance. But, this aspect was not considered by any of the learned Courts below and thereby giving raise to a substantial question of law herein this appeal. Secondly, Mr. Biswas submits that while filing the TS No. 81/09, the plaintiffs having sought for only declaration of their right, title and interest over the suit land which originally belonging to Late Nanka Satnami, wife of Late Ram Bhagat Satnami who were the parents of the respondents/plaintiffs and the husband of the proforma respondent No. 3/defendant No.1 and proforma defendant No.6 in TS 81/09, without having sought for further relief of partition of the suit lands amongst the legal heirs of Late Nanka Satnami, wife of Late Ram Bhagat Satnami, the suit filed by the plaintiffs was hit by the proviso of Section 34 of the Specific Relief Act, 1963 thereby rendering the said suit not maintainable in law, but this aspect had not been considered by the learned courts below. And due to no consideration of aforesaid factual and legal position, the suggested substantial questions of law, especially question No.(v), as suggested in the Memo of Appeal, arises and the same are required to be adjudicated, after admitting the present second appeal and therefore, it is contended to admit the appeal.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal and the suggested substantial questions of law and also perused the judgment and decree, dated 19.12.2011, passed by the learned trial Court in Title Suit No. 81/2009, and also the

judgment and decree, dated 22.11.2024, passed by the learned first appellate Court in Title Appeal No. 08/2012. Also this Court has gone through the pleading of the parties, which are being enclosed here in this appeal.

9. It appears from the written statement of the defendants/appellant, and also from the Title Appeal No. 08/2012 that nowhere the defendants had pleaded that they are governed by the Mitaksara School of inheritance. Such a plea has, for the first time, raised before this Court. It is well settled that new plea cannot be raised for the first time in second appeal. In view of above factual and legal position, this Court afraid such a plea cannot be entertained by this Court in second appeal. It is not in dispute that the defendants are ordinary residents of the State of Assam and wherein the Dayabhaga School primarily deals with the law of inheritance and succession. Moreover, the issue raised in this appeal is essentially a question of fact that ought to have been raised before the learned trial Court with necessary pleadings.

10. Regarding the second limb of argument of Mr. Biswas which relates to substantial question No. (v), this Court finds that in the plaint, the plaintiffs had inter-alia prayed for following relief(s):-

- a) declarations that the plaintiffs have right, title, interests, possession over the suit land and cancellation of Sale Deeds being (1) Sl.No.4367 Deed No. 3543 dt. 22.12.08 and (2) Sl.No.4368 Deed No.3544 dt. 22.12.08, mutation in the name of Defendant No.1 and right to grant mutation over the suit land in favour of the legal heirs of Nanka Satnami (mother of the Plaintiff No.1);
- b) permanent prohibitory injunction restraining the Defendants No.1 and 2 and their family members,

associates, agents, workers etc. from entering into the suit land.

- c) for costs of the suit;
- d) for any other relief or reliefs to which the Plaintiffs are entitled to in law and equity.

10.1. Thus, it appears that the suggested substantial question No.(v) that the plaintiffs in TS 81/09 having only sought declaration of their right, title and interest over the suit land which originally belonging to Late Nanka Satnami, wife of Late Ram Bhagat Satnami, without seeking consequential relief is incorrect. The plaintiffs have also sought for consequential relief of possession over the suit land.

10.2. Section 34 in The Specific Relief Act, 1963 deals with discretion of court as to declaration of status or right, which read as under:-

“Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and whom, if in existence, he would be a trustee.

10.3. In the instant case, the plaintiffs have prayed for declarations of right, title, interests, and possession over the suit land and cancellation of Sale Deeds being (1) Sl.No.4367 Deed No. 3543 dt. 22.12.08 and (2) Sl.No.4368 Deed No.3544 dt. 22.12.08, mutation in the name of Defendant No.1 and right to grant mutation over the suit land in favour of the legal heirs of Nanka Satnami (mother of the Plaintiff No.1). And the consequential relief of possession had also been asked for and also granted by the learned trial Court and as such, this Court is of the considered view that this cannot be a substantial question of law in this second appeal. In the event of seeking no consequential relief at all the suit would have been hit by the said proviso of Section 34 of the Specific Relief Act. [See: *Akkamma v. Vemavathi*, reported in 2021 SCC Online SC 1146].

10.4. It is however, a fact that the plaintiffs had not prayed for partition of the suit land. But, since possession over the suit land was prayed for and also granted by the learned trial Court and upheld by the learned first appellate Court, this Court is of the view that having not prayed for further consequential relief of partition, would be of no consequence. It would have matter if no consequential relief at all was sought for by the plaintiffs.

11. It is to be noted here that in the case of *Pertap Chunder Ghose vs. Mohendranath Purkait*, reported in ILR (1890) 17 Cal 291 (PC), the Privy Council has observed that the limitation as to the power of the Court imposed by Sections 100 and 101 in a second appeal ought to be attended to, and an appellant ought not to be allowed to question the finding of the first appellate court upon a matter of fact. In the case of *Ramgopal vs. Shamskhaton*, reported in ILR (1893) 20 Cal 93 (PC), the Privy Council emphasized that a court of second appeal is not competent to

entertain questions as to the soundness of a finding of facts by the courts below. The same principle has been reiterated in **Rudr Prasad vs. Baijnath**, reported in ILR (1893) 15 All 367. The Court observed that a judge to whom a memorandum of second appeal is presented for admission is entitled to consider whether any of the grounds specified in this section exist and apply to the case, and if they do not, to reject the appeal summarily.

12. In **Santosh Hazari v. Purushottam Tiwari (Deceased) by Lrs.**, reported in (2001) 3 SCC 179, a three-Judge Bench of Hon'ble Supreme Court has delineated the scope of Section 100 CPC, and held that the High Court must be satisfied that a substantial question of law is involved in the case and such question has then to be formulated by the High Court. It was also held that the word substantial, as qualifying 'question of law', means—of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with- technical, of no substance or consequence, or academic merely.

13. In **H.P. Pyarejan vs. Dasappa**, reported in (2006) 2 SCC 496, Hon'ble Supreme Court observed that the judgment of High Court suffers from the vice of exercise of jurisdiction which did not vest in the High Court. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the Court to interfere with the judgments of the courts below is confined to hearing of substantial questions of law. Interference with the finding of fact by the High Court is not warranted if it invokes re-appreciation of evidence.

14. Thus, in the case in hand, while considering the submission of Mr. Biswas, the learned counsel for the appellant and examining the memo of appeal, being presented before this Court with suggested substantial questions of law, in the

light of the principle enunciated herein above, this Court is unable to derive its satisfaction that any grounds specified in Section 100 CPC exist and apply to the present case, and no question of law, not to speak of a substantial question of law, flows out of the impugned judgments and decrees so passed by the learned first appellate court.

15. Accordingly, this appeal stands summarily dismissed at this motion stage itself.

JUDGE

Comparing Assistant