

GAHC010124182022



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

**Case No. : RSA/93/2023**

TAIYAB ALI  
S/O LATE ISHA HOQUE MIAH,  
RESIDENT OF BIDYAPARA, WARD NO. 10, DHUBRI TOWN, PS AND DIST  
DHUBRI, ASSAM

VERSUS

SUBHASH SARMA AND 2 ORS.  
(BLACKSMITH) S/O LATE DURGA MISTRI SARMA, RESIDENT OF NEW  
MARKET, WARD NO. 10, DHUBRI TOWN, PS AND DIST DHUBRI, ASSAM

2:MD. FOEZ ALI  
S/O LATE MASAN ALI  
RESIDENT OF BIDYAPARA  
AFTAB UDDIN ROAD  
WARD NO. 10  
DHUBRI TOWN  
PS AND DIST DHUBRI  
ASSAM

3:MUSSTT. SETARA BEGUM  
W/O MD. FOEZ ALI

D/O NUR HABIB  
RESIDENT OF BIDYAPARA  
AFTAB UDDIN ROAD  
WARD NO. 10  
DHUBRI TOWN  
PS AND DIST DHUBRI  
ASSA

Advocate for the appellant(s): Mr. A Rahman

Advocate for the respondent(s): Ms. R Choudhury

**B E F O R E**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**  
**ORDER**

**15.05.2024**

Heard Mr. A Rahman, the learned counsel appearing on behalf of the appellant and Ms. R Choudhury, the learned counsel appearing on behalf of the respondent Nos.2 and 3.

2. This appeal is directed against the judgment and decree dated 21.03.2022 passed in Title Appeal No.36/2018 whereby the appeal was dismissed thereby affirming the judgment and decree dated 11.07.2018 passed in Title Suit No.26/2005 by the learned Munsiff No.2 Dhubri.

3. The instant appeal is admitted by formulating the following substantial questions of law:

*(i).Whether the learned Courts below were justified in coming to the conclusion that the defendant No.1 had saleable right to transfer the said land in favour of the defendant Nos.2 and 3 though admittedly the defendant No.1 was a tenant as could be seen from a perusal of the*

*judgment and decree passed by this Court dated 30.01.1984 in SA No.207/1977?*

*(ii).Whether the findings arrived at by the learned Courts below suffers from perversity in deciding the suit by taking into account that the defendant No.1 was a tenant under the Assam Temporarily Settled Areas Tenancy Act, 1971, though the suit land was situated in the Dhubri town, wherein the Assam Non-Agricultural Tenancy Act, 1955 would have been applicable and so was held by this Court in the judgment and decree dated 30.01.1984 in SA No.207/1977?*

4. Issue notice upon the respondents.
5. Taking into account that the respondent Nos.2 and 3 are duly represented, no further steps is required to be taken upon the said respondents. However, extra copies of the Memo of Appeal be served upon Ms. R Choudhury, the learned counsel during the course of the day.
6. As regards, the respondent No.1, steps be taken by way of registered post as well as by usual process within three days.
7. The Registry is further directed to call for the records from both the learned Trial Court as well as the learned First Appellate Court.
8. List the matter immediately on completion of service of notice upon the

respondent No.1 and on receipt of the LCR.

**JUDGE**

**Comparing Assistant**