

GAHC010141142023



2026:GAU-AS:3100

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

Case No. : RSA/24/2024

HEMCHAND @ HEMCHANDRA AGARWAL AND 3 ORS.
S/O LATE SITA RAM AGARWALA @ AGARWAL

2: SRI KAPURCHAND AGARWALA @ AGARWAL
S/O LATE SITA RAM AGARWALA @ AGARWAL

3: SRI BHAGIRATH AGARWALA @ AGARWAL
S/O LATE SITA RAM AGARWALA @ AGARWAL

4: SRI BANCHILAL AGARWALA @ AGARWAL
S/O LATE DULAL AGARWALA @ AGARWAL
RESIDENT OF VILLAGE BEMPHOR
PO TOPATALI
PS KHETRI
DIST KAMRUP M ASSA

VERSUS

PUNESWAR BORO @ MULA BORO
S/O LATE PUWA RAM BORO, RESIDENT OF VILLAGE AND PO TOPATALI,
PS KHETRI, DIST KAMRUP M ASSAM 7782403

Advocate for the Petitioner : MR. A ISLAM, MR. L R MAZUMDER

Advocate for the Respondent : MS P SARMA, MR B K SARMA

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGEMENT & ORDER(ORAL)

Date : 27.02.2026

- 1.** Heard Mr. L.R. Mazumder, learned counsel for the appellants and also heard, Mr. B.K. Sarma learned counsel for the respondent.
- 2.** The instant second appeal has been preferred against concurrent findings by the impugned judgment dated 16.12.2022 and decree dated 06.01.2023 passed by the Ld. Civil Judge No.3, Kamrup (M), Guwahati in Title Appeal No. 10/2020 thereby affirming the judgment and decree dated 03.03.2020 passed by the learned Munsiff Court No.2, Kamrup (M), Guwahati in Title Suit No. 18/2018 dismissing the suit of the plaintiffs.
- 3.** The case of the appellants/plaintiffs in brief is that the land measuring 4 Bigahs 2 Kathas 14 lechas covered by Dag No. 338 of Patta No. 43 situated in the revenue village Topatali under Mouza Dimoria as per record of right maintained in Jamabandi are owned jointly by the Plaintiffs by virtue of inheritance from their predecessor in interest Lt. Sita Ram Agarwal who was the father of the Plaintiff No.1 to 3 and grandfather of Plaintiff No.4. Thus as legal heirs, the Plaintiffs have acquired right, title and interest and possession over the suit schedule land and the Plaintiffs being owners/ pattadars of the land used to pay the land revenue regularly to the revenue authorities. After the death of Sita Ram Agarwal, his sons Dulal Agarwal (since deceased), Sri Hemchand Agarwala (Plaintiff. No.1), Sri Kapurchand Agarwala (Plaintiff No.2) and Sri Bhagirath Agarwala (Plaintiff No.3) as legal heirs jointly succeeded to the ownership of the entire land of dag No. 338 of Patta No. 43 referred to the suit land and they jointly acquired right, title, interest and possession thereon. After the death of Dulal Agarwala his son i.e. Plaintiff No.4 acquired joint ownership over the suit land in respect of the undivided share of his deceased

father along with other Plaintiffs. After the family settlement arrived amongst the legal heirs of Dulal Agarwala the Plaintiff No.4 through his wife, the present attorney of the Plaintiffs has been possessing and occupying the suit land continuously with paddy cultivation under her care and custody since her marriage with the Plaintiff No.4 till November 2017. In the first Suwahad part of November 2017 while Plaintiff No.4 and his wife remained busy in their post-harvest work, the respondent/defendant illegally trespassed into the suit land and started digging without the consent of the Plaintiffs. Having come to know of such illegal trespass and encroachment the Plaintiffs rushed to the suit land on 10/11/2017 and confronted the defendant. But the defendant rebuked and intimated the Plaintiffs claiming the ownership of the suit land. The defendant refused to stop his illegal activities and restrained Plaintiff No.4 and his wife from entering into the suit land denying their legitimate right and interest in a deliberate manner to grab the land illegally. On 13/11/2017 the defendant in defiance of the Plaintiffs and attorney started to dig the suit land with a view to make fishery and Plaintiff No.4 and his wife immediately approached the Sonapur Revenue Circle for demarcation of the suit land to identify the actual boundaries. The defendant having such information threatened the Plaintiff and their attorney with dire consequences if they come with revenue staff to the suit land for demarcation on 17/11/2017 as fixed in pursuant of demarcation proceeding and apprehending any eventualities, Plaintiff No.4 and his wife on 13/11/2017 had also filed a complaint before the Sonapur Revenue Circle. Further the Plaintiffs also informed the O/C Khetri P.S on 14/11/2017 along with the complaint dated 13/11/2017 filed by the Plaintiff No.4. However the defendant on the very day of demarcation filed an objection against the demarcation proceeding and along with some; local person threatened and

restrained the revenue staffs not to enter into the land. Both the parties were directed to appear on 23/11/2017 for hearing the matter and asked them to produce any document in support of their respective claims but the defendant refused to appear and dared such proceeding threatening the dire consequences. The Plaintiffs stated that the said actions have clouded right, title and interest of the Plaintiffs and hence the Plaintiffs have come up with the instant suit with the prayers of declaration of right, title, interest, recovery of possession.

4. Respondent/ defendant contested the suit by filing written statement. The defendant denied the averments of the plaint and stated that the schedule land falls under the tribal belt and block and as such the suit is not maintainable under the chapter X of the Assam Land and Revenue Regulation 1886 and the Plaintiffs have no rightful authority to claim that they have purchased the suit land from an indigenous person. That the plaintiffs are not the cultivators of the suit land and reside far away therefrom. The grandfather of the defendant was a cultivator and the Plaintiffs somehow managed to enter their names in the record of rights without any authority. The defendant also contended that he had been possessing the suit land since long time and he will cooperate with the revenue staff in demarcating the land if made on valid records. With the above pleadings the defendant prayed for dismissal of the suit with cost.

5. On the basis of the averments made, the learned trial court framed issues and held that the plaintiff failed to prove right title interest and possession over the suit land and also that the suit is barred under chapter 10 of the Assam Land and Revenue Regulation, 1886.

6. Being aggrieved by the aforesaid judgment and decree of dismissal, the plaintiff preferred an appeal before the learned Civil Judge, Kamrup (M). The

learned Appellate court while dismissing the appeal *inter alia* held that the appellants have based their claim over the suit land on Exhibit-8 which is an unregistered sale deed dated 30/01/1952. According to the appellants the suit land was purchased by their predecessor in interest from one Dheki Kachari in the year 1952 by way of a registered sale deed which was misplaced on account of which Exhibit-8 was executed. However the appellants took no steps for obtaining certified copy of the registered sale deed and rested content with their plea that the same was untraceable. Perusal of Exhibit-8 shows that the sale consideration was fixed at 880/-. Sec 54 of the Transfer of Property Act categorically postulates that transfer of immovable property valued at Rs. 100/- or upwards by way of sale can be effected only by a registered instrument. Therefore, Exhibit-8 is hit by Sec 54 of Transfer of Property Act which is not a valid instrument for transfer of ownership of the suit land in favour of the predecessor in interest of the appellants, held the learned Appellate Court.

7. The learned first Appellate Court also confirmed the finding of the learned trial Court that the suit was not maintainable in view of section 167 of the Assam Land And Revenue Regulation, 1886 by virtue of which the jurisdictions of the Civil Court is barred in respect of determination of rights of persons concerning land which fall under the tribal belt and in the instant case it is an admitted position that the suit land was within a tribal belt.

8. Both the learned Courts below also found that the alleged sale and possession of the suit land was not valid as the suit falls under the tribal belt and the predecessor in interest of the plaintiff does not belong to the category of tribal people and no permission was granted by the concerned Deputy Commissioner in favour of the predecessor in interest of the plaintiff for purchase of the suit land.

9. The learned counsel for the appellant has submitted the following substantial questions of law:-

1. Whether Ld. Courts below in spite of having the fact that exhibit No. 1 prove the factum of possession since long and no evidence could led by the defendant to rebut the plaintiff evidence, Ld. courts below were justified in dismissing the suit of the plaintiff ?
2. Whether plaintiff having been prove the sale by oral evidence and by exhibit- 8 in the year 1952 not controverted by defendant, Ld. courts below were justified in dismissing the suit of the plaintiff ?
3. Whether amendment made in Assam Land and Revenue Regulation in the year 1964 and 1990 has its retrospective application ?
4. Whether finding of the learned Courts below were perverse in appreciating the evidence on record while dismissing the plaintiff suit?

10. With regard to the second proposed substantial question of law, it is the finding of the learned Courts below that the Ext. 8 on which the plaintiff/appellant based their claim was an unregistered sale deed. Although, the suit land was purchased in the year 1952 by way of a registered sale deed and yet the plaintiff/appellants did not produce the certified copy of the said sale deed. Since the sale consideration was fixed above Rs.100, the same could not have been effected by way of an unregistered sale deed in view of Section 54 of the Transfer of Property Act and therefore, the said Ext. 8 was not a valid instrument for transfer of ownership of the suit land.

11. What has been held by both the learned Courts below is a settled position of law which is that in the case of sale of immovable property valued at Rs.100 or upwards, the same can be effected only by way of a registered instrument as postulated by Section 54 of the Transfer Of Property Act. Therefore, it can hardly be said that any substantial question of law has arisen for determination in the present second appeal. With regard to the proposed substantial question of law No. 1, in view of the concurrent findings of the Courts below that the plaintiff had no right title or interest over the suit land, the question of possession is of no consequence and moreover, the same is hardly a substantial question of law.

12. Further, with regard to the third proposed substantial question of law, in view of the findings with regard to the first two questions, it is not necessary for this Court to decide the said question of law. More so, as it is an admitted position that the land was situated in a tribal belt area and no such sale as the present one could have taken place in view of the aforesaid provisions of the Assam Land and Revenue Regulation, 1886, more specifically chapter 10 thereof and the said tribal belt was notified in the year 1947 and the transfer took place thereafter in 1952 and also in view of Section 162 of the said regulation which bars transfers to non-tribals without the permission of the Deputy Commissioner concerned. The question of retrospective operation does not arise as the amendment to the Assam Land and Revenue Regulation, 1886 in the year 1964 is (insertion of new sub-section (3) to Section 162 whereas the amendment of 1990 only introduces a penal provision by inserting section 164(B) concerned with the bar to the registration of such sale. The proposed substantial question of law No. 4 is vague and omnibus nature and nothing is indicated as to how the appreciation of evidence by the Courts below was

perverse and therefore, the same cannot be regarded as a substantial question of law either.

13. In view of the above discussion I do not find any merit in the present second appeal and therefore, the same is not admitted for hearing as no substantial question of law has arisen.

14. Consequently the appeal stands **dismissed** and the findings of the judgment and decree of the Courts below stand affirmed.

JUDGE

Comparing Assistant