

GAHC010184132010



2026:GAU-AS:733

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

Case No. : RSA/79/2010

SWAPAN KUMAR ACHARJEE and ANR.
W/O LATE KALIPADA ACHARJEE.

2: SMTI BINU ACHARJEE

W/O SRI SWAPAN KUMAR ACHARJEE
BOTH RESIDENT OF SITARAM PUKURPAR
P.O.
P.S. and DIST. DIBRUGARH
ASSAM

VERSUS

DINANATH MAHATO and ORS.
S/O BHAGAWAT PRASAD MAHATO, R/O MONCOTTA ROAD, NEAR
OVERBRIDGE, P.O., P.S. and DIST. DIBRUGARH, ASSAM.

2:BRAJAMOHAN MAHATO

S/O LATE KRISHNA MAHATO.

3:PARAMA MAHATO

S/O LATE BHAGAWAT PRASAD
MAHATO
R/O MONCOTTA ROAD
NEAR OVERBRIDGE
P.O.
P.S. and DIST. DIBRUGARH
ASSAM

Advocate for the Petitioner : MR.S P CHOUDHURY, MR.S K GHOSH,MR.S C KEYAL

Advocate for the Respondent : MR.T BARUAH, MR.C BARUAH,,

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellants : Mr. S.P. Choudhury,
Advocate.

Advocate(s) for the Respondents : None appeared.

Date on which judgment is reserved : 27.11.2025.

Date of pronouncement of judgment : 22.01.2026.

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. S.P. Choudhury, learned counsel appearing for the appellants.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) whereby the judgment dated 14.09.2009 passed by the court of learned District Judge, Dibrugarh, Assam in Title Appeal No.14/2007 allowing and reversing the judgment and decree dated 31.07.2007 passed by the learned Munsiff No.2, Dibrugarh in T.S. No.18/2006.

3. In the plaint, the respondent Dinanath Mahato claimed that he is a lawful owner of a plot of land measuring slightly more than 2 Kathas covered by P.P. No.38 of New Amlopattay Ward at Dibrugarh having distinct boundaries. The appellants claimed to have been occupying that land as monthly tenants for a period of three years. The rent was Rs.100/- per year. The appellants had constructed kutcha temporary houses and agreed to vacate the land whenever demanded by the respondent.

4. After the expiry of three years, the appellants requested the respondent to allow them to continue to possess the land on the same terms and conditions. But the respondent refused to allow them to continue their possession over the suit land. Therefore, the respondent filed the suit praying for recovery of vacant possession of their land by evicting the appellants therefrom.

5. The appellants being the defendants contested the case by filing written statement. They claimed that on 25.09.2000, they purchased the suit land from Brojomohan Mahato and Parama Mahato by executing a registered sale deed dated 25.09.2000. The appellants claimed to be the absolute owner of the suit land.

6. On the basis of the pleadings, the trial court framed the following issues:
 - i. Whether the suit is maintainable in law and on facts?
 - ii. Whether the sale deed no.1704 of 2000 executed by the defendant nos.3 and 4 in favour of the defendant nos.1 and 2 is illegal?
 - iii. Whether the plaintiff is the owner of the suit land?
 - iv. Whether there was any lease agreement between the plaintiff and the defendant nos.1 and 2?
 - v. Whether the plaintiff is entitled to the relief as prayed for?
7. At the time of hearing, the respondent/plaintiff examined two witnesses and the appellants examined four witnesses.
8. The trial court held that the respondent failed to prove that the suit land was handed over to the appellants on lease. The trial court also held that the respondent failed to prove that he is the owner of the suit land.
9. The appellants exhibited the sale deed dated 25.09.2000 as Ext.A. The trial court, on the basis of admission made by the respondent in evidence, held the Ext.A to be a genuine document. Accordingly, the trial court dismissed the suit of the respondent.
10. The respondent filed an appeal before the District Judge. The appellate court held that the suit of the respondent is under Assam Non-Agricultural Urban Areas Tenancy Act, 1955 and is covered by Section 5 of the said Act. Accordingly, the appeal was allowed and the suit of the respondent was decreed.
11. The present regular second appeal was admitted for hearing upon the following substantial questions of law:
 - i. Whether the suit of the plaintiff is maintainable in the absence of any notice under Section 11 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955?
 - ii. Whether the appellants could prove (Ext.A) the sale deed as required under the law and whether they have acquired any title by virtue of such sale deed?
12. At this stage, a brief visit to Section 11 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (for short, hereinafter referred to as "*the Act of 1955*") would be fruitful. It reads as under:

"11. Notice of ejectment suit – No suit for ejectment except for arrears of rent shall be instituted until after expiration of one month from the date of the receipt by the tenant of a notice in writing by the landlord requiring the tenant to surrender possession of the land in favour of the landlord."
13. According to the Act of 1955, when a plot of land in any urban area is let out for rent, the tenant cannot be evicted on any ground except other than for non-payment of rent. When a suit is filed for eviction on the ground of non-payment of rent and if a decree is passed against the tenant and if within 30 days subsequent thereto, a tenant pays the rent, the decree is considered to be satisfied.
14. The case projected by the respondents (plaintiff before the trial court) is covered by the Act of 1955. When the appellants wanted to continue with the tenancy, the respondent refused to do so and asked them to vacate the land. But no notice under Section 11 Act of 1955 was served upon the tenants

i.e. the appellants. It is a mandatory provision. Therefore, the suit of the respondent is not maintainable in law.

15. The other aspect of the case is that the respondent admitted the execution of Ext.A. Admitted facts need not be proved. The appellants have acquired right, title and interest over the land by virtue of the sale deed.

16. 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. The appeal is allowed accordingly. The judgment dated 14.09.2009 passed by the court of learned District Judge, Dibrugarh, Assam in Title Appeal No.14/2007, is set aside.

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JUDGE

Comparing Assistant