

GAHC010256122025



2026:GAU-AS:3967

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

Case No. : RSA/217/2025

ASMA KHATUN
WIFE OF MAHAMUD ALI, RESIDENT OF VILLAGE NO. 2 BALLIMARI, P.O.
AND P.S. PANBARI, IN THE DISTRICT OF CHIRANG, ASSAM.

VERSUS

MD MANIK SHEIKH AND 4 ORS.
SON OF OMEL SHEIKH, RESIDENT OF VILLAGE NO. 2 BALLIMARI, P.O.
AND P.S. PANBARI, IN THE DISTRICT OF CHIRANG, ASSAM.

2:TARABHAN BIBI
WIFE OF MANIK SHEIKH
RESIDENT OF VILLAGE NO. 2 BALLIMARI
P.O. AND P.S. PANBARI
IN THE DISTRICT OF CHIRANG
ASSAM.

3:MOJOR ALI
SON OF MANIK SHEIKH
RESIDENT OF VILLAGE NO. 2 BALLIMARI
P.O. AND P.S. PANBARI
IN THE DISTRICT OF CHIRANG
ASSAM.

4:MOIJAL HOQUE
SON OF MANIK SHEIKH
RESIDENT OF VILLAGE NO. 2 BALLIMARI
P.O. AND P.S. PANBARI
IN THE DISTRICT OF CHIRANG
ASSAM.

5:AHHERET ALI

SON OF MANIK SHEIKH
RESIDENT OF VILLAGE NO. 2 BALLIMARI
P.O. AND P.S. PANBARI
IN THE DISTRICT OF CHIRANG
ASSAM

Advocate for the Petitioner : MR. S K ROY, MR. N. ISLAM, K RAHMAN

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 16.03.2026

Heard Mr. K. Rahman, learned counsel for the appellant.

2. This appeal, under Section 100 CPC, read with 151 CPC, is directed against the Judgment and Decree, dated 28.08.2025, passed in the Title Appeal No. 1 of 2025, by the learned Civil Judge, Sr. Division, Chirang, Kajalgaon (herein after first appellate court).

3. It is to be noted here that vide impugned Judgment and Decree, dated 28.08.2025, the learned Judgment and Decree, dated 28.08.2025, the learned first appellate court had reversed the Judgment and Decree dated 09.12.2024, so passed by the learned Civil Judge, Jr. Division, Bijni (herein after trial court) in Title Suit No. 04/2023. It is also to be noted here that vide Judgment and Decree dated 09.12.2024, the learned trial court had decreed the suit of the appellant herein.

4. To avoid confusion and for the sake of convenience, the status of the parties, as appeared in the Title Suit No. 04/2023, is adopted herein this appeal.

5. The background facts leading to filing of the present appeal, is briefly stated as under: -

“The appellant herein, as plaintiff, had instituted a title suit, being Title Suit No. 04/2023, before the court of learned Civil Judge, Jr. Division, Bijni for declaration of right, title and interest upon the suit land, eviction of the defendants from the suit land by demolishing structure and for permanent injunction against the defendants.

The case of the plaintiff is that she is the lawful owner having right, title and interest over a plot of land measuring 2 Bigha 1 katha 9 lechas situated at village No. 2 Bagidwara, covered by P.P. No.6, Dag No. 44 under Bijni Revenue Circle, District - Chirang, Assam. Said plot of land was separated from the old patta No.3 and new periodic patta No.6, vide order dated 29.07.2008. The plaintiff is the absolute owner since then, without any interference.

While the plaintiff was in peaceful possession, the defendants, on 22.05.2020 forcefully entered into a small plot of 4 kathas, out of the said plot of land measuring 2 Bighas 1 katha 19 lechas. By encroaching into 4 kathas land, the defendants started to cut down plantation on the said plot and also attempted to construct a hut thereon. The plaintiff, on receipt of information, came there and requested them not to do so and then the defendants stopped construction. Thereafter, the defendants again entered into the said plot of land on 31.12.2022 and cut down trees and constructed a hut.

Then being aggrieved the plaintiff had instituted the Title Suit No. 04/2023, before the learned trial court. The defendants had contested the suit by filing written statement. Amongst others, the defendants had taken several stands, such as the suit is not maintainable, and barred by limitation and bad for non-joinder of parties, the suit is undervalued and proper court fees has not been paid. The defendants also denied the statement and averment made by the plaintiff in the plaint. It is also stated that the plaintiff has not clarified the mode of acquiring her ownership upon the land in question. It is also stated that the land measuring 4 kothas out of land measuring 2 B-2K-7 Ls, has been possessing by the defendant No.1 for more than 40 years from the period of his father Omel Sheikh and the remaining plot of land was under the possession Mahamud Ali, husband of the plaintiff.

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

- (i) Whether there is cause of action of the suit?
- (ii) Whether the suit is maintainable in its present form?
- (iii) Whether the suit is barred by limitation?
- (iv) Whether the defendants have been in possession of the suit land for more than 40 years?
- (v) Whether the plaintiff has the right, title and ownership upon the suit land?

Thereafter, examining 4 witnesses of the plaintiff and considering 9 documents exhibited by her and also examining two witnesses of the defendants and hearing both the parties, the

learned trial court had decreed the suit of the plaintiff, declaring her right, title and interest over the suit land, eviction of the defendants from the suit land by demolishing structure and for permanent injunction against the defendants.

Then being aggrieved, the defendants preferred an appeal before the court of learned Civil Judge, Sr. Division, Chirang, Kajalgaon, being Title Appeal No. 1 of 2025, on several grounds. Then hearing both the parties and considering the materials placed on record, the learned first appellate court had allowed the appeal and reversed the finding so recorded by the learned trial court and set aside the judgment and decree.”

6. Being aggrieved, the plaintiff has preferred the present appeal on the following grounds:-

- (i) The certified copy of jamabandi and other documents, pertaining to the whole plot, out of which, the suit land consists of only 4 kathas, there was no challenge to either at the stage of conversion of Annual Patta No.6 and thereafter no claim, counterclaim or challenge having been made, the appellate court ought not to have reversed the findings and decision of the learned trial court and that the plaintiff had discharged the initial onus and the defendants have failed to discharge the burden so shifted to them.
- (ii) The learned appellate court was not justified in holding that the certified copy of the jamabandi together with other relevant revenue payment receipt are not evidence of ownership of the

whole plot including the suit land by virtue of provisions of section 77 and 79 of the Indian Evidence Act.

- (iii) The defendant having not been able to produced one such documents in support of their claim of possession of the suit land, which they claimed of having residential structure, the learned trial courts finding ought not to have been reversed by the learned appellate court.
- (iv) The plaintiff's case, as made out in the plaint that on the suit land there was plantation, the claim of the defendant of possession was held to be not tenable by the learned trial court and the same ought not to have been rejected by the learned appellate court.
- (v) The learned appellate court ought not to have come to a conclusion first as to that fact of failure of the defendant to rebut the presumption of ownership of plaintiff on the basis of jamabandi by the revenue authority in proceeding under the land and Revenue Regulation and the defendants' claim was a trespasser only.

7. Upon the aforesaid grounds, the appellant has suggested following substantial question of law for admitting the appeal:-

- "1. Whether the impugned judgment of the learned First Appellate Court reversing the judgment and decree of the learned Trial Court, without complying the mandatory provisions of Order 41 Rule 31 of the Code of Civil Procedure is correct or not?**
- 2. Whether the Learned First Appellate Court committed a substantial error of law by holding that the certified copy of Jamabandi (Ext-1 & 2) has no**

evidentiary value for proving title, thereby ignoring the presumption of genuineness attached to it under Section 78 and its relevance as an entry in a public record under Section 29 of the Bharatiya Sakshya Adhiniyam, 2023 especially when the Respondents-Defendants failed to rebut this presumption or challenge the said Jamabandi before any competent revenue authority?

3. Whether in absence of any challenge to the mutation order, made before the any competent revenue authority, Exhibit 1 & 2, the Jamabandi of the Appellant/Plaintiff, attached under Section 40 & 41 of the Assam Land and Revenue Regulation, 1886 was carried the presumption to be correct and it was carried the title and possession over the suit land?
4. Whether the Learned First Appellate Court erred in law by misinterpreting and misapplying the principles of burden and onus of proof as enunciated by the Hon'ble Supreme Court in Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558, by holding that the Appellant-Plaintiff failed to discharge her initial onus, despite producing unimpeached documentary evidence, in the form of Jamabandi and land revenue receipts (Ext-1 to 9)?
5. Whether the findings of the Learned First Appellate Court are perverse and legally unsustainable, having been arrived at by reversing the findings of fact of the Trial Court without demonstrating that the Trial Court's conclusions were contrary to the evidence on record or were based on no evidence at all?
6. Whether the Learned First Appellate Court committed a substantial error of law by non-suiting the

Appellant-Plaintiff for not producing a registered sale deed, while completely overlooking the settled legal principle that in a suit for eviction, a plaintiff with a better title, even if possessory, is entitled to a decree against a trespasser, who has no title whatsoever?

7. Whether the judgment of the Learned First Appellate Court is vitiated by the non-consideration of material documentary evidence, namely the land revenue receipts (Ext-3 to 9), which corroborated the Appellant's title and established her continuous possession over the suit land?
8. Whether the Judgment and decree of the learned First Appellate Court is vitiated because of perverse appreciation of the materials on record?
9. Any other substantial questions of law that may be formulated by the Hon'ble Court?"

8. Mr.Rahman, the learned counsel for the appellants submits that the plaintiff, by exhibiting the certified copy of Jamabandi as Ext.-1 & 2 and the revenue payment receipts Ext.-3 to 9 has discharged her initial burden in proving her case. But, the learned first appellate court relying upon a decision of Hon'ble Supreme Court in **Anil Rishi v. Gurbaksh Singh**, reported in (2006) 5 SCC 558, has erroneously reversed the finding of the learned trial court by holding that the plaintiff failed to discharge her initial onus, despite production of unimpeached documentary evidence in the form of Jamabandi and land revenue receipts. Mr. Rahman further submits that the learned first appellate court had passed the impugned judgment in contravention of the provision of Order 41 Rule 31 CPC and that the impugned judgment of

the first appellate court is perverse, legally unsustainable, for reversing the findings of fact of the Trial Court without demonstrating that the Trial Court's conclusions were contrary to the evidence on record or were based on no evidence at all. Mr. Rahman also submits that presumption of genuineness attached to Ext-1 & 2 and the revenue payment receipts Ext. 3 to 9, under Section 78 and its relevance as an entry in a public record under Section 29 of the Bharatiya Sakshya Adhiniyam, 2023 especially when the respondents-defendants failed to rebut this presumption or challenge the said Jamabandi before any competent revenue authority. Lastly, Mr. Rahman submits that the impugned judgment and order of the learned first appellate court is vitiated by the non-consideration of material documentary evidence, namely the land revenue receipts from Ext-3 to 9, which supports the claim of the plaintiff and under such circumstances Mr. Rahman has contended to admit this appeal by framing the substantial question of law as suggested herein above and to issue notice to the respondent and thereafter, to call for record and thereafter, to decide the substantial question of law after hearing both the parties.

9. Having heard the submission of Mr. Rahman, this court has carefully gone through the memorandum of appeal, the suggested substantial question of law and the impugned judgment and decree of the learned first appellate court as well the judgment and decree so passed by the learned trial court.

10. It is to be noted here that the mandatory requirement of Order 41 Rule 31 CPC, is that an appellate judgment, is to be in writing and state:

(a) points for determination,

- (b) decision,
- (c) reasons, and
- (d) relief.

It is an obligation to ensure a detailed judgment that enables a self-contained decree, particularly when reversing a trial court decision. It is, however, well settled in catena of decision of Hon'ble Supreme Court that failure to formally list points of determination does not automatically invalidate a judgment if the court has adequately considered all crucial aspects of the appeal. Reference in this context can be made to decision of Hon'ble Supreme Court in **Mrugendra Indravadan Mehta and others vs. Ahmedabad Municipal Corporation, CIVIL APPEAL NOS. 16956-16957 OF 2017.**

11. In the instant case, a careful perusal of the impugned judgment of the learned first appellate court, specially from para No.34, it appears that the learned first appellate court had formulated as many as three points for determination and thereafter, discussing the evidence and considering the materials placed on record has recorded its findings in para No. 45 to 47, with reasons. In that view of the matter, it cannot be said that the mandatory requirement of Order 41 Rule 31 CPC has not been complied with by the learned first appellate court in the impugned judgment.

12. It also appears that the plaintiff had instituted the suit for declaration of her right, title, interest and khas possession over 4 kathas of land covered by P.P. No. 6, Dag No. 44 under Bijni Revenue Circle and for eviction of the defendants therefrom and also for permanent injunction. The learned trial court had decreed the suit of the plaintiff,

granting the said relief(s), on the basis of the evidence adduced and documents exhibited during trial by the plaintiff. It also appears that while deciding the issues the learned trial court had relied upon the certified copy of Jamabandi, being Ext.-1 & 2 and the revenue payment receipts Ext.-3 to 9.

13. But, the learned appellate court has reversed the finding. It has recorded that the law relating to the admissibility of jamabandi which is a public document and the admissibility of the certified copy thereof and the standard of proof required for conferring title. It has also recorded that a certified copy of jamabandi is admissible under section 35 of the Indian Evidence Act, 1872 as an entry in a public record. It shows presumptive ownership (not conclusive). The Courts recognize it as a relevant document in determining possession or ownership, but it must be corroborated by other evidence (like sale deed, inheritance etc.). The contents need to be proved if the document is contested. The person relying on the jamabandi must prove the basis of the entry. And that revenue officials or original records may be summoned to verify the basis of mutation and how and why the entry was made. The learned appellate court had also relied upon some decisions of Hon'ble Supreme Court in **Narain Prasad Aggarwal -Vs- State of M.P.** reported in **AIR 2007 SC 3182**, wherein it was held that revenue records are not a document of title. Thereafter it had discussed the decision in **Ravi Koraga -Vs- Philip Fernandes**, reported in **2023 SCC online KAR 4441**, wherein it was held that certified revenue records must be proved properly if challenged. Thereafter, it has discussed the decision in **Thakur Kishan Singh -Vs- Arvind Kumar** reported in **AIR 1995 SC 73 (74)**,

wherein Hon'ble Supreme Court held that entries in revenue record are not proof of title. Without corroboration or original evidence (like a registered sale deed), certified copy of jamabandi cannot independently prove title.

13.1. Thereafter, the learned first appellate court has held that on perusal of the case records, the documents placed for evidence and on hearing the engaged counsels for both parties, it appears that in the instant suit the plaintiff depends upon a piece of certified copy of Jamabandi to prove her right, title and interest upon the suit land, however, the plaintiff had failed to examine the concerned officials to prove the aforesaid documents viz. Certified copy of jamabandi to prove her ownership upon the suit land. The plaintiff also failed to show as to in what manner she derived the suit land as there is no mention in the jamabandi about the mode of acquiring title. Thereafter, it has held that the learned trial court has erred in deciding the issues 4 and 5 and failed to appreciate that the plaintiff had failed to establish her title and the mode in which she had acquired the title.

13.2. The learned appellate court had also held that on one hand, the plaintiff has claimed ownership upon the suit land measuring 2B-1K-19L, situated at village No. 2 Bagidwara, covered by P.P. No. 6 Dag No 44, under Bijni Revenue Circle and that as per order of the Circle Officer, Bijni, the said plot of land was separated from old patta No 3 to New P.P. No 6 vide order dated 29/07/2008, on the other hand the plaintiff as PW1 during her cross-examination in para (6) stated that she had purchased the land from four brothers including Abdul Goni and Abdul Hanif but without any registered sale deed, for an amount of Rs

50,000/- and the plaintiff failed to produce and prove the unregistered sale deed and solely based her claim on the basis of the certified copy of jamabandi.

13.3. The learned first appellate court had also held that on perusal of Ext 1, also it is seen that the suit land has been separated into Patta No.6 from Patta No.3, but it is not mentioned as to in what manner the land was mutated in her name. P.W.2, has also stated that the suit land is his own land and he purchased the land from one Goni of village, Howly, by dint of an unregistered sale deed, in exchange of Rs.25,000/, but the same has not been produced before the court.

13.4. Thereafter, the learned first appellate court went on to observe that from the above discussion that it is seen that there is contradiction in the statement of the plaintiff in her pleadings as well as in her cross-examination, regarding her claim of the title upon the suit land. The plaintiff had failed to establish her title and also failed to show as to how she had derived the ownership upon the suit land.

13.5. The learned first appellate court, thereafter, held that though the learned trial court had relied upon the judgment pronounced by the Hon'ble Supreme Court of India regarding burden of proof in **Anil Rishi (supra)**, wherein in para 19 of the judgment it was held that:-

In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief. the onus shifts to the defendant to Prove those circumstances, if any, which would disentitle the Plaintiff to the same."

Thereafter, the learned appellate court went on to observe that in the instant case, the plaintiff had failed to discharge her burden of proving her title upon the suit land. The plaintiff also failed to prove that the defendants are trespassers to the suit land. Thereafter, it had observed that the learned trial court, failed to appreciate the fact that the plaintiff had taken contradictory pleas and had failed to establish her title, by showing as to in what mode she had derived the title and the learned trial court had decreed the suit of the plaintiffs/respondents, without appreciating the pleadings of the parties by providing sufficient reasons and the findings of the learned trial court are not based upon lawful consideration and settled provisions of law and needs interference.

14. The finding, so recorded by the learned first appellate court, while examined in the light of the facts and circumstances on the record and also in view of the settled position of law, this court is unable to record concurrence with the submission of Mr. Rahman, the learned counsel for the appellant.

15. It is well settled that the burden to prove a case, is always upon the plaintiff. Section 102 of Evidence Act provides that the initial onus is always on the plaintiff. And if she discharges that onus and makes out a case which entitles her to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. [See **Anil Rishi (supra)**]

15.1. In the instant case the plaintiff relied upon a piece of certified copy of Jamabandi, i.e. Exhibit 1 & 2 and Exhibit 3 – 9, to prove her right, title and interest upon the suit land. However, as observed by the learned first

appellate court, she had failed to examine the concerned revenue officials to prove the aforesaid documents viz. certified copy of jamabandi to prove her ownership upon the suit land. She had also failed to show as to how and in what manner she derived the title over the suit land. There is no mention in the jamabandi also about the mode of acquiring title.

15.2. It is well settled that revenue records are not document of title, in the case of **Corporation of the City of Bangalore vs. M. Papaiah and another**, reported in (1983) 3 SCC 612, Hon'ble Supreme Court has held as under:-

“It is firmly established that revenue records are not document of title and the question of interpretation of document not being a document of title is not a question of law.”

15.3. Again, in the case of the **Guru Amrit Singh vs. Ratal Chand and Others**, reported in (1993) 4 SCC 349, Hon'ble Supreme Court has held that the entries in jamabandi are not proof of title.

15.4. Further, in the cases, so discussed by the learned first appellate court also, i.e. in **Narain Prasad Agarwal (supra)**, **Ravi Koraga (supra)** and **Thakur Kishan Singh (supra)**, it is well settled that the entries in revenue records are not proof of title and without corroboration of original evidence, such as registered sale deed, certified jamabandi cannot independently prove title.

15.5. Notably, in the instant case no such document is produced or exhibited, by the plaintiff despite existence of the same. The material piece of evidence is withdrawn for the reason best known to it. In that view of the matter, by no stretch of imagination it can be said that the

plaintiff had succeeded in discharging her initial burden so as to shift the same to the defendants, as held in the case of **Anil Rishi (supra)**.

16. Thus, in view of the given aforesaid facts and circumstances, this court is unable to agree with the submission of Mr. Rahman, learned counsel for the appellant. None of the suggested substantial question of law is found to be involved in this appeal and accordingly, the same stands dismissed leaving the party to bear their own cost.

JUDGE

Comparing Assistant