

THE HON'BLE MR.JUSTICE HN SARMA
JUDGMENT AND ORDER (ORAL)

A decree passed in favour of the plaintiffs / appellants in the Judgment and Decree passed by the learned trial Court in Title Suit No 157/1993 dated 27.5.1996 having been reversed in Title Appeal No 27/1996 and consequently dismissing the suit of the plaintiffs/appellants, the present second appeal has been filed.

2. I have heard Mr N K Singh, learned counsel for the plaintiffs/appellants. None appears on behalf of the defendants/respondents.

3. The following substantial questions of law are framed as emerged from the pleadings of the parties and the impugned judgment:

i) Whether the learned first appellate Court not holding Ext-1 which is the 'Jamabandi' 2nd R S Patta No 349 (old 236 to the pargana Banskandi Niz 3rd part is a document of title ?

ii) Whether the findings of the Court below that the defendants/respondents are licensee in respect of the suit land has justified the materials available on record ?

iii) Whether the suit of the plaintiff is barred by limitation ?

4. The case of the plaintiffs/appellants, inter alia, is that during the lifetime of the father of plaintiffs/appellants, late Niladwaj Singha, about 60 years back, the father of the defendants/respondents, late Loiri Singh, who was an orphan, engaged as a cowboy and helper of the family. In due course of time, when Loiri Singh got married in the same village and at his request Niladwaj Singh, the father of the plaintiffs allowed him to construct a temporary house adjacent to their homestead land to reside as a licensee with the condition that he would vacate the same as and when demanded. Loiri Singh lived in the suit house till his death for some 25 years. Thereafter, the defendants stepped into the house of the father, Loiri Singh and on their request the plaintiffs allowed them to continue to reside in the suit land till they made some alternative arrangement for shifting and, therefore, they continued to occupy the suit land as licensee. The plaintiffs having demanded to vacate the suit land, the defendants did not vacate but in alternative filed the suit for declaration of right, title and interest over the suit land. The defendants contested the suit by filing written statements denying the allegations made by the plaintiffs. It was specifically stated in their written statements that the suit was barred by limitation. Both the parties adduced evidence in the suit. The plaintiffs had examined some documents and at the end of the trial, the learned trial Court declared the right, title and interest of the plaintiffs over the suit land and decreed the suit. The learned trial Court also decided the issue of adverse possession against the defendants. The said Judgment and decree of the learned trial Court was carried into Title Appeal No 27/1996 and the learned Civil Judge (Senior Division) No 1, Cachar, Silchar, reversing the judgment of the learned trial Court dismissed the suit.

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5. In reversing the judgment of the learned trial Court, the learned appellate Court held that the Ext-1 which is the certified copy of the 'Jamabandi' containing the suit land in the name of the plaintiffs is not the document of title and having so held the learned trial Court came to the conclusion that the plaintiffs having failed to prove their possession over the suit land they are not entitled to get any decree.

6. Ext-1, as stated above, is the certified copy of the 2nd R S Patta No 3 49 (old 236) to the pargana Banskandi Niz 3rd part. The said document was exhibited without any objection and contained the name of the plaintiffs showing the name of their father as Niladwaj Singha. Ext-1 also contains, ie, Annexures 1 to 6. A 'Jamabandi' revenue record, a 'Jamabandi' is prepared as per relevant revenue laws after going through various phases, such as, observation, verification, boundary documents, etc. appeared in entering the names of the 'pattadar' the final Jamabandi is ready. It is also seen that objection was not filed by anybody, if any. After passing through various processes under the relevant Revenue Laws, the competent Revenue Officer has entered the names of the persons in the Jamabandi. Thereafter, the relevant 'Patta' which is a lease deed is issued by the Collector. In a catena of the cases, it has been held that such a 'Jamabandi' prepared in the said manner is the document of title.

7. In that view of the matter, the finding of the first appellate Court that the plaintiffs failed to prove the title over the suit premises is not justified and the learned Court committed error in law in arriving at such a finding. Accordingly, the substantial questions so framed in this respect are answered in affirmative and in favour of the appellants.

8. The specific and positive case of the plaintiffs/appellants is that the suit land was allowed to be occupied by the father of the defendants about 60 years back by now 73 years by constructing houses there on and to stay there as licensee. Although the plaintiffs claimed that the original licensee, ie, Loiri Singh, expired about 25 years back from the date of filing of the suit. The original licensee died in the year 1947. It is also admitted that the father expired and the present defendants were allowed to occupy the suit land as licensee like their father. The record further discloses that the plaintiff No 1 was aged about 65 years on the date of the possession, ie, from 21.11.94, if that be so at the time of making the original agreement to the father of the defendants this plaintiff No 1 was aged 4 years. This witness has also not stated anything as to who granted the license to the father of the defendants nor other witnesses examined on behalf of the plaintiffs have also stated such facts.

9. The term 'licensee' as defined under Section 52 of The Indian Easements Act is as follows :

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. .

10. Section 60 of the Indian Easements Act states under what circumstances the license is revocable and it reads as follows:

License when revocable A license may be revoked by the grantor, unless-

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution. .

11. A bare reading of the aforesaid provisions goes to show that if a license is coupled with transfer of property and such transfer is in force, the license is revocable. Further, if the licensee acting upon the license has executed a work of a permanent nature in that event the license is not to be revoked.

12. In the instant case, on the face of the averments made in the plaint and the deposition of the PWs clearly go to show that the defendants are residing in the suit premises for the 3rd generation by constructing houses over it. This evidence coupled with other materials go to show that the defendants have got specific interest over the suit land in question, ie, the suit land. It is t

rue that the Indian Easements Act has not been applicable in the State of Assam. But the principles of the said Act is also applicable and are being applied by the various Courts in the State.

13. The averment is made in the plaint that the predecessor of the defendants came to occupy the suit land in the year 1933. The original grantor Loiri Singh expired in 1947, ie, 59 years back from now and by this period the defendants have been residing in the suit premises by constructing houses. The suit of the plaintiffs is based on title. The plaintiffs have not barred the suit on 12 years of limitation for declaration of right, title and interest over the suit land. The plaintiffs could have simply filed a suit for ejectment of the defendants but instead of so doing they have prayed for declaration of right, title and interest over the suit land. As per the Limitation Act, such declaration is to be sought for within 12 years and that not having in the circumstances and facts the suit is barred by limitation.

14. In view of the aforesaid discussions, the other substantial questions of law so framed are answered against the appellant and in favour of the defendants, the net result of which is the dismissal of this appeal without any cost.