

GAHC010028962015



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

Case No. : Review.Pet. 178/2018

1:SMTI MIHIR BALA SAHA @ MIHIR BALA MANDAL and 6 ORS
VILLA-KLODOBA PART-II, GOLOKGANJ, PS GOLOKGANJ DIST-DHUBRI,
ASSAM

2: SMT.MIRA RANI SAHA
D/O LATE MANINDRA MOHAN SAHA

3: SMT. MAHAMAYA SAHA
D/O LATE MANINDRA MOHAN SAHA

4: RAJ KR. SAHA
S/O LATE MANINDRA MOHAN SAHA

5: SUKUMAR SAHA
S/O LATE MANINDRA MOHAN SAHA

6: SANTOSH KR. SAHA
S/O LATE MANINDRA MOHAN SAHA

7: ASHUTOSH SAHA
S/O LATE MANINDRA MOHAN SAHA
ALL ARE R/O VILL. KALDOBA PART-II
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM

VERSUS

1:SHRI CHANDRA NATH SAHA and 13 ORS
S/O MONMOTH SAHA, VILL-KALDOBA
PO AND PS GOLOKGANJ
DHUBRI ASSAM

2:MADHUSUDAN SAHA

3:DINANATH SAHA

4:NARAYAN SAHA
SL. NO. 1 TO 4 ARE THE SON OF LATE MONMOTH SAHA AND ALL ARE R/O
VILL. KALDOBA PART-II
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM.

5:SMTI MAYA RANI SAHA
D/O LATE MONMOTH SAHA
W/O SRI DAM SAHA
R/O BOGRIBARI
P.S. BOGRIBARI
DIST. DHUBRI
ASSAM.

6:SMTI MILON RANI SAHA
D/O LATE MONMOTH SAHA
WIDOW OF LATE SUDAM CH. SAHA
R/O DOBI NAGAR
ALIPUR
P.O. and DIST. JALPAIGURI
WEST BENGAL

7:KARTIK CH. SAHA
S/O LATE PHANINDRA MOHAN SAHA

8:BRAJENDRA KR. SAHA
S/O LATE PHANINDRA MOHAN SAHA

9:NRIPENDRA KR. SAHA
S/O LATE PHANINDRA MOHAN SAHA

10:BASUDEV SAHA
S/O LATE GANESH CH. SAHA
S/O LATE PHANINDRA MOHAN SAHA

11:SUDEV KR. SAHA
S/O LATE GANESH CH. SAHA
S/O LATE PHANINDRA MOHAN SAHA

12:SMTI LAKSHI RANI SAHA
WIDOW OF LATE GANESH CH. SAHA

13:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR/THE DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM.

14:THE SETTLEMENT OFFICER
P.O.
P.S. and DIST. DHUBRI
ASSAM

Advocate for the Petitioner : MR. A K PURKAYASTHA

Advocate for the Respondent : MR. A RAHMAN (R1-R12)

Linked Case : RSA 162/2015

1:SMT MIHIR BALA SAHA @ MIHIR BALA MONDAL and 6 ORS
D/O LATE MANINDRA MOHAN SAHA

2: SMT.MIRA RANI SAHA
D/O LATE MANINDRA MOHAN SAHA

3: SMT. MAHAMAYA SAHA

D/O LATE MANINDRA MOHAN SAHA

4: RAJ KR. SAHA

S/O LATE MANINDRA MOHAN SAHA

5: SUKUMAR SAHA

S/O LATE MANINDRA MOHAN SAHA

6: SANTOSH KR. SAHA

S/O LATE MANINDRA MOHAN SAHA

7: ASHUTOSH SAHA

S/O LATE MANINDRA MOHAN SAHA
ALL ARE R/O VILL. KALDOBA PART-II
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM.
VERSUS

1:SHRI CHANDRA NATH SAHA and 13 ORS

2:MADHUSUDAN SAHA

3:DINANATH SAHA

4:NARAYAN SAHA

SL. NO. 1 TO 4 ARE THE SON OF LATE MONMOTH SAHA AND ALL ARE R/O
VILL. KALDOBA PART-II
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM.

5:SMTI MAYA RANI SAHA

D/O LATE MONMOTH SAHA

W/O SRI DAM SAHA

R/O BOGRIBARI

P.S. BOGRIBARI

DIST. DHUBRI

ASSAM.

6:SMTI MILON RANI SAHA
D/O LATE MONMOTH SAHA
WIDOW OF LATE SUDAM CH. SAHA
R/O DOBI NAGAR
ALIPUR
P.O. and DIST. JALPAIGURI
WEST BENGAL

7:KARTIK CH. SAHA
S/O LATE PHANINDRA MOHAN SAHA

8:BRAJENDRA KR. SAHA
S/O LATE PHANINDRA MOHAN SAHA

9:NRIPENDRA KR. SAHA
S/O LATE PHANINDRA MOHAN SAHA

10:BASUDEV SAHA
S/O LATE GANESH CH. SAHA
S/O LATE PHANINDRA MOHAN SAHA

11:SUDEV KR. SAHA
S/O LATE GANESH CH. SAHA
S/O LATE PHANINDRA MOHAN SAHA

12:SMTI LAKSHI RANI SAHA
WIDOW OF LATE GANESH CH. SAHA

13:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR/THE DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM.

14:THE SETTLEMENT OFFICER
P.O.
P.S. and DIST. DHUBRI
ASSAM.

Advocate for the Petitioner : MR.P K DEBROY
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUP KUMAR GOSWAMI

ORDER**Date : 28-02-2019**

Heard Mr. A. K. Purkayastha, learned counsel appearing for the review petitioner.

This review petition is filed by the petitioners seeking review of the judgement and order dated 18.08.2015, passed by this court in RSA 162/2015. The review petitioner was the plaintiff and appellant in RSA 162/2015.

A perusal of the judgement goes to show that the learned counsel for the appellants had submitted that the only substantial question of law that would arise in the facts and circumstances of the case was as to whether the impugned judgement of the learned Lower Appellate Court was a judgment in conformity with Order 41 Rule 31 CPC.

The plaintiff had filed the suit alleging that he has right, title and interest as well as possession over the suit land and one of his brothers, namely, Phanindra Mohan Saha, had left for East Pakistan, where he expired and the other brother, namely, Manmoth Nath Saha, had relinquished his right over the suit land and while he was continuing in possession, the defendant No. 2, i.e., the Settlement Officer, threatened that the land would be made "khas" (Government) land and, therefore, he had filed the suit. The defendant No. 1, i.e., the State of Assam, had filed written statement stating that Patta No. 209 was issued in respect of three brothers and that there was no move to make the land "khas" and that the suit was filed deliberately with the objective of eliminating the names of the plaintiff's two brothers from the Patta. The successor-in-interest of the brothers of the plaintiff, who were impleaded as defendants, had filed written statement and counter-claim praying for declaration of their right, title and interest over the suit land to the extent of 2/3rd share and also for a decree for khas possession by evicting the plaintiff from their share of the suit land.

The suit of the plaintiff was dismissed for default on 08.04.2003 and the same was not restored. The counter-claim was also dismissed as against which an appeal was preferred by the counter-claimants. Learned Lower Appellate Court reversed the judgement of the learned trial court in respect of the counter-claim and decreed the counter-claim.

At paragraph 13 of the judgement under review it was wrongly recorded that the learned Lower Appellate Court reversed the judgement of the "Lower Appellate Court" instead of recording as "learned trial court".

This court noted the underlying principles of Order 41 Rule 31 CPC and came to the conclusion that the judgement of the learned Lower Appellate Court could not be faulted with on the touchstone of the mandate of Order 41 Rule 31 CPC. In paragraph 14 of the judgement under review, it was held as follows:

“14. Bearing in mind the principles underlying Order 41 Rule 31 CPC, I am unable to sustain the argument of Mr. Dey. Learned Lower Appellate Court addressed the arguments of the learned counsel for the parties and also adverted to the evidence on record and analysed the same with regard to its impact on the case of the respective parties. The learned Lower Appellate Court held that it was the projected case of the plaintiff that the suit land was wrongly recorded in the names of the three brothers instead of recording the name of the plaintiff only, but no material particulars were furnished by the plaintiff to show how the names were wrongly recorded. It is also noted by the learned Lower Appellate Court that when the plaintiffs had pleaded relinquishment of right by one of the brothers, necessarily it will be indicative of the fact that the brother, who had relinquished the share, had a share in the property, which cuts at the root of the case projected by the plaintiff that the names of the brothers were wrongly recorded in the Khatian. The learned Lower Appellate Court also rejected Ext.-D, Deed of Relinquishment, being not a registered document. On the basis of the Khatian, Ext.-2, which was proved by the counter-claimants, the learned Lower Appellate Court came to the finding that the suit land is a joint property of the plaintiff, Phanindra Mohan Saha and Manmoth Nath Saha. With regard to the plea of permissive possession, the learned Lower Appellate Court had recorded that in absence of any evidence of complete ouster of the brothers of the plaintiff from the suit property, the possession of the plaintiff would be deemed to be the possession on behalf of other co-sharers. It has to be emphasized, at this point, that there was no assailment on the findings of the learned Lower Appellate Court, but what is argued is that the findings were recorded without due deliberation on the materials on record.”

There is no error apparent on the face of the records in coming to the above conclusion. However, Mr. Purkayastha seeks to contend that the judgement of the learned Lower Appellate Court is vitiated on account of perverse appreciation of the materials on record.

Review is not a re-hearing of the appeal and the scope of review is limited. When the admission of the appeal was argued only on the ground that the judgement of the Lower Appellate Court was not in conformity with the mandate of Order 41 Rule 31 CPC, and when the same did not find favour with the court, in review jurisdiction, it will not be permissible to hear the appeal once over again.

Taking that view, I find no good ground to entertain this review petition and, accordingly, the same is dismissed. No cost.

JUDGE

Comparing Assistant