

1. The present appellant is the defendant in Title Suit No. 448/06 filed by the plaintiff/respondent in the Court of learned Munsiff No. 1, Kamrup at Guwahati. It is the case of the plaintiff/respondent that he along with the brother Raj Nandan Gope are the owners of the suit land by way of inheritance same being the ancestral property. On the death of Raj Nandan Gope, his legal heirs, wife and son inherited his share in the suit land and possessed the same along with the plaintiff/respondent.

2. The defendant/appellant threatened the profoma defendant i.e the legal heirs of Late Raj Nandan Gope, whereafter they left the Schedule A land. It is stated that the plaintiff/respondent along with the defendant/appellant were the business partners. The plaintiff/respondent eloped with the daughter of the defendant/appellant and taking advantage of the absence of the plaintiff/respondent, the defendant/appellant took away the title deeds. Taking advantage of the absence of the plaintiff/respondent, the defendant/appellant encroached the entire suit Schedule A and B plot of land and dispossessed the plaintiff/respondent along with the legal heirs of Raj Nandan Gope. Though the plaintiff/respondent had never transferred the suit land, however, the defendant/appellant got his name mutated in the Jamabondi of the suit land and hence this suit filed for declaration of right, title and interest and for recovery of possession.

3. Defendant/appellant filed his written statement taking the plea that he has been residing over the suit land on the strength of the purchase from the plaintiff/respondent and the legal heirs of Raj Nandan Gope. The said purchase was made by paying valuable consideration during the year 1997/98. Since the said purchase, the said defendant/appellant has been possessing the suit land, got his name mutated in the Jamabondi and as such the suit filed by the plaintiff/respondent is liable to be dismissed.

Amongst the various issues framed by the learned Trial Court, issue Nos. 5 & 6 are relevant for discussion having a direct bearing in the present Second Appeal.

4. The Trial Court looked into the defence of the present defendant/appellant in the written statement. As per the pleadings, in the year 1997, the plaintiff/respondent sold out the share of the Schedule A land measuring 6 Bighas 2 Kathas 8 Lechas of patta No. 27 to the defendant/appellant against valuable consideration of Rs. 4,00,000/- (Rupees Four Lakhs) only and an un-registered deed was executed on 08.12.1997 in favour of the defendant No. 1. Similarly, the heirs of Raj Nandan Gope (profoma defendant No. 2) also by way of an un-registered sale deed dated 04.03.1998 sold away their share over the suit land. On the basis of the said two sale deeds, the defendant took his defence with regard to his legality in holding the possession of the suit land. The learned Trial Court, considering Section 17 (1) of the Registration Act, 1908 and Section 54 of the Transfer of Property Act came to the finding that a sale transaction and immovable property of value of Rs. 100/- cannot be considered to be a valid sale.

5. On the basis of the said finding the learned Trial Court came to the conclusion that the plaintiff/respondent as well as the legal heirs of Raj Nandan Gope cannot be held to transfer the suit land to the defendant/appellant by way of the said two un-registered sale deeds. Accordingly, the suit was decreed in favour of the plaintiff/respondent.

6. In the First Appellate Court, against the appeal of the judgment and the decree passed by the Trial Court in Title Suit No. 448/06, the findings of the Trial Court was upheld and came to the conclusion that mere mutation in the revenue records cannot pass on title nor it can create or extinguish title, unless and until the sale has been carried out as per the mandate of the law. Accordingly, the Title Appeal No. 130/2014 was dismissed vide judgment and decree dated 19.04.2016 by the learned Court of Civil Judge, Kamrup at Amingaon.

7. Being aggrieved, the said defendant/appellant has preferred the present Second Appeal, which is taken up for admission today. Mr. P.P. Das, learned counsel appearing on behalf of the appellant submits that the findings of the Court

below was wrong in decreeing the suit in favour of the plaintiff/respondent in the absence of one of the co-sharers of the suit land. Referring to the pleadings in the plaint Mr. Das pointed out that, it was pleaded that the plaintiff/respondent had another sister who resides at Calcutta but she had relinquished her share which had not been proved.

8. Mr. Das submits that the declaration of right, title and interest over the suit land cannot be passed leaving aside the said sister. It is also submitted that the plaintiff/respondent failed to substantiate as to how the un-registered sale deeds were held to be fraudulent and as the consideration for sale transaction was accepted by the plaintiff/respondent and the legal heirs of Raj Nandan Gope, the same ought to have been taken into consideration for co-lateral purpose with regard to the entry of the appellant over the suit land. The fact of entry to the suit land being as per law on the strength of the said deeds so the decree for recovery of possession ought not to have been passed. So, Mr. Das submits that the appeal is to be admitted as it involves substantial question of law.

9. Mr. S.P. Roy, learned counsel appearing on behalf of the plaintiff/respondents submits that the submissions made by the learned counsel appearing on behalf of the appellant has no basis at all inasmuch as there was no pleading to that effect. Even if it is assumed to be a question of law, the same cannot stand as a valid claim inasmuch as the plaintiff/respondent are still the title holder of the suit land and a person having paramount title can always come to the Court to ask for recovery of possession against a person having no title at all. So Mr. Roy submits that the Second Appeal has no substantial question of law involved.

10. Considered the submissions of both the learned counsels. This Court does not find any merit on the submission made by Mr. Das, as the submissions made before this Court was not pleaded at all as there is no basis in the pleadings so far relief could be granted in absence of the sister of plaintiff/respondent to form a substantial question of law. Further the basis of the claim of the defendant/appellant is by way of purchase and that too on the basis of the un-registered sale deeds. As submitted by Mr. Roy a person holding a paramount title has the right to ask for ejectment of a person having no title with respect to a property has sufficient force. The Second submission that the plaintiff/respondent are not entitled for the relief of declaration of their right, title and interest leaving aside the sister of the plaintiff/respondent cannot be considered at all.

11. The defendant/appellant as per his written statement purchased the suit land from the said two co-owners and knowing fully well about the sister he pleaded that he is the absolute owner on the basis of the said two un-registered sale deeds. The plaintiff/respondent has claimed the relief against the defendant/appellant without suppression of the material fact that he has a sister and that she had relinquished her right over the suit land.

12. In order to make the plaintiff/respondent to disqualify for the decree sought for, a duty was cast upon the defendant/appellant to prove before the Court that the said sister had never relinquished her share in favour of the plaintiff/respondent. Having not done so, at this stage, the defendant/appellant cannot take that plea. Accordingly, there is no merit in this appeal and the same is dismissed.