

GAHC010220152019



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

Case No. : RSA 192/2019

1:SRI BABUL CHOUDHURY
S/O LATE KRISHNA KANTA CHOUDHURY
BY CASTE HINDU
BY PROFESSION BUSINESS
R/O CHANDANPUR
BARPETA ROAD
WARD NO. 4
MOUZA GOBARDHANA
DIST. BARPETA
ASSAM.

VERSUS

1:SMTI. BHAGABATI DEV SARMAH AND 11 ORS
W/O LATE SATYABAN SARMAH

2:MAHESH KUMAR SARMAH
S/O LATE SATYABAN SARMAH

3:KAILASH SARMAH
S/O LATE SATYABAN SARMAH

4:BANKABIHARI SARMAH
S/O LATE SATYABAN SARMAH

5:PRAHLAD KUMAR SARMAH
S/O LATE SATYABAN SARMAH

6:SMTI KUSUM DEVI
D/O LATE SATYABAN SARMAH

7:SMT. ANJU DEVI SARMAH

D/O LATE SATYABAN SARMAH

8:SMTI BANDANA KUMARI SARMAH
D/O LATE SATYABAN SARMAH

9:SMTI MANJUDEVI SARMAH
D/O LATE SATYABAN SARMAH
ALL BY RELIGION HINDU
R/O VILL. BAHARIHAT
MOUZA CHENGA
DIST. BARPETA
ASSAM.

10:SUBASH JAIN
S/O LATE BHAWANLAL JAIN

11:ASHOK KUMAR JAIN
S/O LATE BHAWANLAL JAIN

12:RAMAWATER SARMAH
S/O LATE GANGARAM SARMAH
ALL R/O BARPETA ROAD
MOUZA GOBARDHANA
DIST. BARPETA
ASSAM.

Advocate for the Petitioner : MR. P PATHAK
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 29-11-2019

Heard Ms. P. Barman, learned counsel for the appellant. Also heard Shri R. Sarma, learned counsel for the respondent Nos. 1, 4 & 5.

The instant appeal has been preferred under Section 100 of the Code of Civil Procedure against a judgment and decree dated 05.04.2013, passed by the learned Additional District Judge (F.T.C.), Barpeta in Title Appeal No. 32/2006, by which, the appeal was dismissed and the judgment and decree dated 27.09.2006, passed by the learned Civil Judge, Barpeta in Title Suit No. 08/2003, has been upheld. By the aforesaid judgment and decree dated 27.09.2006, the learned Civil Judge, Barpeta had decreed the suit in favour of the respondent Nos.

1, 4 & 5 (plaintiffs).

The brief facts of the case is that the respondent Nos. 1, 4 & 5, as plaintiffs, had put to challenge a Sale Deed No. 910/1996, dated 09.12.1996, pertaining to 1 Bigha 1Katha 10 Lechas of land. It is the case of the plaintiffs that the predecessor-in-interest of the plaintiffs Shri Satyaban Sarma along with one Nimchand Sarawagi, were the joint owners of the plot of the land of 10 Bighas 3 Kathas 19 Lechas. On 26.02.1976, Nimchand Sarawagi passed away and in this regard, the Death Certificate was exhibited as Exhibit-6. However, by the impugned Sale Deed dated 09.12.1996, an area of 1 Bigha 1Katha 10 Lechas, out of the said plot of land, has been stated to be sold by the said Nimchand Sarawagi in favour of the defendant/appellant. It is case of the respondent Nos. 1, 4 & 5 (plaintiffs) that such Sale Deed could have been executed by Nimchand Sarawagi, who had passed away more than 20 years prior to date of execution of the Sale Deed and the said fact was not disputed. Further, the plaintiffs had discharged their burden by duly exhibiting Exhibit-6, the concerned Death Certificate of the deceased.

Both the Courts below had accepted the said plea and had decreed the case of the plaintiffs by holding that the impugned Sale Deed dated 09.12.1996, was *non est* in law. It is against the aforesaid decisions of the learned Courts below that the present appeal has been preferred.

After perusal of the materials on record and on hearing the parties, this Court is of the opinion that the concurrent finding of fact regarding the death of Nimchand Sarawagi way back on 26.02.1976 and the date of execution of the impugned Sale Deed after about 21 years from such death in the name of said Nimchand Sarawagi, does not appear to be incorrect in any manner. Accordingly, in the opinion of this Court, there is no question of law much less any substantial question of law that arises for determination of case in this appeal.

Accordingly, the appeal is dismissed.

JUDGE

Comparing Assistant