

GAHC010154022007



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

Case No. : RSA/160/2007

GUTTU and COMPANY PVT. LTD. and ORS
REGD. OFFICE AT JANIGANJ BAZAR, SILCHAR, DIST. CACHAR, ASSAM.

2: THE MANAGER

KALINAGAR TEA ESTATE
PO. KALINAGAR TEA ESTATE
DIST. KARIMGANJ
ASSAM

VERSUS

TAIYAL ALI and ORS
S/O LATE MUDARIS ALI.

2:SAIBULLAH

3:NURUL ALI

4:ALI ULLAH

5:INTAJ ALI

ALL SONS OF TAIYAB ALI
R/O NAPIT CHERRA OF KALINAGAR TEA ESTATE
PO. KALINAGAR TEA ESTATE
KARIMGANJ
ASSAM

Advocate for the Petitioners : Mr. G. N. Sahewalla, Sr. Advocate

Ms. K. Bhattacharya, Advocate

Advocate for the Respondents : Mrs. R. Choudhury, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 30.04.2024

Date of Judgment : 30.04.2024

JUDGMENT AND ORDER (ORAL)

This is an Appeal under Section 100 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 30.07.2007 passed by the learned Civil Judge, Karimganj (herein after referred to as the First Appellate Court) in Title Appeal No.27/2003 thereby dismissing the Appeal and affirming the judgment and decree dated 23.12.2002 passed by the learned Civil Judge (Junior Division) No.3 at Karimganj (herein after referred to as the Trial Court) in Title Suit No.37/2001.

2. This Court vide an order dated 27.08.2008 admitted the instant Appeal by formulating the two substantial questions of law which reads as under:-

(i) Whether the judgments of the learned Courts below are perverse to the facts of the case in coming to a finding that Exhibit-7, deed is not specific because Dag numbers are not mentioned although Exhibit-7 contains the Tauzi number and account number of different plots of land, which clearly proves that the appellant purchased the entire Kalinagar Tea Estate and the suit land?

(ii) Whether the judgment of the appellate Court is perverse being not passed on the pleadings and evidences on record inasmuch as no oral evidence has been considered by the learned Appellate Court?

3. In order to ascertain as to whether the two substantial questions of law which have been formulated are duly involved in the instant Appeal, this Court finds it very relevant to take note of the brief facts leading to the filing of the instant Appeal.

4. From the materials on record, it reveals that the plaintiff No.1 is a Company

registered under the provisions of Companies Act, 1956 and the plaintiff No.2 is the manager of the Tea Estate belonging to the plaintiff Company, namely, Kalinagar Tea Estate situated at P.O.-Kalinagar Tea Estate in the district of Karimganj.

5. It is the case of the plaintiffs that a partnership firm, namely, M/s Guttu and Company had purchased Kalinagar Tea Estate from one Shri Ram Tea Company, a transferee of Bharat Samiti Ltd. vide Deed of Sale dated 13th March, 1974. Subsequent thereto, the assets and liabilities of the aforesaid partnership firm were transferred to the plaintiff Company. It is however not clear as to how the transfer was effected in favour of the plaintiff Company. It is the case of the plaintiffs that the land which is in occupation of the defendants is a part of Kalinagar Tea Estate included in the settlement surveyed Dag No.70 of the of the final Khatian No.3 of Mauza-Kalinagar, Jungle Block Part-2 in Paragana Garasati in the district of Karimganj and corresponds to resurvey Dag No. 90 of Patta No.18. Under such circumstances, the plaintiff sought for a declaration that the plaintiff is the owner of the said land which has been described in the schedule to the plaint; for recovery of the khas possession of the suit land by evicting the defendants and all other members of their family and by demolishing the houses and for temporary and perpetual injunction.

6. The defendants jointly filed a written statement raising various preliminary objections on the maintainability of the suit. It was categorically stated that the suit land is or was not the land of the plaintiff Company and the Kalinagar Tea garden. There was or is never any labour quarter of the plaintiff Company and Kalinagar Tea Garden over the suit land. It was mentioned that in the Settlement survey operation of 1990-91, the suit land was not recorded in the name of the plaintiff Company. The Assistant Settlement Officer of Ramkrishnanagar had illegally rejected the prayer of the defendant No.1 for mutation of the suit land in the name of the defendants. It was specifically mentioned that the suit land was

not identifiable. However, as the defendants were arrayed as parties and their rights and possession was questioned, details were given how the defendants acquired their rights. It was stated that there were three plots of land and the same were specifically described in the written statement. The plot No.1 which has been described in the Schedule to the written statement was owned by one Md. Kamar Uddin through inheritance and being the owner and possessor of the land. By a registered Deed of Sale being Deed No.4106 dated 21.11.1984, the said plot of land described in plot No.1 of the Schedule to the written statement was transferred to the defendant No.1 and the defendant No.1, thereupon, has been residing over the said plot of land for the last 30/35 years by constructing homestead and also by planting various trees. As regards the plot of No.2 of the Schedule to the written statement it was mentioned that the said land originally belonged to one Suaid Ali of village Kalinagar Colony and being the owner and possessor, the said Suaid Ali transferred the said land being plot No.2 to Akaddas Ali and the defendant No.1 vide a registered Sale Deed being Deed No.1623 dated 22.10.1986 and delivered possession. It was claimed that the defendant No.1 purchased the land and became owner of the 4 kedars of land and since after the purchase he has been possessing the said 4 kedars of land. In respect to the plot No.3 of the Schedule to the written statement, it was mentioned that the said land originally belonged to one Riaz Uddin of Village Daluganj through inheritance and being the owner and possessor, he sold the land to the defendant No.1 vide the registered Deed of Sale being No. 13387 dated 7.11.1994 and delivered possession to him.

7. It was also mentioned that the suit land including land which has been a part of the Schedule to the written statement was earlier recorded in Dag No.70 of Mouja Kalinagar Jungle Block Part-II during the settlement survey operation held in 1960-68. Subsequently, the said land was recorded in Dag No.90 of the said

Mouza during the next settlement operation. The original owner of the land of Kalinagar Tea Garden along with the land covered by aforesaid Dag. No.70(old) and 90(new) was M/s. Bharat Samiti. The said Bharat Samiti vide a registered Deed of Sale dated 25.7.1965 sold all the land except the land of Dag No.70 (old) corresponding to new Dag 90 and the land of old Dag No.89 to M/s. Sriram Tea Company. Thereafter the said M/s. Sriram Tea Company in the year 1974 sold all the land purchased from Bharat Samiti Ltd. except the land of Dag No.70 (old) corresponding to new Dag No.90 measuring an area of 1149 bighas 14 Kathas 1 Chatak and the land of old Dag No.89 measuring an area of 50 bighas to the authority of Kalinagar Tea Garden. It is under such circumstances stated that neither the plaintiff company nor the Kalinagar Tea Garden has authority or ownership over the land mentioned in the Schedule to the written statement, i.e. the land covered by Settlement surveyed Dag No.70(old) and 90(New) and the land covered by old Dag No.89.

8. On the basis of the said pleadings, the learned Trial Court framed as many as six Issues. Issue No.3 pertains to as to whether the plaintiffs had right, title and interest over the suit land and Issue No.6 pertains to whether the plaintiffs were dispossessed from the suit land by the defendants in the month of February, 1998. It is also relevant to take note of Issue No.2 which stipulates as to whether the suit land is properly described in the schedule of the plaint in as much as the same touches on the substantial questions of law which have been formulated by this Court. The learned Trial Court while deciding the Issue No.2 came to an opinion that the suit land was not properly described and was not identifiable, and accordingly, held that the Issue No.2 in the negative against the plaintiffs. As regards the Issue No.3, the learned Trial Court came to an opinion that the plaintiffs had failed to show that they have right, title and interest over the suit land, and accordingly, the said Issue was also decided against the plaintiffs. It is also seen that Issue No.6 was also decided against the plaintiffs. Accordingly, vide the judgment and order dated 24.12.2002, the

suit filed by the plaintiffs being Title Suit No.37/2001 was dismissed.

9. Being aggrieved, an appeal was preferred by the plaintiffs who are the appellants herein before the Court of the Civil Judge, Karimganj. Vide the judgment and order dated 30.07.2007, the said Appeal was dismissed by affirming the judgment and decree passed by the learned Trial Court. It is under such circumstance, the instant Appeal has been preferred and this Court has duly admitted the said Appeal by formulating the said substantial questions of law.

10. This Court has heard Mr. G. N. Sahewalla, the learned senior counsel assisted by Ms. K. Bhattacharya, the learned counsels for the appellants and Mrs. R. Choudhury, the learned counsel appearing on behalf of the respondents.

11. The first substantial question of law so formulated is as to whether the judgment of the Courts below are perverse to the facts of the case in coming to a finding that Ext.7 is not specific because Dag Numbers were not mentioned although Ext.7 contained the Tauzi number and the account numbers of different plots of land which clearly shows that the appellants purchased the entire Kalinagar Tea Estate and the suit land. In the opinion of this Court, the said question of law cannot be a question involved in the instant Appeal taking into account that perusal of Ext.7 only describes the land in the first Schedule as Tauzi along with account. But there is no correlation with the said Tauzi and the account so mentioned in Ext.7 with the corresponding Dags in the pleadings as well as in the evidence. Under such circumstances, this Court is of the opinion that the said substantial question of law so formulated is not involved in the instant Appeal.

12. The second substantial question of law is as to whether the judgment of the Appellate Court is perverse being not passed on the pleadings and evidence on record and no oral evidence has been considered by the Appellate Court. This Court has duly taken note of that the judgment of the learned Trial Court and also of the First Appellate Court wherein it appears that the material evidence has been duly taken note of. Under such circumstances, the said substantial question of law so formulated

does not arise in the instant Appeal, more so when the appellants completely failed to show which evidence if considered in a different perspective would have changed the course of the proceedings in favour of the appellants.

13. At this stage, this Court finds it very pertinent to take note of that in the plaint, the plaintiff No.1/the appellant No.1 herein had been described as a Company registered under the provisions of Companies Act, 1956. However, the documents of title which have been shown, i.e. Ext.7 is the Deed of Sale made in favour of a partnership firm and this aspect of the matter has also been admitted in the plaint. However, there neither any pleading nor any proof as to how and on what basis the said partnership firm transferred the land in favour of the plaintiff Company. Under such circumstances, it is the opinion of this Court that the plaintiffs had completely failed to discharge its burden to prove their title in terms with Section 101 of the Indian Evidence Act, 1872 to get a decree in their favour. Accordingly, this Court is of the opinion that both the Courts below were justified in dismissing the suit filed by the plaintiffs.

14. Consequently, the Appeal stands dismissed with costs quantified at Rs.20,000/- for the instant proceedings. In addition to that, the defendants shall be entitled to costs throughout.

15. Registry shall forthwith return the LCR.

JUDGE

Comparing Assistant