

GAHC010009572016



2026:GAU-AS:2353

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

Case No. : RSA/63/2016

MD TAYAB ALI and 4 ORS
R/O VILLAGE UCHITA , P.O GOLAKGANJ, DISTRICT DHUBRI, ASSAM, PIN
783334

2.1: ON THE DEATH OF MD. ISAB ALI @ YUSUP ALI
HIS LEGAL HEIRS JAHIRUL HOQUE
R/O VILLAGE UCHITA
P.O. GOLAKGANJ
DISTRICT DHUBRI

ASSAM
PIN 783334

2.2: NAZRUL HOQUE
S/O LATE ISAB ALI
R/O VILLAGE UCHITA
P.O. GOLAKGANJ
DISTRICT DHUBRI

ASSAM
PIN 783334

2.3: MUNNI BIBI
D/O LATE ISAB ALI
R/O VILLAGE UCHITA
P.O. GOLAKGANJ
DISTRICT DHUBRI

ASSAM
PIN 783334

3: MD. AYUB ALI

4: MD. AZAD ALI

5: MD. FAZAR ALI.
ALL ARE SONS OF LATE PIARU SHEIKH
RESIDENTS OF VILLAGE- DHARMASALA PART-IV
P.O. and P.S. DHUBRI
ASSAM.

6.1: ON THE DEATH OF MOZAD ALI HIS LEGAL HEIRS SMTI SAKINA BEWA
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSAM

6.2: SMTI MOROMI KHATUN
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSAM

6.3: SMTI SABINA YASHMIN
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSAM

6.4: SHRI ABU BAKKER SIDDIQUE
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSAM

7: SMTI MOHILA BIBI
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSAM

8: SMTI AHLIMA BIBI
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSAM

9: SMTI MOINA BIBI
R/O VILLAGE DHARMASALA PART IV DISTRICT DHUBRI

ASSA

VERSUS

ON THE DEATH OF NAIMUDDIN HIS LEGAL HEIRS and ORS
NAMELY-

1.1:SRI BABUR ALI
RESIDENT OF DHAMASALA
PART IV
PO DHAMASALA
PS DHUBRI
DIST DHUBRI
ASSAM

1.2:SRI TOSER ALI
RESIDENT OF DHAMASALA
PART IV
PO DHAMASALA
PS DHUBRI
DIST DHUBRI
ASSAM

2.1:ON THE DEATH OF HEPA SK. HIS LEGAL HEIRS SRI ABDUL AZIZ

2.2:SRI SALAM SK.

2.3:SRI ALAMAT SK.

2.4:SRI ALI HUSSAIN SK

2.5:SRI ABUL SK

2.6:SRI SHAHALOM

2.7:SRI MAHOLOM

2.8:SMTI AKLIMA

2.9:SMTI AIMONA

2.10:SMTI. CHAMPA

3:SRI AYNAL HOQUE

4:SRI ABDUL HOWUE

5:SRI SOHAR ALI

6:SRI MOKSED ALI

7:SRI MONIRUDDIN

8:SRI JEARUDDIN

9:SRI NOBAB ALI

10:SRI AMSAR ALI

11.1:ON THE DEATH OF JABBAR ALI HIS LEGAL HEIRS SRI MOJIBUR
RAHMAN

11.2:SRI MOHAMMAD ALI

11.3:SRI ZAKIR ALI

11.4:SRI MOINUL HOQUE

11.5:SRI NASIR ALI

11.6:SRI MUSTAKIM ALI

11.7:SRI AMINUR RAHMAN

11.8:SRI SHAHENURKHATUM

11.9:SMTI SHAHIDA KHATUN

11.10:SMTI. JORINA KHATUN

12.1.1:ON THE DEATH OF BHUDU SK HIS LEGAL HEIRS SRI NABAB ALI

12.1.2:SRI WASKORONI

12.1.3:SMTI KESHBHAB BEWA

12.1.4:SMTI NAZIRAN KHATUN

12.1.5:SMTI DEBRI KHATUN

12.1.6:SMTI FATI KHATUN

12.2:SRI AYUB ALI

12.3:SRI SAIYAD ALI.
ALL ARE RESIDENTS OF VILLAGE- DHAMASALA
PART-IV
P.O.- DHAMASALA
P.S.- DHUBRI
DISTRICT- DHUBRI
ASSAM

Advocates for the appellant : Ms. R. Choudhury, Adv.

Advocates for the respondents : Mr. D. Kalita, Adv.

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 11.02.2026.

Date of pronouncement of judgment : 18.02.2026

Whether the pronouncement is of the : No.

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

- 1.** Heard Ms. R. Choudhury, learned counsel for the appellants, and Mr. D. Kalita, learned counsel for the respondents.
- 2.** This Regular Second Appeal is directed against the Judgment & Decree dated 30.06.2015, passed by the learned Civil Judge, Dhubri, in Title Appeal No. 60/2008, affirming the Judgment & Decree dated 30.08.2008 passed by the Munsiff No. 1, Dhubri in Title Suit No. 189/93, thereby dismissing the appeal on contest.
- 3.** At the time of admission, the following substantial questions of law were framed:-

(i) *Whether the learned Courts below committed error in holding the Exts. 1 and 2 are inadmissible although the*

same were brought on record without objection?

(ii) Whether the learned Courts below committed error in not declaring the right, title and interest of the plaintiff over the suit land on the basis of the proved document?

- 4.** Before dealing with the aforesaid questions, it would be apposite to briefly advert to the facts of the case.
- 5.** The plaintiffs/appellants have pleaded that one Kharia Sk, the predecessor in interest of the plaintiffs as well as the defendant no: 1 and 2 and the pro forma defendants owned and possessed a plot of land measuring 10 Bigha 1 Katha 17 Lessas covered by Khatian no: 186 and also owned another plot of land measuring 2 Bigha 1 Katha 16 Lessas covered by Khatian no: 114 situated at Dharmasala Part I. The plaintiffs have pleaded that Kharia Sk had two wives namely, Ayesha and Fulta and through Ayesha he had one son namely, Fuli Sk and one daughter namely, Ulo Bewa. Kharia Sk had one son namely, Piaru Sk and four daughters namely, Tulo, Buchi, Nalo and Dhepri from his second wife, Fulta. The plaintiffs further pleaded that Fuli Sk had purchased land measuring 4 Katha 15 Lessas covered by Dag no: 509; and another land measuring 1 Bigha 1 Katha 13 Lessas covered by Dag no: 540 of Khatian no: 160 situated at village- Dharmasala Part IV. The plaintiffs have further pleaded that Ful died leaving behind his wife, Tepo, his sister, Ulo and Piaru, Buchi and Nalo and later on Ulo also died leaving behind her son Naimuddin (defendant no:1); and later on Tepo also died issueless, but left behind her brother, namely,

Hepa Sk (defendant no:2) and Piaru too died leaving behind the plaintiff and the pro forma defendant no: 12. The plaintiffs have pleaded that Ful, during his lifetime inherited land measuring 3 Bigha out of the property of Kharia Sk and thus he owned a total plot of land measuring 5 Bigha 1 Katha 8 Lessas, i.e his inherited land and the land purchased by him and the aforesaid 5 Bigha 1 Katha 8 Lessas of land was inherited by his heirs, Tepo, Piaru, Buchi and Nalo. The plaintiffs further stated that Piaru had inherited a total plot of land measuring 2 Bigha 3 Katha 1413 Lessas from Kharia Sk and his mother, Fulta. The plaintiffs have further pleaded that the four sisters of Piaru had gifted their share of 2 Bigha 1 Katha 161/6 Lessas of land each to Piaru Sk and thus Piaru Sk came to own and possess land measuring 12 Bigha 19 Lessas and after his death the aforesaid land came to be inherited by the plaintiffs and the pro forma defendant no: 12. The plaintiffs have alleged that during the last settlement operation the defendant no: 1, Naimuddin and Tepo had wrongly mutated their names in respect of the above land. It is further stated by the plaintiff that the suit land was sold in auction for arrears of land revenue but later on the same was set aside in appeal. The plaintiffs have alleged that the defendants are trying to dispossess them from the suit land; hence this suit praying for declaration of the right, title and interest of the plaintiffs and the pro forma defendant no:12 over of land measuring 12 Bigha 19 Lessas, i.e the land inherited by and gifted to Piaru Sk and for permanent injunction.

- 6.** Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no: 189/1993

was called for and received. The appeal proceeded ex-parte against the respondent no:1 (a) and (b), 2(a) to (j) and 11(a) to (j). The other respondent contested the appeal.

- 7.** The defendant no: 1 to 10 and 11(a), 11(b) and 11(c) filed their joint written statement stating therein that the suit is not maintainable and that the suit is barred by limitation and is also barred by the principles of res judicata. The above named defendants have contended that the sisters of Piaru Sk never gifted any land to Piaru Sk. The defendants further denied the fact that Ful Sk had purchased any land from Khatian no: 160. The above named defendants have further contended that the pro forma defendant no: 12 have filed Title Suit no: 362/91 in respect of the same subject matter of this suit and the plaintiffs in this suit are also one of the parties. The above named defendants have is stated that the defendant no: 1 sold land measuring 1 Bigha 12 Katha to one, Kitappadi Sk and the defendant no: 3 and 4 came in possession of the land through him. The above named defendants further contended that the defendant no: 1 also sold land measuring 1 Bigha 8 Kali to defendant no:5; and the defendant no:6 had purchased land measuring 1 Bigha from the heir of Tepo Bewa and defendant no: 11 purchased the land from the deceased Ful Sk; and that the defendant no: 11(a), (b) and (c) are also the bona fide purchaser alongwith Jamila Bibi. According to the defendants, the plaintiffs are in possession of only 5 Bigha of land and the rest of the land is in possession of the defendants and hence prayed for the dismissal of the suit.

- 8.** It would be pertinent to mention herein that the pro forma defendant no: 13 died during the pendency of the suit as such his legal heirs were substituted and they filed written statement supporting the written statement of the above named defendants. The suit proceeded ex parte against the other pro forma defendants.
- 9.** Upon the pleadings of the parties, the learned trial court framed the following issues:

 - (1) Whether the suit is maintainable in law and in fact and in form?
 - (2) Whether there is any cause of action for this suit?
 - (3) Whether the suit is bad for nonjoinder and misjoinder of necessary parties?
 - (4) Whether the suit is barred by limitation?
 - (5) Whether the suit is barred by the law of estoppel, waiver and acquiescence?
 - (6) Whether the suit is read by S.10 and S.11 CPC?
 - (7) Whether this court has jurisdiction to try the suit?
 - (8) Whether the suit is undervalued and under stamped?
 - (9) Whether the plaintiffs and pro forma defendants have right, title and share in the suit property as alleged?
 - (10) Whether the plaintiffs are entitled to get the decree as prayed for?
 - (11) To what other reliefs, if any are the parties entitled to?

10. After hearing both sides, the learned trial court by the Impugned judgment dated 30/8/2008 dismissed the suit. On being aggrieved by and dissatisfied with the impugned judgment, the plaintiffs/ appellants preferred an appeal on the following grounds:

- (i) That the learned lower trial Court has erred in law and facts in deciding the suit;
- (ii) That the court below failed to appreciate the evidence on record in its proper perspective;
- (iii) That the learned trial Court travelled beyond the pleadings of the parties;
- (iv) That the learned trial Court had not considered the documentary evidence;
- (v) That the learned lower trial court ought to have decreed the suit.

The appeal however came to be dismissed by the First Appellate Court by way of the impugned order dated 30.06.2015.

11. Reverting to the Judgment & Order passed by the learned Trial Court, in the context of the first question framed as adverted to above, regarding the rejection of the exhibits 1 and 2 as inadmissible in evidence, a perusal of the findings of the learned Trial Court on issue No. 9 would suffice, which is as follows:-

“ P.W. 1 in his examination in chief deposed that he has filed the present suit for in respect of the suit land which

originally belonged to one Kharia Sk their grandfather. According to the plaintiffs land measuring 10B-1K-17L covered by Khatian No. 186 and land measuring 2B-1K-16L under Khatian No. 114 belonged to Kharia Sk. and they being the heirs of the son of Kharia Sk. are entitled to the same by right of inheritance.

Besides these averments there is no evidence available on record to show that land aforesaid belonged to Kharia Sk. P.W. 3 in his evidence-in-Chief deposed that land under 186 No. Patta of Dharmashala Part-IV belonged to one Hussain Ali Kabiraj originally, instead and vide order passed in L.S. 906/71-72 the name of Hussain Ali Kabiraj was cancelled and names of Surat Ali, Tayab Ali, Gusuf Ali, Mayub Ali, Fazar Ali, Azad Ali, Mozad Ali and Silbhan Bewa was mutated. P.W. 3 exhibited Ext-1 and annexed the photocopy of certified copy of Jamabandi P.W. 3 further exhibited the photocopy of certified copy of Patta No. 114 as Ext-2.

Section 77 of the evidence Act provides that certified copies may be produced in proof of the contents of public documents or parts of the public documents of which they purport to be copies. In the present case, the PW. 3 has exhibited the photocopies of certified copies, and failed to exhibit the certified copies thereof, as required per the provisions of Sec. 77 of the Evidence Act and hence the same are not admissible in evidence."

- 12.** The finding of the learned first Appellate Court in this regard is as follows:-

“The perusal of the impugned judgment further reveals that the learned trial Court had held that the exhibit 1 and exhibit 2 being photocopies of certified copies of Jamabandi are not admissible in evidence, because they being the certified copies, the plaintiff ought to have produced the said certified copies and not the photocopies of certified copies. The learned trial Court is right in holding so, because it is settled that a certified copy of public document is admissible, but photocopies of certified copies are not admissible in evidence. The learned counsel for the appellants had contended that the learned trial Court had accepted the photocopies of the documents at the time of evidence; as such the learned trial Court could not have held the same to be inadmissible. The above contention of the appellants is not sustainable, because the burden lie upon the plaintiffs to prove that they could not have produced the certified copies because of any other circumstance and as such the photocopies of the same might be taken in evidence, but no such plea was taken by the appellant in the learned trial Court. In addition to the above, the admissibility or otherwise of documents may be decided at the time of writing judgment; and the learned trial Court had rightly done so.”

- 13.** A brief reference to the relevant provisions of the Indian Evidence Act,

which would govern the present question, is made as hereunder:

“63. **Secondary evidence.**- *Secondary evidence means and includes-*

1) *certified copies given under the provisions hereinafter contained;*

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

64. **Proof of documents by primary evidence.**-*Documents must be proved by primary evidence except in the cases hereinafter mentioned.*

65. **Cases in which secondary evidence relating to documents may be given.**- *Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-*

(a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, or of any person out of

reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

77. Proof of documents by production of certified copies.-

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

- 14.** Therefore, from a plain reading of the aforesaid provision, secondary evidence includes copies made from the original and "copies made from such copies." A Jamabandi, or record of rights, is a public document covered by Section 65(e) of the Evidence Act, which contention is not in dispute. As per the provisions of Section 65 of the Evidence Act, in case of (e) or (f), as mentioned herein above, a certified copy of the document, but no other kind of secondary evidence, is admissible.
- 15.** At this stage, the legal position regarding the admissibility of photocopies as secondary evidence, as laid down by the Apex Court, may be referred to:-

In ***Ashok Dulichand v. Madahavlal Dube & Anr. (1975) 4 SCC 664***, the Supreme Court ruled that if the original document is not available for comparison, photocopies cannot be accepted as secondary evidence.

In ***Nawab Singh v. Inderjit Singh Kaur (AIR 1999 SC 1668)***, the Supreme Court held that rejecting the tenant's application to produce a photocopy of a rent note without allowing secondary evidence was unjustified.

In ***Dhanpat v. Sheo Ram (Civil Appeal No. 1960 of 2020)***, the Apex court clarified that there is no requirement to file a formal application to produce secondary evidence, and a photocopy could be accepted even if such an application was not filed.

In ***Aher Rama Gova & Ors. v. State of Gujarat (1979) 4***

SCC 500, the Supreme Court allowed a photocopy of a lost dying declaration to be presented as secondary evidence because the parties did not dispute its admissibility, and the necessary foundation was laid.

- 16.** In *Tharammel Peethambaran Vs. T. Ushakrishnan*, reported in 2026 *INSC 134*, the Honorable Supreme Court held as follows:

“20.7 There is no requirement that an application must be filed to lead secondary evidence. While a party may choose to file such an application, secondary evidence cannot be ousted solely because no application was filed. It is sufficient if the party lays the necessary factual foundation for leading secondary evidence either in the pleadings or during the course of evidence.

21. Therefore, the introduction of secondary evidence is a two-step process, wherein, first, the party must establish the legal right to lead secondary evidence, and second, they must prove the contents of the documents through that evidence. The twin requirements are conjunctive.”

- 17.** However, certain features of the instant case have an important bearing on the question of admissibility of Exhibits 1 and 2.
- 18.** In course of the trial, the Latmandal, Dhubri Circle, was examined as PW3, and he produced the Jamabandi book relating to the suit land from official custody and clearly deposed that the Exhibits 1 and 2, which were photocopies of the certified copies of the concerned Jamabandi, completely tallied with the original records which the said PW had brought with him. In other words, the concerned authority

had, on oath, certified the correctness of Exhibits 1 and 2 photocopies before the Court during the trial, after comparison with the original document, thereby placing the said exhibits on an even higher pedestal than the certified copy itself, which is not issued on oath. For all intents and purposes, this is no different from marking a photocopy as an exhibit after comparison with the original, when the party producing the same, for whatever reason, is not in a position to, or desirous of leaving the said original documents in the custody of the Court, except that the said copies were not marked as "proved in original," which is a formality resorted to for the sake of convenience. In substance, it remains the same. In the present case, there was no need for stamping the said Exhibits 1 & 2 as "proved in original," since the PW-3 himself exhibited and proved the same on the witness stand which was not contested by the defendants. In that view of the matter, the Exhibits 1 & 2, though photocopies, cannot be regarded as secondary evidence, but merely as copies of the originals which themselves were produced before the Court and marked as Exhibits (Exhibits 1 & 2) without any objection from the defendants. In fact, there appears to be no legal basis upon which any objection on the part of the defendants could have been raised since the PW-3 compared the said Exhibits with the original in course of evidence before exhibiting them in Court. Thus situated, it must be concluded that the Exhibits 1 & 2 are admissible in evidence and the question is answered accordingly. Consequently, the learned First Appellate Court is required to decide the matter afresh from the stage of arguments after taking into account the Exhibits 1 & 2 as admissible pieces of

evidence.

- 19.** With regard to the second question formulated at the time of the admission of this second appeal as to whether the learned Court below committed error in not declaring the right, title and interest of the plaintiff over the suit land on the basis of the proved document would not be prudent for this Court to decide as the learned Trial Court, upon remand, would be required to go into all aspects of the matter while deciding the case afresh, unburdened by any observation of this Court.
- 20.** Consequently, the impugned appellate Judgment & Decree dated 30.06.2015 passed in Title Appeal No. 60/2008 is hereby set aside, and the matter is remanded to the learned Appellate Court for a fresh decision in light of the directions mentioned herein before.
- 21.** The appeal stands allowed accordingly.
- 22.** Send back the TCR.
- 23.** Since this is a long-pending matter, it is expected that the learned Court will endeavor to dispose of the matter at the earliest.

JUDGE

Comparing Assistant