GAHC010224962024

2025:GAU-AS:5189

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

Case No. : RSA/220/2024

MUSST ASIA KHATUN
W/O LATE JAMUDDIN, RESIDENT OF VILLAGE NO. 2, URANGBASTI, PS NOWBOICHA, DIST LAKHIMPUR, ASSAM

VERSUS

PATRIK URANG AND 4 ORS
S/O LATE SIMON URANG, RESIDENT OF VILLAGE NO. 2, URANGBASTI, PS NOWBOICHA, DIST LAKHIMPUR, ASSAM

2:KELMEN URANG

S/O LATE PHILIP URANG

RESIDENT OF VILLAGE NO. 2
URANGBASTI
PS NOWBOICHA
DIST LAKHIMPUR
ASSAM

3:BILIYAM URANG
S/O LATE ANTA SIUJ URANG
RESIDENT OF VILLAGE NO. 2
URANGBASTI
PS NOWBOICHA
DIST LAKHIMPUR
ASSAM

4:ALBINOD URANG
S/O LATE ANTA SIUJ URANG
RESIDENT OF VILLAGE NO. 2
URANGBASTI

PS NOWBOICHA
DIST LAKHIMPUR
ASSAM

5:PAULUCH URANG
S/O LATE ANTA SIUJ URANG
RESIDENT OF VILLAGE NO. 2
URANGBASTI
PS NOWBOICHA
DIST LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. A GANGULY, MR. A DHANUKA

Advocate for the Respondent : MS. P BHATTACHARYA (ALL RESPONDENTS), MR. T J MAHANTA(ALL RESPONDENTS),MR. A BORUA (ALL RESPONDENTS),MS P SARMA (ALL RESPONDENTS)

Linked Case : RSA/216/2024

NURUL AMIN
S/O ABDUL GOFUR

RESIDENT OF VILLAGE NO. 2
URANGBASTI
PS NOWBOICHA
DIST LAKHIMPUR
ASSAM

VERSUS

PATRIK URANG AND 4 ORS
S/O LATE SIMON URANG

RESIDENT OF VILLAGE NO. 2
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S/O LATE ANTA SIUJ URANG
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DIST LAKHIMPUR
ASSAM

Advocate for : MR. A GANGULY
Advocate for : MS. P BHATTACHARYA (ALL RESPONDENTS) appearing for PATRIK URANG AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the appellant(s) : Mr A Ganguly.

Advocate for the respondent(s) : Ms P Bhattacharya.

Date of Hearing and Judgment : **29.04.2025**

JUDGMENT AND ORDER (ORAL)

Heard Mr A Ganguly, the learned counsel appearing on behalf of the appellants, in both the appeals and Ms P Bhattacharya, the learned counsel appearing on behalf of the respondent Nos. 1 to 5, in both the appeals.

2. Both the appeals are directed against the common judgment and Decree dated 01.08.2024, passed by the learned Civil Judge (Senior Division), Lakhimpur, at North Lakhimpur (hereinafter, referred to the Learned First Appellate Court), in Title Appeal No. 4/2024, thereby confirming the judgment and decree, 04.01.2024, passed by the learned Civil Judge (Junior Division No. 1), Lakhimpur, at North Lakhimpur (hereinafter, referred to as the Learned Trial Court), in Title Suit No. 39/2019. As both the appeals arise out of Title Suit No. 39 of 2019, and challenges the judgment and decree dated 01/08/2024, passed by the Learned First Appellate Court, both the appeals are taken up together to ascertain as to whether any substantial question of law can be formulated in terms with Section 100 (4) of the Code of Civil Procedure, 1908 (for short, "the Code"). For the purpose of ascertaining the said, this Court finds it relevant to take note of the facts, which led to the filing of the present appeals. For the sake of convenience, the parties herein are referred to, in the same status as they stood before the Learned Trial Court.

3. The respondents herein, as plaintiffs had filed a suit before the Learned Trial Court, which was registered and numbered as Title Suit 39 of 2019, seeking declaration of their right, title and interest, over the suit land, as described in the plaint, along with recovery of Khas possession; for a decree for cancellation of the mutation of the defendants, as well as for permanent

injunction. The case of the plaintiffs in the suit was that a plot of land admeasuring 7 Bighas 0 Katha 4 Lechas, was the ancestral property of the plaintiffs. One Simon Orang, who was the father of the plaintiff No. 1 and the grandfather of the plaintiff Nos. 2, 3, 4 and 5 was the pattadar of the said land. After the death of Simon Orang, the names of the plaintiffs were mutated. On 04.04.2013, the name of the defendant No. 1 was mutated by the Circle Officer, Naoboicha, over a plot of land admeasuring 1 bigha, 2 kathas, 10 lechas, which is a part of the ancestral property of the plaintiffs, admeasuring 7 Bighas 0 Katha 4 Lechas. It was alleged that on 17.07.2013, the defendant No. 2's name was also mutated against another plot of land admeasuring 4 bighas, 4 kathas 4 lechas. This land which was also mutated in the name of the defendant No. 2, was a part of the ancestral land belonging to the plaintiffs. At this stage, it is very pertinent to mention that a land in question fell within the tribal belt, as constituted by the State Government, in terms with Chapter X of the Assam Land and Revenue Regulation, 1886 (for short, "the Regulation"). Taking into account that the mutation was carried out behind the back of the plaintiffs as alleged, the plaintiffs filed a Review Appeal No. 4 of 2015, but as the plaintiffs were not satisfied with the outcome of the said Appeal. It was also alleged in the plaint that the plaintiff had also filed a Misc Case No. 127/2014, under Section 107/145 of the Code of Criminal Procedure, 1973 (for short, "the CrPC"), before the Court of the Additional District Magistrate, but the prayer so made in the said application was rejected by an order dated 28.09.2018. It was also alleged that the plaintiffs paid land revenue over the suit land, till 2013 and since then the Mouzadar refused to accept payment of land revenue from the plaintiffs. It is under such circumstances, the plaintiffs have sought for the relief, as already mentioned hereinabove.

4. The defendants filed their joint written statement. In the said written statement, it was alleged that the father of the plaintiff Nos. 3, 4 and 5, namely, one Atmasius Orang (since deceased), who was the Pattadar, during his lifetime, sold his share, which is the suit land to the defendant No. 1 and the defendant No. 2, and handed over the possession. It was further mentioned that Late Atmasius Orang also signed the Chitha book, and in the year 2013, the name of the defendants were mutated over the suit land. It was also mentioned that as more than three years have passed since the date of mutation, and the right, title and interest of the defendants is, therefore, proved. At Paragraph No. 5 of the written statement, the defendants pleaded that the father of the plaintiff Nos. 3, 4 and 5, had handed over the possession to the defendants and signed the Chitha and as such, the defendants have right, title and possession over the suit land. It was also mentioned at Paragraph No. 6 that the plaintiffs had filed RA Nos. 4/2015 and 5/2015, but did not take any steps to prosecute the same and hence, they were dismissed. At Paragraph No. 7, it was mentioned that the proceedings under Section 145 of the Code of Criminal Procedure, 1973 (for short, "the CrPC"), were dismissed, on the ground that the plaintiffs could not prove their possession. It was also mentioned that in the said proceedings under Section 145 of the CrPC, it was held that the defendants were in possession of the suit land, since 20 years. At Paragraph No. 8 of the written statement, it was further mentioned that the suit land being a land, falling within the Chapter X of the Regulation, the civil court's jurisdiction was barred.

5. On the basis of the pleadings above noted, the Learned Trial Court framed 6 (six) issues, which are reproduced hereinunder:-

"*i) Whether there is cause of action for filing the suit?*

ii) Whether the suit is maintainable in its present form and manner?

iii) Whether the suit is barred by the law of limitation?

iv) Whether the plaintiffs have the right, title and interest over the suit land?

v) Whether the defendants have right, title and ownership by the right of purchase from the pattadars?

vi) Whether the plaintiff is entitled to get any relief and if so what?"

6. During the trial, the plaintiffs adduced the evidence of 6 (six) witnesses and exhibited various documents. On behalf of the defendants, 5 (five) witnesses were examined and various documents were also exhibited.

7. The Learned Trial Court, after dealing with the evidence on record, passed the judgment and decree on 04.01.2024, declaring that the plaintiffs have right, title and interest over the suit land; the plaintiffs are entitled to recover the Khas possession over the suit land by evicting the defendants; the mutation of the names of the defendants over the suit land was held to be illegal and liable to be cancelled and further, the plaintiff was also granted a decree for permanent injunction, as was sought for.

8. Being aggrieved, the appellants herein, who were the defendant Nos. 1 and 2, preferred an appeal, being Title Appeal No. 4 of 2024, before the Learned First Appellate Court. The Learned First Appellate Court, vide the judgment and decree dated 01.08.2024, dismissed the appeal and confirmed the judgment and decree passed by the Learned Trial Court. It is under such

circumstances, the defendant Nos. 1 and 2 have filed these two separate appeals, by invoking the jurisdiction under Section 100 of the Code, being RSA No. 220 of 2024 and RSA No. 2016/2024, respectively.

9. In the backdrop of the above, this Court finds it relevant to take note of that in both the appeals, identical questions of law have been proposed to be substantial questions of law involved in the appeals. The questions of law so proposed in both the memo of appeals are reproduced hereinunder:

> *i) Whether the Ld. Courts below committed gross error of law in failing to consider the effect of the admitted position that the Appellants/Defendants were in continuous adverse possession of the suit land since the last 20 years?*
>
> *ii) Whether the Ld. Courts below committed gross error of law in failing to consider the effect of the admission of the respondents/ plaintiffs admitted position that the Late Atmasius Orang had himself delivered possession of the suit land to the Appellants/Defendants and hence his legal heirs would be estopped from claiming their right, title and interest over the suit land?*
>
> *iii) Whether the Ld. Courts below committed gross error of law in failing to consider that the respondents/plaintiffs utterly failed to plead and prove that their suit claiming a decree of possession was not barred by the law of limitation, more so in view of the stand of the Appellants/defendants that they were in possession of the suit land since the last 20 years?*

10. The question which arises is, as to whether the questions of law so proposed, can at all be formulated as substantial questions of law in terms with

Section 100 (4) of the Code. For appreciating the said, this Court finds it relevant to take note of the submission made by Mr A Ganguly, the learned counsel appearing on behalf of the appellants, in both the appeals. Mr Ganguly has submitted that the materials on record would show that the plaintiffs have also admitted in their evidence that the defendants were in possession over the suit land for a period of 20 years, and as such, the possession of the defendants are required to be taken as adverse to the plaintiffs as well as their predecessors, which both the Courts failed to take into account. He further submitted that in a suit based upon title, along with the reliefs for possession, the plaintiffs are required to prove when the plaintiffs were dispossessed and in absence thereof, no decree can be granted in favour of the plaintiffs for recovery of possession. Additionally, Mr Ganguly further submitted that a perusal of the plaint would show that there is no compliance to the provisions of Order VII Rule 1 (e) of the Code, and, as such, the suit could not have been at all decreed in favour of the plaintiffs.

11. In view of the said submissions, let this Court now consider as to whether on the basis of the said submission so made by the learned counsel appearing on behalf of the appellants, the questions of law so proposed can be formulated.

12. The first question so proposed, pertains to whether the Courts below had committed gross error of law, in failing to consider that the appellants were in continuous adverse possession of the suit land since the last 20 years. This Court, in the previous segments of the instant judgment, have duly taken note of the pleadings of the defendants, who are appellants herein. In the written statement filed by the defendants, there is not a single whisper, as to when the

defendants claim that the possession had become adverse to the plaintiffs or their predecessors in interest.

13. It is a trite principle of law, as would be seen from the judgment of the Supreme Court in the case of ***T Anjanapppa and Others –Vs- Somalingappa and Another;*** reported in (**2006) 7 SCC 570**, that mere possession, however long it may be, does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possession are in denial of the true owner's title.

14. The Supreme Court in the case of ***Chatti Konati Rao and Others –Vs- Palle Venkata Subba Rao;*** reported in **(2010) 14 SCC 316**, further detailed out what are the requirements of claiming adverse possession. Paragraph - 14 of the said judgment being relevant, is reproduced hereinunder:

> *"14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic*

elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter."

15. In the backdrop of the above, it is very pertinent to take note of that merely because, the plaintiffs admit that the defendants are in possession of the suit property for the last 20 years, cannot be considered that the possession of the defendants are adverse to the plaintiffs or even their predecessors-in-interest. This Court, further finds it relevant to take note of that in the pleadings of the defendants, not only, there is nothing mentioned, as to when their possession had become adverse, but on the other hand, it is seen that the defendants have claimed title through the plaintiffs as well as through the predecessors in interest of the plaintiff Nos. 3, 4 and 5, as would be apparent from a perusal of Paragraph No. 4 and Paragraph No. 6 of the written statement.

16. In the case of ***Annasaheb Bapusaheb Patil and Others–Vs- Balwant and Another***; reported in (**1995) 2 SCC 543,** the Supreme Court, categorically observed that the claim of independent title and adverse possession at the same time, amounts to contradictory pleas. It was observed that when the possession can be referred to a lawful title, it will not be considered to be adverse and the reason being that, a person whose possession can be referred to a lawful title, will not be permitted to show that his possession was hostile to another title. It was also observed that, when a person enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. In the instant case, a perusal of the pleadings would show that the defendants had claimed the rights on the basis that the land had been sold by the predecessors of the plaintiff Nos. 3, 4

and 5, in favour of the defendants. However, no such deed of same was exhibited. It is, however, very interesting to take note of that there was a Chitha mutation done in the year 2013, on a basis that the predecessors of the plaintiff Nos. 3, 4 and 5 had signed before the revenue authorities in the Chitha book. It is relevant to take note of that the suit was filed in the year 2019 and the Chitha mutation was done in the year 2013. So, under such circumstances, till 2013, the defendants have duly acknowledged that the plaintiffs as well as the plaintiffs' predecessors-in-interest had the title over the land, and as such, the question of law, so proposed as regards adverse possession, or for that matter, that the defendants had adverse possession, merely on the basis that they had possession over 20 years, cannot be framed as a substantial question of law in terms with Section 100 (4) of the Code.

17. The second question of law, so proposed, pertains to as to whether the plaintiffs were estopped from claiming their right, title and interest over the suit land, on the basis that they admitted during the cross examination that, Late Atmasius Orang had himself delivered possession of the suit land to the defendants. This Court has duly considered that in order to vest a title over an immovable property to another person, such vesting has to be within the confines of law. In the instant case, the defendants claimed that Late Atmasius Orang had sold the land to them, however, there were no documents produced to substantiate the same. The suit land which is situated in an area, where both the Transfer of Property Act, 1882 and the Registration Act, 1908 duly applies. Under such circumstances, the transfer or vesting of the title upon the defendants has to be in a manner recognized by law. Merely delivering a possession of the suit land by Late Atmasius Orang, would not confer any rights upon the defendants to have ownership over the suit property, inasmuch, as the

title over the suit property continues to be to remain with the plaintiffs, pursuant to the death of their predecessor-in interest. Under such circumstances, the second question of law, so proposed to be substantial question of law, cannot be formulated as a substantial question of law, involved in the instant appeals.

18. The third question of law, so proposed to be a substantial question of law, pertains to, as to whether the suit, seeking recovery of possession was barred by the laws of limitation, in view of the admission that the defendants were in possession of the suit land since the last 20 years. As already mentioned, while dealing with the first question of law, so proposed, however long the possession may be, it does not convert into a adverse possession, unless and until it is pleaded and proved in accordance with law. Under such circumstances, the third question of law, so proposed in the memo of the appeals, cannot also be formulated as a substantial question of law, involved in the instant appeals.

19. In addition to that, this Court also finds it relevant to take note of the submission so made by Mr Ganguly to the effect that the plaintiffs having not pleaded and proved, as to when they were dispossessed, the plaintiffs were not entitled to a decree in the suit. The said submission, in the opinion of this Court is totally misconceived, inasmuch, as, in a suit based upon title for recovery of possession, has two parts. First, adjudication on the question of title and secondly, once the title is being proved, the said suit takes the colour of an ejectment suit. Once the suit takes the colour of an ejectment suit, it is for the defendant to prove that he has a better right to remain in possession of the suit property. In this regard, this Court finds it relevant to take note of a judgment of the Supreme Court in the case of ***Indira vs. Arumugam and Another;*** reported in (**1998) 1 SCC 614,** wherein the Supreme Court observed that

when a suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. This Court, further finds it relevant to take note of the judgment of the Supreme Court in the case of ***Maria Margarida Sequeira Fernandez vs. Erasmo Jack De Sequeira***; reported in (**2012) 5 SCC 370**, wherein the Supreme Court categorically observed that in an action for recovery of possession of an immovable property or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property, by a person other than the holder of legal title, will be presumed to be under and in subordination to the legal title and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession to establish that he has such a right. Paragraph Nos. 64, 65, 66 and 67 of the said judgment, being relevant are reproduced hereinunder:

> "*64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.*
>
> *65. A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.*
>
> *66. A title suit for possession has two parts-first, adjudication of*

title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession."

20. Taking into account the above propositions of law, it is, therefore, the opinion of this Court that the said submission so made by the learned counsel appearing on behalf of the appellants, is totally misconceived.

21. Lastly, this Court finds it relevant to take note of the submission made by the learned counsel appearing on behalf of the appellant that the plaint has not been drawn up in accordance with Order VII Rule 1 (e) of the Code. This Court finds it relevant to take note of that no objections were raised in the written statement or even during the trial, as regards the deficiency in the plaint, being not in compliance with Order Order VII, Rule 1 (e) of the Code. In this regard, this Court finds it very pertinent to take note of the judgment of the Supreme

Court in the case of ***Santosh Hazari vs Purushottam Tiwari*;** reported in **(2001) 3 SCC 179**, wherein the Supreme Court categorically observed at Paragraph No. 14, that to be a question of law involved in the case, there must be at first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact, arrived at by the courts of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It was further observed that an entirely new point raised for the first time before the High Court is not a question involved in the case, unless it goes to the root of the matter. Paragraph of 14 of the said judgment being relevant is reproduced hereinunder:

> "*A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial", a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages*

and impelling necessity of avoiding prolongation in the life of any lis."

22. In that view of the matter, the said contentions so raised as regards the deficiency in the plaint, in so far as non-compliance with Order VII Rule 1(e) cannot be formulated as a substantial question of law, arises in the instant appeals.

23. Considering the above, this Court does not find that there is any substantial question of law, that can be formulated in the instant appeals, for which both the appeals stand dismissed. However, in the peculiar facts of the case, this court is not inclined to impose any costs.

24. It is seen that although the appeals have not yet been admitted, but inadvertently, the records of the Courts below were called for. The Registry shall return the records.

JUDGE

Comparing Assistant