

GAHC010173872016



2021:GAU-AS:15143

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

Case No. : RSA/219/2016

ON THE DEATH OF SHRI AMARESH CHANDRA DAS, HIS LEGAL HEIRS
AND 7 ORS
REPRESENTED BY-

1.1: SRI RIPON DAS
S/O- LATE AMARESH CHANDRA DAS
R/O- VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM

1.2: SMTI ANITA DAS
D/O- LATE AMARESH CHANDRA DAS
R/O- VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM

1.3: SMTI ANURUPA DAS
W/O- LATE AMARESH CHANDRA DAS
R/O- VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM

2: SHRI ARUP DAS
S/O- SHRI AMARESH DAS
R/O- VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM

3: SHRI MONIJIT DAS
S/O- SHRI AMRESH DAS

R/O- VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM

4.1: SMTI. TAPASHI DAS @ RUBI
D/O- LATE BIMALENDU DAS
R/O- HOSPITAL ROAD
KARIMGANJ
TOWN
P.O. AND P.S. AND DIST.- KARIMGANJ
ASSAM

4.2: SMTI. DIPSHISKHA DAS @ SUMON
D/O- LATE BIMALENDU DAS
R/O- HOSPITAL ROAD
KARIMGANJ
TOWN
P.O. AND P.S. AND DIST.- KARIMGANJ
ASSAM

4.3: SRI RATNADEEP DAS @ SHIBOM
S/O- LATE BIMALENDU DAS
R/O- HOSPITAL ROAD
KARIMGANJ
TOWN
P.O. AND P.S. AND DIST.- KARIMGANJ
ASSAM

4.4: SRI RAJDEEP DAS @ SHUVAM
S/O- LATE BIMALENDU DAS
R/O- HOSPITAL ROAD
KARIMGANJ
TOWN
P.O. AND P.S. AND DIST.- KARIMGANJ
ASSAM

4.5: SRI RANADEEP DAS @ SUNDARAM
S/O- LATE BIMALENDU DAS
R/O- HOSPITAL ROAD
KARIMGANJ
TOWN
P.O. AND P.S. AND DIST.- KARIMGANJ
ASSA

VERSUS

ON THE DEATH OF SHRI MUNINDRA CHANDRA DAS, HIS LEGAL HEIRS

AND 4 ORS
REPRESENTED BY-

1.1:MRINAL KANTI DAS
S/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.2:MRIDUL KANTI DAS
S/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.3:MRINMOY KANTI DAS
S/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.4:RATNA RANI DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.5:SWAPNA DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.6:APARNA DAS CHOUDHURY
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.7:SIPRA RANI DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN

P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.8:MILI RANI DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.9:SHELLY RANI DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.10:JOLY RANI DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

1.11:LILY RANI DAS
D/O- LATE MUNINDRA CHANDRA DAS
VILL.- MANSANGAN
P.O.- RAKESHNAGAR
P.S. AND DIST.- KARIMGANJ
ASSAM.

2:THE STATE OF ASSAM
REPRESENTED BY THE LEARNED GOVT. ADVOCATE
ASSAM

3:THE COLLECTOR AND DEPUTY COMMISSIONER
KARIMGANJ
P.O.
P.S. AND DIST.- KARIMGANJ
ASSAM

4:THE SETTLEMENT OFFICER
KARIMGANJ
P.O.
P.S. AND DIST.- KARIMGANJ
ASSAM

5:SRI HITU DAS
S/O- LATE RABINDRA CHANDRA DAS
LAKSHMINAGAR ROAD
KARIMGANJ TOWN
KARIMGANJ
P.O.
P.S. AND DIST.- KARIMGANJ
ASSA

Advocate for the Petitioner : MS. M KHANIKAR, MR.V M THOMAS,MRM J QUADIR,MR.S Y AHMED

Advocate for the Respondent : MR.H R A CHOUDHURYR, MS F N ZAMAN,MR N RAHMAN,MS. R CHOUDHURY,GA, ASSAM,MS.S S ZIA(R-1),MR.S R BORUAH,MRS.R CHOUDHURY(R-1)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date on which judgment is reserved : 20.01.2026

Date of pronouncement of judgment : 10.02.2026

Whether the pronouncement is of the operative part of the judgment? : N/A.

Whether the full judgment has been pronounced? : Yes.

JUDGMENT

Date : 10-02-2026

Heard Mr. M. J. Quadir, learned counsel for the appellants. Also heard Ms. R. Choudhury, learned counsel for the respondent No.1 and Mr. K. K.

Bhattacharyya, learned Government Advocate, Assam appearing for the respondent Nos. 2, 3, 4 and 5.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908 against the judgment dated 09.05.2016 and decree dated 20.05.2016, passed by the learned Civil Judge, Karimganj in Title Appeal No. 13/2013, whereby the judgment and decree passed by the learned Munsiff No. 2, Karimganj, dated 03.04.2013 in Title Suit No. 388/2006 was upheld.

3. This Court, after hearing the learned counsel for the appellants, admitted this appeal on the following substantial questions of law:-

1. Whether the findings of both the courts below that the registered sale deed Ext. 5 (Ext. A) was null and void is correct after holding that the respondent/ plaintiff be a tenant under the Assam Temporary Settled Areas Tenancy Act, 1971?

2. Any other substantial question of law that may be formulated at the time of hearing of this second appeal.

4. During the pendency of this appeal, some of the appellants as well as some of the respondents died and their legal heirs are accordingly impleaded as appellants/respondents.

5. The basic ground for preferring this appeals is that the learned Trial Court as well as the learned Appellate Court did not consider that the suit is specifically barred and not maintainable under the various provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (here-in-after referred to as 'the 1971 Act') and also barred under the Specific Relief Act. The learned Court below, while deciding the issue No.4, did not appreciate the evidence on record in its proper perspective and wrongly decided the issue in favour of the respondent/ plaintiff. The respondent/plaintiff admitted that he was a teacher by

occupation and he was not a agriculturist but this aspect of the case was also not considered by the learned Trial Court as well as by the learned Appellate Court. More so, the respondent plaintiff failed to prove his possession over the suit land and also failed to prove that he was an occupant under Rakesh Ch. Das and without considering this aspect of the case, the judgment and decree was passed by the learned Trial Court below, arriving at a concurrent decision.

6. Mr. M. J. Quadir, the learned counsel for the appellants submitted that while passing the impugned judgment and decree, the learned Trial Court as well as by the learned Appellate Court did not consider the Regd. Sale Deed No.3042, dated 20.07.2006 (Ext.5 or Ext.A document), which has been challenged in this suit by the plaintiff, praying for cancellation of the sale deed. But the plaintiff/respondent did not pay the necessary Court Fee and in that aspect also, the suit ought to have been dismissed for want of necessary Court Fee. Further, he submitted that the findings of the learned Trial Court as well as of the learned Appellate Court in regards to the issue No.4 is illegal and perverse and for which also, the findings arrived at by the learned Courts below is liable to be set aside and quashed. The learned counsel for the appellants further submitted that the learned Trial Court below did not make any discussion in regards to the DWs. and also did not consider the fact that the prayer of the present respondent as a plaintiff in the original suit was only to the extent of confirmation of possession over the suit land, wherein he was occupancy tenant.

7. Further, the appellants claimed that the suit land is purchased by their predecessor from the original pattadar/defendant No.4 by executing a sale deed and thus they had the right, title and interest over the suit land on the strength of purchase from the defendant No.4. He further submitted that even if the

plaintiff/respondent is considered to be an occupancy tenant but for their right as occupancy tenant, the Court cannot pass the decree for cancellation of the sale deed, which was executed by the defendant No.4 and it is the admitted position that the defendant No.4 was also one of the pattadar of the said suit land. Further, the only document exhibited by the plaintiff/respondent is the Ext.1 (the Khatian) and it cannot be considered as a title document and the said document only give the right of tenancy and it does not confer any title. Further, the PW.1 in his cross-examination also took the name of five pattadars, out of which the name of vendor Bimalendu Das is also mentioned by the PW.1 and thus it is an admitted position that the vendor of the suit land was also a title holder and there is no dispute to that regard.

8. Mr. Quadir, the learned counsel for the appellants further submitted that the right of tenancy was not given as per Sections 23 and 24 of the 1971 Act and no formalities are also observed under Section 26 of the said Act. Accordingly, the learned counsel for the appellants submitted that the findings of the learned Trial Court as well as the learned Appellate Court are illegal and perverse, as the plaintiff could not prove the so called tenancy right and possession over the suit land and the Ext.1 which is the only document exhibited by the appellant i.e. the Khatian No.468 cannot give the right, title and interest as well as possession over the suit land and thus both the Trial Court as well as the Appellate Court have arrived at a wrong decision, which are liable to be set aside and quashed.

9. To substantiate his argument, the learned counsel for the appellants have relied upon the following decisions of the Hon'ble Supreme Court as well as of this High Court :

(i) (1997) 7 SCC 137 (Balwant Singh and another vs. Daulat Singh

(Dead) by LRS. And others).

(ii) (1998) 9 SCC 719 (Ram Das vs. Salim Ahmed and another).

(iii) (2000) 1 SCC 434 (Ishwar Dass Jain (Dead) through LRS. Vs. Sohan Lal (Dead) by LRS).

(iv) [2007] 2 GLR 526 (Jadu Thakur and another vs. on the death of Kedar Prasad @ Kedar Prasad Ram and his legal heirs).

(v) (2018) 5 GauLR 580 (on the death of Suleiman Ali, his legal heirs Ahad Ali vs. Safia Khatoon (Musstt.)).

10. On the other hand, Ms. R. Choudhury, learned counsel for the respondent No.1 submitted that the Government, on the basis of title and possession of the plaintiffs/respondents as tenants over the suit land and some other lands, prepared the Final Khatian No.468 of the concerned Mouza under the relevant provisions of the 1971 Act and the tenancy Rules framed there under, which was finally prepared in 1975, without any objection from any quarter and thus it stands un-rebutted and the Final Khatian No.468 became the title deeds of the plaintiff, so far as the suit land and some other lands, as mentioned in the Khatian. On the other hand, the defendants/appellants claimed both the tenancy right as the occupants of the land as well as right, title and interest over the suit land on the strength of purchase. The learned counsel for the respondents further submitted that though it is stated that the evidence of the defendants' witnesses was not considered by the learned Trial Court below at the time of passing the judgment, but from the discussions made in issue No.4 itself, it is seen that the evidence of the DW.1 was considered while discussing the issue No.4 and thus it is not a case that the learned Trial Court below did not consider the evidence of the defendants' witnesses at the time of passing

the judgment. Rather, relevant discussion has been made with regard to the DW.1 and also the case of the defendants as well. In the issue No.5 also, the oral evidence of the witnesses were taken into consideration and considering the oral evidence adduced by both sides, the issue was accordingly decided in favour of the plaintiffs/respondents.

11. The defendants in one hand had claimed their right, title and interest over the suit land on the strength of purchase but in spite of the said claim, the defendants/appellants did not file any counter claim praying for declaration of right, title and interest over the suit land on the strength of purchase. The plaintiffs/respondents had exhibited the necessary documents and also adduced their evidence to prove their occupancy right and it is the case of the plaintiff that their right is established after the publication of the Khatian in the name of the plaintiffs/respondents in the year 1975 itself and thus, the case of the plaintiff is not based on the evidence of the defendants, rather, the plaintiffs had proved their case and both the oral as well as documentary evidence were also adduced accordingly.

12. In the same time, it is also seen that though they have challenged the legality and validity of the Khatian in the name of the respondents/ plaintiffs but there is no prayer made for cancellation of the said Khatian which is still in existence and in the name of the plaintiffs/respondents. Rather, it is the DW.1, who stated in his cross-examination that they did not raise any objection to the Khatian issued in favour of the respondent No.1. Ms. R. Choudhury, learned counsel for the respondent No.1 further submitted that mere statement that the Khatian was fraudulently obtained is not at all sufficient and there is no specific plea to that regard in their written statement nor there is any evidence adduced by the defendant/appellant, while adducing their evidence. Rather, the plaintiff

also exhibited the revenue receipt as Ext.2, issued by the defendant Rakesh Chandra. Ms. Choudhury further submitted that the plaintiff has been possessing the suit land and some other lands since 1975, as mentioned in the Final Khatian No.468, without any objection from any corner as tenant within the meaning of Sub-Section (1)(9) of Section 4 of the 1971 Act. It is further stated by Ms. Choudhury that the defendant had no right, title and interest over the suit land and the defendant No.4 Bimalendu Das had no possession over the portion of the land, mentioned in the Final Khatian No.468. He also had no right to execute the registered Kobala No.3642, dated 20.07.2006, as claimed. Considering all these aspects of the case, the learned Trial Court as well as by the learned Appellate Court had rightly arrived at a concurrent decision and there is no need of any interference in the judgment and order passed by the learned Trial Court as well as by the learned Appellate Court.

13. In support of her argument, the learned counsel for the respondent No.1 has relied upon the decision of the Hon'ble Supreme Court in the case of Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board, reported in [2010] 13 SCC 216 (para 13, 25 & 40).

14. Mr. K. K. Bhattacharyya, learned Government Advocate, Assam appearing for the respondent Nos. 2, 3, 4 and 5 submitted that they have also filed an affidavit to that regard wherein it is stated that the land record of the suit land was prepared as per the provisions of the 1971 Act and it is stated that the Final Khatian No.468 of Mouza Baniargool has been prepared and the above Dag where the suit land is located has already been made Government Khass land under the Ceiling Case No.330/1977—78 and accordingly it is submitted by Mr. Bhattacharyya, the learned Government Advocate that the plaintiff was the tenant over the said land and accordingly, the Khatian was issued in his favour.

Presently as the land is khas land under the Ceiling Case, there can only be tenancy right, which only can be transferred and thus the claim of the appellant/defendant also cannot be considered where the Final Khatian has already been issued considering the plaintiff as an occupancy tenant over the khas Government land. Mr. Bhattacharyya, the learned Government Advocate accordingly raised objection and submitted that the present appeal is liable to be dismissed.

15. The present appeal under Section 100 of the CPC has been filed, wherein this Court has already framed the substantial question of law as to "*1. Whether the findings of both the courts below that the registered sale deed Ext. 5 (Ext. A) was null and void is correct after holding that the respondent/ plaintiff be a tenant under the Assam Temporary Settled Areas Tenancy Act, 1971?*". On perusal of the judgment and order as well as the record and evidence, it is seen that the learned Trial Courts below also made discussions in regards to the evidence of DW.1 and their exhibited documents and also considered their written statement. Thus, it cannot be considered that the material evidence were not discussed by the learned Trial Court below as well as the learned Appellate Court while passing the judgment. In the same time, it is also not a case that the order has been passed only considering the weakness of the defendant but it is seen that the entire case of the plaintiff was also discussed at the time of passing the order/judgment. Further, considering the nature of the land, where the respondent/plaintiff was the occupancy tenant, Sections 23, 24 & 26 of the 1971 Act also not applicable, as argued by the learned counsel for the appellants.

16. Considering the submissions made by the learned counsel for the parties and also on perusal of the records as well as the judgment passed by the

learned Trial Court below as well as the learned Appellate Court, it is seen that admittedly the Khatian was issued in favour of the plaintiff/respondent No.1 in the year 1975 and at the time of publishing the Final Khatian, no objection was received from any quarter and the Khatian is still stands in the name of the plaintiff/respondent No.1. It is the case of the plaintiff that since last more than 50 years, they were possessing the said land and accordingly, the Final Khatian was issued in their favour. But the defendant Bimalendu Das/appellant with the collusion with the other defendants and the Government side, had created the forged registered sale deed, which was shown to be executed in the year 2006 and on the basis of the said registered sale deed, they claimed their right, title and interest over the suit land, though the defendant No.4 had no possession over the land under which the Final Khatian was issued in favour of the plaintiff/respondent No.1.

17. On perusal of the pleadings of the parties as well as the judgments passed by the learned Courts below, it is seen that the tenancy settlement in respect of the suit land was made in the year 1368 B.S., by the predecessor of defendant No.4, in favour of the plaintiff, on the basis of which the plaintiff had possession over the said land and as stated earlier, after considering their possession over the land, the Final Khatian was issued in their favour. Thus, the defendant No.4 had no right and title over the property to transfer the same in favour of the defendant No.1. Thus, the defendant No.4 had no such right to make any transfer on the strength of the Regd. Sale Deed, as claimed by the defendant. It is also the case of the defendant, as per the written statement, wherein it is stated that the defendant No.1 was an occupancy tenant of Late Rakesh Ch. Das i.e. the father of the defendant No.4, in respect of the suit land. It is seen that on one hand he claimed his occupancy right over the suit land, on the other

hand, it is claimed by him that the Sale Deed was executed in his favour by the defendant No.4. Thus, contrary averment of the defendant in the written statement as well as in the documents i.e. the sale deed nullifies the claim of the defendant that they executed the Ext.1 i.e. the Regd. Sale Deed in favour of the defendant No.1 by the defendant No.4 in the year 2006. It is the admitted position that the Final Khatian was issued in the name of the plaintiff in the year 1975, considering their occupancy/ possession over the property and that was not challenged by any person till date. Further, from the submissions made by the learned Government Advocate Mr. Bhattacharyya and the affidavit filed thereon, it is seen that the Final Khatian was prepared as per provision of 1971 Act and the land is already made Government Khas land under the Ceiling Case No.330/1977—78 and it is the plaintiff who was the tenant over the said land, on the basis of which only the Khatian was issued in his favour. As the land is Government Khas land under the Ceiling Case, only the tenancy right can be transferred and there cannot be any transfer of right, title and interest through the sale deed, as the land is Government Khas land. Thus, it is also seen that the land in question, as per the Ceiling Case No.330/1977—78, the Government has already acquired the land as Khas land and considering the plaintiff as an occupancy tenant, the Final Khatian was also published in their favour in the year 1975.

18. In such situations/circumstances, this Court is of the opinion that the learned Trial Court as well as the learned Appellate Court committed no error or mistake while discussing the suit in favour of the plaintiff/ respondent and also passing the decree for cancellation of the sale deed. If the prayer for cancellation of the deed is not considered, it may create multiplicity of the proceedings, as the defendant/appellant cannot claim any right over the suit

land on the strength of the Regd. Sale Deed, as claimed by them.

19. Considering the entire discussions made above, this Court is of the opinion that the substantial question of law, which has been framed in this appeal is decided in negative, which goes against the appellant/defendant. Accordingly, there is no need of any interference in the concurred findings of the learned Trial Court as well as the learned Appellate Court, passed by the learned Munsiff No. 2, Karimganj, dated 03.04.2013 in Title Suit No. 388/2006, which was affirmed by the learned Civil Judge, Karimganj in Title Appeal No. 13/2013.

20. Accordingly, the present appeal is devoid of merit and accordingly the same is dismissed.

21. Return back the Trial Court Record along with a copy of this judgment forthwith.

JUDGE

Comparing Assistant