

(2013) 11 GAU CK 0027

In the Gauhati High Court

Case No : Regular Second Appeal No. 43 of 2012

Anil Kumar Das

APPELLANT

Vs

Ganesh Chandra Ojha

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 1 GLT 439

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A. Dey, Mr. R.C. Saikia, Mr. D.M. Nath, Mr. H.K. Deka, Mr. P. Sundhi and Mr. B.D. Deka, for the Appellant; M.K. Choudhury, M. Dutta, A. Barkataki and Mr. N. Baruah, for the Respondent

Judgement

Brojendra Prasad Katakey, J.—This appeal by the defendant is directed against the judgment and decree dated 23.12.2010 passed by the learned Civil Judge, Barpeta, in Title Appeal No. 29/2010, dismissing the appeal preferred by the present appellant by upholding the judgment and decree dated 05.06.2010 passed by the learned Munsiff No. 1, Barpeta, in Title Suit No. 258/2008, whereby and whereunder the suit filed by the present respondent as plaintiff has been decreed. The respondent as plaintiff instituted the said suit for declaration of right, title and interest over the land measuring 4 kathas more fully described in Schedule-A to the plaint and also for recovery of khas possession by evicting the defendant from 1 katha land (B schedule land), which forms part of A schedule land, contending inter alia that the land measuring 4 kathas (Schedule-A) was purchased by him by a registered deed of sale dated 09.12.1994 (Ext.-1) from one Rajendra Deuri, pursuant to which the plaintiff was put into possession. It has further been pleaded that the defendant, who is on the eastern boundary of the said land, started creating trouble in peaceful possession of the plaintiffs land, for which the demarcation proceeding was initiated at the instance of the plaintiff and demarcation was done on 12.06.2003 and thereafter the defendant initially on 05.02.2008 tried to encroach the plaintiffs land and was successful in encroaching 1 katha of land, described in Schedule-B to the plaint, which

necessitated filing of the suit.

2. The defendant on receipt of the summons entered appearance and filed written statement contending inter alia that the suit is not maintainable for non-joinder of necessary party, namely, brother of the defendant, Amarendra Das, in whose favour the settlement was granted by the Govt. of Assam in respect of 1 bigha 5 lechas of land in Dag No. 709 and that though the plaintiff purchased 4 kathas of land in Dag No. 708, he was, in fact, in possession of land measuring 3 kathas, as 1 katha of land on the western boundary of the plaintiffs land has been used for construction of a road. According to the defendant, he along with his brother are in possession of the land in Dag No. 709 and never encroached upon the land in Dag No. 708.

Based on the pleadings of the parties, the Trial Court framed the following issues for determination:--

- (i) Whether the suit is bad for nonjoinder of necessary parties?
- (ii) Whether the plaintiff has right, title and interest over the schedule A land of the plaintiff?
- (iii) Whether the defendant has right, title and interest over the schedule B land by way of adverse possession?
- (iv) Whether the defendant is liable to be evicted from the schedule B land?
- (v) Whether the plaintiff is entitled for the decree as prayed for?
- (vi) To what other relief or relief's the parties are entitled for?

Both the plaintiff and the defendant examined their respective witnesses in support of their respective claims and proved a number of documents. The witnesses examined by the parties were cross-examined by the respective parties.

3. During pendency of the suit, the Trial Court appointed an Amin Commission to find out whether the defendant has encroached any land belonging to the plaintiff in Dag No. 708. The Amin Commissioner has submitted his report on 22.03.2010 on the basis of the inspection and measurement of land done on 02.02.2010 by the revenue staff in presence of the plaintiff, defendant and their respective learned counsel.

Based on the evidence adduced by the parties, both oral and documentary, the Trial Court decreed the suit of the plaintiff, which though has been put to challenge by the defendant in the aforesaid appeal, the same has been dismissed by affirming the judgment and decree passed by the Trial Court. Hence the present appeal.

4. I have heard Mr. H.K. Deka, learned Sr. counsel for the appellant/defendant and Mr. A. Barkataki, the learned counsel appearing for the respondent/plaintiff.

It has been contended by Mr. Deka, the learned Sr. counsel for the appellant that since the dispute between the parties is relating to the eastern boundary of the plaintiffs land, which is the western boundary of the defendant's land, the Amin Commission's report assumes importance, on the basis of which the suit has been decided. It has been contended that the Amin Commission's report (Ext.-5), however, cannot be the basis for decreeing the suit of the plaintiff as the Amin Commissioner did not himself measure the land and also did not measure the land in Dag No. 709 to ascertain as to whether the defendant has the land measuring 1 bigha 5 lechas in the said Dag. It has also been submitted that the Courts below did not take into consideration the fact that 19 pillars were raised by the defendant after the settlement of the aforesaid land in Dag No. 709, while decreeing the suit of the plaintiff. Further submission of the learned Sr. counsel is that the suit of the plaintiff is bad for non-joinder of necessary party, namely, brother of the defendant, Amarendra Das, who is the joint settlement holder in respect of the land measuring 1 bigha 5 lechas covered by Dag No. 709.

5. Mr. Barkataki, the learned counsel appearing for the respondent, on the other hand, has submitted that it is apparent from the Amin Commission's report (Ext.-5) that the measurement was done in presence of the Amin Commission by the Revenue staff and also in presence of the plaintiff and the defendant, apart from the respective learned counsel representing the parties. It has also been submitted that the said report further reveals that the measurement not only of Dag No. 708 but also of Dag No. 709 was done and it has been found that the land measuring 1 katha in Dag No. 708 has been encroached by the defendant and the land measuring 1 lecha in Dag No. 709 is in possession of the plaintiff. The learned counsel further submits that 19 pillars, in fact, were raised by the plaintiff after the order was passed by the Revenue authority in the demarcation proceeding and since the measurement was done on the field by the Amin Commission appointed by the Court, who has not been cross-examined by the defendant, the Court below did not commit any illegality in decreeing the suit of the plaintiff. Relating to the submission with regards to the non-joinder of necessary party, it has been submitted that Amarendra Das is not the recorded pattadar and that as it is the case of the plaintiff that the defendant only encroached the land of the plaintiff, the suit as against the defendant for his eviction from the land in Dag No. 708, which belongs to the plaintiff, is maintainable.

6. I have considered the submissions advanced by the learned counsel for the parties and also perused the judgments and decrees passed by the Courts below.

Both the Courts below have recorded the finding of fact that the defendant has encroached 1 katha of land in Dag No. 708 belonging to the plaintiff. Such finding has been recorded based on the Amin Commission's report dated 22.03.2010 (Ext.-5). Perusal of the said report reveals that the inspection and measurement was done by the Revenue staff, in presence of the Amin Commission, the plaintiff

and the defendant as well as the learned counsel representing them, on 02.02.2010. The said report further reveals that not only the land covered by Dag No. 708 but also the land covered by Dag No. 709 has been measured and it was found that the defendant is in possession of 1 katha of land covered by Dag No. 708 belonging to the plaintiff and the plaintiff is occupying the land measuring 1 lecha covered by Dag No. 709 belonging to the defendant. The said report has been marked as exhibit and though the Amin Commissioner was examined, he has not been cross-examined by the defendant.

The Courts below having accepted the said report, which has not been objected to by the defendant, has, therefore, rightly held that the defendant is encroaching the land measuring 1 katha in Dag No. 708 belonging to the plaintiff. The dispute relating to raising of pillars, therefore, has no relevance.

7. The contention of the defendant that the suit is bad for non-joinder of necessary party, namely, brother of the defendant, Amarendra Das, also cannot be accepted, as the plaintiffs case is that it is the defendant alone who has encroached the plaintiffs land in Dag No. 708, which was found to be correct by the Courts below. The plaintiff never claims any land in Dag No. 709. In view of the aforesaid discussion, I do not find involvement of any substantial question of law to admit the appeal and hence the appeal is dismissed. No costs.

Since the plaintiff has also placed reliance on the Ext.-5 Amin Commission's report, which has been accepted by both the Courts below, which reveals that the plaintiff is in possession of 1 lecha of land covered by Dag No. 709 belonging to the defendant, the plaintiff shall give up the possession in respect of the said 1 lecha of land in favour of the defendant.