

(2024) 05 GAU CK 0097

In the Gauhati High Court

Case No : SAO No. 6 Of 2013, 2 Of 2014

Biswa Bijoy Das And 2 Ors.

APPELLANT

Vs

Kalpana Das And 2 Ors.

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 41 Rule 23A, Order 41 Rule 24

Citation : (2024) 05 GAU CK 0097

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : R. Devi, S. P. Roy

Final Decision : Disposed Of

Judgement

1. Both the appeals are taken up together for disposal taking into account that both the appeal arises out of an order dated 18.05.2013 passed in Title Appeal No.32/2011 whereby the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dibrugarh had remanded the suit back to the learned Trial Court in exercise of powers under Order XLI Rule 23A of the Code of Civil Procedure, 1908 (for short "the Code") by formulating an additional issue.

2. The question therefore arises before this Court is as to whether the learned First Appellate Court has shirked its responsibility in deciding the appeal and the order so passed is contrary to the provisions of Order XLI Rule 24 of the Code.

3. I have heard Mrs. R. Devi, the learned counsel appearing on behalf Appellants in SAO No.6/2013 and Mr. S. P. Roy, the learned counsel appearing on behalf of the Appellants in SAO No.2/2014. The said counsels duly represents their respective Appellants who are the Respondents in those appeals.

4. The brief facts leading to the filing of these two appeals are that the Appellants in SAO No.2/2014 as plaintiffs had instituted a suit being Title Suit No.10/2008 seeking declaration that they had got right, title and interest over the suit land being the absolute owner and in possession for the last 5 (five)

decades; for declaration that the order dated 09.12.1969 passed by the S.D.C., Dibrugarh, East Circle, Dibrugarh in Mutation Case No.42/1969-70 mutating the name of Late Bhagawati Prasad Das in respect to the suit land is void, illegal and inoperative in law and deletion of the names of the defendants and their mother from any records available in the Office of the Deputy Commissioner, Dibrugarh; for declaration that the order 11.09.1970 passed by the learned Additional Deputy Commissioner, Dibrugarh in Mutation Case No.37/1969-70 and also giving separate patta being P.P. No.71 in favour of Late Bhagawati Prasad Das is void, illegal and inoperative in law and deletion of his heirs name from any records available in the Office of the Deputy Commissioner, Dibrugarh; for declaration that the order dated 19.09.1997 passed by the S.D.C., Dibrugarh, West Circle, in M.C. Case No.87/1997 granting mutation in the name of the defendants and their mother is void, illegal and inoperative in law; for declaration that the notice of demarcation issued by the Circle Officer, Dibrugarh East/West Circle in Demarcation Case No.DEC/D/54/2004-05 to the Plaintiff No.1 is void, illegal and inoperative in law and not binding and for perpetual injunction restraining the defendants from trespassing over any portion of the suit land and from disturbing the peaceful possession and enjoyment of the suit land by the plaintiffs.

5. The Defendants jointly filed a written statement cum counter claim denying the case of the Plaintiffs and further claiming the declaration that the Defendants have right, title and interest over the land measuring 0 Bigha 2 Kathas 4 Lechas of Periodic Patta No.71 covered by Dag No.94 of Tinkunia Ward of Dibrugarh Mouza, District Dibrugarh; for khas possession of the suit land as described in the Schedule of the written statement cum counter claim by evicting the plaintiffs, their men, women, representatives, etc; for permanent injunction restraining the plaintiffs, their men, women, representatives, from making any alteration, repairing renovations, new constructions over the suit land and from making any Deed of Conveyance involving the suit land and premises and from doing any act prejudicial to the nature etc.

6. On the basis of the pleadings filed by the plaintiffs as well as the Defendants, the learned Trial Court framed as many as 7 issues which being relevant for the purpose of the adjudication of the instant appeal are reproduced herein under:

“(1) Whether the suit as well as the counter claim is maintainable?

1.(A) Whether the suit is barred by limitation?

(2) Whether there is cause of action for the suit and counter claim?

(3) Whether the plaintiffs have right, title, interest and possession over the suit land or the defendants have right, title, interest and possession over the suit land?

(4) Whether the orders passed by the land revenue/settlement authorities such as mutation order and partition etc. impugned herein are devoid of legality and

thus, inoperative in law?

(5) Whether the plaintiffs and the defendants are entitled to the respective reliefs claimed for?

(6) To what reliefs the parties are entitled?”

7. On the basis of the evidence which was tendered by both the plaintiffs as well as the Defendants before the learned Trial Court, the suit being Title Suit No.10/2008 was disposed of vide a judgment and decree dated 24.06.2011 by dismissing the suit of the plaintiffs and decreeing the counter claim of the defendants. Being aggrieved, the plaintiffs preferred an appeal being Title Appeal No.32/2011. The learned First Appellate Court vide the impugned order dated 18.05.2013 remanded the suit back to the learned Trial Court by framing an additional issue and it is under such circumstances, both the proceedings have been instituted.

8. This Court has duly perused the records which were called for. The evidence submitted by both the parties have been perused. This Court had taken note of that the Issue No.3 categorically dealt with the issue as to whether the plaintiffs have right, title, interest and possession over the suit land or the defendants have right, title and interest and possession over the suit land. Under such circumstances, this Court is of the opinion that framing of an additional issue as to whether the father of the defendant namely Late Bhagawati Prasad Das inherited the suit land in 1969-70 and got the same mutated in his name with the knowledge of all surviving heirs with the consent of his mother Smti Akanibala Das was not at all necessary inasmuch as the Issue No.3 would duly take care of such additional issue. Further to that, this Court having taken note of the evidence on record is of the opinion that the learned First Appellate Court could have decided the Appeal on the basis thereof rather than remanding the appeal back to the learned Trial Court by framing an additional issue. The said order in the opinion of this Court is therefore totally contrary to the provisions of Order XLI Rule 24 of the Code for which this Court sets aside the impugned order dated 18.05.2013 passed in Title Appeal No.32/2011 and further directs the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dibrugarh to decide the appeal on the basis of the materials available on record.

9. Taking into account that both the parties are duly represented, this Court fixes the matter before the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dibrugarh on 01.07.2024 on which date, both the parties shall appear and the learned First Appellate Court thereupon shall decide the said appeal in accordance with law without being influence by the observations made in the instant order as well as the order dated 18.05.2013 passed by the learned First Appellate Court impugned in the instant proceedings.

10. This Court has also taken note of that already 16 years have passed by and as such, this Court requests the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dibrugarh to take appropriate steps to arrange the business

of its Court in such a manner that the appeal can be disposed of within 6 (six) months from the date of appearance of both the parties.

11. The Registry shall forthwith take appropriate steps for transmitting the records back to the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dibrugarh, and if need be, take recourse to the special messenger.

12. With above observations and directions, both the appeal stands disposed of.