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**(2012) 04 GAU CK 0054**

**In the Gauhati High Court**

**Case No :** Regular Second Appeal No. 30 of 2003

Chandra Kumar Singha

APPELLANT

Vs

Arun Kumar Singh & Ors.

RESPONDENT

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**Date of Decision :** 04-04-2012

**Acts Referred:**

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 8, 8

**Citation :** (2012) 4 GLT 290

**Hon'ble Judges :** I.Shah, J

**Bench :** Single Bench

**Advocate :** Mr. M. Singha, Mrs. Gouri Singha, Mr. T. Singh , Mr. Anowara Begum??None appeared for the Respondent, Advocates appearing for Parties

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**Judgement**

1. Shah, J.—This appeal is preferred against the judgment & decree dated 24.12.2012 passed by the learned Civil Judge (Sr. Division No. 1) Cachar, Silchar, in Title Appeal No. 11 of 2002 affirming the judgment and decree dated 24.12.2001 passed in Title Suit No. 19 of 1997.

2. Heard Mr. M. Singha, learned counsel assisted by Mrs. G Singha, for the appellant/ defendant. None appeared on behalf of the respondent/plaintiff.

3. The facts which were admitted by both the parties in their pleadings are:

Sri Birendra Singha (Proforma defendant No.3) was an occupancy tenant in respect of a plot of land measuring 6 Bigha 19 Katha 3 Chataks under Radha Lal Gupta (Proforma defendant No.2). The occupancy tenant Birendra Singha transferred 13 Katha 6 Chataks of land to E.M. Bahadur Thapa (Proforma defendant No.4) by executing a sale deed dated 10.05.1982. Bahadur Thapa vide an unregistered sale deed transferred the land to proformadefendant No.5 Sri Lokeswar Singha as Lokeswar Singha was in need of money.

4. The plaintiff's case is that he was searching for land and in the meantime, the defendantappellant Chandra Kumar Singh informed him that Lokeswar Singha intends to sale the land. But before plaintiff could purchase the land, Lokeswar

Singh redelivered the land to E.M. Bahadur Thapa for a consideration of Rs. 10,000/. Plaintiff then approached E.M. Bahadur Thapa, who agreed to sale the land to him. It was agreed that E. M. Bahadur Thapa till necessary permission from the authorities is obtained shall execute an unregistered sale deed. The consideration was settled at Rs. 15,000/ and plaintiff paid an advance Rs. 10,000/ on 22.04.1998. The unregistered sale deed was executed and possession of the land was delivered to the plaintiff. The balance sum of Rs. 5,000/ was payable only at the time of registration of the sale deed. Sri Lokeswar Singha and Chandra Kumar Singha (defendants) were the attesting witnesses. Chandra Kumar Singha instead of his real name signed as Brojo Kumar Singha i.e. nick name. Thereafter plaintiff erected a kutch house on the land.

5. Further plaintiff being posted in Cachar District used to visit the suit land. In the month of September, 1998, he was transferred and had to go out of the State. He kept most of his furnitures, building materials etc. in the house on the suit land. As the defendant/ appellant Chandra Kumar Singha was residing near the suit land, plaintiff requested him to take care of the house on suit land and the materials thereon. In the month of October, 1994, plaintiff came to the suit land and found that the defendant Chandra Kumar Singha had unauthorizedly erected 3/4 kucha houses on the said land. On being asked defendant promised to vacate the land by removing the houses constructed by him. Plaintiff came to the suit land in August, 1995. Although, defendant sought for time to vacate the land he did not, rather he obstructed plaintiffs wife from digging the pond. There was a meeting convened in the village wherein defendant agreed that either he shall pay Rs. 50,00/consideration for the land or he shall vacate the land within 3 months but he failed to do so, plaintiff instituted the suit for declaration of his right of occupancy, for eviction of defendant No. 1 and also for permanent injunction.

6. The defendant's case is that after retirement from service, he was residing in a rented house and was in need of a plot of land to construct his own house. Lokeswar Singha offered the land (suit land). The possession of the land was delivered to defendant by Lokeswar Singha and assured the defendant that in case if he (Lokeswar) intends to sell the land it would be sold to him (defendant). The defendant constructed his house on the land and planted valuable trees thereon. He denied that plaintiff either purchased the suit land or ever was in possession of the land.

7. The learned trial Court held that the tenancy right of the suit land was sold to plaintiff and the plaintiff acquired the tenancy right. The defendant No. 1 was mere trespasser. It was further held that no permission from the Deputy Collector was obtained to sale, no notice was sent to the Landlord as required under Assam (Temporarily Settled Areas) Tenancy Act, 1971. The trial Court held that there is no evidence that land is agricultural land within the meaning of Section 3 of the Assam (Temporarily Settled Areas) Tenancy Act. That prior to

execution of the sale deed the suit land was included in Town Committee vide notification dated 06.04.1994 as per Exb.19. The defendant who had not acquired any interest in the suit land was not affected in any way by the execution of sale deed in favour of the plaintiff. The judgment and decree of the trial Court was upheld by the appellate Court in its entirety.

8. The substantial questions of law, in this appeal, are:

(1) Whether the transfer of tenancy right issued under Section 58 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971, without prior permission of the Deputy Commissioner as required under Section 8 of the Act, would be valid transfer.

(2) The cause of action in the suit arose in October, 1975 as per averment in Para 22 of the plaint, whether the disputed sale deed dated 01.08.96 constituted a legally valid documentary evidence. Exhibit 18, wherein it is stated that the plaintiff got possession of the suit land on the date of execution of the sale deed:

(3) Whether the finding that the suit land was converted into town land is perverse as Exhibit 19 Notification, neither pleaded nor there was any issue?

9. The Section 8 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 puts a restriction on the right of a occupancy tenant. The tenant cannot transfer his holding to a nonagriculturist and without prior permission of the Deputy Commissioner. From the pleading, it appears that no such plea was taken. It is evident that it was never the case of the defendant that the sale in question was invalid on the ground that sale deed was executed without prior permission of the Deputy Commissioner.

10. The Courts below took notice of the Exb.19, certificate issued by Chairperson, Lakhipur indicating the Govt. Notification No. MA 250/79/62 dated 06.04.1994 whereby the land in question was included within the Lakhipur Town Committee Area. It was also observed by the Courts below that the defendant who claimed himself as licensee has no right to challenge the title of the plaintiff.

11. Section of Assam (Temporarily Settled Areas) Tenancy Act, 1971 says about forfeiture of tenancy on subletting and transfer, as under.

"If a tenant sublets or transfers the whole or any part of his holding otherwise than, in accordance with the provision of this Act, then the tenant's interest thereon shall be forfeited; and

(a) if the transferee is an agriculturist, he shall be deemed to have become a tenant under the landlord under the same terms and condition as the transfer or;

(b) if the transferee is a nonagriculturist then such transfer shall be void and the Deputy Commissioner may, after such enquiry as may be prescribed, and after ejecting any persons in possession, place any landless agriculturist as a nonoccupancy tenant of the landlord."

12. In this case, neither the plaintiff nor the defendant claimed themselves to be agriculturists.

Section 3(6) defines "land" means "agricultural land"; and "agricultural land" means land used for agricultural purpose or purposes subservient thereto.

Explanation Land under homestead occupied for residential purposes in connection with an agricultural holding shall be deemed to be included in "agricultural land".

13. Whether the suit land was agricultural land within the meaning of the Act, was neither in the pleading nor any issue was framed. The defendant claimed himself to be in permissive possession. Plaintiff claimed his possession on the basis of registered sale deed executed in his favour after obtaining due permission from the authority i.e. Chairperson, Lakhipur Town Committee. It was also noticed that the land in question was declared town land vide a notification. Even if notification" which was not in issue is not considered, Section 70 says that the State Govt. may, by notification in the Official Gazette delegate the powers of Deputy commissioner or Settlement Officer etc. The authority of Chairperson of Lakhipur Town Committee to accord permission for sale of the land was not challenged.

14. The date cause of action, action has been dealt with by the learned appellate Court and there is no error to interfere with his findings.

15. In view of above, the judgment passed by first appellate Court is upheld. Appeal is dismissed with cost. Send down the case record along with the LCRs.