

(2005) 06 GAU CK 0059

In the Gauhati High Court

Case No : Regular Second Appeal No. 101 of 2005

Dhananjay Mudoi and Another

APPELLANT

Vs

Smt. Guan Mudoi and Others

RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 154
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 2006 Guw 31 : (2005) 3 GLT 534

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : P.C. Goswami, for the Appellant;

Final Decision : Dismissed

Judgement

Amitava Roy, J.—This appeal is directed against the judgment and order dated 15-12-2004 passed by the learned Civil Judge (Sr. Division) No. 2, Guwahati, in Title Appeal No. 38/2003 reversing the judgment and decree dated 2-4-2003 passed by the learned Civil Judge (Junior Division) No. 1, in Title Suit No. 59/2000 decreeing the suit of the present respondents/plaintiffs.

2.I have heard Mr. P.C. Goswami, learned Counsel for the appellants/defendants. None has appeared for the respondents/plaintiffs.

3.The predecessor in interest of the respondents/plaintiffs", Shri Maheswar Mudoi filed a suit against the present appellants" praying for a decree inter alia for declaration of his right, title and interest in and confirmation of possession of the land described in schedule "A" to the plaint. A decree for possession of the land described in schedule "B" was also prayed for. The pleaded case of the plaintiff was that his father Shri Sonaichand Mudoi (since deceased) was the absolute owner of the plot of land measuring 1B 1K 3L covered by Dag No. 417 of KP Patta No. 697 of Uttar Guwahati Town under Silasundorighopa Mauza in the District of Kamrup, Assam. He died leaving behind three sons namely Maheawar

Mudoi (Plaintiff), Dhananjay Mudoi (defendant No. 1) and Harmohan Mudoi (Pro forma defendant No. 2).

4. After the death of Sonaichand Mudoi, his son Harmohan Mudoi somehow managed to get his name entered in the record of rights against the whole plot of land. The plaintiff then filed an application before the Circle Officer, North Guwahati Revenue Circle, for his one-third share of the property, Notice was issued in the proceeding to the other two sons. According to the plaintiff, though notices were served, the defendant Dhananjay Mudoi did not turn up and Harmohan though appeared took adjournments and ultimately did not contest the proceedings. Eventually the Circle Officer by order dated 29-6-94 disposed of the mutation case No. 398/92-93 granting mutation in respect of one third of the land in favour of the plaintiff. Accordingly, he also came in possession thereof. The other two sons also received their respective one-third shares in the land. The plaintiff's name was mutated in respect of his share in the relevant jamabandi. Thereafter by order dated 2-11-95 passed by the Additional Collector in Partition Case No. 198/94-95, partition was effected and the plaintiff was granted a separate patta in respect of his share of the land measuring 2K 1L. His land stood covered by Dag No. 1909 in Patta No. 727. The plaintiff thereafter erected boundary wall demarcating his land. This land was described in Schedule "A" to the plaint. It was alleged in the plaint that on 10-10-99, the defendant Dhananjay Mudoi along with his labourers forcefully entered into the Schedule "A" land and dispossessed the plaintiff from a portion of the land described in Schedule "B" to the plaint. The reliefs were prayed for in the above factual premises.

5. The appellants/defendants in their joint written statement contended that the pro forma defendant No. 2 purchased the land measuring 1B 1K 3Ls from Shri Trailokya Subahs Chandra Goswami, Sareejan Satradhikar of Dihing Satra in the year 1935 at a price of Rs. 25 and his name was mutated in respect thereof. It was contended that the notice of the partition case was not served on the appellant/defendant No. 1, Shri Dhananjoi Mudoi and though the appellant defendant No. 2 was served with such notice, because of his illness he could not contest the proceedings. The allegation of forceful dispossession of the predecessor in interest of the respondents/plaintiffs was denied.

6. After the framing of the issues, the parties examined their witnesses and proved documents. The learned Trial Court on a consideration of the pleadings of the parties and evidence on record dismissed the suit mainly on the ground that the defendant No. 1 and his witness, DW 3 were not cross-examined on behalf of the plaintiff concluding thereby that their testimony consequently had to be accepted as true.

7. In the appeal preferred by the respondents/plaintiffs, who in the meantime had been substituted for their deceased predecessor in interest, the learned Lower Appellate Court, on a consideration of the oral and documentary evidence, held that the land measuring 1B 1K 3L had in fact been purchased by Shri

Sonaichand Mudoi (since deceased), the predecessor in interest of the parties. On a consideration of the money receipts and the money order receipts brought on record by the appellants/defendants in support of their claim of purchase of the land by Shri Harmohan Mudoi, the learned Court below rejected the said plea. Instead on the basis of the entries in the revenue records more particularly the Jamabandi, Exhibit "Ja" it was held that the land involved was purchased by Sonaichand Mudoi. The learned lower Appellate Court further noticed that the predecessor in interest of the respondents/plaintiffs had obtained mutation in respect of one third of the suit property following a mutation proceeding and that on the basis of partition thereof had obtained possession of his share of the property. The learned Court below further held that from the description of the suit land in the schedule "A" and "B" to the plaint, the same was clearly identifiable. The suit was thus decreed.

8. Mr. Goswami has contended that the respondents/plaintiffs having failed to prove their pleaded case, the learned Court below erred in law in reversing the judgment and decree of the learned Trial Court. He further urged that the suit was not maintainable being barred u/s 154 of the Assam Land Revenue Regulation, 1886.

9. Having regard to the frame and character of the suit as discernible from the plaint, in my view, the contention bearing on the maintainability thereof qua Section 154 of the Assam Land Revenue Regulation, 1886, is misconceived. The suit was essentially one for declaration of right, title and interest in the land described in schedule "A" to the plaint and for recovery of possession of the land described in Schedule "B". Moreover, no such plea was taken in the written statement. In that view of the matter, the objection on this ground is untenable.

10. The learned Court below, as the discussion recorded in the impugned judgment and order reveals, had approached the pleadings of the parties and the evidence on record in the correct perspective and no patent illegality is noticeable so as to reject the conclusions as manifestly perverse or being vitiated by any error on the fundamental principle of law or procedure. The findings recorded by the learned lower Appellate Court are based on an exhaustive analysis of the materials on record and this Court in exercise of powers u/s 100, C. P. C., in absence of any obvious error in the appraisal of the evidence, is not inclined to interfere therewith. In the above view of the matter, in my opinion, no question of law arises to be examined in the instant appeal which, therefore, being without any merit is hereby dismissed. No costs.