

(1989) 08 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 877 of 1982

Harimati Das

APPELLANT

Vs

Jadav Chandra Deka

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 41, 41

Citation : (1990) 1 GLJ 304

Hon'ble Judges : A.Raghuvir, C.J. and W.A.Shishak, J

Bench : Division Bench

Advocate : S.N.Bhuyan, S.Medhi, H.Das, B.Agarwal, Advocates appearing for Parties

Judgement

A. Raghuvir, C.J.

The order of the Board of Revenue dated June 7, 1982 in Case No. 114 RA/1981 is assailed in the writ petition.

The proceedings originated before the Assistant Settlement Officer and before that authority there were three parties. The first party consisted of Devendra Charan Deka, Rameswar Kalita and Narayan Chandra Das. The second party Harimati Das. The third party are Jadav Chandra Deka, Tarun Chandra Barua and Ramesh Chandra Barua. The Assistant Settlement Officer held that in the place of Jina Ram Das, son of Jhanpati the name of Harimati Das be substituted. Jina Ram Das was not a party in the proceedings. The order thus was in violation of the principles of audi alteram partem.

The order of the Assistant Settlement Officer was confirmed by the Settlement Officer on March 6, 1981 in two appeals holding the title of Harimati Das is established per Deed Nos, 4067 of 1958 and 2022 of 1960. On a further appeal to the Board of Revenue it held "When the question of title and possession have been decided by the civil Court, the impugned order cannot be sustained and these are liable to be set aside" therefore the appeal was allowed. Hence the writ

petition by Harimati Das.

It is rather unfortunate that in these proceedings no attention was paid whether the affected persons were made parties or not. We see in the order of the Assistant Settlement Officer the name of Jina Ram Das from the revenue records is deleted without Jina Ram Das a party in the proceedings. Now what is termed the first party members of that party were not before the Board of Revenue. Thus as to proper or necessary parties no attention was focused by the authorities before orders were passed.

The more substantial question that arises for consideration in the writ petition is what is relevant in a proceeding in section 41 of the Assam Land and Revenue Regulation.

The revenue authorities do not have power to decide questions of title is obvious from a reading of section 41 of the Act. When title is relevant the revenue authorities are to refer the parties to civil Court. That is the scope of section 41 of the Act. Nevertheless question of title prevailed in the orders of the authorities. The Assistant Settlement Officer, the Settlement Officer and the Board of Revenue have power to consider possession and possession alone can be determined. When the* issue as to title arises the authorities have no jurisdiction to decide such an issue and the parties have to be referred to civil Court.

Thus in the circumstance there is no other alternative than to set aside the impugned order and remit the matter to the Board of Revenue to decide the issue in the light of the above discussion.

The writ petition is allowed and ordered as indicated above. No costs,