
(2015) 09 GAU CK 0051
In the Gauhati High Court
Case No : RSA No. 64 of 2006

Lal Mohan Roy and Others

APPELLANT

Vs

Sunil Roy and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Citation : (2015) 09 GAU CK 0051

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : S.K. Ghosh, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J.—Heard Mr. S.K. Ghosh, learned counsel for the appellants. None appears for the respondents.

2. This second appeal is preferred by the defendants against the judgment and decree dated 5.1.2006 passed by the learned District Judge, Hailakandi in Title Appeal No. 10/2005 allowing the appeal and reversing the judgment and decree dated 15.7.2005 passed by the learned Civil Judge (Junior Division), Hailakandi in Title Suit No. 50/2003.

3. This second appeal was admitted to be heard by an order dated 5.6.2006 on the following substantial question of law:

"Whether the decree of reversal passed by the learned trial court is valid in law in view of the non consideration of the case propounded by the defendants/appellants."

4. The plaintiffs filed the suit for declaration of right, title and interest and for recovery of khas possession of 1 bigha 2 katha 13 chattak and 10 gonda of land. The case projected is that on 21.10.2002 the principal defendants took away the paddy grown upon schedule I land by the plaintiffs and constructed a temporary cow-shed and planted saplings of betel-nut, banana and other crops by forcibly

dispossessing the plaintiffs. Schedule II of the plaint refers to 6 katha 1 chattak of land purchased on 4.6.1993 by a registered deed from one Sudhir Roy. However, no prayer was made with regard to the aforesaid schedule II land.

5. The defendant Nos. 1 to 6 denied the allegation of forcible dispossession and stated that claim of title is based on the assumption of the plaintiffs on the basis of suppression of facts. Western boundary of Schedule II land was also stated to be wrongly described.

6. Four issues and one additional issue were framed by the learned trial court. Issue No. 3 and the additional issue No. 1 are relevant for the purpose of this case and they are extracted herein below:

"Issue No. 3. Whether the plaintiffs have right, title and interest over the suit land and whether the plaintiffs were dispossessed?"

Additional issue No. 1:

"Whether the suit land is properly described and identifiable in the locality?"

7. The learned trial court recorded the finding that the plaintiffs have right, title and interest over 1 bigha 2 katha 13 chattak 10 gonda of land. It is also recorded that the plaintiffs failed to establish that they were dispossessed from a specific plot of land as described in schedule I of plaint. It was held that the suit land was not properly described and was not identifiable in the locality and any decree for khas possession that may be passed shall not be workable and executable and the same shall adversely affect the interest of other co-sharers of the patta.

8. The plaintiffs preferred an appeal against the said judgment and decree. Though a finding was recorded by the learned trial court with regard to right, title and interest in favour of plaintiffs in respect of 1 bigha 2 katha 13 chattak 10 gonda of land, no appeal was preferred by the defendants against such declaration of title of the plaintiffs. The learned lower appellate court, on the basis of the evidence of four witnesses examined on behalf of the plaintiffs, recorded the finding that the defendants forcibly occupied the plot of land and cut paddy there from and constructed house thereon. While recording such finding, the learned lower appellate court held that the court below failed to appreciate the evidence on record regarding possession of the land. The learned lower appellate court also held that the learned trial court was not justified in denying the plaintiffs the decree for khas possession on the purported ground that the decree for khas possession would affect the interest of other co-sharers and accordingly, decreed the suit of the plaintiffs declaring the right, title and interest in respect of schedule I land and granting recovery of khas possession in favour of the plaintiffs as the plaintiffs had given in the plaint a specific boundary of the plot of land measuring 1 bigha 2 katha 13 chattak 10 gonda.

9. Though in the written statement, a contention was advanced with regard to the western boundary of schedule II land, no dispute was raised with regard to the boundary given in schedule I land. When the plaintiffs have got right, title

and interest in respect of the plot of land measuring 1 bigha 2 katha 13 chattak 10 gonda, well demarcated by a specific boundary, the finding of the learned trial court that passing of a decree for delivery of khas possession would adversely affect the interest of the co-sharers is unacceptable. On such ground, the trial court could not have denied the plaintiffs a decree for khas possession once the title over the plot of land have been decreed in favour of the plaintiffs. The learned lower appellate court, in the facts and circumstances of the case, rightly granted the decree for khas possession and therefore, I see no good ground to interfere with the judgment of the learned lower appellate court.

10. Accordingly, the appeal is dismissed. The judgment of the learned lower appellate court is affirmed. The substantial question of law is answered against the appellant. No cost.

11. The Registry will send back the records.