
(2015) 01 GAU CK 0011
In the Gauhati High Court
Case No : R.S.A. No. 14 of 2004

Mrinmoyee Dutta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 1(5)

Citation : (2015) 2 GLD 706

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : M.K. Choudhury, Senior Advocate and M. Dutta, for the Appellant;
G.N. Sahewalla and B. Sarma, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Suman Shyam, J.—This Second Appeal has been preferred against the judgment and decree dated 13.08.2003 passed by the learned Civil Judge (Senior Division) No. 3, Kamrup at Guwahati in Title Appeal No. 11/2002 affirming the judgment and decree dated 08.10.2001 passed by the learned Civil Judge (Junior Division) No. 2, Kamrup at Guwahati in Title Suit No. 82/1988.

2. The Second Appeal was admitted to be heard on the following substantial questions of law:--

"(1) Whether the jurisdiction of Civil Court is barred under Section 32 of the Assam Fixation of Ceiling on Land Holding Act, 1956?

(2) Whether the suit is barred under Section 154(c) of the Assam Land and Revenue Regulations?

(3) Whether the suit is barred by limitation?"

The appellant was given the liberty to urge any other substantial question of law that may emerge in the course of hearing.

3. The appellant as plaintiff had instituted Title Suit No. 82 of 1988 in the Court of Civil Judge (Junior Division) No. 2, Kamrup at Guwahati, (then Munsiff No. 2), praying for a decree declaring her right, title and interest and for confirmation of possession over the suit land, alternatively, a decree for recovery of possession; a decree declaring that the Government Notifications dated 13.07.1987 and 03.02.1988 making allotment of the suit land in favour of the defendant No. 2/respondent No. 2 is void, illegal; a decree of permanent injunction and for other consequential reliefs.

4. The brief factual matrix of the Plaintiff's case as set out in the plaint is that the land measuring 1 bigha covered by L.C. Dag No. 1 of Borati Borakhat Grant No. 13, village No. 2, Modghoria under Beltola Mouza in the district of Kamrup originally belonged to three persons, namely, P.G. Dombrain, E.W. Dombrain and M.B. Dombrain who had been impleaded as proforma defendant Nos. 3, 4 and 5 respectively in the title suit. Smti. Surabala Choudhury, mother of the plaintiff, had purchased the said plot of land by means of a registered deed of sale bearing No. 4755 dated 16.08.1961 pursuant where to Surabala Choudhury was put in actual physical possession of the land. In the settlement operation for the period 1957-64 the name of Surabala Choudhury had been duly mutated in the Chita in respect of the said plot of land on the strength of her purchase and possession over the plot of land. Surabala Choudhury transferred the said plot of land measuring 1 bigha by executing a registered deed of gift bearing No. 7105 dated 22.08.1971 in favour of her daughter i.e. the plaintiff/appellant. The plaintiff/appellant had accepted the said gift and obtained delivery of possession of the plot of land. The plaintiff/appellant continued to possess the said plot of land measuring 1 bigha described in the schedule to the plaint which is the suit land. It is also the case of the plaintiff/appellant that upon obtaining possession of the suit land she had raised two houses thereupon and her two sons being educated and unemployed youths had been carrying on poultry farming and seasonal vegetable cultivation thereon. The plaintiff/appellant has also been paying land revenue in respect of the said plot of land. It is the case of the plaintiff/appellant that in the settlement operation during 1923-28 the suit land was included and covered by N.C. Dag No. 1, Borati Borakhat Grant No. 13 of village Modghoria No. 2 under Beltola Mouza in the district of Kamrup. In the settlement operation during 1957-64 the suit land was shown as dag No. 7(old)/38(new) in the draft Chita and then again it was changed and renumbered as Dag No. 34 of Patta No. 1 of 30 years settlement. While the aforesaid land was under the possession of the Plaintiff, on 13.07.1987 the Government of Assam, Revenue (B) Department passed an order for allotment of 3 kathas of land purporting it to be ceiling sarkari land covered by Dag No. 46, village Modghoria, N.C. Beltola Mouza in favour of the Defendant No. 2/respondent No. 2. On the basis of the said order of allotment, 3 kathas of land out of the suit land belonging to the plaintiff/appellant was sought to be handed over to the defendant No. 2/respondent No. 2 for setting up a petrol pump. The said order of allotment dated 13.8.87 was issued on an assumption that the land formed a

part of sarkari land which was declared as ceiling surplus land in connection with Land Ceiling Case No. 195/74, whereby and whereunder, land measuring 594 bighas 3 kathas 7 lessas was made sarkari, being ceiling surplus land, by creating a new Dag No. 46. The plaintiff did not have any knowledge about the said developments but could come to know about the same for the first time on 01.08.1987 when the concerned Lot Mondal went to the suit land in pursuance of the order of allotment dated 13.07.1987 so as to deliver possession of the land to the Defendant No. 2.

5. That being aggrieved by the proposed decision in seeking to allot the plaintiff's patta land in favour of defendant No. 2/respondent No. 2 purporting the same to be sarkari land the plaintiff/appellant through her mother Surabala Choudhury petitioned the Revenue Minister, Govt. of Assam on 03.08.1987 requesting for the cancellation of the above order of allotment. On the basis of the aforesaid petition dated 03.08.1987 the Revenue Minister passed an order on 05.08.1987 directing the Secretary Revenue, Govt. of Assam, to call for a report from the Deputy Commissioner while staying further proceedings in the matter and accordingly the allotment proceedings initiated on the basis of the order dated 13.07.1987 was kept in abeyance pending disposal of the said petition filed by the mother of the plaintiff. But while the aforesaid petition was pending disposal, The Government of Assam through the Revenue Department passed another order dated 03.02.1988 whereby the remaining part of the 2 kathas of land belonging to the plaintiff/appellant had also been allotted in favour of the defendant No. 2/respondent No. 2. The said order had also issued a direction upon the Deputy Commissioner, Kamrup to hand over the possession of the land to the defendant No. 2/respondent No. 2 thereby vacating the earlier stay order passed in the matter. In the wake of such developments the mother of the plaintiff/appellant through her husband had filed another application dated 09.02.1988 before the Revenue Minister, Assam, praying for disposal of the pending petitions seeking cancellation of the order of allotment but in vain. Having failed to obtain any relief from the Government the plaintiff/appellant had approached this Court by filing Civil Rule No. 339/1988 challenging the orders of allotment as aforesaid. By the order dated 30.05.1988 a Division Bench of this Court disposed of the Civil Rule No. 339/1988 remanding the parties to seek relief before the civil court since the issues involved disputed questions of fact. By the order dated 30.05.1988 the parties were directed to maintain status quo for a period of 10 weeks with effect from 30.05.1988. It is the specifically pleaded stand of the plaintiff/appellant that the suit land is covered by Dag No. 34 of Patta No. 1 under village Modghoria, Beltola Mouza and was never included under Dag No. 46 of the said village. The plaintiff's/appellant's further pleaded case is that her mother Surabala Choudhury purchased the suit land by means of a registered deed of sale from its registered owners in the year 1961 i.e. way before the Land Ceiling Case No. 195/74 was even started. The suit land being a patta land purchased by her mother and subsequently transferred to her by means of a registered deed of gift was not ceiling surplus land and hence could

not have been declared so under the provisions of the Assam Fixation of Ceiling on Land Holding Act, 1956 (hereinafter referred to as the Act of 1956) nor was the same ever declared so by any order passed in connection with the land ceiling proceeding. As a matter of fact, the final order in the Land Ceiling Case No. 195/74 was passed by the Deputy Commissioner only on 17.06.1983 which order was upheld by the Government vide order dated 26.12.1994. Therefore, according to the plaintiff/appellant the Government Notifications dated 13.07.1987 as well as 03.02.1988 were completely illegal and hence liable to be declared so.

6. The defendants/respondents contested the plaintiff's suit by filing separate written statements. The State of Assam i.e. defendant No. 1/respondent No. 1 in its written statement took a plea that the suit was barred under section 32 of the Assam Fixation of Ceiling on Land Holding Act, 1956 as well under section 154 of the Assam Land and Revenue Regulation Act, 1886. It was the pleaded stand of the Defendant No. 1 that the suit land was a ceiling sarkari land which was settled in favour of the Defendant No. 2/respondent No. 2 as per the statutory provisions and as such there was no illegality in the said process.

7. In his written statement the defendant No. 2/respondent No. 2 had stated that after taking possession of the land the defendant No. 2/respondent No. 2 had developed the same by clearing the jungles etc. and started a petrol pump thereupon which has been operational since 01.01.1990. While supporting the order of allotments made in his favour, the defendant No. 2/respondent No. 2 has stated in his defense that on the basis of his request made to the State Government for allotment of land for the purpose of setting up a petrol pump under the Indian Oil Corporation, the Government of Assam had allotted him 3 kathas of land initially and thereafter another 2 kathas comprising of a total area of 1 bigha land of dag no 46. The defendant No. 2/respondent No. 2 also took a plea in his written statement that the plaintiff's suit was barred by limitation as well as under Section 32 of the Act of 1956 and the Civil Court would not have any jurisdiction to entertain the plaintiff's suit and grant any of the reliefs.

8. On the basis of the pleadings of the parties the learned trial Court framed as many as 7 issues including two additional issues which are as follows:--

"(1) Whether the suit is maintainable?

(2) Whether the plaintiff is the absolute owner of the suit land?

(3) whether the plaintiff is entitled to a decree for declaration of right, title and interest over the suit land and also for a decree for ejectment?

(4) Whether order No. RSS/263/87/19 dated 13.7.87 and No. RSS/263/87/41 dated 3.2.88 passed by the Govt. of Assam, Revenue(S) Department are void, illegal and inoperative?

(5) Whether the plaintiff is entitled to the relief as claimed in the plaint?

Additional Issues

(6) Whether the suit is barred by limitation?

(7) Whether the suit is barred by Section 154 of the A.L.R.R. and Section 32 of the Assam Fixation of Ceiling on Land Holding Act?"

9. On hearing the parties the learned trial Court dismissed the plaintiff's suit holding that the plaintiff has failed to discharge her burden in showing that the suit land was not a sarkari land. The learned trial court held that the Plaintiffs suit was not barred by limitation. However, the trial court answered the issue Nos. 1 and 7 against the Plaintiff holding that since the Plaintiff has failed to prove that the suit land was not a sarkari land, hence, the relief claimed in the suit would be barred under Section 32 of the Assam Fixation of Ceiling on Land Holding Act of 1956 as well as section 154 of the Assam Land and Revenue Regulation Act 1886. The learned Trial Court recorded a finding that the court witness i.e. the Circle Officer in his report had stated that land of Dag No. 34 was made sarkari and converted to Dag No. 46. Since the Plaintiff did not approach the Government for cancellation of the allotment orders hence the issue No. 4 was decided against the Plaintiff. Relying on Ext-10, the learned trial Court further held that although the plaintiff/appellant had exhibited the purchase deed of the suit land (Ext-1) made by her mother and also the gift deed (Ext-2) by which the land was transferred in her favour as well as the draft Chita (Ext-3) showing the mutation of the name of Surabala Choudhury, yet after the land measuring 594 bighas was made ceiling sarkari in connection with L.C. Case No. 195/74 and the new dag was created in the form of Dag No. 46, the plaintiff has not been able to prove that thereafter she had continued in possession in respect of the suit land. As such, the learned trial Court answered the issue Nos. 2, 3, also against the plaintiff thereby dismissing the Plaintiff's suit.

10. The plaintiff/appellant preferred Title Appeal No. 11/2000 in the Court of Civil Judge (Senior Division) No. 3, Kamrup at Guwahati against the said judgment and decree dated 08.10.2001 passed by the learned Civil Judge (Junior Division) No. 2, Kamrup at Guwahati in Title Suit No. 82/1988. The F Appellate Court below recorded its concurrence in respect of the findings arrived at by the learned trial Court in respect of issue Nos. 2, 3, 4, 5 and 7 and thereby dismissed the appeal filed by the plaintiff/appellant by further holding that the Plaintiff's suit was barred by limitation. The learned Lower Appellate Court recorded a finding that the plaintiff's side had failed to substantiate her claim by producing any document that the suit land was the land purchased by her mother and subsequently transferred to her. The learned lower Appellate Court held that although the plaintiff had exhibited the sale deed, gift deed as well as the Chita showing the mutation of the name of her mother in respect of the suit land measuring 1 bigha covered by Dag No. 7(new) and 38(old) but in the gift deed which was executed in the year 1971 nothing was mentioned about the new/changed Dag No. i.e. 34. The learned Lower Appellate Court further recorded a finding that the suit land is a sarkari land and falls under Dag No. 46 and hence

the suit itself is barred under Section 154(c) of the Assam Land and Revenue Regulation as well as Section 32 of the Act of 1956.

11. I have heard Mr. M.K. Choudhury, learned Senior Counsel for the appellant/plaintiff and Mr. G.N. Sahewalla, learned Senior Counsel appearing for the respondent No. 2/defendant No. 2. None appeared for the defendant No. 1/respondent No. 1. I have also perused the records.

12. Mr. M.K. Choudhury, learned Senior Counsel, submits that there is no dispute about the fact that the mother of the plaintiff/appellant purchased the suit land from the proforma defendant Nos. 3, 4 and 5 (whose names had been subsequently struck off by the order dated 12.12.2005 passed by this Court) pursuant where to she was put in possession in respect of the suit land and her name was also duly mutated in the Chita. It is also not in dispute that the said plot of land measuring 1 Bigha was subsequently transferred in favour of the plaintiff/appellant by executing a registered deed of gift. Such being the position the plaintiff's/appellant's patta land measuring 1 bigha could not have been acquired by the Government in connection with Ceiling Case No. 195/74, since such a recourse would not be permissible under the law. Such being the position the defendant No. 1/respondent No. 1 could not have allotted the plaintiff's/appellant's suit land in favour of defendant No. 2/respondent No. 2 by means of the allotment orders dated 13.07.1987 and 03.02.1988, more so, when the Dag Nos. of the suit land distinctly differs from Dag No. 46 mentioned in the allotment order.

13. Mr. Choudhury further submits that the plaintiff's suit being one based on title deeds, the learned Courts below could not have nonsuited the plaintiff/appellant citing the bar of Section 32 of the Act of 1956 as well as Section 154(c) of the Assam Land and Revenue Regulation, 1886. By placing the impugned judgment Mr. Choudhury further submits that the learned Courts below committed manifest illegality in recording the findings of fact which are not only contrary to the record but such findings of fact have also been recorded by ignoring relevant materials that are available on record. Mr. Choudhury further submits that notwithstanding the specific plea taken in the plaint, the learned courts below did not make any endeavor to factually determine as to whether the land allotted to the Defendant No. 2 was pertaining to Dag No. 34 or Dag No. 46. Mr. Choudhury, therefore, submits that findings recorded by the learned Courts below is vitiated by perversity and hence liable to be held so by this Court.

14. Per contra, Mr. G.N. Sahewalla, learned Senior Counsel appearing for the defendant No. 2/respondent No. 2 submits that there is no illegality in the orders of allotment made in favour of the defendant No. 2/respondent No. 2 in as much as the State Government was well within its competence to make allotment of sarkari land in favour of the Defendant No. 2. Mr. Sahewalla further submits that even the report of the Amin Commissioner did not support the claim of the plaintiff/appellant. He submits that there is no illegality in the orders of allotment made in favour of the defendant No. 2/respondent No. 2. While supporting the

judgment and decree under appeal Mr. Sahewalla submits that the plaintiff/appellant has failed to lead any evidence to prove and establish her title and possession over the suit land and therefore the learned Court below rightly decided the appeal against the appellant/plaintiff. Mr. Sahewalla further submits that the petrol pump has been operational since the year 1990 and any interference with the judgment and decree under appeal would cause prejudice to the interest of his client.

15. I have gone through the records of the case and considered the rival submissions made by the learned counsels for the parties. From the materials available on record, it is evident that the suit of the Plaintiff was based on title whereby the plaintiff/appellant had prayed for declaration of her right, title and interest over the suit land on the basis of title deeds. The relief pertaining to the allotment orders dated 13.7.87 and 3.2.88 were merely consequential in nature. Section 32 of the Act of 1956 lays down that except as otherwise specifically provided in the Act, no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any court. From a plain reading of Section 32 of the Act of 1956 it is evident that orders passed in connection with proceedings drawn up under the provisions of the Act of 1956 cannot be called in question in any Court. It is nobodies case that the Plaintiff was served with any Notice in connection with the Land Ceiling Case No. 195/74. The orders dated 13/7/87 and 3/2/88 were orders of allotment of land in favour of the Defendant No. 2 and the same were ostensibly not orders passed under the provisions of the Assam Fixation of Ceiling on Land Holding Act, 1956 so as to attract the provisions of section 32 of the said Act. The reliefs prayed for in the suit pertaining to the orders of allotment dated 13/7/87 and 3/2/88 were merely consequential in nature depending upon the findings of the court as regards her claim for declaration of title over the suit land. There is nothing on record to either show that the dag no 34 had been converted to Dag No. 46. The allotment order also did not mention Dag No. 34. Therefore, the Plaintiff's suit being one for declaration of title, confirmation of possession and for permanent injunction the same was not barred under section 32 of the Act of 1956.

16. In a catena of decisions of this court it has been held that suit based on prayer for declaration of title and permanent injunction is not barred under section 154(1) of the Assam Land and Revenue Regulation. In a decision of this court in the case of Urmila Bala Das Vs. Bhubaneswar Das and Others, it has been categorically held that a suit for declaration of title and injunction is never barred by section 154(1) of the Assam Land and Revenue Regulation. The Plaintiffs suit being one for declaration of Title, confirmation of possession and for injunction, the same was not barred under section 154(1) of the Assam Land and Revenue Regulation.

17. A perusal of the impugned Judgment shows that the learned First Appellate has also held the plaintiff's suit to be barred by law of Limitations. The lower appellate court held that in Ext- 10, in the remark column an entry has been

made to the effect that " vide MA/TA dated 3-4-79 as per Memo No KARASHI-6/363/73 dated 13-10-79 and PRA NO 3446 dated 19-10-76 the Collector, Kamrup, in Land Ceiling case No. 195/74 the land measuring 594 B 3K 7 L were made sarkari by creating Dag No. 46 by acquisition as per provision of the amended Ceiling Act". The Learned Court below has held that since the said entry was made on 3-4-79 and the Plaintiff had instituted the suit in the year 1988 hence the suit is barred by Limitation. On examination of the records, I find that Ext -10 does not have any connection with dag no 34 and hence, there was absolutely no basis to even remotely infer that by the aforesaid entry, the Plaintiff's suit land covered by dag no 34 was converted into sarkarai land. The cause of action for filing the Plaintiff's suit arose on 13/7/87 and 3/2/88 when the allotment orders were issued. This position is also clear from the pleadings in the plaint, more particularly paragraph 36 of the plaint. The Plaintiffs suit was filed in the month of August 1988. Therefore, it is held that the suit was not barred by limitation.

18. Consequently, the decision of the learned lower Appellate Court on the issue Nos. 1, 6 and 7 is hereby reversed. The Plaintiff's suit is held to be maintainable in law. The substantial questions of law framed by this court would stand answered accordingly.

19. Now coming to the findings recorded on issue Nos. 2 and 3, it can be seen from the record that the plaintiff/appellant has produced the registered deed of sale (Ext -1) by which her mother had purchased the suit land from its registered owners as well as the copy of the order of mutation of her mother in the draft Chitha (Ext-3) by means of which her name was mutated in respect of 1 bigha land comprised of dag No. 7(old)/38 (new) of the suit patta.. The Plaintiff has also exhibited the registered deed of gift (Ext-2) by which the suit land had been gifted to her by her mother. In paragraph 5 of the Plaint the Plaintiff has clearly stated as to how the dag numbers of the suit land had been changed and/or renumbered from time to time by furnishing all the material particulars, which assertion of facts have not been specifically denied in the written statements.

19. From the evidence adduced by the Plaintiff side it is discernable that the Plaintiff through her mother had raised objection to the handing over possession of the land to the defendant No. 2 by petitioning the Revenue Minister and thereafter, by approaching this Court by filing Civil Rule No. 338/1988, which event evidently took place in and around the time when the possession of the land was sought to be handed over to the Defendant No. 2 by the Lat Mandal in pursuance of the allotment orders dated 13/7/87 and 3/2/88.

20. On perusal of the deposition of the court witness i.e. the Circle Officer as well as the document Ext-10 nothing is discernable which can lead to the conclusion that Dag No. 34 had been converted into Dag No. 46. In that view of the matter the decision and conclusions recorded by the learned court below to the effect that the Plaintiff has completely failed to adduce any evidence to show her title and possession over the suit land and that the Dag No. 34 was converted into

Dag no 46 appears to be incorrect. It appears that the learned court below did not consider the material evidence on record in their proper perspective and went on to decide the issue Nos. 2 and 3 in a perfunctory manner by ignoring relevant material on record. There was enough evidence lead by the Plaintiff in support of her claim of title over the suit land. What value such evidence would carry in the ultimate analysis is a different matter altogether.

21. There is yet another aspect of the matter which needs to be pointed out here. From a reading of the impugned Judgment it appears that both the courts below have proceeded on the basis that the suit land had been declared as sarkari land in the Ceiling Proceeding No. 195/74. However, surprisingly enough not withstanding the specific assertion made by the Plaintiff in paragraph 7 of the Plaint denying the fact that the suit land was ceiling sarkari land and the contention raised in the written statement filed by the Defendant No. 1 to the effect that the suit land was in fact a ceiling sarkari land, the trial court failed to frame any issue in respect thereof so as to enable the parties to lead evidence on this point.

22. Although there was no issue framed on the above point, the First Appellate Court has recorded a finding of fact to the effect that the suit land was a sarkari land merely placing reliance upon a document Ext-A. On perusal of the records, it could be seen that Ext-A is the order of allotment dated 13/7/1987 by means of which 3 kathas of land pertaining to Dag no 46 of Village Modghoria N.C. had been allotted in favour of the Defendant No. 2. Save and except mentioning "3 kathas" of land and the "Dag No. 46", the said order of allotment does not furnish any other particulars such as boundary etc so as to identify the land. This bears special significance in view of the admitted position of fact that dag no 46 contains 594 B 3 K 7 L of land out of which only 1 bigha land had been allotted to the Defendant No. 2. Similar is the case with Ext-C i.e. the letter of allotment dated 3/2/1988. Even the letter of possession of the land dated 29/7/87 (Ext-B) does not furnish any specific particulars so as to identify the land in question. Therefore, it is apparent that there was no evidence available before the court to so as to record a positive finding of fact that the suit land covered by Dag no 34 was in fact a sarkari land. Moreover, in the absence of any particulars mentioned in the Ext. A, B and C above, there is nothing on record to indicate as to on what basis the Defendants had identified the 1 Bigha plot of land out of the 594 bighas of land in dag 46 for handing over possession to the Defendant No. 2.

23. From a close scrutiny of the pleadings of the parties it is apparent that the land claimed by the Plaintiff pertains to the dag no 34 whereas the land allotted to the Defendant No. 2 pertains to Dag no 46 forming a part of ceiling sarkari land measuring 594 b 3 k 7 L. It is the specific case of the Plaintiff that in purported execution of the orders of allotment dated 13/7/87 as well as 3/2/88, the Plaintiffs patta land covered by dag No. 34 of village Modghoria under beltola mouza had been illegally handed over to the Defendant No. 2. The Defendant No. 1 has taken a pleaded stand in paragraph 17 of the written statement that the

suit land is different from the 3 katha land allotted to the Defendant No. 2. In view of such pleaded stand of the parties, an effective resolution of the controversy involved the Title suit would not be possible without first ascertaining two important question of fact viz., whether the Plaintiff's suit land had been declared as sarkari land in connection with Ceiling Case No. 195/74 converting the same to dag no 46 and secondly whether the land handed over to the Defendant No. 2 pursuant to the allotment letter dated 13/7/87 and 3/2/88 is the same plot of land claimed by Plaintiff in the suit. In my considered opinion, having regard to the circumstances of the case a factual determination of the aforesaid two aspects of the matter would have a material bearing in the out come of the suit. However, it is found that the learned trial court has failed to frame proper issues so as to enable the parties to lead evidence on these vital points.

24. On perusal of the records it can be seen that by the order dated 08.04.1997 the learned trial Court had issued a Commission appointing the Assistant Settlement Officer, Dispur Circle, asking him to ascertain the position of Dag No. 34 of Patta No. 1. On the basis of such order the Assistant Settlement Officer, Dispur Circle submitted a report dated 10.06.1997 whereby it has been clearly indicated that the land involved in the suit appertains to Dag No. 34 of Patta No. 1 of 1957-64 settlement of village Modghoria L.C. under mouza Beltola and is owned by the plaintiff and that the suit land does not appertain to Dag No. 46 of Modghoria L.C. under Beltola Mouza. In the said report the Assistant Settlement Officer had further mentioned that the petrol pump of the defendant No. 2/ respondent No. 2 has been set up over the land covered by Dag No. 34 of No. 30 grant of Village Modghoria and the plot of land allotted to the defendant No. 2/ respondent No. 2 was a different plot of land located towards the south of the petrol pump. The Assistant Settlement Officer had also submitted a trace map whereby the plaintiff's plot of land marked with red ink was shown as a distinctly different plot as compared to the plot of land allotted to the defendant No. 2/ respondent No. 2 by the Government covered by Dag No. 46. Despite the fact that such a report of a competent official was available on record it appears that the said report was discarded by the order dated 03.04.1998 passed by the learned Civil Judge (Junior Division) and another Commission was appointed. The aforesaid Commission was executed by the Circle Officer, Dispur Circle, Sri Dilip Das, who in his deposition has clearly mentioned that Dag No. 34 comprised of 22 bighas of land and is distinctly different from the land covered under Dag No. 46. However, even the reports submitted by the said Commission could not indicate with any degree of the clarity and precision, as to whether the land of dag no 34 was converted into dag no 46 or that the land claimed by the plaintiff/ appellant being the suit land is one and the same plot of land which was allotted to the defendant No. 2/respondent No. 2 by the orders dated 13.7.87 and 3.2.88. On contrary, the Report of the Commissioner goes to show that dag Nos. 34 and 46 are two adjacent dags covering two different plots of land and that both the dags are in existence. Be that as it may. As has been indicated here-in-

above, the trial court has failed to frame the key issues that would have addressed the real controversy in the suit as a result of which the parties did not get proper opportunity to lead evidence on these points.

25. Order 14 Rule 1 CPC provides that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Order 14 Rule 1(5) CPC enjoins a duty upon the court to ascertain at the first hearing of the suit as to upon what material proposition of fact or law the parties are at variance and thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. The said exercise is required to be carried out by the court after reading the plaint and the written statement and after hearing the parties or their pleaders. The purpose of framing issues based on pleadings appears to be to highlight the substantial issues in controversy in the suit in respect whereof the parties are put to notice at the very commencement of the trial so as to enable them to know the nature and extent of evidence that they would have to lead during the trial. It is, therefore, apparent that framing of proper issues is not a mere formality as the same would have a decisive bearing in the outcome in the suit. The issues must be framed on the basis of pleadings and in doing so the court is required to exercise proper care and caution so as to identify and frame issues that would correctly address the real controversy in the suit. Failure to frame proper issues may misdirect the trial causing prejudice to either of the parties eventually leading to miscarriage of justice.

26. While emphasizing upon the importance of framing proper issues based on pleadings the Hon"ble Apex Court has observed in the case of An Advocate Vs. Bar Council of India and Another, that framing of issues based on pleadings would be of immense utility. " The controversial matters and substantial questions would be identified and attention focused on the real and substantial factual and legal matters in context. The parties would then become aware of the real nature and content of the matters in issue and would come to know (1) on whom the burden rests (2) what evidence should be adduced to prove or disprove any matter (3) to what end cross- examination and evidence in rebuttal should be directed. When such a procedure is not adopted, there exists inherent danger of miscarriage of justice on account of virtual denial of a fair opportunity to meet the case of the other side".

27. As has been indicated here-in-before, it appears that the trial court has failed to frame the key issues on which the right decision of the suit was dependent. In the facts of the present case, such omission has clearly had a vitiating effect on the trial of the suit. As such, for the grounds and reasons mentioned herein above, the impugned judgment and decree are not sustainable in law and hence the same are hereby set aside.

28. On examination of the pleadings of the parties the following issues are framed as additional issues in the Title Suit:--

"1. Whether the suit land was acquired in connection with Ceiling Case No. 195/74 and included in Dag No. 46 of Modghoria Village?

2. Whether the plot of land measuring 1 Bigha handed over to Defendant No. 2 in terms of the allotment orders dated 13/7/87 and 3/2/88 was in fact the suit land claimed by the Plaintiff?"

29. Since the evidence available on record is insufficient to conclusively decide these issues and considering the fact that the determination of the above issues involving disputed questions of fact would warrant adducing of evidence by the parties, hence, this court has no option but to remand the matter back to the court of first instance for deciding the two additional issues framed by this court today. Having regard to the nature of the controversy in the suit this court is of the view that the findings and conclusion in respect of the two additional issues framed above would be intricately connected with any decision based on the findings on issue Nos. 2,3,4 and 5. As such, the learned Trial Court would now try the issues Nos. 2,3,4 and 5 together with the two additional issues framed by this court, after affording reasonable opportunities to the parties for adducing evidence as may be permissible under the law. Based on the findings arrived at on the said issues the learned Trial Court would go on to finally decide the Title Suit on its own merit without being influenced by any observations made by this court in this order. Since the Plaintiff's suit is an old one having been instituted in the year of 1988, an endeavor would be made to carry out the exercise indicated here-in-above as expeditiously as possible, preferably within a period of six months from the date of receipt of the records. If necessary, the learned trial court may consider holding day to day hearing of the suit.

30. In view of the above directions, the Title Suit No. 82 of 1988 in the Court of Civil Judge (Junior Division) No. 2, Guwahati would stand restored to file. Parties are directed to appear before the Trial Court on 18-2-2015.

31. In the light of the above discussions the Second Appeal stands allowed to the extent indicated above. However, having regard to the facts and circumstances of the case parties to bear their own cost. Registry may send back the records forthwith.