
(2018) 07 GAU CK 0050

In the Gauhati High Court

Case No : Regular Second Appeal No. 99 Of 2009

Partha Sarathi Chakraborty And Ors

APPELLANT

Vs

Gopal Nanda Goswami And Anr

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 61, 63(1), 64, 65, 67, 74(2)

Code Of Civil Procedure, 1908 — Section 100, Order 41 Rule 21, Order 7 Rule 3

Citation : (2018) 07 GAU CK 0050

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : D Mazumdar, B C Das

Final Decision : Allowed

Judgement

[1] This second appeal is filed challenging the judgment and decree dated 31.03.2009 passed by the learned Civil Judge No.1, Cachar at Silchar in

Title Appeal No.4/2008, whereby learned Appellate Court reversed the judgment and decree passed by the learned Munsiff No.1 in Title Suit

No.113/2006 and dismissed the suit of the plaintiff/appellant.

[2] Facts leading to the present second appeal may be stated as follows :-
Gopendra Bhusan Chakraborty, the predecessor of the present appellant,

filed a suit being Title Suit No.113/2006 (48/2004) against the respondents,
Gopal Nandan Goswami and Gita Rani Namasudra for declaration of right

title and interest, recovery of khas possession, permanent injunction and other
reliefs.Â During pendency of the suit, Gopendra Bhusan Chakraborty

died and his legal heirs were brought on record.Â The defendant Nos. 3, 4 and 5
were also subsequently impleaded as proforma defendants by way

of amendment.Â The case of the plaintiff was that Prakriti Rani Chakraborty, wife

of late Gopendra Bhusan Chakraborty was the owner of the land measuring 3 Katha 8 Chataks covered by Second RS. Patta No.163 and Dag No.713/724.Â Prakriti Rani Chakraborty died in the year 1998 and her legal heirs by executing a registered gift deed on 19.03.2001, gifted the aforesaid 3 kathas 8 chataks of land along with other land to Abhra Kanti Chakraborty, the youngest son of Prakriti Rani Chakraborty.Â Later on, the said Abhra Kanti Chakraborty sold the suit land along with other land to one Ujjal Seal and Amal Mazumdar.Â Subsequently, the suit land was repurchased by the plaintiff from the said Ujjal Seal and Amal Mazumdar vide registered sale deed dated 26.03.2002.Â After purchasing the land from Ujjal Seal and Amal Mazumdar, the plaintiffs have been possessing the suit land.Â The plaintiffs allowed the defendants to occupy 1 (one) katha of land out of the suit land as permissive occupier. Subsequently, the defendants illegally occupied another 1 (one) katha of land out of the 3 katha 8 chataks.Â The land illegally occupied by the defendants has been shown in Schedule 2 and 3 and the entire suit land has been shown in Schedule 1 of the plaint.Â When the plaintiffs asked the defendants to vacate the suit land covered by Schedule 2 and 3, the defendants initially sought for time, however, ultimately refused to vacate the suit land and therefore, the plaintiffs filed the suit for declaration of right title and interest in Schedule A land measuring 3 katha 8 chataks and recovery of possession in respect of land described in Schedule 2 and 3 of the plaint.

[3] The case of the defendants was that the plaintiffs have no right tile and interest over the suit land, as the suit land was sold to Ujjal Seal and Amal Mazumdar by registered sale deed and possession was delivered to them.Â Further case of the defendants was that the defendants have been possessing the land measuring 3 katha covered by Khas Dag No. 637, and not the land covered by RS Patta No.163.Â On the basis of the above pleadings of the parties, learned Munsiff framed the following issues:

1. Whether there is cause of action for the suit?
2. Whether the suit is maintainable in the present form and manner?
3. Whether the suit is barred by law?
4. Whether the suit is bad for defect of parties?
5. Whether the plaintiffs have right, title and interest over the suit land?

6. Whether the plaintiffs are entitled to get any relief as prayed for?

[4] Both the parties adduced evidence, oral as well as documentary and after hearing both the sides, learned Munsiff decreed the suit in favour of the

plaintiffs.Â Being aggrieved, the defendants/respondents preferred an appeal before the learned Civil Judge and learned Civil Judge by the impugned

judgment and decree, allowed the appeal and dismissed the suit of the plaintiffs/appellants.Â

[5] Aggrieved by the judgment and decree of the learned appellate Court reversing the decree of the learned trial Court, the plaintiffs/appellants have

preferred the instant second appeal which was admitted to be heard on the following substantial questions of law:

a. Whether the Exhibit-4 (the certified copy of the registered sale deed dated 26.03.2002 executed by Ujjal Seal and Amal Mazumdar in favour of the

original plaintiff Gopendra Bhusan Chakraborty) which was exhibited without any objection is not admissible in evidence for the alleged non-

compliance of Section 65 of the Indian Evidence Act, 1872?

b. Whether the burden of the defendants claiming possession of Khas land of Dag No. 637 was discharged by merely exhibiting a certificate issued by

the ASO for providing electric connection without there being any description of the land therein as Exhibit-â??Kaâ???

[6] The second appeal was decided ex-parte by judgment dated 12.01.2018. However, ex-parte judgment was subsequently set-aside upon application

of the respondent under Order 41 Rule 21 CPC by order dated 22.05.2018 passed in I.A No. 502/2018 and the appeal was re-heard.

[7] During hearing of the second appeal the following additional substantial questions of law have been framed:-

c. Whether the findings of the learned First Appellate court with regard to the identity of the suit land was perverse?

[8] Mr. GN Sahewalla learned senior counsel for the appellant and Mr. B.C. Das, learned Sr. counsel for the respondent were heard.

[9] Learned senior counsel Mr. GN Sahewalla submits that the certified copy of the sale deed is an admissible document and once such certified copy

of sale deed is tendered and admitted in evidence without any objection, no objection as to admissibility of such document, being a certified copy of

sale deed, admitted as secondary evidence, can be raised at a later stage.Â To

buttress the submission, learned counsel placed reliance on a decision of the Apex Court in RVE Venkatachala Gounder V. Arulmigu Viswesaraswami & V.P. Temple reported in (2003) 8 SCC 752. The Apex Court

while dealing with the admissibility of document and scope of raising objection as to admissibility of a document observed as under:-

20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras in support of his submission that a

document is not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the

proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made

precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to

admissibility of documents in evidence may be classified into two classes : (i) an objection that the document which is sought to be proved is itself

inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode

of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an

objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the later case, the

objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection

that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any

stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an

objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of

proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly it enables the court to apply

its mind and pronounce its decision on the question of admissibility then and there and secondly, in the event of finding of the court on the mode of

proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular

mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence.Â Such

practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a

prompt and timely objections amounts to waiver of the necessary for insisting on formal proof of a document, the document itself which is sought to be

proved being admissible in evidence.Â In the first case, acquiescence would be no bar to raising the objection in a superior court.Â??

[10] In the instant case, the undisputed position is that the suit land originally belonged to Prakriti Rani Chakraborty.Â It is also admitted position that

the suit land was gifted to the plaintiff, Abhra Kanti Chakraborty, who sold the suit land to Ujjal Seal and Amal Mazumdar.Â It is the case of the

plaintiffs that the plaintiffs repurchased the suit land from Amal Mazumdar and Ujjal Seal by registered sale deed on 26.03.2002.Â The plaintiffs

proved the certified copy of the gift deed in favour of the plaintiffs as Exhibit-2 and the jamabandi of the suit land as Exhibit-1.Â The certified copy of

sale deed executed by plaintiff, Abhra Kanti ChakrabortyÂ in favour of Ujjal Seal and Amal Mazumdar had been proved as Exhibit-3 and certified

copy of the subsequent sale deed executed by Ujjal Seal and Amal Mazumdar in favour of the plaintiffs as Exhibit-4. So far Exhibit-1, Exhibit-2 and

Exhibit-3 proved by the plaintiffs, there was no dispute.Â The plaintiff No.1(b) in his evidence stated that Ujjal Seal and Amal Mazumdar sold the suit

land to the plaintiffs by executing sale deed on 26.03.2002.Â Plaintiffs further stated that the original sale deed executed by Ujjal Seal and Amal

Mazumdar in favour of the plaintiffs was with the sub-registrar and therefore, they proved the certified copy and marked as Exhibit-4.Â When

Exhibit-4 certified copy of the sale deed was proved as evidence of title over the suit land, by the plaintiffs, no objection was raised by the

defendants/respondents.Â

[11] Mr. B.C. Das, placing reliance on the decision of the Apex Court in *Narbada Devi Gupta Vs. Birendra Kr. Jaiswal and Another* (2003) 8 SCC

745 contended that mere production and marking of a document as Exhibit by the Court cannot be held to be a due proof of its content.Â Its

execution has to be proved by admissible evidence.Â

[12] There is no dispute about the above legal proposition that admissibility of

a document and its probative value are different aspect and mere production and marking a document as exhibit may not be held to be a due proof of its contents.Â In the present case the plaintiff stated on oath that Amal MazumdarÂ and Ujjal Seal sold the suit land to the plaintiffs by registered sale deed dated 26.03.2002, and the certified copy was proved, as the original was not available.Â The title of Ujjal Seal and Amal Mazumdar, the vendor of the plaintiffs was not disputed.Â In fact, the defendant did not specifically deny the title of the plaintiffs over the suit land as the defendant categorically stated, in his evidence that he had no claim over the land covered by R.S. Patta No.163, which was the suit land, as per description given in the schedule of the plaint.Â Plea of the defendant was that they were occupying Khas land of Dag No.637.Â Apparently the vendor of the sale deed did not raise any objection regarding the execution of the sale deed.Â Therefore, defendant being stranger to the sale deed in question and having not claimed any right or title under the vendor of the plaintiff, defendants could not raise objection as to the contents of the sale deed.Â

[13] The law does not prescribe any specific mode of proving a sale deed.Â As per section 67 of the Evidence Act, any one acquainted with the execution of the sale deed can prove the sale deed.Â It is not necessary to examine the vendor or attesting witness or the scribe in order to prove a sale deed.Â In this regard, the observation of this Court in Abdul Gam and ors., vs. Jarun Ali Mandal 1999 (1) GLT 196, profitably may be referred to, where it was observed, that "â? In order to prove a sale deed, it is not necessary to examine the vendor and or the attesting witness or even the scribeâ?.Â It is also to be borne in mind that the manner in which a document has to be proved may defer from case to case depending on the nature of plea.Â When execution of a sale deed is specifically denied, mere proof of certified copy of the sale deed shall not absolve the party sought to rely on such deed as the basis of title, from the requirement of proof of execution of the deed or its consent by independent evidence.Â Â In the case in hand when execution or the contents of the sale deed was not denied by the vendor of the plaintiffs and the title of the vendor of the plaintiffs was also admitted by the defendants, the proved certified copy of the registered sale deed and the evidence of the plaintiff were sufficient to prove the title of the plaintiff, over the suit land, having regard to the nature of pleas raised

by the parties.

[14] Having regard to the scheme of the Registration Act regarding duties and powers of the Registering officer engrafted in Part XI of the

Registration Act when a document is registered under the provisions of the Registration Act, the Court has to presume that the document was duly

executed and registered, unless rebutted.Â The Apex Court in Food Corporation of India Vs. Assam State Cooperative Marketing & Consumer

Federation Ltd & Others (2004) 12 SCC 360 dealing with presumption as to the contents of a document duly proved, observed that when a document

is duly proved then contents can be read in evidence, though it may not be conclusive proof and subject to rebuttal.

[15] This Court in Sheo Prasad Chouhan Vs. Joyradha Das & Others 2015 (5) GLT 347, dealing with the presumption associated with the certified

copy of a registered sale deed held as follows:

24. Part-XI of the Registration Act, 1908 provides for the duties and powers of the Officers.Â Section 51 refers to the Register books to be kept in

the several Registering officer; Section 52 prescribes the duties of the Registering officers when documents are presented.Â Section 53 mandates

that the entries are to be numbered consecutively. Section 54 provides that every office in which any of the books are to be kept, current indexes of

the contents of such books and every entry in such indexes shall be made, so far as practicable, immediately after the Registering officer has copied

or filed a memorandum of the document to which it relates.Â Section 55 provides that four indexes, namely, Index No.1, Index No.II, Index No. III

and Index No.IV, are to be made by Registering Officers.Â Index No.IV shall contain the names and additions of all persons executing and of all

persons claiming under every inspection of certain books and indexes, and to give certified copies of entries.Â Section 57(5) provides that all copies

given under this section shall be signed and sealed by the Registering Officer, and shall be admissible for the purpose of proving the contents of the

original documents.Â Section 59 requires that the Registering Officer shall affix the date and his signature to all endorsements made under Section 52

and 58, relating to the same document and made in his presence on the same day.Â Section 60 provides for endorsing a certificate containing the

word "registered", together with the number and page of the book in which

the document has been copied, when any document is presented for registration under the provisions of the Act.Â Sub-section (2) of Section 60 stipulates that such certificate shall be signed, sealed and dated by the Registering officer and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.

25. In view of the scheme of the Registration Act, when a document is registered under the provisions of the Registration Act, its due execution and registration has to be presumed.Â This presumption is, however, a rebuttable presumption and a party is entitled to rebut the presumption associated with a registered document by producing cogent evidence to the contrary.

[16] It is settled position of law that certified copy of sale deed is admissible in evidence as secondary evidence in view of sub-section (2) of Section

74 read with Section 63 (1) of Evidence Act. Section 74(2) provides that public record kept in any state of private documents are to be treated as

public document.Â The Apex Court in Kalyan Singh Vs. Smt. Choti and Ors AIR 1990 (SC) 396 observed that a certified copy of a registered sale

deed may be produced as secondary evidence in absence of the original. Section 61 of the Evidence Act provides that the contents of documents may

be proved either by primary or by secondary evidence.Â Section 64 of the Evidence Act provides that document must be proved by primary evidence

except in cases, where production of secondary evidence is permissible.Â Section 65 of the Evidence Act lays down the procedure and the

circumstance under which secondary evidence can be adduced to prove the existence, condition or contents of the primary document.Â When the

secondary evidence of a document is sought to be adduced, the party seeking to adduce secondary evidence has to satisfy the conditions laid down in

Section 65 of the Evidence Act, however, such conditions and requirement are merely procedural and Court can exempt such procedures while

admitting a document, provided such document is otherwise admissible.

[17] In the present case, the secondary evidence in question being a certified copy of sale deed is admissible under the law.Â It is also evident that

when the certified copy of the sale deed Exhibit-4, was tendered in evidence no objection was raised with regard to its admissibility or mode of proof.

The Apex Court in *R.V.E. Venkatachala* (supra) succinctly distinguished the objections as to the admissibility of document into two categories, i.e.

(i) An objection that the document which is sought to be proved is itself inadmissible in evidence; and

(ii) Where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.

[18] The first category of documents are itself inadmissible in evidence, whereas, second category covers the documents, which are not inadmissible

itself, but while adducing such documents in evidence, certain procedural formalities are required to be followed. Therefore, objection as to first

category relates to its admissibility and second category relates to mode of proof. When a document is inherently inadmissible, objection to the

admissibility of such document can be raised at any stage, however, when a document is otherwise admissible but requires some procedural formality

to be followed before tendering it in evidence, in such case, if the objection with regard to the admissibility or mode of proof is not raised at the time,

the document was tendered in evidence and marked exhibit, objection as to admissibility of such document cannot be raised at a later stage.

[19] Section 65 of Evidence Act provides only certain procedural requirement as to the mode of proof of secondary evidence. The proposition of

law has been made abundantly clear in *RVE Venkatachala* (supra) that if a document is otherwise admissible and no objection with regard to

procedural formality or mode of proof is raised at the time of tendering such document in evidence, objection as to admissibility of such document

cannot be raised at a later stage. As already pointed out, Exhibit-4 being the certified copy of sale deed is admissible in evidence and does not fall in

the category of documents which are inherently inadmissible. Therefore, when objection was not raised at the time of tendering Exhibit-4 and the

learned Court admitted the document (Exhibit-4) in evidence and marked the same as Exhibit, it shall be construed that the procedural formality

contemplated in Section 65 of the Evidence Act had been exempted. Therefore, Exhibit-4 shall not be inadmissible merely because of non-

compliance of the procedure provided in Section 65 of the Evidence Act. Since the proposition of law with regard to raising objection in respect of a

document which is otherwise admissible is well settled, in the facts and circumstances of the present case, Exhibit-4, the certified copy of the sale deed can by no stretch of imagination be held to be inadmissible for non compliance with the provisions of Section 65 of the Evidence Act.Â Being of the above view, the substantial question of law No.1, is answered in favour of the appellants/plaintiffs.

[20] The plaintiffs filed the suit for declaration of title and recovery of possession in respect of the suit land covered by Dag No.713/724 and RS Patta

No.163.Â It is also the case of the plaintiffs that the defendants were initially occupying a portion of the suit land as permissive occupier and

subsequently they have occupied additional 1 (one) katha of the suit land and therefore, the suit was filed for declaration of tile and recovery of

possession by evicting the defendants.Â The specific plea of the defendants was that the defendants were occupying the land covered by Khas Dag

No.637 and the land occupied by the defendants has no relation with the suit land.Â The plaintiffs had adduced evidence in support of their plea that

defendants occupied the suit land covered by Dag No.713/724 and Patta No.163 and such evidence could not be shaken.Â In fact, the defendant

Gopal Nandan Goswami examining himself as DW-1 stated in cross-examination that he did not know the Dag No. and Patta No. of the suit land.Â

He also admitted in unambiguous terms that he has no claim over the suit land covered by RS Patta No.163.

[21] The defendant No.2 also admitted in cross-examination that he did not know the Dag No. and Patta No of the suit land.Â Specific plea raised in

the written statement was that the defendants were possessing the land covered by Khas Dag No.637, and a certificate issued by Assistant

Settlement Officer had been proved as Exhibit- Ka, where it had been mentioned that the land measuring 3 kathas covered by Khas Dag No.637 was

under occupation of the defendant, Gopal Nandan Goswami.Â Exhibit-â??Kaâ?? certificate does not reveal, that suit land was covered by Khas

Dag No.637. The case of the plaintiffs was that the defendants occupied the suit land covered by Dag No.713/724 of Patta No.163 and adduced

evidence to that effect.Â However, though the defendants raised the plea that the suit land was not covered by RS Patta No.163, rather it was

covered by Dag No.637, during evidence both the DWs categorically stated that they were not aware of the Dag No. and Patta No. of the suit

land. DW-2 admitted that he did not know the land covered by Dag No.637. It was also stated categorically by the defendant No.1 that he had

no claim over the land covered by RS Patta No.163. When admittedly, the defendants had no knowledge as to the Dag No. and Patta No of the suit

land and DW-2 even failed to recognize the land covered by Dag No.637, mere proving Exhibit-Ka a certificate issued by the settlement officer

stating that the defendants were in occupation of a land measuring 3 katha covered by Khas Dag No.637, cannot dislodge the case of the plaintiffs.

Even if it is assumed for the sake of argument, that the land covered by Dag No.637 was in occupation of the defendants, that per-se is incapable to

establish the plea of the defendants that the suit land is covered by Dag No.637. When the plaintiffs filed the suit for declaration of title and

recovery of possession in respect of the suit land covered by RS Patta No.163 and Dag No.713/724 and defendants sought to dispute the identity of

the suit land with a specific plea that suit land was not covered by RS Patta No.163, rather it was covered by Khas Dag No.637, it was burden of the

defendants to prove such facts disputing the identity of the suit land. But the defendants failed to discharge their burden. The defendant No.1,

rather, categorically stated that he has no objection if a decree is passed in favour of the plaintiffs in respect of the suit land. From the nature of

controversy and the facts and circumstances of the case, the issue involved is whether the suit land was covered by Khas Dag No.637 or Dag

No.713/724 of RS Patta No.163 and the plaintiffs have adduced sufficient evidence, oral and documentary showing that the suit land was covered by

Dag No.713/724 and RS Patta No.163. Whereas, the defendants and the witness of the defendants categorically stated that they did not know the

Dag No. and Patta No. of the suit land.

[22] In view of the above evidence and admitted position, it can by no stretch of imagination be held that the defendants have been able to discharge

their burden to prove their plea that the suit land was covered by Dag No.637. The Exhibit-Ka, which merely indicated that the land measuring 3

katha covered by Khas Dag No.637 was in occupation of the defendants, does not make any difference to the claim of the plaintiffs in respect of the

suit land in view of the evidence and materials discussed herein above. Therefore, the substantial question of law No.2 is decided against the

defendants.

[23] Learned senior counsel Mr. B.C. Das submitted, that the findings of First Appellate Court, after appreciating the evidence and materials brought

on record, that the suit property was not identifiable, and dismissal of the suit on the basis of such findings by the First Appellate Court, cannot be

faulted, inasmuch as, no decree could be passed, when the property in question in respect of which relief is sought, was unidentifiable.Â To buttress

the submission learned counsel placed reliance on a decision of the Apex Court in Nahar Singh Vs. Harnak Singh and Others (1996) 6 SCC 699,

wherein, the Apex Court observed that it is well settled that unless the property in question for which the relief has been sought for is identifiable, no

decree can be granted in respect of the same.Â Further contention of Mr. Das was that the finding of the learned Appellate Court with regard to the

identity of the suit land being a finding of fact, such finding of fact arrived at by the First Appellate Court cannot be interfered in the second appeal.Â

Strongly resisting the above submission of Mr. Das, Mr. G.N. Sahewala contends that the findings of the Appellate Court with regard to the identity of

the suit land was perverse and the High Court in second appeal can interfere with such perverse findings.Â The Apex court in Gurvachan Kaur and

Others Vs. Salikram (dead) through LRS (2010) 15 SCC 530, relied by the learned counsel for the respondent, observed that in exercise of power

under Section 100 CPC, the High Court cannot interfere with the findings of fact, recorded by the First Appellate Court, which is the final Court of

fact, unless the same is found to be perverse.Â Another decision relied by learned counsel for the respondent is S.C. Jindal Vs. UHBVNL Through

Executive Engineer and Another (2011) 15 SCC 117, where the Apex Court observed, that â??We are of the view that having regard to the evidence

and the findings of fact recorded by the appellate Court, there was no justification for the High Court to interfere with the findings of fact recorded by

the first appellate Court.â??Â Therefore, what needs to be seen is whether the findings of the learned First Appellate Court regarding the identity of

the suit land was perverse?

[24] Specific plea of the plaintiffs in the instant case was that he purchased a suit land measuring 3 katha, 8 chataks covered by RS Patta No.163 and

Dag No.713/724 which is described in the Schedule I of the plaint, which covers

the entire land of the suit Dag. The allegation of the plaintiff was that the defendants have been illegally occupying the Schedule II & III land, being part of Schedule I land. The plaintiff described the suit land of Schedule II and III by specific boundary. However, boundary of the entire suit Dag described in Schedule I, land has not been given in the plaint. Order 7 Rule 3 of the CPC provides that where the subject matter of the suit is the immovable property, the plaint shall contain the description of the property sufficient to identify it, and, in case of such property can be identified by the boundaries or numbers, in the record of settlement or survey, the plaint shall specify such boundaries or numbers. Since Schedule I land covers the entire land of the suit Dag, and the same has been described by the Dag number, it cannot be said that suit land was unidentifiable, reason being that when the land covers the entire dag the same can be identified by the dag number itself, without the boundary. So far Schedule II & III are concerned, they are part of the Schedule I land and were properly described by boundaries.

[25] Referring to the evidence of PW-1, learned First Appellate Court observed that the southern boundary of the suit land is National Highway and northern boundary of the suit land is river Ghagra. It is also observed by the learned First Appellate Court that there was a path on the western boundary of Schedule I land running from the National Highway to Ghagra river which is about 800 feet in length. The plaintiffs stated in evidence that the front side of his land was 200 feet and on the basis of above evidence, learned Appellate Court observed, that if the length and breadth of the Schedule I land is taken as 800 × 200 feet, then total area of the Schedule I land comes to more or less 1 bigha 1 chataks whereas, the plaintiff purchased only 3 katha 8 chataks of the land. On the basis of above hypothetical calculation, learned Appellate Court came to the finding that the suit land of the plaintiff was not identifiable inasmuch as, the Schedule I land was only 3 katha 8 Chataks whereas, as per the assumed boundary total land in Schedule I, comes to more than 1 bigha. While coming to the above finding, learned Appellate court referring to the cross-examination of PW-1, held that the northern boundary of the Schedule I land was the National Highway. But the plaintiff nowhere stated that northern boundary of the suit land was the National Highway. The plaintiffs only stated in his evidence that his

house was on the southern side of the National Highway, which run from east to west.Â From the cross-examination of the plaintiffs it was further elicited that there were other vacant land in between National Highway and the suit land.Â Evidently, the northern boundary of Schedule III land, was also the northern boundary of the entire Schedule I land, and there were other land in between the National Highway and the Schedule I land.Â Therefore, the finding of the learned First Appellate Court, referring to the evidence of the plaintiffs that the northern boundary of the suit land was the National Highway was apparently perverse and against the evidence. Learned First Appellate Court apparently came to an erroneous finding that the suit land was not identifiable on the assumption that the northern boundary of the entire Schedule I land was National Highway which was palpably perverse as plaintiffs nowhere stated that the northern boundary for the suit land to be the National Highway. Rather, the boundary of Schedule III land and the cross-examination of the plaintiffs, clearly demonstrated, that there were other land in between the National Highway and the suit land.Â Therefore, the finding of the First Appellate Court that the plaintiffs included more than 1 bigha of land in Schedule I, on the basis of a hypothetical calculation, palpably on a wrong premise, was totally perverse and against the weight of evidence.Â This apart, Schedule I land having covered the entire land of the dag, the dag number itself was sufficient to identify the schedule I land. apparently, Schedule II and III were described by both Dag No. and boundaries.Â Therefore, finding of the First Appellate Court that the suit land was unidentifiable was totally incorrect.Â Hence, the substantial question No.c is answered in affirmative and in favour of the appellant.

[26] The plaintiffs having established their title over the suit land by adducing evidence oral and documentary and the plea of the defendants having fallen through, as discussed in substantial question of law No.b, the plaintiffs were certainly entitled to a decree as sought for.Â However, learned Appellate Court dismissed the suit and allowed the appeal with the observation that Exhibit-4 being the certified copy of the sale deed could not be admitted in evidence until the procedure for adducing the secondary evidence under Section 65 of Evidence Act was complied. Such finding of the learned first Appellate Court was contrary to the established proposition of law,

as indicated above and therefore, the learned Appellate Court fell in grave error by dismissing the suit holding Exhibit-4, certified copy of the sale deed inadmissible in evidence for non-compliance of the procedure provided in Section 65 of the Evidence Act.

[27] In view of the discussions made herein before, the impugned judgment and decree of the Appellate Court cannot be allowed to hold the field.Â

Accordingly, the impugned judgment and decree passed by the learned first appellate Court is set-aside and the judgment and decree passed by the

learned Munsiff in Title Suit No.113/2006 is hereby restored.Â The second appeal accordingly stands allowed.

[28] Send back the LCR.