
(2004) 03 GAU CK 0089

In the Gauhati High Court

Case No : Civil Revision Petition No. 134 of 2001

Tuniram Katoni and Others

APPELLANT

Vs

Golap Chandra Katoni

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 154

Citation : (2004) 3 GLR 641

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : N. Choudhury and S.K. Ghosh, for the Appellant; P.D. Gogoi, for the Respondent

Judgement

I.A. Ansari, J.—This revision has arisen out of the impugned order, dated 12/1/2001, passed by the learned Civil Judge (Junior Division) No. 1, Jorhat, in Title Suit No. 44/91, whereby the learned Civil Judge (Junior Division) No. 1, Jorhat, has disposed of the preliminary issue, with regard to the jurisdiction of the Court to entertain the suit in question, by holding to the effect that Section 154 of the Assam Land Revenue Regulation, 1887, does not debar the Civil Court, from entertaining declaratory suit of title.

2. Presenting the case on behalf of the revision-petitioner, Shri N. Choudhury, learned counsel for the petitioner, has submitted to the effect, inter-alia, that while passing the impugned order, the learned Court below did not take into account the observations made-by the Full Bench of this Court in Daulatram Lakhani v. State of Assam and Ors., reported in (1989) 1 GLR 131 wherein this Court has held, according to Mr. Choudhury, that though a plaintiff may seek declaration of his title to the land from where he is sought to be evicted, the assertion of such title must be genuine and not a mere pretext. In consequence of the impugned order, the learned Trial Court, according to Mr. Choudhury, can not debar itself from entering into the question of genuineness of the claim of the title set up by opposite-party in the suit and in this view of the matter, submits by

Mr. Choudhury, the impugned order needs to be interfered with.

3. None has appeared on behalf of the opposite-party No. 1.

4. Upon hearing Mr. Choudhury, learned counsel for the petitioner, and on perusal of the materials on record, this revision is disposed of with the observations that though the learned Court below was, while deciding the preliminary issue, justified in answering the issue in the affirmative by holding to the effect that the Court has jurisdiction to decide the suit in question, it is desirable that while finally deciding the suit on merits, the learned Court below shall bear in mind the law laid down in *Daulatram Lakhani (supra)*, wherein a Full Bench of this Court observed and held as follows:"-

"22. From what has been stated above, we would say that in a matter like the one at hand Civil Court's jurisdiction would not be barred in the following cases :

(1) When the order under Rule 18 is patently illegal or without jurisdiction;

(2) Where the remedy provided by the Regulation to adjudge the objection raised is not sufficient;

(3) where complicated questions relating to title are involved; or

(4) where the plaintiff seeks declaration of his title over the land from which he is sought to be evicted.

23. As to points (3) and (4) above we would like to state that the assertion of title must be genuine and not a mere pretext - a bona fide claim of having title and not having only a husk of title."

5. It is also clarified that while finally deciding the question as to whether the plaintiff is entitled to any relief, the learned Court below shall keep in mind that the assertion of title in the suit must be a genuine one and not a mere pretext.

6. With the above observation and directions, this revision shall stand disposed of.

7. Send the lower Court's records.

8. The learned Trial Court is hereby directed to dispose of the suit expeditiously.

9. No costs.