

HEADING OF JUDGMENT IN APPEAL

District: Barpeta.

IN THE COURT OF CIVIL JUDGE; BARPETA, ASSAM.

Present: Smti. D. Bhuyan, A.J.S.
Civil Judge, Barpeta.

Wednesday, the 9th day of October,2013.

Title Appeal No.15/2012

Omar Ali.....Appellant(s)

Versus

Md. Bhasan Ali..... Respondent(s)

This appeal coming on for final hearing on 23.09.2013 in the presence of-

Mr.A.R. Khan.....Advocate/pleader for Appellant(S).

Mr. A.K. Das &

Mr. H. Ojah.....Advocate/pleaders for respondent(s)

And having stood for consideration to this day, the Court delivered the following judgment:

J U D G M E N T

1. This appeal U/S 96 & U/O 41, R-1, R/W Sec 151 of the CPC has been preferred by the Plaintiff/ Appellant Omar Ali against the judgment

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and order dated 12.09.2012 passed by Miss P. Shyam the learned Munsiff No. 2, Barpeta in Title Suit No. 115/2009 both on facts and law.

2. On admission of the appeal memo for hearing, notices were issued to the Respondent/ Defendant and case record of Title Suit No. 115/2009 was called for. Respondent/ Defendant appeared through their engaged advocates and resisted the appeal.

3. I have heard learned advocate of the Plaintiff/Appellant and Defendant/ Respondent , gone through the appeal memo, case record of T.S 115/2009 and the documents submitted by the parties in the aforesaid Title Suit.

4. Being aggrieved by the aforesaid judgment and decree the appellant/plaintiff filed this instant appeal on certain grounds incorporated in the memo of appeal as follows:-

i) That the learned trial court has erred in law as well as in facts while passing the judgment and decree.

ii) That the learned trial court has failed to evaluate the evidence on record in proper perspective.

5. The facts leading to this suit is that the plot of land measuring 26B-3K-11Ls originally belonged to four pattadars namely Harekrishna Das, Gobinda Ram Bayan, Dhairijya Nath Sarma and Karekrishna Choudhury under four different dag Nos. of periodic patta No.89. The plaintiff purchased 4K-7Ls of land covered by dag No.2 from Harekrishna through registered sale deed No.3660/76 dated 06.04.76 and 2B-3K-0Ls of land from Dhairjya Nath Sarma, Harekrishna Choudhury and Gobinda Ram Bayan through registered sale deed No.3400/76 dated 29.03.76 and also took possession of the land and have mutated his name in the revenue record. Accordingly the plaintiff has been in possession of land measuring 3B-2K-7Ls under dag No.2 of periodic patta No.89 and the said land has been used as an agricultural land. The plaintiff stated that although he with his family resided at a different place since the year 1997 he had possession

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over his land. But in the year 1999 his brother Omar Ali herein after called as defendant No.1 requested the plaintiff to allow him to cultivate over the land on plaintiff's behalf with the promise to vacate the land on demand. As such defendant was under permissive possession of the land for ten years. But when the plaintiff asked the defendant to vacate the land he promised to vacate within a stipulated period, then the defendant failed to keep up his promise and ultimately on 16.04.09 refused to vacate the land and with the help of other defendants began to dig pond over the eastern portion of the suit land, hence this suit.

6. From the case record it shows that the main defendant and proforma defendant failed to submit their written statement but they cross examined the Pws at length.

7. The respondent/plaintiff examined 2 witnesses including himself in support of their case and also exhibited some documents.

8. Learned trial court after detailed discussions and appreciating the evidence of the Pws with their exhibited documents decreed the suit with cost declaring right, title and interest over 3B-2K-7Ls of land under dag No.2 of periodic patta No.89 along with to recovery of khas possession by evicting the defendant from the suit land by removing structure if there was any and further directing them by permanent injunction not to change the nature and feature of the suit land by any construction till delivery of possession of the plaintiff.

9. Upon perusal of the pleadings, the impugned judgment and hearing the arguments advanced by the learned advocates of the appearing parties the following point is formulated for determination in this appeal.

- i) *Whether the plaintiff has any right, title and interest over the land measuring 3B-2K-7Ls under dag No.2 of periodic patta No.89223?*

DECISION THEREON WITH REASONS FOR DECISION

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10. Learned counsel for the appellants has submitted that the suit land is a family property and it was purchased in the name of the plaintiff/respondent as his brothers and sisters were minor at that time. But the learned trial court misconceived the fact of the case and arrived at an erroneous findings.

11. On the other hand the learned counsel for the plaintiff as respondent has submitted that the suit land is not a family property and the plaintiff can prove his case and therefore the learned trial court ought to have decided the suit in their favour.

12. In deciding the above point under determination it is found that the learned trial court while deciding this issue vividly discussed and considered the evidence of Pws and after an elaborate discussion has held that the plaintiff has right, title and interest over the land under dag No.2 of periodic patta No.89. PW-1 Md. Bhasan Ali has reiterated the same facts as narrated in his plaint. PW-2 also supported the case of the plaintiff. Exhibited documents Ext.1 certified copy of jamabandi of K.P. Patta No.89 of village Nali, Ext.2 is the original registered sale deed executed on 29.03.76 in the name of plaintiff Md. Bhasan Ali. Ext.3 is the certified copy of Ext.2 and these exhibited documents show that plaintiff has right, title and interest over the above mentioned land. The evidence of PW-2 also supported the evidence of PW-1. The plaintiff has substantiated his claim by producing documentary evidence. Learned trial court has rightly opined that though there is no rebuttal evidence from the defendant side to disprove the claim of the plaintiffs. The defendant whole cross examining the witnesses of the plaintiff side admitted that the plaintiff purchased the suit land after his separation. The plaintiff can prove his case. Under such circumstances, I do not find any illegality or irregularity in deciding the suit as decided by the learned trial court and I find also no ground to remand the suit as per prayer of the appellant as the suit was disposed of ex-parte and the appellant side did not challenge that ex-parte order before the higher court.

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O R D E R

13. In the result, the appeal is devoid of any merit.
14. Draw up a decree accordingly.
15. Send down the original case record being T.S 115/2009 with a copy of the judgment to the learned Munsiff No2, Barpeta.

Given under my hand and seal of this court on this 9th day of October, 2013.

Dictated & Corrected by me

Sd/-
(Smti. D. Bhuyan),
Civil Judge, Barpeta.

Sd/-
(Smti. D. Bhuyan),
Civil Judge, Barpeta.