

TITLE APPEAL NO:109 OF 2009  
APPELLANT: SHRI SUDHIR CHANDRA RAY Vs  
RESPONDENT: SHRI KHOKA RAY & ORS

Assam Schedule VII, Form No.132.

HIGH COURT FORM NO.(J)2

*HEADING OF JUDGMENT OF APPEAL/ CASE*  
DISTRICT : DHUBRI.

In the Court of the Civil Judge, Dhubri  
**Present : Yusuf Azaz, AJS.**  
**Civil Judge, Dhubri.**

**TITLE APPEAL No: 109/ 2013**

Monday, the 30<sup>th</sup> January, 2017

1) SHRI SUDHIR CHANDRA ROY  
2) SMTI BASANTI ROY

..... APPELLANT (s).

- versus-

1) SHRI KHOKA ROY

.....RESPONDENT

1) SHRI AMULYA ROY  
2) SHRI BINOD ROY  
3) SHRI ADHIR RAY

.....PROFORMA RESPONDENT

This suit coming on this day (or having been heard on) 19/12/2016  
presence of:

SHRI M.M AHMED, Advocate..... for the appellant(s)

SHRI R.N MONDAL, Advocate .....for the respondent.

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

### **JUDGMENT**

1. This first appeal has been preferred by the principal defendant no: 2 and 3 /appellants on being dissatisfied with the judgment & decree dated 19/11/2013 passed by the learned Munsiff No.1, Dhubri in Title Suit No: 09/ 2009 whereby the learned trial court decreed the suit on contest with cost.
2. Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no: 09/ 2009 was called for and received. The principal respondent contested the appeal, but the proforma respondents did not contest the appeal as such the appeal proceeded ex-parte against them.
3. In order to decide the appeal, let me narrate, in brief, the facts leading to this appeal:
4. The plaintiff/ principal respondent, Shri Khoka Ray had instituted the suit against the principal defendants namely, Shri Adhir Ray, Shri Sudhir Ray and Smti Basanti Ray stating therein that he owned a plot of land measuring about 1 Bigha 3 Kathas 10 Lessas covered by Dag no:201(old)/ 255(new) of Khatian no:24 of Patta no:222 situated at village- Jhapusabari Part IV (more particularly described in the schedule A of the plaint). The plaintiff pleaded that the predecessor of the defendants and the proforma defendant no:2, Shri Binod Ray used to

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work as day labourer in the fields belonging to the plaintiff since long and about 12 years ago, the predecessor of the principal defendants and proforma defendant no:2 namely, Khagen Ray (since deceased) approached the plaintiff to allow him to reside temporarily over a plot of land measuring about 3 Katha 2 Lessas out of the schedule A land and this plot of land is more particularly described in the schedule B of the plaint and hereinafter referred to as the suit land. The plaintiff permitted Khagen Ray to temporarily reside over the suit land and he promised that he would vacate the suit land as and when asked to do so. About 5/6 years ago, Khagen Ray expired and thereafter the plaintiff requested the principal defendants and the proforma defendant no:2, who are the legal heirs and successors of Khagen Roy to vacate the suit land. Accordingly the proforma defendant no:2 vacated the suit land but the principal defendants refused to vacate the suit land; hence this suit praying for the declaration of the right, title and interest over the suit land and for other reliefs.

5. The principal defendants filed their written statement stating therein that the suit is not maintainable and that the same is bad for non joinder of necessary parties. The defendants pleaded that the defendant no:2 and 3 had purchased a plot of land measuring about 1/2 Bighas from Ketu Roy (brother of plaintiff) for sale consideration of Rs.12,000/-. The defendants have alleged that the plaintiff thereafter proposed to them to exchange the suit land with the land purchased by the defendant no:2 and 3 from Ketu Roy about 16 years ago and accordingly they exchanged the suit land and since then the defendants are residing over the suit land by constructing their houses; hence

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prayed for dismissal of the suit. The defendants further pleaded that their names were recorded in the draft Chitha in respect of the suit land on the basis of transfer.

6. The proforma defendant no:2 filed his written statement supporting the pleadings of the plaintiff and he admitted that his father, Khagen Roy was a permissive occupier in respect of the suit land.
7. The pro forma defendant no:1 did not file any written statement and the suit proceeded ex parte against him.
8. Upon the pleadings of the parties, the learned trial court framed the following issues:

***(1) Whether the suit is maintainable in law and facts?***

***(2) Whether there is a any cause of action for the suit?***

***(3) Whether the suit is barred by law of limitation?***

***(4) Whether the suit is bad for non joinder and mis joinder of parties?***

***(5) Whether the suit is under valued?***

***(6) Whether the plaintiff has right, title and interest over schedule B land?***

***(7) Whether the plaintiff is entitled to possession of the schedule B land by eviction of defendants thereon?***

***(8) Whether the plaintiff is entitled to a decree as prayed for?***

***(9) To what relief (s), the plaintiff is entitled?***

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9. Both the parties adduced evidence in support of their cases. After hearing both sides, the learned trial court vide the impugned judgment dated 19/11/2013 decreed the suit. On being aggrieved by and dissatisfied with the impugned judgment, the principal defendant no:2 and 3 /appellants preferred the present appeal, amongst others, on the following grounds:

***(i) That the learned lower trial Court has erred in law and facts in deciding the suit;***

***(ii) That the court below failed to appreciate the evidence on record in its proper perspective;***

***(iii) That the learned trial Court ought to have held that the suit is barred by limitation;***

***(iv) That the learned trial court ought to have held that the suit is bad for non joinder of co-pattadat, Khukibala Barman and Kasu Bala Barman;***

***(v) That the learned trial court ought to have held that the plaintiff does not have the right, title and interest over the suit land;***

***(vi) That the learned lower trial court ought to have dismissed the suit.***

**DISCUSSION, DECISION & REASONS FOR THE DECISION**

10. I have perused the evidence and materials available in the case record. I have heard the arguments. Now, let me examine the evidence and other materials available in the case record to decide the case at hand.

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**POINTS FOR DETERMINATION:**

***Point for determination no:1:Whether the learned trial Court had rightly decided the issue no:6 and 7wherein it held that the plaintiff has the right, title and interest over the suit land and the defendants are liable to be evicted therefrom?***

11. The learned counsel for the principal defendant no:2 and 3/appellant, Shri M.M Ahmed had contended that the learned trial Court had erred in holding that the plaintiff has the right, title and interest over the suit land because the said land was exchanged and accordingly the defendants came into the possession of the suit land and in fact their names are recorded in the Chitha.
12. The learned counsel for the plaintiff/ respondent, Shri R.N Mondal has contended that the learned trial court had rightly discussed the above issues as such the decisions in the aforesaid issues are not liable to be interfered with.
13. I have perused the impugned judgment and the case record. Let me now discuss the materials on record and try to arrive at a definite finding in respect of the above issues.
14. At the outset I would like to state that it is an admitted fact that the suit land originally belonged to the plaintiff. The plaintiff has specifically pleaded that he has the right, title and interest over the suit land and the principal defendants had also specifically admitted in their written statement that the plaintiff is the owner having the right, title and

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interest over the suit land. It is, therefore, held that the plaintiff has the right, title and interest over the suit land because a fact which is admitted is not required to be proved.

15. Even otherwise, the plaintiff, Shri Khoka Ray (PW1) has examined himself and he had produced the final khatian in respect of the suit land which is marked as exhibit 1. The perusal of the exhibit 1 reveals that the suit land belonged to the father of the plaintiff namely, Hurka Ray. The plaintiff had further produced the certified copy of the Jamabandi which is marked as exhibit 2 and it specifically shows that the name of the plaintiff is recorded alongwith his brother in the revenue records as pattadar. It is specifically proved from the exhibit 1 and the exhibit 2 that the plaintiff has the right, title and interest over the suit land; as such it is held that the plaintiff had, independent of the admissions made by the defendants, proved that he has the right, title and interest over the suit land.

16. It is, therefore, held that the plaintiff has the right, title and interest over the suit land and in fact the defendants had admitted the above fact, but the only contention of the defendants is that the defendant no:2 and 3/ appellants had purchased a plot of land measuring about ½ Bighas from one Ketu Ray orally for consideration of Rs.12,000/- and later on upon the proposal received from the plaintiff they had exchanged the said land purchased from Ketu Ray with the suit land which belonged to the plaintiff. In view of the above let me now discuss the materials on record and try to find out if the defendants are able to prove that they had exchanged the suit land with the land belonging to

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them. The defendant, Shri Sudhir Ch Ray had specifically deposed that he alongwith Sandhya Ray (predecessor of defendant no:3) had purchased the land belonging to Ketu Ray orally for sale consideration of Rs.12,000/-. In this regard I would like to submit that it is a settled position of law that any transfer of immovable property of the value more than Rs.100/- had to be compulsorily done by way of a registered deed. It is an admitted fact that no sale deed had been executed and admittedly the alleged transfer was not registered; as such in the eye of law no transfer has in fact been effected and thus the defendant no:2 and 3 cannot claim any right, title and interest over the land belonging to Ketu Ray, as alleged. Similarly the defendants have specifically pleaded that they had exchanged this land orally with the suit land belonging to the plaintiff. It is seen that the alleged exchange is also not done by any registered document; as such as per section 49 of the Registration Act, 1908 no effective transfer of the suit land had taken place; hence the defendants cannot claim any right, title and interest over the suit land. It is a settled position of law that exchange of an immovable property of the value of more than Rs.100/- had to be compulsorily registered just like a sale deed and as such any oral exchange of the suit land is not an effective transfer in the eye of law; hence it is held that the defendant no:2 and 3/ appellant have no right, title and interest over the suit land.

17. In view of the above discussions it is held that the plaintiff has the right, title and interest over the suit land and it is further held that the defendants do not have any right, title and interest over the suit land and as such their status over the suit land is that of trespassers.

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18. It is an admitted fact that the defendants are in possession of the suit land. The plaintiff had claimed that the defendants are permissive occupiers of the suit land; whereas the defendants contended that they came into the possession of the suit land by way of exchange. It is already held above that no effective exchange of the suit land had taken place and that the defendants had no right, title and interest over the suit land; as such it is held that the defendants are trespassers over the suit land because they have refused to vacate the suit land inspite of requests made by the plaintiff. The defendants cannot resist the true owner of the suit land, i.e the plaintiff from entering into the possession of the suit land. Moreover, the defendants had neither pleaded nor proved that they are in adverse possession of the suit land as such no right over the suit land would extinguish in their favour; hence it is held that the defendants are liable to be evicted from the suit land.

19. The learned counsel for the appellants had contended that the defendants are in possession of the suit land for more than 20 years and as such they are not liable to be evicted. The above contention of the defendants/ appellants is not sustainable because it is a settled position of law that mere long possession, howsoever long, cannot confer any right, title and interest upon an immovable property.

20. The learned counsel for the appellants had further contended that the defendants are in possession of the suit land and their names are recorded in the Chitha (Exhibit A); as such they have right, title and interest over the suit land. The above contention of the defendants/

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appellants is not sustainable because the draft Chitha is not a document of title and it merely shows the person who is in possession of the said land. In the instant case at hand it is an admitted fact that the defendants are in possession of the suit land; as such mere recording of their names in the Chitha would not confer any right, title or interest in their favour because they have none. The draft Chitha does not confer any right, title or interest in favour of the persons whose names are recorded therein as such it is held that the defendants have no right, title or interest over the suit land and the learned trial Court had rightly held so.

21. The perusal of the impugned judgment reveals that the learned trial Court had rightly considered all the materials and had rightly discussed the evidence and had arrived at the correct finding that the plaintiff has the right, title and interest over the suit land and that the defendants are liable to be evicted as such the decision of the learned trial Court in the issue no:6 and 7 are affirmed.

22. In view of the above discussions, it is held that the learned trial court had rightly held that the plaintiff has the right, title and interest over the suit land and that the defendants are liable to be evicted from the suit land.

23. DECISION: The decision of the learned trial Court in the issue no:6 and 7 are affirmed.

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24. The learned counsel for the appellants has further contended that the suit is bad for nonjoinder of Khukibala Barman and Kasu Bala Barman because they are the joint co-pattadars. In my considered opinion, the plaintiff had specifically pleaded and proved that he has the right, title and interest over the suit land and that the defendants are trespassers hence liable to be evicted from the suit land; as such it is seen that the decree of eviction and declaration, if any, passed in this suit can be effectively and completely executed only as against the defendants already on record as such I do not think that the co-pattadars are necessary parties in this suit. An effective decree capable of being executed as against the persons already on record can be effectively be passed as such it is held that the suit is not bad for any other persons; hence the decision of the learned trial Court in the issue no:4 is hereby affirmed.

25. The learned counsel for the defendants/ appellants had further contended that the suit is barred by limitation because the defendants are in possession of the suit land for more than 20 years. The above contention of the defendants is not sustainable because it is already held above that mere long possession, howsoever long, cannot confer any right, title and interest over the suit land and hence this suit is not barred by limitation because the defendants have failed to plead and prove that they are adversely possessing the suit land. As per section 65 of the Limitation Act, 1963, the period of limitation of a suit for possession brought on the basis of title is 12 years from the date on which the possession of the defendants became adverse to the interest of the owner. In the instant case at hand, the defendants have neither

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pleaded nor proved that they are adversely possessing the suit land; as such there is no question of this suit being barred by limitation. In view of the above discussions it is held that the learned trial Court had rightly held in the issue no:3 that the suit is not barred by limitation.

26. I have perused the decision of the learned trial court in the issue no: 1, 2 and 5 and I do not find any infirmity in the decisions of the learned trial court in the above issues as such the decisions of the learned trial court in the issue no: 1, 2 and 5 are affirmed.

27. In view of the above discussions, and more particularly the decisions reached in the issue no:6 and 7 it is held that the learned trial Court had rightly decided the issue no:8 and 9 and rightly held that the plaintiff is entitled to the relief of declaration of his right, title and interest over the suit land and for recovery of possession of the same by evicting the defendants.

ORDER

28. In view of the above discussions, the appeal is dismissed and the impugned judgment and decree passed in Title Suit no:09/ 2009 by the learned Munsiff No:1, Dhubri is hereby affirmed.

29. Prepare decree accordingly.

30. The appeal is dismissed on contest with cost.

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31. Send back the LCR alongwith a copy of the judgment to the learned trial Court.

Given under my hand and the seal of this Court on this the 30<sup>th</sup> day of January, 2017 at Dhubri.

YusufAzaz,  
Civil Judge, Dhubri

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.