

TITLE APPEAL NO:42 OF 2010  
APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs  
RESPONDENT: SHRI MONTU SK & 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: 42/ 2010**  
Thursday, the 12<sup>th</sup> January, 2017

**1) ON DEATH OF BODIOZZAMAL HIS LEGAL HEIRS**

- 1(1) SHRI ABU SAYED MD KAMRUZ ZAMAN
- 1(2) SHRI ABU SAYED SAMSUS ZAMAN
- 1(3) SHRI ABU SAYED MD NURUZZAMAN

..... APPELLANT (s).

- versus-

- 1) SHRI MONTU SK
- 2) SHRI MOZAFFAR ALI

**3) ON DEATH OF LUTFUN NESSA HER LEGAL HEIRS**

- 3(i) SMTI MOFIDA BIBI
- 3(ii) SMTI MASUKA BIBI

.....RESPONDENT

**LEGAL HEIRS OF ALI AKBAR SK**

**1) ON DEATH OF SAHERA BEWA HER LEGAL HEIRS**

- 1(1) SMTI ATIFA BEGUM
- 2) SHRI SAHIDUL ISLAM

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010  
APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs  
RESPONDENT: SHRI MONTU SK & ORS

- 3) SHRI SAIFUL ISLAM
- 4) SHRI LUTFAR RAHMAN

**LEGAL HEIRS OF BAHADUR ISLAM**

- 1) SHRI ROHUL ISLAM
- 2) SHRI ROSHIDUL ISLAM
- 3) SHRI MOHIDUL ISLAM
- 4) SHRI HAFIZUR RAHMAN

.....PROFORMA RESPONDENT

This suit coming on this day (or having been heard on) 3/12/2016  
presence of

SHRI A. ISLAM, Advocate..... for the appellant(s).

SHRI B.K DAS, Advocate .....for the respondent

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

**JUDGMENT**

1. This first appeal has been preferred by the plaintiff/appellant on being dissatisfied with the judgment & decree dated 6/7/2010 passed by the learned Munsiff, Bilasipara in Title Suit No: 82/ 2007 (Originally Title Suit no:8/ 2006) whereby the learned trial court dismissed the suit on contest.
2. Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no:82/ 2007 was called for and received.

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

3. It would be pertinent to mention herein that the suit was initially instituted by the sole plaintiff, Bodiazamal but he died during the pendency of the appeal as such his legal heirs were substituted as appellants. In this judgment the word "plaintiff" would mean and include the original plaintiff, Bodiazamal.
4. In order to decide the appeal, let me narrate, in brief, the facts leading to this appeal:
5. The plaintiff, Bodiazamal had instituted this suit stating therein that he is the co-owner/ co-pattadar in respect of a plot of land measuring about 4 Bighas 3 Kathas 5 Lessas covered by Khatian no:109 of Dag no: 386 & 389 (more particularly described in the schedule C of the plaint) alongwith his brother, Bahadur Islam (proforma defendant no:3). The plaintiff pleaded that the above land was partitioned amicably between him and Bahadur Islam in the year 1990/ 1991 and separate pattas were issued in the name of the plaintiff and the sons of Bahadur Islam and thus the plaintiff became the sole owner of the plot of land measuring about 2 Bighas 1 Katha 19 Lessas covered by Medi Patta no: 103 (old)/ 186(new) of Dag no: 386(old)/ 546(new) which land is more particularly described in the schedule A of the plaint and is a part of schedule C land. The plaintiff possessed the schedule A land by constructing CI sheet roof house and also grew Mango trees, betel nuts trees bamboos trees etc. The plaintiff pleaded that the defendant no:1 and 2 did not have good relation with their father and as such they approached the plaintiff and accordingly the plaintiff allowed the defendant no:1 and 2 namely, Montu Sk and Mozaffar Ali to reside over

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

10 Lessas of land out of the schedule A land in the year 1990/ 1991 and the aforesaid land is more particularly described in the schedule B of the plaint and thus the defendants came into the possession of the schedule B land. The plaintiff thereafter requested the defendant no:1 and 2 to vacate the schedule B land during October, 1996 but they refused and further dispossessed the plaintiff from the entire schedule A land during the pendency of the Title Suit no:314/ 1996 which was instituted by them for eviction of the defendants from the schedule B land. Thereafter the plaintiff withdrew the earlier Title Suit no:314/ 1996 with a permission to file fresh suit which was granted on 19/12/2005 and thereafter instituted this suit for the declaration of the right, title and interest of the plaintiff over the suit land, i.e schedule A land and for eviction of the defendants.

6. The principal defendants filed their joint written statement stating therein that the suit is not maintainable. The abovenamed defendants pleaded that the plaintiff was never in possession of the schedule A land as such there is no question of permitting the defendants to reside over schedule B land or dispossessing the plaintiff from the entire schedule A land. The abovenamed defendants further contended that the plaintiff has no right, title or interest over the suit land as such even if any patta is issued in his name, then the same is illegal.
7. The abovenamed defendants pleaded that the suit land originally formed part of a plot of land measuring about 37 Bighas 2 Kathas 3 ½ Lessas of land belonging to their predecessor, Daulat Munshi. The defendants pleaded that Daulat Munshi had three sons namely, Afazuddin, Sk

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010  
APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs  
RESPONDENT: SHRI MONTU SK & ORS

Ahmed Ali and Azimuddin (father of plaintiff and proforma defendant no:3), but Azimuddin died prior to the death of his father, Daulat Munshi as such the plaintiff and the proforma defendant no:3 are not entitled to inherit the properties left behind by Daulat Munshi. The defendants further pleaded that their father, Afazuddin had shown the suit land as his private land in the year 1976 while he gave his return regarding Ceiling Surplus land; hence prayed for dismissal of the suit. The abovenamed defendants contended that the defendant no:1 and 2 are residing over the suit land since their birth and the defendant no:3 is residing thereon since her marriage to Afazuddin.

8. The proforma defendant no: 1 to 5 filed their joint written statement supporting the pleadings of the principal defendants.
9. Upon the pleadings of the parties, the learned trial court framed the following issues:

***(1) Whether the suit is maintainable?***

***(2) Is there any cause of action?***

***(3) Whether the plaintiff has right, title, interest over the suit land?***

***(4) Whether the plaintiff is entitled to get a decree of khas possession evicting the defendants by demolishing structures?***

***(5) Whether the plaintiff is entitled to get the reliefs as prayed for?***

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

10. After hearing both sides, the learned trial court by the impugned judgment dated 6/7/2010 dismissed the suit. On being aggrieved by and dissatisfied with the impugned judgment, the plaintiff/appellant 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 plaintiff has the right, title and interest over the suit land;***

***(iv) That the learned trial court ought to have held that the defendants are permissive occupiers in respect of the suit land;***

***(v) That the learned lower trial court ought to have decreed the suit.***

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

Let me now, discuss the materials on record and try to arrive at a definite finding as regards the issues in this suit.

#### **POINTS FOR DETERMINATION:**

***Point for determination no:1:Whether the learned trial Court had rightly decided the issue no:3 and 4 wherein it held that the plaintiff had failed to prove that he had the right, title and interest over the suit land and failed to prove that the defendants are permissive occupiers; hence not entitled to recover khas possession of the suit land?***

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

11. The learned counsel for the appellants had contended that the learned trial Court had erred in holding that the Kutcha Patta is not a document of title and that the Khatian is also not a document of title. The learned counsel for the appellants had contended that the plaintiff had produced the Kutcha patta in his name in respect of the suit land which is a proof of title and as such the learned trial Court ought to have held that he has the right, title and interest over the suit land. The learned counsel for the appellants had further contended that the plaintiff had proved that the suit land alongwith some other land was gifted to him and Bahadur Islam jointly by the original owners, Afazuddin and Sk Ahmed Ali and the said gift is proved; as such the learned trial Court had erred in holding that the plaintiff had no basis for inclusion of his name in the revenue records.

12. The learned counsel for the respondents, Shri B.K Das had contended that the learned trial Court had rightly held that the plaintiff failed to prove his title because mere entries in revenue records do not confer title. The learned counsel for the respondents had further contended that the plaintiff did not plead in his plaint that the suit land was gifted to him and as such the plaintiff cannot introduce evidence regarding the said gift and the same is beyond pleading as such the evidence regarding gift cannot be considered. It is further submitted on behalf of the respondents that the plaintiff failed to prove that the defendants are permissive occupiers in respect of the suit land; as such the respondents are not liable to be evicted.

13. I have perused the impugned judgment and the case record. It is revealed from the impugned judgment that the learned trial Court had

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

held that the plaintiff had failed to produce any documents of title and that the plaintiff failed to prove the basis on which the Kutcha patta was issued in his name; hence held that the plaintiff failed to prove that he had the right, title and interest over the suit land.

14. The perusal of the plaint reveals that the plaintiff, Shri Bodiozzamal had claimed that he has the right, title and interest over the schedule A land; whereas the defendants disputed the same; as such it is seen that the burden lie upon the plaintiff to prove that he had the right, title and interest over the schedule A land.

15. The plaintiff, Shri Bodiazamal (PW1) examined himself in support of his case and he had deposed that originally the schedule A land formed part of land covered by Khatian no:109 of Dag no:386 and 389 standing in the name of the plaintiff and his brother, Bahadur Islam. The plaintiff had produced the said Khatian which is marked as exhibit 1. The plaintiff (PW1) further deposed that later on the aforesaid land was partitioned in the year 1991 and accordingly the schedule A land fell in the share of the plaintiff and a separate patta was issued in his name. The plaintiff (PW1) had produced the Kutcha patta in respect of the schedule A land covered by Medi Patta no:103(old)/ 186(new) of Dag no:386(old)/ 546(new) which is marked as exhibit 2. It is seen that the plaintiff had produced the exhibit 1 and exhibit 2 to prove his right, title and interest over the suit land, i.e the schedule A land. There is absolutely nothing on record to doubt or disbelieve the exhibit 1 and exhibit 2. In fact the plaintiff had also examined Shri Atowar Rahman (PW5), the Lat Mandal of the office of the Assistant Settlement Officer, Bilasipara who had produced the records of rights and deposed that

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

Final Khatian no:109 was issued in the name of Bahadur Islam and the plaintiff. The PW5 had also deposed that the Dag no:386 of the said Khatian consisted of land measuring 2 Bighas 1 Katha 9 Lessas situated at Fakiranirjhar Part II. The PW5 had also deposed that the Final Khatian was prepared in the year 1961 after settlement. The above witness was not cross examined by the defendants. In fact there is absolutely nothing on record to doubt or disbelieve the above witness as such it is seen that the Khatian no:109 is issued jointly in the names of the plaintiff and his brother, Bahadur Islam. The bare perusal of the exhibit 1 specifically reveals that the plaintiff and his brother, Bahadur Islam were the raiyots in respect of the suit land. The plaintiff had further produced the Kutcha patta (Exhibit 2) issued in his name in respect of the schedule A land which specifically shows that the land of Khatian no:109 was partitioned and separate patta was issued in the name of the plaintiff in respect of the schedule A land. The plaintiff (PW1) had specifically deposed that the land of Khatian no:109 (Exhibit 1) was partitioned amongst them and thereafter separate patta was issued. The bare perusal of the exhibit 2 substantiates the above evidence of the PW1 because it is evident from the exhibit 2 that the land of Dag no:386, which earlier formed part of the Khatian no:109 was included in a separate patta in the name of the plaintiff. It is specifically proved from the bare perusal of the exhibit 1 and the exhibit 2 that the plaintiff has the right, title and interest over the schedule A land. The Patta is a document of title and is held to be correct unless the contrary could be shown.

16. The learned counsel for the respondents/ defendants had contended that the Kutcha Patta was issued in the name of the plaintiff but no final

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

Patta was issued; as such no reliance could be placed upon the same. The above contention of the respondents/ defendants is not sustainable because the Kutcha Patta is also a document of title and there is absolutely no material on record to show that the Kutcha patta was later on cancelled or otherwise rescinded as such it is held that the exhibit 2 sufficiently proves that the plaintiff has the right, title and interest over the suit land, i.e the schedule A land.

17. Moreover, the right of a raiyot is permanent and heritable and as such it is seen that the Khatian was issued in the name of the plaintiff and Bahadur Islam jointly vide exhibit 1 and thereafter the issuance of separate patta in respect of the suit land in the name of the plaintiff proves beyond all doubts that the plaintiff has the right, title and interest over the suit land.

18. The perusal of the impugned judgment reveals that the learned trial Court had refused to accept the exhibit 1 and the exhibit 2 because according to the learned trial Court the exhibit 2 does not mention the basis upon which the same was issued. In my considered opinion, the learned trial Court had erred in looking beyond the records of rights and trying to determine the basis of title, because the Patta in itself is a document of title and unless the same is cancelled by a competent authority, it would be sufficient to confer the right of a landholder. Moreover there is no requirement in law that Patta should mention the basis upon which it is issued, because Patta in itself is a document of title and it confers right, title and interest on the landholder.

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

19. The learned counsel for the appellants had aptly relied upon the judgment of the Hon'ble Gauhati High Court **Syed Nabab Hussain Vs Alkas Ali [(2008) 3 GLR 506]** to show that the Civil Court cannot go beyond the records of rights finally prepared and published and it is presumed to be correct and would be considered as conclusive evidence of the matter referred therein.
20. The learned counsel for the appellants had further relied upon the judgment of the Hon'ble Gauhati High Court in the case of **Maya Hajong Vs Manjula Hajong [ (2008) 3 GLR 839]** to show that the plaintiff could not be expected to prove his title beyond reasonable doubt, but a high degree of probability lending assurance of availability of title would be enough to shift the onus back on the defendant. In the instant case at hand, the plaintiff had shown that he was the raiyot in respect of the suit land alongwith his brother, Bahadur Islam and Khatian was issued in his name, which shows that record of rights were finally prepared and published and thereafter separate patta in respect of the suit land was also issued in the name of the plaintiff vide exhibit 2; as such it is held that the plaintiff had discharged his burden of proving that he had the right, title and interest over the suit land; as such the onus shifted upon the defendants to show that they had better title than that of the plaintiff or that the title of the plaintiff got extinguished later on, but no such fact is pleaded or proved by the defendants.
21. The learned counsel for the respondents had relied upon the judgment of the Hon'ble Gauhati High Court in the case of **Fazal Sheikh Vs Abdur Rahman [(1991) 1 GLR (NOC) 13]** to contend that the

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

Khatians issued under the Goalpara Tenancy Act are not documents of title but they at best can indicate possession. I have perused the above judgment and basing upon the above judgment even if it is held that the exhibit 1 does not confer any title as it is not a document of title, still the Patta (Exhibit 2) issued in the name of the plaintiff in respect of the suit land coupled with the fact that the Khatian (exhibit 1) is prima facie proof of possession leads me to infer that the plaintiff has the right, title and interest over the suit land because the Patta is a prima facie document of title.

22. The learned counsel for the respondents had further relied upon the judgment of the Hon'ble Gauhati High Court in the case **of Legal Heirs of Amrit Kakoti Vs Karuna Patgiri [2015 (6) GLJ 239]** to show that records of rights does not create or extinguish title. I have perused the above judgment and in my considered opinion there is no dispute as regards the law down therein, but the same is not applicable in the facts and circumstances of this case, because in the said case the title was sought on the basis of gift deed but it was observed therein that records of rights were corrected prior to the execution of the gift deed and moreover there was doubt regarding the genuineness of the said gift. In the instant case at hand, there is no doubt or dispute as regards the Khatian (exhibit 1) which shows that the plaintiff was a raiyot and thereafter Patta was issued in his name; as such it is seen that the records of rights were correctly prepared and Patta was rightly issued.

23. The learned counsel for the respondents had further contended that mere mutation entries in revenue records do not confer any title. There is no dispute as regards the settled position of law that mere mutation

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

entries in Jamabandi does not confer any title, but in the instant case at hand, the plaintiff had shown that he was a raiyot (occupancy tenant) in respect of the suit land and Patta was issued in his name, and Patta cannot be considered as mere mutation entries of Jamabandi.

24. In addition to the above, the plaintiff (PW1) and the PW2, Smti Meherjan Bewa had deposed that the suit land alongwith some other land measuring in total about 40 Bighas 10 Lessas was gifted to the plaintiff and Bahadur Islam by gift deed no:2002/ 1948 by Afazuddin and Sk Ahmed Ali, the original owners and as such they derived title over the suit land. The PW1 had produced the certified copy of the gift deed and the same is marked as exhibit 5. The learned counsel for the respondents had contended that the factum regarding the gift of the land was not pleaded by the plaintiff in his plaint as such the evidence in this regard cannot be considered as the same is beyond pleading. The respondents had further relied upon the judgment of the Hon'ble Gauhati High Court in the cases of **Tulan Ch Kakoty Vs Laburam Laskar [(2012) 5 GLR 71]** and **Banamali Deka Vs Upendra Nath Das [ (1995) 1 GLR 77]** to show that no evidence beyond pleadings can be looked into. There is no dispute as regards the settled position of law that evidence beyond pleading cannot be looked into, and even if the evidence regarding the aforesaid gift is not looked into, then also it is seen that the plaintiff had, independent of the evidence regarding the gift, proved his right, title and interest over the suit land on the basis of the exhibit 1 and exhibit 2.

25. It is seen from the above discussions that the plaintiff has proved his right, title and interest over the suit land; as such the onus now shifts

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

upon the defendants to show that the plaintiff does not have the right, title and interest over the suit land. The defendant, Shri Montu Sk (DW1) had deposed that the suit land formed part of a plot of land measuring about 37 Bighas 2 Kathas 3 ½ Lessas which was originally owned by Daulat Munshi (predecessor of the plaintiffs and defendants) and after his death the same devolved upon his two sons namely, Afazuddin (predecessor of the plaintiffs) and Sk Ahmed Ali, but Ahmed Ali went to Bangladesh and as such Afazuddin became the owner of the said land. The DW1 was cross examined but during cross examination he had specifically admitted that the suit land stands recorded in the name of the plaintiff.

26. The DW1 had also produced copies of return of land submitted under Assam Fixation of Ceiling of Land Holding Act, 1956 which are marked as exhibit A and exhibit B to show that Afazuddin had shown the suit land as his private land. In my considered opinion, the returns submitted under the Assam Fixation of Ceiling of Land Holding Act, 1956 and the exhibit A and exhibit B are not documents of title and the same does not confer any title. Merely because some persons had shown in the return some parts of land, it would not make him the owner of the said plot of land. The defendants ought to have produced some documents of title like the Khatian, or Patta or such other documents to show that Afazuddin had the right, title and interest over the suit land, but strangely enough the defendants failed to produce any such documents. If Afazuddin was actually the owner or the tenant in respect of the suit land, then he would surely have had raiyoti Khatians issues in his name or Jotedari Khatians or such other Khatians issued in his name, but the defendants had failed to produce any such documents showing the right

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

of Afazuddin as tenants or owner or Jotedar over the suit land; hence it is held that the defendants had failed to prove that the suit land was owned by Afazuddin.

27. The learned counsel for the respondents had further contended that the exhibit 1 mentions that the said land is situated at Fakirairjhar whereas the exhibit 2 mentions the land to be situated at Fakiranirjhar Part II; hence it cannot be held that the exhibit 1 and exhibit 2 are in respect of the same land. The perusal of the impugned judgment reveals that the learned trial Court had also observed the above difference. I have closely perused the exhibit 1 and the exhibit 2 which reveals that the exhibit 1 specifically mentioned the village as "Fakiranirjhar Dwitiya Khand" (assamese), i.e Fakiranirjhar Part II; and the exhibit 2 also mentions as "Fakiranirjhar Dwitiya Khand" (assamese), i.e Fakiranirjhar Part II.

28. In view of the above discussions it is held that the plaintiff has the right, title and interest over the schedule A land and as such the decision of the learned trial Court in the issue no:3 is hereby set aside and reversed.

29. It is further seen that the exhibit 1 is a Khatian and it is a prima facie proof of possession of the suit land in favour of the plaintiff; and similarly the Patta is also a prima facie proof of possession of the suit land, as such it is held that the plaintiff was in possession of the suit land and thereafter the defendants had dispossessed him. The learned counsel for the defendants had contended that they were all along in possession of the suit land. Even if it is held that the defendants were in

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

possession of the suit land since long, then also their possession, how so long does not confer any right, title or interest in their favour because the defendants had neither pleaded nor proved that they are adversely possessing the suit land.

30. Moreover, the defendants had failed to prove any superior title or any other right to remain in possession of the suit land to the exclusion of the plaintiff as such the possession of the defendants is that of an trespasser; hence they are liable to be evicted and they cannot resist their eviction as against the true owner, i.e the plaintiff.

31. In view of the above discussions it is held that the defendants are liable to be evicted from the schedule A land; as such the decision of the learned trial Court in the issue no:4 is hereby set aside and reversed.

32. In view of the above discussions it is held that plaintiff has the right, title and interest over the schedule A land and it is further held that the defendants are liable to be evicted from the suit land and the plaintiff is entitled to the khas possession of the suit land; as such the decision of the learned trial Court in the issue no:3 and 4 are hereby set aside and reversed.

33. DECISION: The decisions of the learned trial court in the issue no: 3 and 4 are hereby set aside and reversed and it is held that the plaintiff has the right, title and interest over the suit land and he is entitled to recover the khas possession of the suit land by evicting the defendants.

34. I have perused the decisions of the learned trial Court in the issue no:1, and it appears that the decision rendered in the above issue is correct as

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010  
APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs  
RESPONDENT: SHRI MONTU SK & ORS

such the same is affirmed. Moreover, the appellants had not challenged the decision of the learned trial Court in the above issue.

35. The perusal of the impugned judgment further reveals that the learned trial Court had held that in the issue no:2 that the plaintiff does not have the cause of action for this suit. In my considered opinion, the learned trial Court had erred in holding so because the plaintiff had pleaded that he has the right, title and interest over the suit land and that the defendants had dispossessed him as such he is entitled to recover possession of the same and he had in fact proved the same; as such it is seen that the plaintiff has the cause of action for this suit. In view of the above, the decision of the learned trial Court in the issue no:2 is hereby set aside and reversed and it is held that the plaintiff has the cause of action.

36. In view of the above discussions, more particularly the decisions reached in the issue no: 3 and 4 it is held that the plaintiff is entitled to the relief of declaration of his right, title and interest over the schedule A land and he is also entitled to recover the possession of the schedule A land by evicting the defendants; as such the decision of the learned trial Court in the issue no:5 is hereby set aside and held that the plaintiff is entitled to the above stated reliefs.

#### ORDER

37. In view of the above discussions the appeal is allowed on contest with cost and the impugned judgment and decree dated 6/7/2010 passed by the learned Munsiff, Bilasipara in Title Suit no: 82/ 2007 is hereby set aside and reversed. The suit of the plaintiff is hereby decreed and it is

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:42 OF 2010

APPELLANT: ON DEATH OF BODIAZZAMAL HIS LEGAL HEIRS & ORS Vs

RESPONDENT: SHRI MONTU SK & ORS

held that the plaintiff and after his death the appellants herein have the right, title and interest over the schedule A land and they are entitled to recover the khas possession of the schedule A land by evicting the defendants/ respondents. The defendants/ respondents are allowed time of three months to vacate and hand over the khas possession of the suit land or else the appellants would be at liberty to get the decree executed. The period of three months is allowed to the defendants/ respondents to vacate the suit land so that they could search for alternate accommodation.

38. Prepare decree accordingly.

39. The appeal is allowed on contest with cost.

40. 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 12<sup>th</sup> day of January, 2017 at Dhubri.

Yusuf Azaz,  
Civil Judge, Dhubri

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.