

TITLE APPEAL NO:69 OF 2013
APPELLANT: SHRI ABDUL KARIM SK & ORS Vs
RESPONDENT: SHRI AMJAD ALI & ORS

Assam Schedule VII, Form No.13(2)

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: 69/ 2014

Thursday, the 19th January, 2017

1) SHRI ABDUL KARIM SK

2) LEGAL HEIRS OF LT KHOSH MAHMUD

2a) SHRI ABUL HUSSAIN

2b) SHRI ALIAZOM SK

2c) SMTI KHOTEZA BEWA

2d) SMTI MOMENA BEWA

2e) SMTI SOLEMA BIBI

2f) SMTI SAMIYA BIBI

2g) SMTI HALIMA BIBI

2h) SMTI MAFIDA BIBI

2i) SMTI HAMIDA BIBI

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

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3) LEGAL HEIRS OF LT JOSHMATULLA SK

- 3a) SHRI AKTAR HUSSAIN
- 3b) SHRI SIDDIQUE HUSSAIN
- 3c) SHRI MOINUL HOQUE
- 3d) SHRI AINUL
- 3e) SMTI JOBEDA BIBI
- 3f) SMTI RAFIKA BIBI
- 3g) SMTI ROKEYA BIBI
- 3h) SMTI RASHIDA BIBI
- 3i) SMTI SAHIDA BIBI

..... APPELLANT (s).

- versus-

- 1) SHRI AMJAD ALI

.....RESPONDENT

- 1) SHRI DILBAR ALI
- 2) SHRI DELDAR ALI
- 3) SHRI DUDHBAR ALI

.....PROFORMA RESPONDENTS

This suit coming on this day (or having been heard on) 13/12/2016
presence of:

SHRI JOYNAL ABEDIN, Advocate..... for the appellant(s).

NONEfor the respondent.

And having stood for consideration to this day, the court

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delivered the following judgment :

JUDGMENT

1. This first appeal has been preferred by the plaintiffs/appellants on being dissatisfied with the judgment & decree dated 3/7/2014 passed by the learned Munsiff No.1, Dhubri in Title Suit No:361/ 2013 whereby the learned trial court dismissed the suit.
2. Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no:361/ 2013 was called for and received. The respondents did not appear and contest the appeal as such the same 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 plaintiffs/ appellants have pleaded that the plaintiff no:1, Shri Abdul Karim Sk, and the predecessors of the remaining plaintiffs namely, Khosh Mahmud and Joshmotulla Sk (both are dead) jointly purchased the suit land measuring about 1 Bigha 2 Katha 16 Lessas covered by Dag no: 375 of Khatian no:183 situated at village- Geramari Part II by way of registered sale deed no:7372/ 1973 and got delivery of possession of the same and their names were also mutated in the revenue records. According to the plaintiffs, the principal defendant, Shri Amjad Ali requested them to allow him to reside over the suit land and the plaintiffs allowed the principal defendant to possess the same, but the defendant is refusing to vacate the same now; hence the suit praying for the declaration of the right, title and interest of the plaintiffs

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over the suit land and for eviction of the defendant and for mesne profits.

5. The defendants remained absent and did not file written statement as such the suit proceeded ex-parte against them.
6. As the defendants did not file written statement, no issues were framed, but the learned trial Court dismissed the suit of the plaintiff vide the impugned judgment and decree dated 3/4/2014 by holding that the plaintiffs have failed to prove their right, title and interest over the suit land.
7. On being aggrieved by and dissatisfied with the impugned judgment, the plaintiffs/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 had erred in holding that the plaintiffs have failed to prove their right, title and interest over the suit land;

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

DISCUSSION, DECISION & REASONS FOR THE DECISION

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8. 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.
9. It would be pertinent to mention herein that the appellants had preferred a petition under Order 41 Rule 27 CPC praying therein to allow them to adduce additional evidence and to prove the sale deed no:7392/ 1973 by which they allegedly purchased the suit land. The appellants had contended that due to typographical error, they had wrongly mentioned the number of the sale deed as "7372" instead of "7392" as such they may be allowed to prove the aforesaid sale deed and to adduce additional evidence in this regard. The above prayer was allowed and the appellants were permitted to adduce additional evidence and accordingly the appellants/ plaintiffs produced the sale deed no:7392/ 1973 and adduced additional evidence.
10. It would further be pertinent to mention herein that the defendants/ respondents remained absent during the proceeding as such the witness for the appellants was not cross examined.

POINTS FOR DETERMINATION:

Point for determination no:1:Whether the learned trial Court had rightly held that the plaintiffs/ appellants had failed to prove their right, title and interest over the suit land and failed to prove that the principal defendant was a permissive occupier hence liable to be evicted?

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11. The learned counsel for the appellants/ plaintiffs, Shri Joynal Abedin had contended that the plaintiffs/ appellants had produced the sale deed by which they had purchased the suit land and had also produced the Patta in respect of the suit land which was issued in the names of the purchasers of the suit land, i.e the plaintiff no:1 and Khosh Mahmud and Joshmotulla Sk; hence the right, title and interest of the plaintiffs ought to be declared.

12. I have perused the impugned judgment and the case record. The perusal of the impugned judgment reveals that the learned trial Court had held that the plaintiffs have failed to prove that they had purchased the suit land from the original owner. Let me now discuss the materials on record and try to arrive at a definite finding in respect of the above issues in the light of the additional evidence adduced by the plaintiffs as well as the evidence already on record in the trial Court. The plaintiff, Shri Abdul Karim Sk (PW1) had examined himself in support of his case and he had specifically deposed that he alongwith Khosh Mahmud and Joshmotulla Sk had purchased the suit land by way of registered sale deed no:7392/ 1973 from the original owner, but in the plaint due to typographical error the deed no:7372/ 1973 was mentioned inadvertently. The plaintiff, Shri Abdul Karim Sk (PW1) had produced the original sale deed no:7392/ 1973 (Exhibit 5) the perusal of which reveals that the plaintiff, Shri Abdul Karim Sk alongwith Khosh Mahmud and Joshmotulla Sk had purchased the suit land. The plaintiff, Shri Abdul Karim Sk (PW1) had further produced the Patta issued in their names in respect of the suit land and the same is marked as exhibit 8. It is evident from the exhibit 5 and exhibit 8 that the plaintiff, Shri Abdul

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Karim Sk and Khosh Mahmud and Joshmotulla Sk had purchased the suit land and as such the plaintiff, Shri Abdul Karim Sk and after the death of Khosh Mahmud and Joshmotulla Sk, their legal heirs and successors, i.e the remaining plaintiffs are the owners of the suit land having the right, title and interest over the same. There is absolutely nothing on record to doubt or disbelieve the PW1.

13. The PW1, Shri Abdul Karim Sk had further deposed that the principal defendant/ respondent, Shri Amjad Ali is their permissive occupier in respect of the suit land and he is refusing to vacate the suit land inspite of requests being made by the plaintiff. There is nothing on record to doubt or disbelieve the PW1; as such it is held that the defendant, Shri Amjad Ali is a permissive occupier and as he is not vacating the suit land even after requests being made by the plaintiffs, he is nothing but a trespasser as such he is liable to be evicted from the suit land.

14. In view of the above discussions, it is held that the plaintiffs have the right, title and interest over the suit land and it is further held that the principal defendant/ respondent, Shri Amjad Ali is liable to be evicted from the suit land.

15. DECISION: The decision of the learned trial Court in the impugned judgment is set aside and reversed and it is held that the plaintiffs/ appellants have the right, title and interest over the suit land and the defendant/ respondent, Shri Amjad Ali is liable to be evicted from the suit land.

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ORDER

16. In view of the above discussions, the appeal is allowed ex-parte with cost and as such the impugned judgment and decree dated 3/7/2014 passed by the learned Munsiff No:1, Dhubri in Title Suit no: 361/ 2013 is hereby set aside. It is hereby decreed and declared that the plaintiffs have the right, title and interest over the suit land. It is further directed that the defendant/ respondent, Shri Amjad Ali vacate and hand over the khas possession of the suit land to the plaintiffs within three months from today or else the plaintiffs would be at liberty to get the decree executed. The period of three months is granted to the defendant so that he could search for some alternative accommodation.

17. Prepare decree accordingly.

18. The appeal is allowed ex-parte with cost.

19. 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 19th day of January, 2017 at Dhubri.

Yusuf Azaz,
Civil Judge, Dhubri

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.