

TITLE APPEAL NO: 93 & 107 OF 2013

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: 93/ 2013

Saturday, the 7th day of January, 2017.

1) ON DEATH OF HIMANGSHU GHOSH HIS LEGAL HEIRS

- 1a) SMTI HEMA GHOSH
- 1b) SHRI ABHIJIT GHOSH
- 1c) SMTI POLI MAJUMDAR
- 1d) SMTI JOLY GHOSH

- 2) SHRI RATAN GHOSH
- 3) SMTI ALO RANI GHOSH
- 4) SMTI NITU GHOSH
- 5) SMTI MONITA GHOSH
- 6) SHRI SUMON GHOSH

..... APPELLANT (s).

- versus-

- 1) SHRI RAM SAGAR BIN ALIAS GUDRA BIN
- 2) SHRI DILIP BIN
- 3) SHRI DIPAK RAJAK
- 4) SHRI AMAR RAJAK
- 5) SMTI BEGUMA RAJAK
- 6) SMTI GODANI RAJAK

.....RESPONDENTS

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YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

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TITLE APPEAL No.107/ 2013

- 1) SHRI DIPAK RAJAK
- 2) SHRI AMAR RAJAK
- 3) SMTI BEGUMA RAJAK

..... APPELLANT (s).

- versus-

- 1) SHRI RAM SAGAR BIN ALIAS GUDRA BIN
- 2) SHRI DILIP BIN

.....RESPONDENTS

1) ON DEATH OF HIMANGSHU GHOSH HIS LEGAL HEIRS

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- 4) SHRI NITU GHOSH
- 5) SMTI MONITA GHOSH
- 6) SHRI SUMON GHOSH

.....PROFORMA RESPONDENT

This suit/appeal coming on this day (or having been heard on) 23/11/2016
presence of

SHRI A. K PAUL, Advocate for the plaintiff.

SHRI B.K DAS, SHRI S.K DAS, Advocate for the principal defendants.

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

JUDGMENT

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1. By way of this common judgment I am going to dispose both the Title Appeal no:93/ 2013 and the Title Appeal no:107/ 2013 which are preferred against the same judgment and decree dated 16/9/2013 passed by the learned Munsiff No:1, Dhubri in Title Suit no: 591/ 2006.
2. These two first appeals have been preferred by the principal defendants and the proforma defendants separately on being dissatisfied with the judgment & decree dated 16/9/2013 passed by the learned Munsiff No:1, Dhubri in Title Suit No.591/ 2006 whereby the learned trial court decreed the suit of the plaintiffs by holding that the plaintiffs have the right, title and interest over the schedule B land and also directed the eviction of the defendants from the schedule B land.
3. Upon admission of the appeals for hearing, the notices were issued to both the parties and the original case record of Title Suit no:591/ 2006 was called for and received. Both the parties contested the appeal.
4. I have heard the learned counsels for both the sides.
5. In this judgment I would use the words "plaintiffs" and "defendants" and "proforma defendants" to describe the parties in order to avoid conflict, because two separate appeals are preferred against the same judgment and the appellants in one appeal are the respondents in the other appeal.
6. In order to decide the appeals, let me narrate, in brief, the facts leading to these appeals:

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7. The plaintiff, Shri Ram Sagar Bin and Shri Dilip Bin had instituted this suit stating therein that their predecessors, Ram Khelaun Bin and Shri Mangal Bin were originally the tenants under the Jotedar, Samsul Hoque in respect of several contiguous plots of land measuring 1 Katha 1 Lessas covered by Dag no:302; and land measuring 1 Katha 5 Lessas covered by Dag no: 306 of Khatian no: 145; and land measuring 8 Lessas covered by Dag no: 303 of Khatian no:148 (more particularly described in schedule A of the plaint). The above land originally formed part of the Bidyapara Lahkiraj Estate and the same was acquired by the Government and after acquisition the name of Mangal Bin was recorded alongwith one Faujdari Bin in Khatian no:148, but the said Faujdari Bin abandoned his share in Khatian no:148 and took his share in the land covered by Dag no:306 of Khatian no:145 and sold his share in the Dag no:306 to the predecessors of the principal defendants namely, Tribeni Rajak. The plaintiffs pleaded that Faujdari Bin sold about 17 Lessas in Dag no:306, being the half share of 1 Katha 5 Lessas of land of Dag no:306 and half share of 8 Lessas of land of Dag no:303 and thereafter Tribeni Bin got his name mutated in the revenue records in respect of the entire land of Dag no:306 under Patta no:103, but no land covered by Dag no:302 or 303 was sold to Tribeni Bin.
8. According to the plaintiffs, they had earlier instituted Title Suit no: 229/ 1993 against the legal heirs of Surendra Nath Ghose, i.e the proforma defendants herein on the allegation that the aforesaid proforma defendants namely, Himangshu Ghose, Ratan Ghose and Manik Ghose (since deceased) forcibly dispossessed the plaintiffs from a plot of land

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measuring about 1 Katha 3 Lessas out of the schedule A land described above. The plaintiffs have more particularly described the above plot of land in schedule B of the plaint. The plaintiffs pleaded that the proforma defendants had dispossessed them sometime during January, 1991 to February, 1992 and to perpetuate the dispossession the proforma defendants erected a brick boundary wall measuring about 37 feet along the western boundary of the schedule A. The plaintiffs pleaded that the above schedule B land fell in the Dag no:302 and 303 belonging to the plaintiffs; hence the plaintiffs had instituted the Title Suit no:229/ 1993 for eviction of the proforma defendants herein, but during the pendency of the said suit an Amin Commissioner was appointed for survey of the land and from the report of the Amin Commissioner it came to the knowledge of the plaintiffs on 12/7/1998 that Tribeni Rajak is occupying the Eastern part of the schedule A land measuring about 20 feet X 94 feet (about 7 Lessas of Dag no:302 and about 6 Lessas of Dag no: 303); as such the plaintiffs herein sought for amendment of the plaint of Title Suit no:229/ 1993 and also sought for impleadment of Tribeni Rajak, but the trial Court rejected the prayer for amendment as such the plaintiffs prayed for allowing them to withdraw the suit with liberty to file a fresh suit but the said prayer was also rejected and as such the plaintiffs herein preferred a Civil Revision before the Hon'ble Gauhati High Court in CRP no: 350/ 2000 but the same was also dismissed; hence the plaintiffs were left with no option but to institute this fresh suit against the legal heirs of Tribeni Rajak praying for their eviction from the schedule B land and also for recovery of possession by evicting the defendants. The plaintiffs have alleged that Tribeni Rajak had

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dispossessed the plaintiffs from the suit land alongwith the proforma defendants.

9. The principal defendants, i.e the legal heirs of Tribeni Rajak (appellants of Title Appeal no: 107/ 1993) filed their joint written statement stating therein that the suit is not maintainable and that the suit is barred by res- judicata. The defendants further pleaded that the suit is barred by limitation. According to the defendants, their predecessor, Tribeni Rajak had purchased land from Lt Kamakhya Bin and Garib Bin, who are the sons of Lt Faujdari Bin by way of three registered sale deeds being sale deed nos: 232/ 1970, 10914/ 1974, and 3601/ 1977 and came into possession of his purchased land and the land under their possession is the said land purchased by way of the above sale deeds from the original owners. The defendants further pleaded that the name of Tribeni Rajak is rightly recorded in the revenue records in respect of the suit land; hence prayed for dismissal of the suit.

10. The proforma defendants, i.e the legal heirs of Surendra Ghose (the appellants of Title Appeal no:93/ 2013) also filed their joint written statement stating therein that the suit is not maintainable and that the same is barred by limitation and is barred under the principles of res- judicata in view of the pendency of another suit being Title Suit no:229/ 1993. The abovenamed proforma defendants pleaded that their predecessor, Surendra Nath Ghose (since deceased) had been in possession of the western portion of the schedule A land since the year 1960 and he raised a boundary wall in the year 1984 with the consent of the plaintiff no:1, Ram Sagar Bin and in his presence; hence there is no

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question of dispossessing the plaintiffs. The abovenamed proforma defendants pleaded that they are in possession of the western portion of the schedule A land by constructing their residential houses thereon within the pucca boundary walls to the knowledge of the plaintiffs. It is further pleaded by them that the plaintiffs realized their mistake that the proforma defendants herein did not dispossess them and as such the plaintiffs herein tried to amend the plaint in Title Suit no:229/ 1993 but the same was rejected; hence the plaintiffs had instituted this suit illegally. The abovenamed defendants further pleaded that the name of Surendra Nath Ghose was rightly recorded in the revenue records in respect of Dag no:302 of Khatian no: 145 and Dag no: 303 of Khatian no:148 and Miyadi Patta no: 1034(new) of Dag no:1914 (new) was also issued in the name of the proforma defendants on the basis of their title; hence prayed for dismissal of the suit.

11. Upon the pleadings of the parties, the learned trial court framed the following issues:

- (1) Whether the suit is maintainable?***
- (2) Whether the suit is barred by limitation?***
- (3) Whether the suit is bad for non joinder of necessary parties?***
- (4) Whether the suit is barred by principles of res judicata?***
- (5) Whether the suit is barred by principles of estoppel, waiver and acquiescence?***
- (6) Is there any cause of action for the suit?***
- (7) Whether the plaintiffs have title over the B schedule land?***

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(8) Whether the plaintiffs are entitled to get decree as against the defendants as prayed for?

(9) To what other relief the plaintiffs are entitled?

12. During trial both the parties led their evidence.

13. After hearing both sides, the learned trial court by the impugned judgment dated 16/9/2013 decreed the suit declaring the right, title and interest of the plaintiffs over the suit land and also directed the eviction of the defendants. On being aggrieved by and dissatisfied with the impugned judgment both the principal defendants and the proforma defendants have filed two separate appeals amongst others on the following grounds:

GROUND TAKEN BY THE PRINCIPAL DEFENDANTS:

(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 wrongly relied upon the report of the Amin Commissioner without formal proof of the same because the said report was allegedly given in Title Suit no: 229/ 1993 and not in this suit; hence the same could not have been read in this suit without proving the same;

(iv) That the suit is barred by limitation because admittedly the defendants are occupying the suit land for more than 12 years adversely to the interest of the plaintiffs;

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(v) That the learned trial Court ought to have considered the sale deeds submitted by the defendants and ought to have held that the defendants have the right, title and interest over the suit land and are in possession of the same;

(vi) That the learned trial Court ought to have dismissed the suit.

GROUND TAKEN BY THE PROFORMA DEFENDANTS:

(i) That the learned trial Court did not discuss and decide the issue no:5 regarding cause of action; as such the impugned judgment is not sustainable on this ground alone;

(ii) That the learned trial Court had wrongly relied upon the report of the Amin Commissioner without formal proof of the same because the said report was allegedly given in Title Suit no: 229/ 1993 and not in this suit; hence the same could not have been read in this suit without proving the same;

(iii) That the learned trial court had wrongly held that the plaintiffs have the right, title and interest over the suit land because the suit land is owned by the proforma defendants;

(iv) That the learned trial Court ought to have dismissed the suit;

DISCUSSION, DECISION & REASONS FOR THE DECISION

POINT FOR DETERMINATION NO:1: Whether the learned trial Court had rightly decided the issue no:7 wherein it held that

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the plaintiffs have proved their right, title and interest over the suit land?

14. The learned counsel for the defendants/ appellants had contended that the learned trial Court had erred in holding that the plaintiffs have the right, title and interest over the schedule B land because the schedule B land is owned by the defendants and not the plaintiffs. The learned counsel for the appellants/ defendants further pleaded that the learned trial Court had misplaced his reliance upon the report of the Amin Commissioner (exhibit 4) without formal proof of the same and moreover the said report was called for in the Title Suit no:229/ 1993 and not in this suit; hence the same could not have been read in evidence in this suit.
15. The learned counsel for the plaintiffs, Shri A.K Paul had contended that the learned trial Court had rightly held that the plaintiffs have the right, title and interest over the suit land. The learned counsel for the plaintiffs have further contended that the defendants claimed that Tribeni Rajak purchased the suit land by way of three registered sale deeds, however when the total land transferred by way of the three sale deeds are added up it comes out to 2 Katha 2 Lessas, which is in excess to the land under the said Khatian no:148; as such the said sale deeds could not have been relied upon and rightly not relied upon by the learned trial Court.
16. The perusal of the impugned judgment reveals that the learned trial Court had relied upon the khatians (Exhibit 1 to 3) and the report of the Amin Commissioner (Exhibit 4) and held that the plaintiffs have the

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right, title and interest over the suit land and as such the defendants are liable to be evicted therefrom.

17. Now let me discuss the materials on record and try to arrive at an independent finding as regards the above issues. It is revealed from the rival pleadings of both the parties that the plaintiffs are claiming their right, title and interest over the suit land and similarly the defendants are also claiming their right, title and interest over the suit land; as such the burden lies upon the plaintiffs to prove that they have the right, title and interest over the suit land.

18. The plaintiffs have alleged that they have the right, title and interest over the schedule B land. It is seen that the schedule B land allegedly consists of land measuring 7 Lessas out of Dag no: 302 and land measuring 6 Lessas out of Dag no:303, i.e total of 13 Lessas of land covered by Dag no: 302 and 303. In order to prove their right, title and interest over the suit land the plaintiffs have produced three khatians in respect of the suit land which are marked as exhibit 1, 2 and 3. I have perused the above referred exhibits. The exhibit 1 is the final khatian in respect of Khatian no:145 of Dag no: 302, i.e one of the suit Dags. The perusal of the exhibit 1 reveals that the Dag no:302 consists of total land measuring 1 Katha 1 Lessas only out of which the name of Surendra Nath Ghose is recorded in respect of land measuring 4 ½ Lessas and the name of Mangal Bin (father of plaintiff no:1) is recorded in respect of remaining portion of the land. It is seen from the above that the plaintiffs' predecessor, Mangal Bin is not the recorded owner of the entire land covered by Dag no:302, but he owns only land measuring about 16 ½ Lessas therein. It is seen from the exhibit 1 that

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the plaintiffs are not the sole owners of the land covered by Dag no:302, but they are co-owners and Surendra Nath Ghose also has share in the said Dag no:302. The perusal of the exhibit 1 does not reveal the exact boundary over which the share of land belonging to Surendra Nath Ghose falls and over which the share of land of Mangal Bin falls; as such it is held that it cannot be ascertained as to whether the land measuring 7 Lessas of Dag no:302 (part of schedule B land) actually falls within the land of the plaintiffs or not.

19. Similarly the plaintiffs produced the final khatian in respect of the Dag no:303 (exhibit 2). I have perused the exhibit 2 and it appears that the Khatian no: 148 comprises of two Dags being Dag no:303 and 306, out of which the Dag no:303 is the suit Dag. It further appears from the exhibit 2 that the suit Dag no:303 comprises of land measuring only 8 Lessas and it is further seen that the name of the plaintiffs or their predecessors is not recorded in the aforesaid khatian. In fact the perusal of the remarks given in the exhibit 2 reveals that the entire land of Dag no:303 is recorded in the name of Surendra Nath Ghose as per Order dated 12/2/1978 passed in DM case no:164/ 76-77; as such it is seen that the plaintiffs do not have any right, title or interest over the land measuring 8 Lessas covered by the suit Dag no:303. It is further revealed from the exhibit 2 that the land measuring 1 Katha 5 Lessas covered by the other Dag no:306 is entirely recorded in the name of Tribeni Rajak, i.e the predecessor of the present defendants vide order dated 31/1/1976 in DM case no: 62/ 75-76. It is, therefore, held that the plaintiffs do not have any right, title or interest over the land covered by Dag no:303, i.e the remaining part of schedule B land.

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20. The plaintiffs had also produced the final khatian in respect of Khatian no: 153 of Dag no:304 (exhibit 3) which is solely recorded in the name of Surendra Nath Ghose; as such the exhibit 3 is also of no assistance to the plaintiffs.
21. Other than the exhibit 1, exhibit 2 and exhibit 3 discussed above the plaintiffs have failed to bring on record any other document of title in their favour; as such it is held that the plaintiffs have failed to prove that they have the right, title and interest over the specific schedule B land.
22. The plaintiffs have also produced the certified copy of the report of the Amin Commissioner which was prepared after survey in the previous Title Suit no:229/ 1993. The perusal of the impugned judgment reveals that the learned trial Court had relied upon the observations made in the aforesaid survey report (Exhibit 4). The learned counsel for the appellants/ defendants had contended that the exhibit 4 cannot be taken into consideration because the said report was submitted in the Title Suit no:229/ 1993 and not in this case and as such the same is not admissible in evidence without formal proof of the same because the same does not form part of a record of this suit.
23. The learned counsel for the plaintiffs, on the other hand, had contended that the report of the Amin Commissioner forms part of the record and it is a public document as such its certified copy is admissible.
24. In my considered opinion, the report of the Amin Commissioner (exhibit 4) does not form part of the evidence in the instant case at hand because the said report was called for and prepared in respect of the Title Suit no:229/ 1993 and not in this case. In the said case the

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principal defendants were admittedly not parties and as such the report of the said suit would definitely not be binding upon the principal defendants herein because they had no opportunity to challenge the findings of the said report.

25. Further, the report of the Amin Commissioner (exhibit 4) would have been admissible in this case also like any other document if the said Amin Commissioner was examined as regards his report, but strangely enough the plaintiffs failed to examine the said Amin Commissioner who had allegedly prepared the report. The Amin Commissioner who had allegedly prepared the above report ought to have been examined by the plaintiffs in order to prove the contents of the exhibit 4, and without the formal proof of the contents of the exhibit 4 and without affording an opportunity to the defendants to cross examine the maker of the exhibit 4, the report of the Amin Commissioner (Exhibit 4) cannot be taken into consideration. There is absolutely no doubt that the exhibit 4 (report of Amin Commissioner) formed part of the record of the Title Suit no:229/ 1993, but the said report would not form part of the record of this suit automatically. The plaintiff could rely upon the above report like any other document, but in order to make the above document (Exhibit 4) admissible and in order to rely upon the contents of the exhibit 4, the maker of the exhibit 4 ought to have been examined and not otherwise. In view of the above discussions it is held that the exhibit 4 is not sufficiently proved by examining its maker and as such the same cannot be relied upon and its contents cannot be taken into consideration.

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26. The perusal of the impugned judgment reveals that the learned trial Court had relied upon the exhibit 4 (report of Amin Commissioner) and based upon the same he concluded that Tribeni Rajak, i.e the predecessor of the defendants had occupied the schedule B land, but considering that the exhibit 4 is held to be inadmissible in evidence without formal proof of the same, it is held that the learned trial Court had erred in arriving at the aforesaid conclusion on the basis of the exhibit 4.
27. The learned counsel for the plaintiffs has contended that the documents submitted by the plaintiffs as well as the defendants reveal that Tribeni Rajak had land only in Dag no:306 and as such the schedule B land which is covered by Dag no:302 and 303 is not owned by Tribeni Rajak and hence they are liable to be evicted. The above contention of the plaintiffs is not sustainable because the burden lie upon the plaintiffs to prove that they have the right, title and interest over the schedule B land and only then they would be entitled to eviction of the defendants from the suit land, but in the instant case at hand the plaintiffs failed to prove that they have the right, title and interest over the suit land as such they have no right to evict the defendants, i.e the legal heirs of Tribeni Rajak or for that matter the proforma defendants who are the legal heirs of Surendra Nath Ghose.
28. Further, it is revealed from the evidence of the PW1, Shri Dilip Bin that the plaintiffs have their residential house on the Western part of the schedule A land and that there is a brick boundary wall on the Eastern boundary of their residence. The PW1, Shri Dilip Bin further admitted that on the Eastern side of the schedule B land there is a boundary wall

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and on the Eastern side of the boundary wall the legal heirs of Tribeni Rajak, i.e the defendants are possessing their land, which specifically shows that the PW1 had admitted that the defendants, i.e the legal heirs of Tribeni Rajak are occupying land beyond the boundary of the schedule B; as such it is held that the plaintiffs have failed to prove that the defendants are occupying the schedule B land.

29. It is, therefore, held that the plaintiffs do not have the right, title and interest over the entire schedule B land; as such the learned trial Court could not have declared the right, title and interest of the plaintiffs over the suit land and could not have directed the eviction of the defendants from the schedule B land.

30. In view of the above discussions it is held that the learned trial Court had erred in holding that the plaintiffs have the right, title and interest over the schedule B land and as such it is further held that the defendants are not liable to be evicted.

31. DECISION: The decision of the learned trial court in the issue no: 7 is set aside and reversed and it is held that the plaintiffs do not have the right, title and interest over the suit land.

POINT FOR DETERMINATION NO:2: Whether the learned trial Court had rightly decided the issue no:2 wherein it held that the suit is within the prescribed period of limitation?

32. The perusal of the impugned judgment reveals that the learned trial Court had held that suit is not barred by limitation and while arriving at the above finding the learned trial Court had relied upon the statement of the plaintiffs wherein the plaintiffs stated that they came to know that

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Tribeni Rajak was occupying the suit land by dispossessing the plaintiffs only after the Amin Commissioner submitted his report in Title Suit no:229/ 1993.

33. In my considered opinion, the learned trial Court had erred in holding that the date of commencement of the period of limitation in the instant case would be from the date of the report of the Amin Commissioner, because even if it is held that the defendants or their predecessor, Tribeni Rajak had dispossessed the plaintiffs from the suit land then the date of commencement of the period of limitation would start from the date of dispossession and not from the date of the report of the Amin Commissioner because the act of dispossession is such an act which can be seen. In fact in the instant case at hand the plaintiffs had admittedly instituted Title Suit no:229/ 1993 alleging that the proforma defendants had dispossessed them from the suit land sometime during the year 1991-92; as such it is seen that the plaintiffs were actually dispossessed from the suit land in the year 1991- 92 and not in the year 1998 when the report of the Amin Commissioner was submitted; hence the period of limitation would start from the date of dispossession and not from the date of the report of the Amin Commissioner.

34. In fact the PW2, Shri Nagina Prasad Bin had deposed that Tribeni Rajak purchased his land in Dag no: 306 in the year 1970 and since then he is in possession of the suit land. The PW2 had further deposed that Tribeni Rajak is in possession of the suit land since the last more than 20/25 years, which shows that Tribeni Rajak might have come into possession of the land where they are presently residing sometime during the year 1986-91. Even if it is held that Tribeni Rajak came into possession of the

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land in the year 1991 then also this suit is barred by limitation because the period of limitation for a suit of this nature is 12 years from the date of dispossession under Article 64 of the Limitation Act, 1963.

35. In the instant case at hand, it is already held that the plaintiffs have failed to prove their right, title and interest over the suit land as such the instant suit for recovery of possession would be covered by Article 64 of the Limitation Act, 1963 and not under Article 65 of the Limitation Act, 1963, because Article 65 would come into play when the suit for recovery of possession is based upon title. As such, though it is not proved, but even if it is held for the sake of argument that the plaintiffs were in possession of the suit land prior to they being dispossessed in the year 1991, then also this suit which is instituted in the year 2006 is much beyond the prescribed period of limitation of 12 years from the date of dispossession; hence it is held that the suit is barred by limitation.

36. The perusal of the impugned judgment further reveals that the learned trial Court had discussed about the Title Suit no:229/ 1993 while discussing the above issue and held that the plaintiffs herein sought for impleadment of Tribeni Rajak before the trial Court upon getting the knowledge that Tribeni Rajak had dispossessed the plaintiffs and not the proforma defendants but his prayer was rejected and as such the plaintiffs sought for withdrawal of the suit but the same was rejected and thereafter the plaintiffs approached the Hon'ble High Court by way of Civil Revision; hence it is seen that there is good reason for delay in filing the suit. In my considered opinion, there is no question of any **"good reason"** for delay in filing a suit because section 5 of the

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Limitation Act, 1963 is not applicable to suits and as such whether the plaintiffs had "good" or "sufficient" grounds for delay in preferring the suit cannot be considered and the period of limitation for filing a suit cannot be condoned and thus the learned trial Court had erred in observing that the plaintiffs had "good reasons" for delay in filing the suit.

37. The learned trial Court had further observed while discussing the above issue that the instant suit is filed in continuation of the earlier Title Suit no:229/ 1993 and as such the suit is not barred by limitation. In my considered opinion the learned trial Court had erred in holding so because every suit is independent and the period of limitation cannot be "carried forward" or "continued" and no suit can be said to be continuation of another suit.

38. In view of the above discussions it is held that the suit is barred by limitation and as such the decision of the learned trial Court in the issue no:2 is hereby set aside and reversed.

39. DECISION: The suit is barred by limitation.

40. The appellants had not challenged the decision of the learned trial Court in the issue no:1,3,4 and 5 and I also do not find any infirmity in the decisions of the above issues as such the decisions of the learned trial Court in the issue no:1,3,4 and 5 are affirmed.

41. It would be pertinent to mention herein that the learned trial Court had inadvertently or otherwise failed to mention and discuss the issue no:6 which reads as **"Is there any cause of action for the suit?"** and as

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such the learned counsel for the defendants/ appellants had contended that the impugned judgment cannot be sustained on this ground alone and as such the aforesaid judgment is liable to be set aside and the same may be remanded for fresh decision.

42. In my considered opinion the suit is not liable to be remanded merely because the learned trial Court had failed to decide the issue no:6, because no additional evidence is required to decide the above issue; as such I would like to proceed to decide the above issue no:6.
43. I have already narrated the pleadings of the plaintiffs and it is revealed that the plaintiffs had contended that they have the right, title and interest over the suit land and that the defendants had dispossessed them from the suit land; as such it is seen that the plaintiffs have the cause of action for this suit. The cause of action is nothing but a bundle of material facts which the plaintiff must allege and prove in order to succeed in his case. In the instant case at hand the pleadings that the plaintiffs have right, title and interest over the suit land and the fact that the defendants had allegedly dispossessed them from the suit land discloses a cause of action; as such it is held that the plaintiffs had the cause of action for this suit; hence the issue no:6 is answered in the affirmative and in favour of the plaintiffs.
44. In view of the above discussions and the decisions reached in the foregoing issues, more particularly the issue no:2 and 7, it is held that the plaintiffs are not entitled to any reliefs and as such the decision of the learned trial Court in the issue no:8 and 9 are hereby set aside and reversed and it is held that the plaintiffs are not entitled to any reliefs.

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ORDER

45. In view of the above discussions both the appeals are allowed on contest with cost. It is hereby declared that the plaintiffs are not entitled to any relief in this suit. The impugned judgment and decree dated 16/9/2013 passed by the learned Munsiff No:1, Dhubri in Title Suit no: 591/ 2006 is hereby set aside and reversed.

46. In view of the above discussions both the Title Appeal no:93/ 2013 and the Title Appeal no:107/ 2013 are allowed on contest with cost.

47. Prepare decree accordingly.

48. 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 7th day of January, 2017 at Dhubri.

Yusuf Azaz,
Civil Judge, Dhubri

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.