

CAUSE TITLE**TITLE APPEAL NO.5/2017.**

Appellants : Md. Anowar Hussain and another.

Respondents : Md. Adilur Rajjak and others.

ADVOCATES :

For the Appellants : Mr. Brojen Baruah, Advocate.

For the Respondents : Mr. Biman Borah, Advocate.

**IN THE COURT OF THE DISTRICT JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
District Judge,
Lakhimpur, North Lakhimpur.

TITLE APPEAL NO.5/ 2017.

Appellants : Md. Anowar Hussain and another.

Respondents : Md. Adilur Rajjak and others.

Date of argument : 06.03.2020.

Date of judgment : 22.01.2021.

JUDGMENT & ORDER

- 1) This Appeal is preferred to set at naught the Judgment and Order dtd. 10.08.2017 passed by the learned Civil Judge, Lakhimpur, in Title Suit No.9/2014 dismissing the suit filed by the plaintiffs, Md. Anowar Hussain and Md. Imdad Hussain.
- 2) The genesis of the case is that, the suit land described in the schedule of the plaint of the corresponding case being Title Suit No.9/2014 was exchanged by the defendant's father, Lt. Abdul Rajak, during his lifetime, on 07.01.1990, with the plaintiff's mother, Lt. Nurjahan Begum, for a plot of land measuring 7 bighas 4 kathas 16 lessas pertaining to Dag No.686 of Chaboti village map under Nakari mouza. Nurjahan Begum's name was entered in the Chittha in place of Lt. Abdul Rajak on 07.01.1990 and she took possession of the land described in the schedule also referred to as the suit land. The suit land was cultivated and Anwar Hussain (here-in-after referred to as the

Contd...

plaintiff No.1) and Imdad Hussain (here-in-after referred to as the plaintiff No.2) used to go to the suit land with their parents from their early childhood.

- 3) On 01.04.1983, the suit land was handed over to Anwar Hussain by Nurjahan Begum, and thereafter, Anwar Hussain took possession of the same and started cultivating the suit land. Again, the plaintiff No.2 took possession of the suit land on 01.04.1993, and thereafter, started cultivation on the same plot along with the plaintiff No.1. It is submitted that both the plaintiffs along with their mother had been in continuous and peaceful possession of the suit land from 07.01.1990 without any disturbance and interference from any corner.
- 4) On 14.01.2014 and 24.01.2014, the defendants tried to dispossess the plaintiffs from the suit land, but failed. The defendants then, in collusion with the revenue staff of North Lakhimpur revenue circle entered their names in Dag No.292 (old 112) of P.P. No.424 of Jamabandi for Chaboti village map.
- 5) The defendants filed written statement (W.S. in short), contending inter alia that the suit is barred by limitation. They have denied exchange of the suit land with the plaintiffs' mother. They have claimed that their names were mutated in the Patta of the suit land in 1990 and records were corrected in the year, 1997. The defendants have submitted that they are in continuous possession of the suit land along with their father and Nayab Ali used to cultivate the suit land on their behalf. A written agreement was prepared with Nayab Ali on 10.02.2006, and since then, Nayab Ali has been in continuous possession of the suit land and has been cultivating the same.

Contd...

- 6) On the contrary, it is submitted that the plaintiffs are in possession of the land covered by P.P. No.6 and the defendants are in possession of the suit land covered by P.P. No.5, while the Government acquired 3 bighas 2 kathas of land from Dag No.291 under P.P. No.6 and 3 bighas of land of Dag No.292 of P.P. No.5 and compensation was paid to the defendants. It is contended that the plaintiffs sold 2 kathas of land pertaining to Dag No.291 to Arpana Dey on 20.08.2014 vide registered deed No.474 and plaintiffs also sold 3 kathas of land to Shaminur Ahmed. So, the defendants have alleged that the plaintiffs' claim of exchange is false and frivolous. The defendants have prayed for dismissal of the suit.
- 7) To substantiate their stance, the plaintiffs adduced the evidence of eight witnesses and exhibited various documents while the defendants adduced the evidence of three witnesses and also exhibited various documents.

CONTENTION OF THE PARTIES :

- 8) It is submitted on behalf of the plaintiffs that they were in possession of the suit land for more than 40 years. It is submitted that no exchange deed was executed by the plaintiff's mother and the defendants' father, but the suit land was exchanged by the defendants' father by affixing his signature on the Chittha 'Bohee' (book). The defendants are trying to sell the plaintiff's land in a subterfuged manner, but the Chittha copy is a 30 year old document and is a valid and genuine document. On the contrary, the learned counsel of the defendants laid stress in his argument that there is no merit in this appeal. As per Section 118 of the Transfer of Property Act (T.P. Act in short), an exchange deed has to be executed and

Contd...

Section 54 of the Transfer of Property Act, 1882 defines 'Sale'. Sale of land, which is valued at Rs.3 Lacs has to be registered. The plaintiffs have no right, title and interest over the suit land and they cannot seek relief without title. Ancillary relief cannot be sought without title.

- 9) The learned counsel for the Appellants has preferred this Appeal on the following amongst other grounds :

It is contended that the learned trial court failed to appreciate the evidence on proper perspective. The learned trial court failed to appreciate that the evidence was in favour of the plaintiffs. It is contended that the learned trial court had opined that the plaintiffs/ appellants had adverse possession over the suit land. The remaining part of the argument submitted by the learned counsel for the Appellants will be discussed at appropriate stage.

- 10) I have heard the arguments submitted on behalf of the Respondents.

ISSUES :

- 11) The learned trial court decided the case on the following issues :

i) Whether the suit land was exchanged by Lt. Abdul Rajjak, the father of the defendants with the mother of the plaintiff on 07.01.1970 for land measuring 7 B 4 K 16 L under Dag No.686 ?

ii) Whether the plaintiffs acquired right and title of the suit land by virtue of exchange ?

iii) Whether the plaintiff's mother had taken possession over the suit land ?

iv) Whether the plaintiffs are entitled to reliefs as prayed for?

Contd...

DECISION THEREON AND THE REASONS FOR THE DECISION :

ISSUE NOS.1, 2 AND 3

12) As this is a first appeal, the evidence can be taken into account.

13) As the learned trial court discussed the Issue Nos.1, 2 and 3 conjointly, I am taking up the issues together for the sake of brevity. The plaintiff No.1, Anowar Hussain, figuring as Appellant No.1 in this case, deposed as PW.1 that the defendants' father, Lt. Abdul Rajjak during his lifetime exchanged 7 B 8 K 16 L of land with their mother, Lt. Nurjahan Begum for the plot of land of Myadi Patta No.5 (old 24) bearing Dag No.292 (old 112) with the plot of 8 bighas of land pertaining to Dag No.686. Then, on 07.01.1970, the plaintiff's mother's name, Nurjahan Begum was mutated and entered in the Chittha mutation, in place of Abdul Rajjak, which was acknowledged by Abdul Rajjak, who affixed his signature on the Chittha copy, Ext.1. The evidence of PW.1 also depicts that since 07.01.1970, his mother has been in possession of the suit land, and thereafter, they took over. PW.1 further deposed that on 01.04.1993, his brother, Imdad Hussain also took possession of the suit land and since then, they have been in peaceful possession of the suit land without any interruption till 20.05.2013. PW.1 deposed that the defendants offered them money to dispossess them from the suit land. Since 20.05.2013, the defendants had been claiming their right over the suit land. The defendants fraudulently got their name mutated as patta holder of the suit land. They also tried to sell the suit land in a subterfuged manner.

Contd...

- 14) In his cross-examination, PW.1 admitted that he and his brother sold 2 Kathas of land pertaining P.P. No.6 of Dag No.293 to Aparna Dey vide registered deed 474 dtd. 20.08.2014, and handed over possession to the buyer. His brother, Imdad Hussain sold a plot of land of 3 kathas 10 lessas pertaining to PP No.6 of Dag No.291 to Shaminur Ahmed vide registered Sale deed 473, and handed over possession to Shaminur Ahmed. The government took khas-possession of the plot of land measuring 3 bighas 2 kathas pertaining to PP No.6 of Dag No.291 and they received compensation of Rs.2,94,384.80 in the year, 2014. He further testified in his cross-examination that the suit land has never been under possession of the defendants and they have been in continuous possession of the suit land.
- 15) The cross-examination of PW.1 further proceeds that they have not exchanged the land for PP No.6 with PP No.5. He admitted that Nabanita Bora's name has been mutated against PP No.5 of Dag No.292, but the plot of land extends to only 1 bigha 6 lessas in Nabanita Bora's name. He has admitted that when the name of Arman Rajjak and Adilur Rajjak were corrected as pattadars against PP No.5 of Dag No.292, he did not file any revenue appeal against such mutation. PW.1 admitted that the defendants have been paying land revenue. Although, the defendants have been paying land revenue, he has not filed a case for confirmation of possession. He has admitted that the names of two defendants are recorded as pattadars of the suit land.
- 16) In sync with the evidence of PW.1. Md. Abdul Kadir deposed as PW.2 that since childhood, he was aware of the plaintiff's possession over the suit land. The defendants'
- Contd...

father Lt. Abdul Rajjak had exchanged 8 Bighas of land of PP No.5 and Dag No.292 with Lt. Nurjahan Begum for a plot of land measuring 7 Bighas 4 Kathas 16 lessas in the year, 1970. In his cross-examination, PW.2 admitted that he did not know in whose name the land of PP No.6 exists and also could not say who is the owner of the plot of land of PP No.5. PW.2 also testified in his cross-examination that he did not know if the defendants allowed Nayab Ali to cultivate the suit land and if Nayab Ali is still cultivating the land of P.P. No.5. The evidence of Noor Ahmed as PW.3 depicts that since his childhood, he had noticed that the plaintiffs were in possession of the suit land at Chaboti Gaon covered by Dag No.292 of PP No.5. The peasants and plaintiffs' uncle had also cultivated the suit land for the plaintiffs. He could recall very well that since childhood, he had seen the plaintiffs often going to the suit land. He is wary that the defendants tried to dispossess the plaintiffs. PW.3 was not cross-examined. So, PW.3's evidence has to be eschewed.

- 17) The evidence of Md. Idrish Ali as PW.4 depicts that he has been residing at Chaboti Gaon since 1962 and he is wary that the plaintiffs' parents took possession of the suit land about 45 / 46 years ago, and he used to work as day labourer in the suit land. However, in his cross-examination, he could not describe the boundary of the suit land and he could not mention the description of the land under PP Nos.5 and 6. He testified in his cross-examination that Nayab Ali is cultivating the suit land on 'Adhi'. It is clear that PW.2 and PW.4 are aware of a dispute between both the parties regarding land, but they could not very well describe the suit land. Their evidence does

Contd...

not depict clearly if the same suit land is the land in dispute.

18) The evidence of Md. Mofij Ali as PW.5 depicts that Md. Nayab Ali used to cultivate the land covered by P.P. No.5 on 'Adhi'. Similarly, the evidence of Md. Haidarul Latif Baruah as PW.6 depicts that both the parties are related to him. His evidence also depicts that the suit land has been occupied by the plaintiff's parents and after their demise, the plaintiffs have been occupying the suit land. The plaintiffs have been cultivating the suit land for about 33 years. He along with his brother, Iskandar Latif Baruah have been cultivating the suit land on 'Adhi' basis. He had never seen the suit land being given for cultivation to any other person by the plaintiffs. This witness was cross-examined in extenso. It is apt to mention that this witness has correctly described the suit property. It is true that PW.6 did not know the Dag number and pattadar number of the suit land, but he has correctly described the boundaries and location of the suit land in his examination in chief. He has stated that the suit land is bounded by the plaintiff's land on the East, D.L. Baruah's land on the West, Prabhat Baruah's land on the North and the by-pass towards South. It has to be borne in mind that PW.6 is a peasant and he cannot be expected to go through the revenue records. His evidence could not be refuted by extensive cross-examination by the defence. So, it is clear that PW.6's evidence supports the plaintiffs' evidence and pleadings.

19) Smt Niru Konwar is a senior Assistant in the D.C. court. She testified that Ext.1(1) is entry on the Chittha book of Sunpata village against Dag No.292 (new) 112(old) and
Contd...

PP No.24 (old). The names of the pattadars, Inamul Latif Baruah and Md. Abdul Rajjak are mentioned in Ext.1. It is also mentioned that 8 bighas of land under 686 Dag has been exchanged for 7 bighas 4 kathas 6 lessas of land on 07.01.1970 with the signature of Md. Abdul Rajjak on Chittha. Ext.1(2) and Ext.1(3) were proved in original. She testified that she could not identify the signature marked as Ext.1(2) and Ext.1(3) as she was not present at the time when signatures were taken.

20) The Lat Mandal, Dhaneswar Bora testified as PW.8 that he brought the revenue report submitted by him relating to the suit land. He submitted the Ext.2 to the Circle Officer and Ext.2(1) is his signature. Ext.2 was proved in original. In his cross-examination, he has testified that he has not mentioned the name of the Lat Gaonburah relating to possession of the land by Anowar Hussain. He also did not demarcate the land. His cross-examination is somewhat vague.

21) The learned trial court has held that no exchange deed regarding the exchange of the suit land has been executed between the plaintiff's mother and the defendants' father during the exchange of the suit land with another plot of land. A valid exchange of land worth Rs.100/- or more, will require registration. PW.7 produced the original Chittha book of Dag No.292 and PP No.24, but entry in the Chittha cannot confer any right, title and interest over the land. The defendants have denied the title of the plaintiffs over the suit land. When the plaintiffs have brought a case, the onus lies on the plaintiffs to prove that their mother exchanged the suit land with the defendants' father. The

Contd...

learned trial court has correctly held that transfer of immovable property valued at Rs.100/- or more, requires compulsory registration under Section 17 of the Indian Registration Act, but the plaintiffs failed to produce any valid deed of exchange to prove their title over the suit land.

22) At this juncture, I would like to advert to the evidence adduced by the defendants. Defendant, Amanur Rajjak stated in his evidence as DW.1 that the land of PP No.5 has been mutated in his name and in his brother's name in the year, 1990, and thereafter, they have been occupying the same. The land under PP No.6 has been mutated in the name of the plaintiffs and their siblings after death of their mother, Nurjahan Begum and they have been occupying the same. The plaintiffs never occupied any portion of the land covered by PP No.5. They have been occupying the land covered by PP No.6 only. DW.1 further deposed that a measure of 9 bighas 6 lessas of land pertaining to Dag No.5 was under possession and occupation of the earlier pattadar, Inamul Laskar Baruah, who sold 1 bigha 6 lessas of land to Nabanita Baruah and 3 bighas 3 lessas of land have been acquired by the Government for National Highway project leaving only a measure of 5 bighas of land in the name of the two defendants. This evidence of DW.1 supports his pleadings. DW.1 further deposed that the plaintiffs are not aware of their share of land and after submission of their written statement, went for amendment scaling down the suit land from 8 bighas to 5 bighas. The land, which was acquired by the Government have been compensated and the defendants were paid their share of compensation as well. In a similar manner,

Contd...

3 bighas of land were acquired by the Government after acquisition of a part of plaintiffs' land. This 3 bighas of land is of PP No.6 and Dag No.291 and the plaintiffs were paid compensation for the land acquisition.

23) Through his pleadings and evidence, DW.1 has reflected that the plaintiffs are in occupation of the land of PP No.6 and Dag No.291, whereas the defendants are in occupation of 5 bighas of land of PP No.5 and Dag No.292. He and his brother were in possession and occupation of the suit land from time immemorial and their peasants have been cultivating the same after their father's death. An agreement was also made between them and their farmer and Nayab Ali on 10.02.2006.

24) The defendants' peasant working under them, Nayab Ali deposed as DW.2 that the defendants are the owners of the suit land. Earlier, the suit land was of 8 bighas, but after acquisition by the Government under National Highway project, the suit land, at present, is of 5 bighas. An agreement was executed between him and the defendants in the year, 2006 and since then, he has been cultivating the land of PP No.5 comprising of 8 bighas of land and he has been providing the defendants with paddy. After acquisition of 3 bighas of the suit land, he has been cultivating 5 bighas of the suit land.

25) In view of my foregoing discussions, it is held that the learned trial court has correctly held that the plaintiff has to prove his own case on its own footing and not on the weakness of others. The evidence of DW.1 and DW.2 has also been substantiated by PW.4 and PW.5, who admitted in their cross-examination that Nayab Ali has been

Contd...

cultivating the suit land for the defendants. Ext.'Unga' reveals that Nayab Ali was given 'Adhiar' by the defendants to cultivate the suit land in exchange of paddy for 10 years commencing from the year, 2006. It is clear from Ext.'Unga' that Nayab Ali has been cultivating the suit land for the defendants. PW.1 has admitted in his cross-examination that he did not file any revenue appeal against the mutation of the suit land in the defendants name. Ext.'Ka' is the certified copy of the Jamabandi which reveals the defendants name recorded as pattadars of the suit land covered by Dag No.292 of P.P. No.5.

- 26) If the chittha copy exhibited by the PW.1 was genuine, then why no lis was preferred by the plaintiffs for cancellation of mutation of the suit land in favour of the defendants. Why no revenue appeal was preferred by the plaintiffs. Moreover, the Ext.1 is an older document as claimed by the plaintiffs.
- 27) In view of my foregoing discussions, it is thereby held that as the plaintiffs failed to produce any registered document in support of their case, the entry in the chittha copy falls short in comparison to defendants' documents i.e., Ext.'Ka'. The decision of the learned trial court relating to Issue Nos.1 ,2 and 3 are hereby upheld.
- 28) It is held that the plaintiffs have no right, title and interest over the suit land. The Issue No.4 is incidental to the findings of the Issue Nos.1, 2 and 3.

ORDER

- 29) This appeal is devoid of merits and is hereby dismissed.
- 30) No order as to costs.

Contd...

31) Prepare a decree, accordingly.

Judgment is signed, sealed and delivered in the open Court on the 22nd day of January, 2021.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.