

**CAUSE TITLE****TITLE APPEAL NO.8/2018.**

Appellant : Sri Kusharam Baruah.

Respondent : The Secretary,  
Water Resources Department,  
Govt. of Assam, Dispur, Guwahati,  
and three others.

**ADVOCATES :**

For the Appellant : Mr. Brojen Boruah, Advocate.

For the Respondents : Mr. S.I. Hazarika, Govt. Pleader.

**Case referred to in chronological order :**

- 1) Vidaya Devi -vs- The State of Himachal Pradesh decided on 8<sup>th</sup> January, 2020 in Criminal Appeal Nos.60 – 61 of 2020.
- 2) Kusum Ingots Alloys Ltd. vs Union of India (2004) 6 SCC 254.

**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.

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Appellant : Sri Kusharam Baruah.

Respondents : The Secretary,  
Water Resources Department,  
Govt. of Assam, Dispur, Guwahati,  
and three others.

Date of argument : 11.12.2020.

Date of judgment : 22.01.2021.

**JUDGMENT & ORDER**

- 1) This appeal is preferred, seeking defeasance of the Judgment and Order dtd. 01.09.2018 passed by the learned Civil Judge, Lakhimpur, North Lakhimpur, in connection with Title Suit No.21/2016.
- 2) The genesis of the case is that the plaintiff, Sri Kushram Bora @ Kusharam figuring as Appellant in this case, is the rightful owner and recorded pattadar of a plot of land measuring 1 katha 8 lessas under Dag No.665 and covered by Periodic Patta ( P.P. in short ) No.53. The suit land which is described in the schedule of the plaint is a part of this land. The plaintiff has been in possession of the suit land  
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since 02.05.1997 and had been regularly paying land revenue. On 01.02.2016, when the plaintiff was removing weeds from his land, Sri Raja Phukan, Caretaker of the quarter of the Superintending Engineer, Water Resources Department demanded that the plaintiff should immediately leave the land. The premises of the Water Resources department is adjacent to the suit land. The plaintiff retorted that it was his land under PP No.53, but Raja Phukan disagreed.

- 3) Thereafter, the plaintiff requested the Superintending Engineer and the Executive Engineer of the Water Resources department, North Lakhimpur, on several occasions asking them to vacate the suit land, but they ignored his requests. The plaintiff also requested the Circle Officer to demarcate the land under Dag No.665 of PP No.53 at 'Uttar Lakhimpur Sahar Pratham Angsha', and accordingly, on 26.04.2016, the concerned Lat Mandal, Sri Arun Bora demarcated his land and handed over 1 katha 8 lessas of land of Dag No.665 and PP No.53 to the plaintiff in presence of the Gaonburah, Yakub Ali and Raja Phukan, the Caretaker of the quarter of the Superintending Engineer. On the same day, the plaintiff erected bamboo posts in the land handed over to him by the Lat Mandal, but on the next evening i.e., on 27.04.2016, the bamboo posts over the 12 lessas of land were found damaged and the suit land was encroached by the Water Resources department, with a bamboo fence.
- 4) The plaintiff confronted Raja Phukan, who informed him that he acted under the instruction of the Superintending Engineer and took possession of his land. The Water

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Resources department went a step further and started to construct a pucca wall around the Engineer's quarter by encroaching the plaintiff's land i.e., the suit land. The plaintiff approached the Superintending Engineer and the Executive Engineer, and requested them to vacate the suit land and asked them not to construct the concrete boundary wall further, but they ignored his requests. Thereafter, the plaintiff sent notices through registered post to the defendants u/s 80 of the Code of Civil Procedure (CPC in short) informing them about his intention to file a civil suit for declaration of his right, title and interest over the suit property and recovery of khas possession of the same along with permanent injunction.

- 5) At this juncture, I would like to mention that the Secretary of the Water Resources department, Chief Engineer of the same department, Superintending Engineer and Deputy Commissioner -cum- Collector of Lakhimpur, North Lakhimpur, respectively, have been arrayed as defendants in Title Suit No.21/2016. The defendants are figuring as Respondents in the present Title Appeal. After notices were issued, the Asstt. Govt. Pleader sent a reply on 18.07.2016 under instruction of the Chief Engineer and Superintending Engineer of the Water Resources department, denying the allegation of encroachment of the suit land. On the contrary, they have claimed that a concrete boundary wall within their own land premises was constructed. Then, the plaintiff was impelled to file a case for recovery of khas-possession by evicting the defendants from the suit land and for permanent injunction.
- 6) The defendant No.3 filed written statement on behalf of the defendant No.1 and 4, and have inter alia denied that they have encroached into the plaintiff's land. They have

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categorically denied that any land of any private person is included within the campus of the Water Resources department. They have prayed to dismiss the suit with costs.

- 7) To substantiate his pleadings, the plaintiff adduced the evidence of two witnesses and exhibited various documents, whereas the defendants did not adduce any evidence.

**CONTENTIONS OF THE PARTIES :**

- 8) The learned counsel for the plaintiff / appellant laid stress in his argument as well as in his Appeal memo. that the suit was dismissed on flimsy grounds. The plaintiff's evidence fortifies his pleadings, but without delving into the evidence, the suit was dismissed by the learned trial court. The issues were erroneously decided. It is also contended that the defendants submitted through their written argument that they had acquired ownership rights by way of adverse possession of the suit land, but the State cannot claim adverse possession. On the contrary, the learned counsel for the defendants/ respondents has stressed through his argument that this case is devoid of merits. The defendants have constructed a concrete wall over their own land and not over other's property. The defendants have prayed to dismiss the appeal.
- 9) It is submitted on behalf of the defendants/ respondents that the defendants have been in possession of the suit land for 52 / 53 years. The defendants have not denied that the plaintiff is the owner of the land of PP No.53. The appellant has not properly identified his suit land and his case fails. Rules for demarcation as laid down in the Assam Land and Revenue Regulation, 1886, of a plot of land was
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not properly followed. By flipping a document at random without supporting evidence, a plaintiff cannot prove demarcation of land.

ISSUES DECIDED :

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

i) Is there any cause of action for the suit ?

ii) Whether the defendant i.e., Water Resources Department removed bamboo posts on 27.04.2016 and erected wall encroaching 12 lessas of land of the plaintiff ?

iii) Whether the plaintiff is entitled for recovery of khas-possession and for permanent injunction ?

iv) To what relief(s) the plaintiff is entitled to ?

**DECISION THEREON AND THE REASONS FOR THE DECISION :**

ISSUE No.1 :

11) The plaintiffs have prayed for recovery of khas-possession by evicting the defendants from the suit land and also for permanent injunction. The defendants have denied encroaching the plaintiff's land. They have insisted that they have constructed a concrete wall within their own campus and not over 12 lessas of the plaintiff's land.

12) Thus, there is a cause of action. The learned trial court has correctly held that there is cause of action and the plaintiff has a right to sue. The trial court relied on the decision of ***Kusum Ingots Alloys Ltd. vs Union of India (2004) 6 SCC 254***, wherein it was observed that "*cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action*"

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*is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action."*

13) It was correctly held by the trial court that the contentions in the plaint depict a *prima facie* case and the court is not required to embark upon an elaborate enquiry whether the allegations are true or false.

ISSUE NO.2 :

14) The plaintiff, Sri Kusha Ram Boruah has reiterated his pleadings as PW.1. He has deposed that he is the pattadar of the suit land described in the schedule of the plaint. Ext.1 is the certified copy of the Jamabandi of the suit land. He has been regularly paying land revenue. Ext.1 to Ext.8 are the revenue receipts. He has been in possession of the suit land since 20.05.1997. On 01.02.2016, while he was clearing the weeds from his land ( suit land ), the Caretaker of the Superintending Engineer's quarter, Raja Phukan demanded that the plaintiff should leave the suit land immediately. When the plaintiff retorted that he is the owner of the suit land covered by PP No.53, Raja Phukan ignored him. It has also been reiterated by the plaintiff as PW.1 that he requested the Superintending Engineer and the Executive Engineer of the Water Resources department on many occasions to vacate the encroached suit land, but they ignored his requests. Then, he requested the Circle Officer to demarcate the land under Dag No.665 and PP No.53 at 'Uttar Lakhimpur Sahar Pratham Angsha' and accordingly, on 26.04.2016, the concerned Lat Mandal, Sri Arun Bora demarcated the land and handed over 1 katha 8 lessas of land covered by

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Dag No.665 and PP No.53 to the plaintiff in presence of the Gaonburah, Yakub Ali and the Caretaker, Raja Phukan. Ext.9 was issued by the Circle Officer to the plaintiff regarding demarcation of the land. Ext.10 is the certified copy of the report of the Lat Mandal, Sri Arun Bora to the Circle Officer.

15) The PW.1, then, erected bamboo posts on the same day, but on the next morning i.e., on 27.04.2016, the plaintiff found to his utter dismay that the bamboo posts constructed by him were thrown away and the Water Resources department had encroached into 12 lessas of his land by erecting a fence. On being confronted, Raja Phukan informed the PW.1 that the Superintending Engineer instructed him to do so. After vacating the suit land, the Water Resources department started constructing a concrete wall around the quarter of the Superintending Engineer by encroaching into his ( PW.1's ) land i.e., the suit land. He (PW.1) then approached the Superintending Engineer and the Executive Engineer and requested them to vacate the suit land and to stop construction of the boundary wall over his 12 lessas of land ( suit land ).

16) The evidence reveals that the official residence of the defendant No.3 is adjacent to the suit land.

17) The evidence of Lat Mandal, Arun Bora as PW.2 has substantiated the evidence of the plaintiff. He has stated that he demarcated the plaintiff's land measuring 1 katha 8 lessas as per map, Ext.24. PW.2 stated that he handed over the possession of the aforementioned land to the plaintiff and he submitted report to that effect to the Circle Officer. He has proved his report Ext.23. The village headman and another witness have affixed their signatures on Ext.23. PW.2 has admitted in his cross-examination that notices have to be issued to the owners of the land surrounding the land identified for demarcation, but no

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notices were issued to Mohiruddin and Loknath Gogoi, whose plots of land are adjacent to the suit land. He has admitted that Ext.22 depicts that Mohirudin and Loknath Gogoi are residents in the land adjacent to the suit land. He has also admitted that as per the map, Ext.24, Ashapali is in possession of the land towards the western boundary of the suit land.

18) However, the Gaonburah i.e., the village headman was not produced as witness by the plaintiff. It was held by the learned trial court that demarcation of the suit land was not properly executed. After scrutinising the evidence, it is held that the decision of the learned trial court was appropriate. Notices ought to have been sent to the neighbours around the perimeters of the suit land prior to demarcation of the same. No witness in support of the document i.e., Ext.23 was examined.

19) Reverting back to the evidence of PW.1, it is apt to mention at this juncture that his evidence and pleadings does not reflect that on what context, he requested the Superintending Engineer and the Executive Engineer of the Water Resources Department to vacate the suit land. Was the suit land already encroached before demarcation and before erection of bamboo posts? It could be culled out from the evidence and pleadings that bamboo posts were erected after demarcation. No witnesses were present at the time when the bamboo posts were erected. Was the suit land already encroached upon, before the bamboo posts were erected? If so, why is it missing in the evidence that the suit land was already encroached and then, PW.1 requested the Engineers to vacate the encroached portion of 12 lessas of his land? The genesis of the dispute between both parties is missing. PW.1's evidence depicts that he requested the Engineers to vacate his land, which implies that the Water Resources Department was already occupying his land prior to his verbal spat with the Caretaker i.e., before 01.02.2016. His

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evidence depicts that after the Engineers ignored to vacate his land, he got his land demarcated. On the contrary, PW.1's evidence and pleadings also depicts that, his land was encroached after demarcation and not before the demarcation. He was just asked by the Caretaker to stop clearing the weeds on the suit land. Thus, it can be held that the evidence of PW.1 is self-contradictory.

20) PW.1 has admitted in his cross-examination that he did not lodge any complaint when the concrete boundary wall was constructed. The PW.1 admitted in his cross-examination that he was not aware of his measure of land apportioned in his name under P.P. No.53 and Dag No.665. Although, the plot of land recorded in his name in the record of rights has been entered in the record of rights by way of gift, no Probate case has been exhibited in support of his ownership.

21) In view of my foregoing discussions, it is held that the plaintiff has come forward with a prayer for khas-possession over only 12 lessas of land, and not the entire land gifted to him. His allegation is that the defendants encroached only 12 lessas of his land. Through the evidence, the plaintiff tried to reflect that the defendants' claim that the suit land is a Government land, is false.

22) Through his oral and documentary evidence, the plaintiff tried to reflect that he is the owner of the suit land. Although, the plaintiff tried to prove his legal right over the suit land through the Jamabandi copy, yet he could not prove the demarcation of the particular plot of land even on the touchstone of preponderance of probability.

23) The defendants have admitted that the plaintiff is the owner of land under P.P. No.53. They have denied plaintiff's right only over the 12 lessas of land covered by the same P.P. No.53

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Dag No.665. In this instant case, the plaintiff failed to prove the demarcation of the suit land because the suit land was not demarcated as per Section 23 of the Assam Land and Revenue Regulation, 1886, which postulates that whenever in the course of survey it comes to knowledge of the Survey-Officer that any boundary dispute exists, he shall notify the same to the Settlement-Officer, who shall proceed as follows - (a) if the dispute is between the proprietors of different estates, the Settlement-Officer shall decide it on the basis of actual possession; or if he is unable to satisfy himself as to which party is in possession, he may determine by summary inquiry who is the person best entitled to possession, and may put him in possession ; or he may refer the dispute to arbitration for decision on the merits, as provided in Section 143; (b) if the dispute is between the settlement-holders of different estates, the Settlement-Officer shall, after due inquiry, determine the proper boundaries of those estates; (c) if the dispute is between the Government and any settlement-holder as to whether any land is comprised in the settlement, the Settlement-Officer shall, after due inquiry, determine the dispute.

24) In this case, the documentary evidence, Ext.23 was not substantiated. Neither Raja Phukan nor the Gaonburah or the third witness was examined in support of Ext.23. At least one witness, who was present during demarcation by the Lat Mandal (PW.2) ought to have been examined. Moreover, the demarcated portion i.e., the suit land is not identified on the map, Ext.24(1). The ownership of the plaintiff over P.P. No.53 is not at all denied by the defendants. Notices were not issued to the owners occupying the perimeters of the suit land.

25) As per Section 102 of the Indian Evidence Act, 1872, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

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26) In the instant case, the defence did not adduce evidence while the plaintiff failed to prove his case, even on preponderance of probability.

27) Thus, the defendants were astute enough not to adduce any evidence. I would like to reiterate that the defendants have not claimed adverse possession over the suit land through their written statement or argument. The decision of Hon'ble the Supreme Court in ***Vidaya Devi -vs- The State of Himachal Pradesh decided on 8<sup>th</sup> January, 2020 in Criminal Appeal Nos.60 - 61 of 2020***, is not relevant to this case. This decision relied upon by the Appellants does not support their case.

28) The decision of the trial court regarding the Issue No.2 is, hereby, upheld. It is also held that the decision of the trial court on Issue Nos.3 and 4, is held to be appropriate.

29) In view of my foregoing discussions, Appeal is dismissed upholding the decision of the Civil Judge.

30) No order as to costs.

30) Prepare a decree, accordingly.

Judgment & Order is signed, sealed and delivered in the open Court on the 22<sup>nd</sup> 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.