

High Court Form No.(J)3.  
HEADING OF JUDGMENT IN THE APPEAL.

District : Lakhimpur.

IN THE COURT OF 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.1/2019.  
the 1<sup>st</sup> day of March, 2021.

From the Judgment & Decree dtd. 21.05.2018 passed by the learned  
Civil Judge, Lakhimpur, in Title Suit No.6/2018.

Sri Purnananda Hazarika. ... Appellant.

-versus-

1. Smt Jarada Hazarika.

2. Smt Moni Hazarika Karmakar. ... Respondents.

This appeal is coming on for final hearing on  
13.03.2020 in presence of :

Mr. Ghanashyam Saikia, the learned advocate for the Appellant.

Mr. M.C. Hazarika, the learned advocate for the Respondents.

and having stood for consideration to this day this  
court has delivered the following JUDGMENT.

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**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.1/ 2019.**

Appellant : Sri Purnananda Hazarika.

Respondents : 1) Smt Jarada Hazarika.  
2) Smt Moni Hazarika Karmakar.

Date of argument : 13.03.2020.

Date of judgment : 01.03.2021.

**JUDGMENT & ORDER**

1) This Appeal is preferred against the Judgment & Decree dtd. 21.05.2018 in Title Suit No.6/2018 on the following amongst other grounds :-

2) It is contended that the Judgment & Decree of the corresponding Title Suit No.6/2006 was passed on 21.05.2016 de hors jurisdiction. It is contended that the suit is not in the form of a suit for partition and is not maintainable henceforth. The suit is not according to the verdict of Title Suit No.15/1997. The learned trial court failed to apply the principle of *Res judicata* in

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the suit. The decision passed in the Revenue Court as court of exclusive jurisdiction cannot be challenged before a Civil court. The claim for proper partition of an estate is a matter to be decided solely by the Revenue Court. The learned trial court ignored the Ext.'Kha' and 'Ga', which were dismissal orders of the Partition cases.

3) The genesis of the case is that the Plaintiffs, Smt Jaroda Hazarika and Smt Moni Hazarika Karmakar figuring as Respondents in this case filed a suit for declaration of their right, title, interest, khas-possession and permanent injunction over the suit land. The Respondents, who are the Defendant's sisters obtained a decree for right, title and interest over the suit land in Title Suit No.15/1997. Thereafter, as per order dtd. 13.03.2003 passed in Title Execution No.1/2001, the suit land was mutated in the plaintiffs' name vide order dtd. 20.05.2003 passed by the Circle Officer of Narayanpur Revenue Circle. Thereafter, the Respondents filed a Petition for partition before the Deputy Commissioner and three cases being Case Nos.49/ 2003-04, 58/ 2003-04 and 59/ 2003 - 04 were registered. The Dy. Commissioner passed an order for partition of the suit land in favour of the Respondents, but the Defendant ( hereinafter the Appellant ) preferred an Appeal before the Board of revenue. Vide order passed in Appeal No.40.RA(L)/ 2005, the learned Revenue Board remanded back the cases to the Dy. Commissioner with a direction to decide the matter afresh. Subsequently, the said Partition Case No.49/ 2003-04, 58/2003-04 and 59/ 2003-04, was referred to the Circle Officer of Narayanpur Revenue Circle. It is submitted that the aforementioned cases are still pending in the office of the Circle Officer.

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4) It is alleged by the Respondents that about four months ago, the Appellant occupied the suit land by constructing a house, and hence this impelled the Respondents to move the court for partition and recovery of khas-possession by evicting the Appellant and also for permanent injunction.

5) The Appellant contested the suit by filing Written Statement contending inter alia that the Title Suit No.15/1997 of the Respondents was partly decreed on contest, decreeing joint title and possession of the plaintiffs and the defendants over the suit land described in schedule 'Ka' of the plaint. Therefore, the Respondents' present Title Suit No.6/2016, for right, title, interest, recovery of khas-possession and permanent injunction with respect to the suit land, is not tenable.

### **CONTENTIONS OF THE PARTIES**

6) The learned counsel for the Appellant laid stress in his argument that there was no prayer for partition of the entire suit land in the plaint. The learned Trial Court had no jurisdiction to try and entertain the corresponding suit i.e., Title Suit No.6/ 2016. The suit was not in the form of a suit for partition and was thus, not maintainable. The suit was also not according to the verdict of the other T.S. No.15/1997. As there are several Dag numbers, only four boundaries demarcating the suit land is inconsistent without demarcation for each Dag. The decision passed by the Revenue Court cannot be challenged in the Civil court. The learned counsel for the Respondent laid stress in his argument that by the dint of the orders in Title Suit

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No.15/1997 and Title Execution No.1/2001, the Respondents' names have been entered in the record of rights. The preliminary Decree passed by the learned Trial Court was appropriate.

**ISSUES DECIDED :**

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

- i) Whether there is cause of action for the suit ?
- ii) Whether the Plaintiffs/ Respondents have subsisting right, title and interest over the suit land?
- iii) Whether the plaintiffs are entitled to get partition by metes and bounds and also entitled to recover khas-possession of their shares ?
- iv) To what relief / reliefs the parties are entitled ?

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

8) As this case is a first Appeal, the evidence can be taken into account. The Respondents were compelled to institute a suit because vide Title Suit No.15/1997, they obtained a decree of right, title, interest and joint possession over the suit land, but the Appellant occupied the suit land by constructing a house thereon. On the contrary, the Appellant has contended that vide Title Suit No.15/1997, the Respondents' suit was partly decreed

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on contest without costs declaring joint title and possession of the Appellant along with the Respondents on the same suit land described in the schedule 'Ka'. Thus, it has been correctly held by the learned trial court that cause of action lies because the parties are variance.

**Issue No.2 :**

9) The Respondent/ plaintiff No.1 has reiterated her pleadings as PW.1 that the suit land is their ancestral property. She and her sister i.e., Respondent No.2 obtained decree of right, title and interest in their favour. Thereafter, as per order dtd. 13.03.2003 passed in Title Execution No.1/2001 and vide order dtd. 25.02.2003 passed by the Circle Officer, Narayanpur Revenue Circle, the suit land was mutated in their names and Ext.1 is the certified copy of the Jamabandi. Ext.1 depicts that their names were mutated with respect of 17 Lechas of land being 2/7<sup>th</sup> share over 2 Bighas of land covered by PP No.88, Dag No.318, and 17 Lechas of land being 2/7<sup>th</sup> share out of 1 katha 18 Lechas of land under Dag No.348 and 8 Lechas being 2/7<sup>th</sup> share out of 8 Lechas under Dag No.385, and a total of 1 katha 18 lechas along with the Appellants and another.

10) Smt Rumena Begum, Sheristadar of Civil Judge, Lakhimpur, has deposed as PW.3 and has proved the record of Title Suit No.15/1997 as Ext.2. The Ext.2 reveals that the Title Suit No.15/1997 was instituted by the Respondent Nos.1 and 2, claiming their 1/7<sup>th</sup> share each, over a total area of 12 Bigha 7 lechas of land described in schedule 'ka' to the plaint. The Respondents have also prayed for declaration of their right, title and interest over schedule 'kha' land, which is 2/7<sup>th</sup> of schedule 'ka' land.

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11) Vide Judgment dtd. 24.08.2020, the Respondent's/ plaintiff's suit being Title Suit No.15/1997 was partly decreed, declaring the Respondent's / plaintiff's right, title and interest over the schedule 'kha' land, which is 2/7<sup>th</sup> share of the land described in schedule 'ka' to the plaint, jointly along with the appellant and others for their joint possession over their share of land along with the Appellants till formal partition of schedule 'ka' land amongst the plaintiff and the defendant. A perusal of the land described in the schedule to the plaint of this Title Suit being Title Suit No.6/2016 reveals that the land is the part of the land, which was described in the schedule 'kha' of Title Suit No.15/1997. Thus, the learned trial court has correctly held that the Respondents have right, title and interest over the suit land.

### **ISSUE NO.3**

12) The decision of the learned Trial Court relating to Issue No.3 was found to be appropriate. The Title Suit No.15/1997 was proved as Ext.2. The suit of the Respondents was decreed, declaring their rights over the schedule 'Kha' described in their plaint. The Decree was passed for joint possession of their shares along with the share of the Appellant until formal partition. The schedule 'Kha' described in the plaint of the suit i.e., Title Suit No.15/ 1997 encompasses the suit land of this Appeal and corresponding Title Suit No.6/ 2016. Moreover, this case is not barred by *Res judicata* as the Appellant admitted that the Respondent's suit is not according to the verdict of the earlier suit i.e., Title Suit No.15/1997. As in the earlier suit, the Appellant was given joint possession with respect to the suit land along with the Respondents, the Decree for partition of the suit land was ordered in the Title Suit No.6/2016, considering the fact that the Respondents had alleged that the Appellant dispossessed

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them from the suit land by constructing his house thereon. Through the extensive cross-examination of PW.1 and PW.2, the fact of dispossession by the Appellant could not be dislodged. The Respondents have their own right, title over their shares of land along with the Appellant.

13) A preliminary Decree for partition of the respective shares of the legal heirs over the suit land will be a relief to both the parties. I would, therefore, not like to breach into the decision of the Trial Court. The decision of the learned Trial Court is, hereby, upheld. Contrary to the submission of the Appellant, there was also a prayer for preliminary decree for partition of the suit land. Without proper demarcation and partition, the boundary dispute between the legal heirs will be a never ending issue.

14) The Appeal is dismissed.

15) No order as to costs.

16) Prepare a Decree, accordingly.

17) Send back the LCR with a copy of this Judgment.

Judgment & Order is signed, sealed and delivered in the open Court on the 1<sup>st</sup> day of March, 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.