

Assam Schedule VII, Form No. 132
HIGH COURT FORM NO. (J) 2
HEADING OF THE JUDGMENT IN ORIGINAL SUIT

**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.

Wednesday, the 12th April, 2021.

TITLE APPEAL NO.2/2017.

Appellant : Sri Naren Neog.

Respondents : 1. Smt Sarumai Neog.
2. Sri Tilok Neog.
3. Sri Madhab Neog.
4. Sri Bhoirab Neog.

Proforma Respondents : 5. Sri Khirod Neog.
6. Sri Seniram Neog.
7. Sri Dilip Borah.
8. Sri Prafulla Neog.
9. Sri Rohini Neog.

This suit/case coming on for final hearing on 07.04.2021.

In presence of :-

Mr. Manik Chandra Hazarika, learned counsel for the Appellant.

Mr. Pankaj Saikia, learned counsel for the Respondents.

And having stood for consideration to this day the Court delivered the following

judgment :

JUDGMENT & ORDER

1) The present Appeal is filed by the Appellant challenging the legality of the Judgment and Decree dtd. 15.06.2017 rendered by the Civil Judge, Lakhimpur, at North Lakhimpur, in connection with Title Suit No.20/2015 dismissing the aforesaid suit. The plaintiff, Sri Naren Neog is figuring as Appellant in the present Appeal and the Defendants and Proforma Defendants of Title Suit No.20/ 2015, are arrayed as Respondents and Proforma Respondents in this Appeal. The Plaintiff will hereinafter be referred to as Appellant and the Defendants and Proforma Defendants will hereinafter be referred to as the Respondents and Proforma Respondents.

2) The factual array, as narrated in the pleadings is asseverated thus.

3) The land described in the schedule of the plaint is an ancestral property of Khudram Neog under Narayanpur mouza Saukuchi map appertaining to P.P. No.42 (old) and Dag No.211 (old), which is claimed to be newly numbered as P.P. No.247 and Dag No.1026 measuring 2 Bighas 0 Katha 2 Lechas. This land is also referred to as the suit land. Lt. Khudram Neog was survived by his sons, (1) Sri Naren Neog (Appellant hereinafter), (2) Sri Prafulla Neog (Proforma Respondent No.4) and (3) Lt. Phanidhar Neog. Lt. Phanidhar Neog was the husband of Respondent No.1, Smt Sarumai Neog and father of Respondent Nos.2, 3 and 4, namely Sri Tilak Neog, Sri Madhab Neog and Sri Bhoirab Neog respectively.

4) Genesis of the present lis is that the Appellant was the recorded pattadar of the suit land after partition. Based on the

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order of the Circle Officer, Narayanpur circle dtd. 28.06.2007 in Partition Case No.1/2007, his name was recorded as pattadar in the record of rights. Dissatisfied by the order of the Circle Officer, the Respondent No.1 filed a revenue Appeal being Case No.40 RA(L)/ 08 and vide order dtd. 08.08.2011, the Assam Board of Revenue remanded the Appeal to the Deputy Commissioner. It is contended by the Appellant that the Deputy Commissioner and thereafter, the Addl. Deputy Commissioner, sent back the record to the Circle Officer of Narayanpur circle on 26.09.2014 without taking steps. This impelled the Appellant to file Title Suit No.20/ 2015 with prayer for recovery of khas-possession and permanent injunction relating to the suit land.

5) It is averred that Madhab Neog, Respondent No.3 illegally encroached into the suit land by constructing a thatched house. The Appellant claims to have inherited the suit land from his father.

6) Per contra, the Respondents No.1 to No.4 contested the suit and filed Written Statement contending *inter alia* that there is no cause of action and there is no Dag No.211 under Myadi Patta No.42. It was contended that Myadi Patta No.42 covers Dag Nos.92, 188, 210 and 231 comprising a plot of land measuring 7 Bighas 19 Lechas. The Respondents have claimed that 2 Bighas of land of P.P. No.42 and covered by Dag No.210, belongs to the husband of the Respondent No.1, and father of Respondent Nos.2, 3 and 4. Respondents were in peaceful possession of their share of land since 1970 up to 1993. Respondents have submitted that after partition, the Appellant inherited his share of land of P.P. No.20, P.P. No.11, Eksona Patta No.27, Eksona Patta No.3, of a large track of land extending up to 30 Bighas. The Appellant has been residing at Tatibahar since 1985.

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7) It is further contended that after Phanidhar Neog's death, in order to grab the land lying in Phanidhar Neog's share, the Appellant filed the partition case in a subterfuged manner to procure the plot of land measuring 2 Bighas 2 Lechas appertaining to P.P. No.42 and Dag No.210. In collusion with the Circle Officer, the Appellant procured a separate Patta No.247 in his share. A Revenue Appeal was preferred against this order of the Circle Officer and the Partition Case No.1/ 2007 was cancelled by the Circle Officer of Narayanpur on 22.11.2011. The Appellant, then filed Misc. Case No.1/ 2007 before the Deputy Commissioner regarding the same matter, but they were not accorded any relief. The Respondents have prayed to dismiss the case *in limine*.

CONTENTIONS OF THE PARTIES :

8) The bone of contention is the rights of the parties over the suit land. The Judgment and Order of the Trial Court has been impeached on the grounds that the Trial Court failed to appreciate the evidence in its proper perspective. After holding that the suit is maintainable and that there is cause of action, the Trial Court took a contrary view and dismissed the suit. P.P. No.42 of Saokuchi revenue map under Narayanpur mouza is an Ejmali patta and the Plaintiff's/ Appellant's father's name was shown as Pattadar No.1 against Dag No.210. Then, the Appellant got his name recorded as Pattadar of P.P. No.247 (newly numbered) and new Dag was created as No.1026 for a plot of land measuring 1 Bigha 0 Katha 2 Lechas, which was subsequently cancelled by order of the Assam Board of Revenue, but the Appellant's share was not extinguished in any way.

9) It is contended that the Trial Court ignored that the Appellant was occupying the suit land on or before 2008 by virtue of his

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share over the ancestral property, and erroneously formed an opinion that the Appellant had no right, title and interest over the suit land. Another contentious issue branching out is that the Respondents dispossessed the Appellant from the suit land. The decision of the Trial Court was assailed on the ground that, the Trial Court did not observe that the Respondents trespassed into the suit land despite the evidence of the witnesses regarding the encroachment of the suit land by the Respondents. No opinion was given about the documentary evidence adduced by the Appellant.

10) On the other hand, the Respondents submitted that the decision of the Trial Court was judicious. It is contended that the Appellant has filed a case relying on a cancelled patta.

ISSUES DECIDED :

11) After a patient hearing of both the parties, the Trial Court decided the case on the following issues :

“ I) Is there any cause of action for the suit ?

II) Is this suit maintainable ?

III) Whether the plaintiff got right, title and interest over the suit land ?

IV) Whether the Defendant has dispossessed the Plaintiff from the suit land?

V) To what relief or reliefs the plaintiff is entitled to ? ”

12) As this is a first Appeal, it is the bounden duty of this Court to reappraise the evidence.

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The Plaintiff's witnesses are -

PW.1	Sri Naren Neog.
PW.2	Sri Rohini Neog.
PW.3	Sri Prafulla Neog.
PW.4	Sri Khirod Neog.
PW.5	Sri Anil Bhuyan.

The Defendants' witnesses are -

DW.1	Smt Sarumai Neog.
DW.2	Sri Diganta Borah.
DW.3	Sri Nabin Das.

Documents were exhibited by the parties in endorsement of their pleaded case.**13) Was there any cause of action for the suit ? (Issue No.I)**

The Appellant has claimed his right, title and interest as legal heir of Lt. Khudram Neog. On the contrary, the Respondents have denied the Appellant's right, title and interest over the suit land, ascertaining that their predecessor, Lt. Phanidhar Neog was the owner of the suit land. The Appellants have also alleged that the Respondents have illegally constructed a thatched house over the suit land in the year, 2008. This issue was decided correctly by the Trial Court. The parties are at variance. There is indeed a cause of action. The cause of action arose in the year, 2008 and thereafter, on several dates when the Appellant was denied his right over the suit land. Cause of action also arose on 26.09.2014 when allegedly the Revenue Court sent back the record of the Revenue Appeal No.40 RA (L)/ 08 to the Circle Officer, without taking steps.

14) The authoritative pronouncement of the Hon'ble Supreme Court as reported in ***Kusum Ingots Alloys Ltd. vs Union of India (2004) 6 SCC 254***, is that "cause of action implies a right to sue. The material facts which are imperative for the suitor to

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allege and prove constitutes the cause of action. Cause of action 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."

15) 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.

16) Whether the Plaintiff had right, title and interest over the suit land ? (Issue No.III)

The Trial Court spelt out sound reasonings while deciding the issue No.III. The Appellant/Plaintiff adduced his evidence as PW.1. His evidence and pleadings depict that the suit land is his property. Ext.1 is the Myadi kutcha patta. As per order of the Circle Officer at Narayanpur, dtd. 28.06.2007 in Partition Case No.1/2007, his name was recorded as the owner of the suit land after partition. Ext.2 is the certified copy of the partition. He acquired a separate Patta No.247 (newly numbered) of Dag No.1026 (newly numbered) for a plot of land of 2 Bighas 2 Lechas, and Ext.3 is the new patta. Against this order of the Circle Officer, the Respondents / Defendants preferred an Appeal before the Assam Board of Revenue being Case No.40 RA(L)/ 08, but as the Respondents / Defendants deliberately abstained from taking steps, the Appellant's / plaintiff's right, title and interest was confirmed. Ext.4 is the certified copy of the Order of the Assam Board of Revenue. Ext.4 is the letter issued by the A.D.C, Lakhimpur, to the Circle Officer. PW.1 also deposed that he was in

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peaceful possession of the suit land after his father had given him possession over the same. Ext.6 is the land Revenue Receipt.

17) I have scanned the documentary evidence as well as oral evidence. The copy of the order dtd. 08.08.2011 of Case No.40 RA(L)/08, however, depicts that the Board of Revenue heard both the parties. It is not true that no steps were taken by the Respondents. Contrary to PW.1's evidence and pleadings, the order dtd. 08.08.2011 in Case No.40 RA (L) / 08 depicts that the Board of Revenue set aside the order dtd. 02.06.2007 passed by the Circle Officer of Narayanpur circle in Partition Case No.1/2007. This has been admitted by the PW.1 in his cross-examination that vide order dtd. 08.08.2011, the Board of Revenue set aside the order of the Circle Officer and remanded back the case to be placed before the proper forum. It was held by the Board of Revenue that **as per dispensation of Section 147 (b) of the Assam Land and Revenue Regulation, 1886, an Appeal shall lie before the Deputy Commissioner only.** So, the order passed in Partition Case No.1/2007 was set aside, and the case was remanded back to the Deputy Commissioner. PW.1's evidence in chief is contradictory to his cross-examination and the documents submitted by PW.1 as well as by the Respondents contradicts PW.1's evidence and pleadings. He has admitted that the Revenue Appeal Case No.40 RA(L)/ 08 was decided in favour of the Respondents. He has indignantly denied any knowledge about cancellation of his newly numbered patta on 22.11.2011 as per order of the Addl. Deputy Commissioner, Lakhimpur.

18) The Respondent No.1, Smt Sarumai Neog deposed as DW.1 that her husband (Lt. Phanidhar Neog) had been in possession

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over 2 Bighas of land since 1970. A house was constructed by her husband over the plot of land. This property has devolved to their share (Respondents' share) as legal heirs of Lt. Khudram Neog. The land was already partitioned. Ext'A' is the certified copy of Myadi Patta No.42. The Myadi Patta No.247 submitted by the Appellant in this case was already cancelled. DW.1 has, however, admitted in her cross-examination that the land of Khudram Neog was not partitioned officially, but the ancestral land of Khudram Neog was verbally partitioned. There was no formal partition. She has stressed that the Appellant has no share in the suit patta bearing Dag No.210.

19) After scrutinising the cross-examination of PW.1, it can be held that admittedly, Khudram Neog was the original pattadar of the suit land during his lifetime. His legal heirs are the Appellant, Respondent No.1's husband and proforma respondent No.4. It is clear that both the parties are ancestors of the same family tree. Respondents' father (Lt. Phanidhar Neog) was Naren Neog's (Appellant's) brother.

20) At this juncture, it is apt to advert to the evidence that has surfaced from the deposition of PW.5, the evidence of the Respondent as DW.1 and evidence of DW.2, Sri Diganta Bora. Respondent's document, Ext.A(1), corresponding to Ext.10 depicts the note of cancellation of the patta allegedly procured by the Appellant through Partition Case No.1/2007. According to the note, as per order of the Deputy Commissioner dtd. 24.10.2010, and order of the Circle Officer dtd. 22.11.2011, the order of partition in favour of the Appellant was cancelled. It is thereby held that the Patta No.247 stood cancelled along with Dag No.1026. **It is thereby held that the patta marked as Ext.3 is a comparatively older document.**

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This has been indeed admitted by the Appellant. It has been rather emphatically submitted by the Eloquent Mr. Hazarika on behalf of the Appellant that even though Ext.3 was issued on 23.07.2007, and thereafter, cancelled on 22.11.2011, the Appellant's right over his share of the ancestral property does not get extinguished.

21) Now, I would like to advert to the evidence of Sri Anil Bhuyan, the Lat Mandal of Lat No.2 of Narayanpur mouza under Narayanpur circle. He testified as PW.5 that Saukuchi map is under his Lat, and on the day when his evidence was recorded, he produced some documents including Jamabandi, Chittha book, pertaining to P.P. No.247 of Dag No.1026. He proved the Jamabandi as Ext.10. Ext.10(1) is the relevant entry of P.P. No.247 (proved in original), and the Dag number was shown as 1026, covering an area of 2 Bighas 0 Katha 2 Lechas 1st class homestead land. Ext.10(2) is the partition note (proved in original) and Ext.11(1) is the entry of PP No.42 (proved in original) with relevant Dag Nos.92, 188, 210 and 231 of the entire expanse of land measuring 7 Bighas 0 katha 19 Lechas and the plot of land of specific Dag No.210, extends up to 5 Bighas 0 katha 3 Lechas, along with the notes in three pages. The evidence of PW.5 substantiates the pleadings of the Respondents that there is no Dag No.211 under Myadi Patta No.42. The Myadi Patta No.42 covers Dag Nos. 92, 188, 210 and 231 for a plot of land measuring 7 Bighas 0 katha 19 Lechas. Thus, it can be safely held that the documentary evidence i.e., Ext.11 pertaining to Patta No.42 does not include the land covering Dag No.211 (suit Dag). It has to be borne in mind that the old Dag No. and Patta no. of the suit land scheduled in the plaint was P.P. No.42 and Dag No.211. Thus, the submission of the defence counsel that the Appellant has filed a case without

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documents has come to the fore through the evidence of the witnesses. It has been proved with reliable documentary evidence that the Appellant's patta, Ext.3 was cancelled.

22) PW.5 further deposed that Ext.12 is the Chittha Book in original and Ext.12(1) is the relevant chittha entry relating to Dag No.210 (proved in original). The notes recorded in Ext.10 and Ext.11 - Jamabandi are in tune to the notes with respect to Ext.12 (Chittha book). Ext.12(2) is the entry of Dag No.1026 (proved in original). Ext.12(2) is the partition note made from the original Dag No.210. PW.5 has proved the original map pertaining to Dag No.210 as Ext.13 and Ext.13(1) shows the existence of Dag No.210. PW.5 has also proved an old map relating to the same Saokuchi map as Ext.14 (proved in original). After scanning the evidence of PW.5, Ext.13 and Ext.14, it can be held that the old map marked as Ext.14 encompasses Dag No.1026 within Dag No.210, but the original map, Ext.13 does not depict Dag No.1026 (suit Dag). It is clear from the evidence of PW.5 and from the pleadings that in the old map, Saokuchi Dag No.1026 existed, but when the Patta No.247 was cancelled, Dag No.1026 was also cancelled along with the patta. This explains why Dag No.1026 was not imprinted in the map- Ext.13.

23) The defence was successful in contradicting the Appellant's case through cross-examination of PW.5 and the evidence of DW.1 and DW.2. PW.5 testified in his cross-examination that Ext.10 depicts that the Appellant's name was included in the patta, but now, it has been shown as omitted. Ext.A proved by DW.1 depicts the note pertaining to cancellation of the suit patta

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recorded in the Appellant's name. Ext.A(1) corresponding to the Appellant's documents, Ext.10, is the note pertaining to cancellation of the partition procured by the Appellant. The Respondents' documents, Ext.B corresponding to Appellant's document, Ext.11 contains the note, which mentions cancellation of Partition Case No.1/2007. This has been admitted by PW.5 in his cross-examination. The PW.5 proved the Chittha Book as Ext.12(2) and the corresponding Jamabandi copy of the suit land as Ext.10(1). The note 'Kha' on the Jamabandi copy - Ext.10(1) and the note on the Chittha Book marked as Ext.12(2) clearly depicts cancellation of the Partition Case No.1/2007 as per order of the Deputy Commissioner dtd. 24.10.2010 and subsequent thereto, the order of the Circle Officer dtd. 22.11.2011. This is the up-to-date and latest order and status of the landholder over the suit land. The Appellant's name as a pattadar over the suit land has been cancelled. No Appeal was preferred against this order by the Appellant, but the Appellant traced back his steps and launched the corresponding Title Suit on the strength of an older document allegedly procured on 28.06.2007.

24) It is therefore held that the Appellant failed to assert even on the touchstone of preponderance of probability that he is the land holder of the suit land covered by PP No.42 (old) and Dag No.211 (old) or the suit land described by the newly numbered PP No.247 and Dag No.1026 extending up to 2 Bighas 2 Lechas of land, which is also described in the schedule of the plaint. The other documents marked as exhibits depicts that the Appellant is the land holder of tracks of land pertaining to other Dag numbers and Patta numbers, but the documents do not prove that the Appellant is the land holder of the suit land. It is apt to mention that Ext.1 upto Ext.14 were exhibited by the Appellant. The

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Appellant's name appears in P.P. No.42, but he is not the landholder of Dag No.210. His name is recorded as landholder relating to other Dags, but not Dag No.210.

25) The Advocate, Mr. Manik Chandra Hazarika laid stress in his argument that the rights to ancestral property does not get extinguished with cancellation of old patta. It is admitted that the Appellant has come forward seeking khas possession as land holder over his ancestral property, which cannot be extinguished by the cancellation of the partitioned land. It has already been discussed in my foregoing discussions that the Appellant's name appears in P.P. No.42, Ext.12, but there is no Dag No.211 (old) under P.P. No.42. The Appellant is not a landholder of Dag No.210. After order dtd. 08.08.2011 and subsequent order dtd. 22.11.2011 cancelling the Patta No.247 (old) and Dag No.1026 (old), the Appellant took no steps to go against the order and establish his right as landholder of 2 Bighas 0 Katha 2 Lechas of land of Narayanpur mauza Saukuchi map of PP No.42 (old) and Dag No.211 (old) corresponding to P.P. No.247 (new) and Dag No.1026 (new). I would like to reiterate that the pleadings and evidence depicts that the P.P. No.247 consisting of Dag No.1026 was cancelled, extinguishing the rights of the Appellant as a landholder over the aforesaid plot of land of P.P. No.247 and Dag No.1026.

26) It is palpably true that the Appellant as legal heir by order of consanguinity has right over his share of land, but unfortunately, the Appellant's case was for khas possession and injunction and not for partition as a right of being legal heir in order of consanguinity, as a descendant. Moreover, the document, Ext.3 on the basis of which the Appellant sought relief was not

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enforceable in law. The patta, Ext.3 has no validity as it was already cancelled. It is true that an Appeal can be decided beyond the recital of the Appeal memo., but at the same time, it has to be borne in mind that an Appeal is a continuation of a suit. Therefore, in order to render substantial justice, I record my concurrence to the Issue No.III decided by the Trial Court that the Appellant has no right, title and interest over the suit land. When no right was established over the suit land, the Appellant is not entitled to injunction or khas possession.

27) Regarding the Issue No.II, the reasons assigned by the Trial Court relating to maintainability of the suit has been assailed by the defence counsel stating that the Trial Court's final decision was not in conformity to the decision on maintainability. The Trial Court held that a suit was maintainable relying on the authoritative pronouncement of the Hon'ble Gauhati High Court in *Sukumari Dev and others -versus- on the death of Manindra Chandra Dev, his legal heirs Madan Dev and ors. (1991) 1 GLR 236*. It was strenuously argued on behalf of the Appellant that despite holding that the suit was maintainable, the Trial Court on the contrary dismissed the Title Suit. It is germane to mention at this juncture that the Hon'ble Gauhati High Court held in *Sukumari Dev's case (Supra)* that "**Section 154 of the Assam Land and Revenue Regulation, 1886, is not a bar for issuing such a direction for cancellation, it is needless to say entry in the revenue records does not confer any title on any person and at most it is a piece of evidence.**"

The original Title Suit in *Sukumari Dev's case (Supra)* was for cancellation of the illegally procured mutation of land in the names of the defendants. It is true that Section 154 of the Assam

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Land and Revenue Regulation, 1886, is not an embargo against the jurisdiction of a Civil court. It has also been observed in *Sukumari Dev's* case (Supra) that **“In this connection, I may quote below Section 62 of the Regulation, which runs as follows. Nothing contained in this Chapter and nothing done in accordance therewith shall be deemed to - (a) preclude any person from bringing, a suit in the Civil Court for possession of, or for declaration of his right to any immovable property to which he may deem himself entitled.”**

28) In view of my foregoing discussions, it is held that the relief was available to the Appellant in Civil Court. The suit indeed does not fail on the ground of maintainability. I would like to record my concurrence with the decision of the Trial cCourt on the issue of maintainability (Issue No.II). It is opined that the Trial Court spelt out sound reasonings while deciding issue No.II.

29) Whether the Respondents had dispossessed the Plaintiff from the suit land ?

The Appellant has claimed to have been dispossessed by the Respondent No.3, who has allegedly encroached into the suit land taking advantage of his continuous absence from the suit land. PW.1 (Appellant) has admitted in his cross-examination that he has been residing at Tatibahar for 30 years. He has admitted that he used to stay at Tatibahar and not in Narayanpur. The evidence of PW.1 (Naren Neog) and PW.2 (Rohini Neog) depicts that the Respondent No.3, Sri Madhab Neog encroached into the Appellant's (PW.1') land and constructed a thatched house . It is averred that since the Assamese month of 'Fagun' of 2008, the Appellant has been dispossessed. The evidence of PW.4, Sri Khirod Neog substantiates the fact that the Respondents'

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predecessor Lt. Phanidhar Neog was in possession of the suit land and after his death, the Respondents have been in possession of the suit land. On the broad probabilities of this case, it is held that the Respondents have been in possession of the suit land from the year, 2008. It also appears from the evidence of DW.1 that the Respondents are in possession of the suit land. The Appellant has no right, title and interest over the suit land. The question of dispossession does not arise at all. The Appellant failed to prove that the Respondents have dispossessed him and encroached into his land.

30) This issue was decided in the negative by the Trial Court. It is held that the decision of the Trial Court on Issue No.IV is sustainable.

31) It is held that there is no necessity to disturb the findings of the Trial Court in respect of Issue Nos. I, II, III, IV and V.

32) Appeal is, hereby, dismissed.

33) No order as to costs.

34) Prepare a Decree, accordingly.

35) Send back the LCR with a copy of this Judgment and order.

Given under the hand and seal of this Court on the 12th day of April, 2021.

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

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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.