

HIGH COURT FORM NO. (J) 2

**HEADING OF JUDGMENT IN APPEAL/CASE**

District : **LAKHIMPUR.**

**IN THE ORIGINAL COURT OF THE CIVIL JUDGE,  
LAKHIMPUR, NORTH LAKHIMPUR**

Present :- ***A.M.Md.Mahiuddin. M.Sc; LL.B.***

**Wednesday, the 09<sup>th</sup> day of March, 2022**

**Title Suit No. 2 of 2016**

1. **Smti Mina Hazarika Konwar**  
**On death of Dimbeswari Gogoi (the original Plaintiff no.1) her legal heirs**
2. **Sri Tikendrajit Konwar,**
3. **Sri Firojit Konwar and**
4. **Sri Kalyan Konwar**  
..... **Plaintiffs.**

***Versus***

1. **Smti Punya Gogoi and**
2. **Sri Tukheswar Konwar .....** **Defendants.**

This Appeal/SUIT coming on this day (or having been heard on) **23-02-2022 and 08-03-2022**, in the presence of

***Sri Biman Bora , Advocate*** .....for the Plaintiffs.  
***Sri G. Sahu, Advocate*** ..... for the defendants.

and having stood for consideration to this **09<sup>th</sup> day of March, 2022**, the Court delivered the following Judgment: -

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***A.M.Md.Mahiuddin,***  
Civil Judge, Lakhimpur, North Lakhimpur.

**Title Suit No. 2 of 2016**

Plaintiffs: Smti. Mina Hazarika Konwar and ors.

Vs

Defendants: Sri. Punnya Gogoi and anr.

**J U D G M E N T**

**1.** This is a suit for partition of a land measuring 17 Bighas 2 Kathas 18.5 Luchas out of a total land measuring 35 Bighas and 17 Luchas covered by Dag no. 149,361,440,479,480,486,509,511,563,566,569 and 688 of P.P no. 23 of Sukulibhoria village under Nakari Mouza of Lakhimpur District (herein after referred as the suit land), originally filed by one Dimbeswari Gogoi (now deceased and represented by the plaintiffs no. 2, 3 and 4) and her daughter-in-law Smti Mina Hazarika (now plaintiff no.1) against the nephew of Dimbeswari Gogoi i.e defendant no.1 Punnya Gogoi and a stranger i.e defendant no.2 Tukheswar Konwar.

**PLEADINGS OF PLAINTIFF SIDE**

**2.** After going through the original as well as amended plaint, it is found that the plaintiffs would plead that, the entire suit land of 35B-0K-17L was originally owned by two brothers namely Maheswar Ahom and Punaram Ahom. On the death of Maheswar Ahom, the name of his only son Lila Kanta Gogoi was mutated in the record of rights. Said Lila Kanta Gogoi died unmarried and intestate and accordingly, the name of his mother Gulapi Gogoi and sister Dimbeswari Gogoi (original plaintiff no.1) got mutated in his place. On the death of Gulapi Gogoi, Dimbeswari Gogoi became the only surviving share holder of late Maheswar Ahom. Likewise on the death of Punaram Ahom, his son Ghansyam Ahom became the share holder and got his name mutated

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and on his death, the name of his son Punnya Gogoi (defendant no.1) got mutated in the record of right.

**3.** The plaintiffs would also plead that Dimbeswari Gogoi had three sons namely Biswapati Konwar (the husband of plaintiff no.1 and father of plaintiff no. 2,3 and 4), Ananta Konwar and Bhaben Konwar. Bhaben Konwar died in the year 1986, Ananta Konwar died in the year 1989 and Biswapati Konwar died in the year 1995. As Dimbeswar Gogoi at the time of filing of the suit was old and ailing person, she appointed her daughter-in-law Mina Hazarika Konwar as her attorney vide registered power of attorney dated 25.02.2016 for conducting this suit and to adduce evidence. So, said Mina Hazarika was impleaded as plaintiff no.2 in the original plaint and on the death of Dimbeswari Gogoi on 23.03.2017, her surviving legal heirs i.e. the sons of late Biswapati Konwar i.e. Tikendrajit Konwar, Firojit Konwar and Kalyan Konwar were impleaded as plaintiff no.2, 3 and 4.

**4.** The plaintiffs would further plead that after the death of Lila Kanta Gogoi, Dimbeswari Gogoi started to live with her mother Gulapi Gogoi and during that time, they permitted the defendant no.1 to cultivate in the suit land in exchange of its produce and the defendant no.1 continued to cultivate in that land and continued to give a share of the crop to Dimbeswari Gogoi and thereafter to her daughter-in-law Mina Hazarika (plaintiff no.1). In the year 2007, the plaintiffs could learn that defendant no.2 Tukheswar Konwar started constructing house in the suit land which comes in the share of the plaintiffs and accordingly, they went there to prevent the construction and at that time they

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came to know that the defendant no.2 purchased the land covered by Dag no. 480 of Suit Patta. Since then, the defendant no.1 stopped giving Dimbeswari Gogoi her share of the crop and helped defendant no.2 in order to dispossess her from the suit land. Due to some household problems, though Dimbeswari Gogoi could not take immediate action however, in the year 2015 she filed partition case no. 49/2015 before the Circle Officer, Lakhimpur Revenue Circle seeking partition of her share in the suit land. But, the case was dismissed on 13.01.2016 as the Circle Officer did not find possession of Dimbeswari Gogoi over the suit land.

5. Accordingly, Dimbeswari Gogoi along with her attorney Mina Hazarika had filed this suit seeking declaration that she is entitled to half of the suit land to the share measuring 17B-2K-18.5L of land and to get the land partitioned in her favour. She further prayed for a decree declaring that the name of the defendant no.2 in the record of right should be cancelled and that he should be evicted from the suit land.

**PLEADINGS OF THE DEFENDANT SIDE**

6. Summons was issued to the defendants and they contested the suit by filing their written statements wherein the defendant no.1 has filed his counter-claim. Upon perusal of the written statements and additional written statement of the defendants, it appears that the defendant no.1 would plead that he deny the claim of the plaintiffs categorically and specifically. The defendant no.1 pleaded that the

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plaintiffs have no right, title or interest over the suit land and the mutation of the names of Lila Kanta Gogoi, Gulapi Gogoi and Dimbeswari Gogoi was irregular, illegal and liable to be cancelled.

**7.** The defendant no.1 pleaded that actually Punaram Ahom @ Gogoi was the father of Maheswar Ahom @ Gogoi and not his brother. Punaram Ahom @ Gogoi had two sons Maheswar Ahom @ Gogoi and Ghanashyam Gogoi. The plaintiffs are the descendants and legal heirs of late Maheswar Gogoi and defendant no.1 is the son of late Ghanashyam Ahom @ Gogoi. The suit land comprising of 35B-0K-17L was the exclusive property of Ghanashyam Gogoi and after his death the defendant no.1 became its absolute owner. Therefore, the claim of the plaintiffs that the suit land originally belonging to Maheswar Ahom and Punaram Ahom is false and baseless and as such, the plaintiffs cannot inherit any right over the suit land and accordingly, they have no right to get partition over the same. The defendant no.1 prayed for declaring, in his counter-claim, that he being the son of Ghanashyam Gogoi, is the sole processor of the suit land having absolute right over it, that in view of adverse possession also he has the right to hold and continue possession over the same, that he has right, title and interest over the suit land, that the mutation of the name of original plaintiff no.1 (Dimbeswari Gogoi) in the record of right is illegal and liable to be cancelled and for permanent injunction against the plaintiffs.

**8.** From the pleadings of defendant no.2, it appears that he has completely denied the claim of the plaintiffs and pleaded that he has been wrongly arrayed in the suit as he neither dispossessed the

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plaintiffs from the suit land nor has constructed any structure over it. Rather he has his permanent structure over land covered by Dag No. 482 of P.P No. 98 of Nakari Mouza. The defendant no.2 admitted that he has no right, title, interest or possession over land covered by Dag no. 480 and if his name was mutated in the said Dag, it was done irregularly.

9. Upon perusal of record, it appears that two sets of issues were framed vide order dated 14.03.2017 and 10.11.2017. So, in order to avoid over lapping of issues and for the convenience of discussion and proper adjudication of the dispute, the following issues were re casted after going through the pleadings of the parties and hearing the learned counsels representing them.

**Issues:-**

1. *Whether there is any cause of action for the suit?*
2. *Whether late Dimbeswari Gogoi had any right over the suit land to get her share partitioned from the defendants?*
3. *Whether the plaintiffs are entitled to get the decree as prayed for?*
4. *Whether the defendant no.1 is entitled to get a decree in his counter-claim as prayed for?*
5. *To what other reliefs the parties are entitled?*

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**PEREMPTORY HEARING**

**10.** At the time of peremptory hearing the plaintiff side adduced evidence of 3 (three) witnesses and exhibited couple of documents. On the other hand, the defendants adduced evidence of two witnesses and also exhibited certain documents.

**11.** After conclusion of evidence stage, I have heard Arguments of the learned counsels for both the parties and have gone through the record meticulously. It is to be mention here that at the time of Argument, the learned counsel for the plaintiffs has cited and relied on three judgments, as mentioned below, which would be discussed, if found relevant, in appropriate stage.

*(i) Shub Karan Bubna Vs Sita Saran Bubna and Ors reported in (2009) 9 SCC 689,*

*(ii) M. Venkataramana Hebbar (dead) by LRS Vs M. Rajagopal Hebbar and Ors. Reported in (2007) 6 SCC 401,*

*(iii) Hashyabala Ghosh and Ors Vs Ghanashyam Nunia reported in (2005) 1 GLR 366.*

**DICUSSION, DECISION AND REASONS THEREFOR:**

**Issue No.2**

**12.** After going through the pleadings of the parties and hearing the submissions of both the parties, it is apparent that the present plaintiffs are claiming their joint right over the suit land and partition of the same in their favour through a derived right claimed by the

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original plaintiff late Dimbeswari Gogoi. The original plaintiff of the suit late Dimbeswari Gogoi claimed the suit land to be a joint property of her father Maheswar Ahom and his brother Punaram Ahom. So, the entire suit is found to rest on the question whether suit land is a joint property of Maheswar Ahom and his brother Punaram Ahom and whether late Dimbeswari Gogoi had any joint right or share over the suit land to get it partitioned in her favour.

- 13.** It is found from the record that, prior to adducing evidence Dimbeswari Gogoi expired and she could not put her statements directly before the court in the shape of evidence. However, her legal heirs i.e the present plaintiffs adduced evidence and deposed that the suit land belonged to Maheswar Ahom and Punaram Ahom jointly. On the death of Maheswar Ahom his only son Lila Kanta Gogoi inherited his share and on his death his share was inherited by his mother Gulapi Gogoi and his sister Dimbeswari Gogoi as Lila Kanta Gogoi died unmarried and intestate. Later on, when Gulapi Gogoi died, the whole share of late Maheswar Ahom was inherited by Dimbeswari Gogoi. The witnesses for the plaintiffs have corroborated the contentions. But, it would not be out of context to mention here that, in a Civil dispute, cases are established through documents and documentary evidence always gets preference and weightage over oral evidence. So, on being scrutinized it is found that the plaintiffs have exhibited only a certified copy of Jamabandi of the suit patta no.23 as Exhibit-2 and one land revenue payment certificate issued by the Mouzadar as Exhibit-3. Upon perusal of Exhibit-2, it appears that, the name of Lila Kanta Gogoi was there in the suit patta and on

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his death the name of his mother Gulapi Gogoi and sister Dimbeswari Gogi were mutated as per order dated 26.12.1982 of the Circle Officer. But from Exhibit-2, we would not be able to trace back the title of Maheswar Ahom. There is no mention in the Jamabandi as to how the name of Lila Kanta Gogoi got mutated in respect of the suit patta.

- 14.** Moreover, it is settled law that, mutation entry in the record of rights does not confer any right or title except affording a presumption of possession. In this regard, I would like to refer the decisions of the Hon'ble Supreme Court given in the case of [Sawarni v. Inder Kaur and Others](#) reported in **AIR 1996 SC 2823** wherein the Hon'ble Court held that, *mutation entry neither creates nor extinguishes title or ownership*. In **Narain Prasad Aggarwal (D) by LRs. v. State of M.P.** reported in **2007 (8) SCALE 250**, the Hon'ble Supreme Court opined in Para 22 that, "Record of right is not a document of title. Entries made therein in terms of Section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable." Further, in the case of **Gurunath Manohar Pavaskar & Ors vs Nagesh Siddappa Navalgund & Ors** reported in **AIR 2008 SC 901**, the Hon'ble Supreme Court opined in Para 12 that, "a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/ or continuity thereof

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*both forward and backward can also be raised under Section 110 of the Indian Evidence Act."*

**15.** Since in a suit of partition the court has to decide whether the claimant has a share in the suit property, the share must be established through title and not merely on the basis of possession over the suit property. This observation has also been taken by the Hon'ble Supreme Court in the case ***Shub Karan Bubna Vs Sita Saran Bubna and Ors***, referred by the plaintiff side. Here in this case, it is found that though the plaintiff and her witnesses deposed that the plaintiffs were/are in joint possession of the suit property as co-owner but, they could not conclusively established through cogent evidence and proper document that, the suit property originally co-owned by Maheswar Ahom, the predecessor in interest of late Dimbeswari Gogoi.

**16.** On the other hand, the defendant no.1 denied the claim of the plaintiffs that Maheswar Ahom and Punaram Ahom were brothers. As per defendant no.1 Punaram Ahom was the father of both Maheswar Ahom and his father Ghanashyam Ahom and the suit land pertaining to Periodic Patta no. 23 was exclusive property of Ghanashyam Ahom. In support of his contentions, he has produced and exhibited one original Kheraji Patta issued by Settlement Officer, Lakhimpur in the year 1976 pertaining to the suit land measuring 35B-0K-17L comprising of Dag Nos. 149,361,440,479,480,486,509,511,563,569, 566 and 688 of P.P No. 23, as Exhibit- 'ka' and from said exhibit it is crystal clear that the aforesaid land was settled in the name of

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Ghanashyam Ahom, the father of the defendant no.1. there is no mention of the name of Maheswar Ahom in the original land document. Further PW-1/Plaintiff No-1 admitted in her cross-examination that, they did not object issuance of periodic patta in the name of Ghanashyam Gogoi.

- 17.** The defendant no.1 further exhibited 20 nos of land revenue payment receipts from Exhibit-'kha' (1) to Exhibit- 'Kha' (20) and from all these exhibits, it appears that the defendant no.1 was in possession of the suit land and has been paying the land revenue of the same since 1983 till 2015. So, on the basis of pre ponderance of evidence, it would not be difficult for us to decide that late Dimbeswari Gogoi neither had any right nor she had inherited from her father Maheswar Ahom, in respect of the suit land, so as to get a partition of her share. **Accordingly, this issue is decided in negative against the plaintiffs.**

**Issue No. 1**

- 18.** It is found from the pleadings of the plaintiffs that originally the suit was filed by plaintiff Dimbeswari Gogoi (now deceased) when in the year 2007 she came to know that the defendant no.2 started constructing a house in her share of the suit land. But from the pleadings of defendant no.2 and from the evidence on record, it is found that the house of the defendant no.2 was constructed over his own land covered by Dag no. 482 of P.P No. 98 of Nakari Mouza which is quite different from the suit land. Further, from the discussion and decision on issue no.2, it is apparent that late

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Dimbeswari Gogoi had no right over the suit land to seek a decree of partition of the same. So, I am of this reasonable opinion that the plaintiffs had no cause of action for instituting the suit against the defendants. **Accordingly, this issue is decided in negative against the plaintiffs.**

**Issue no.3**

**19.** It has already been mentioned that, the present plaintiffs are the legal heirs of late Dimbeswari Gogoi, the original plaintiff and they are praying for a decree of partition of the suit land on the basis of the alleged right derived from late Dimbeswari Gogoi. It is found from the pleadings of the plaintiffs that, they prayed for a preliminary decree for partition of the suit land between them and the defendant no.1. They also prayed for appointing a commissioner for doing the partition and for passing a final decree. The plaintiffs also prayed for eviction of defendant no.2 from the suit land and for cancellation of mutation in the name of the defendant no.2 and for restoration of khas possession to them.

**20.** It has already been discussed and held that late Dimbeswari Gogoi neither had any direct right over the suit land nor she had derived the same from any of her predecessors including late Maheswar Ahom. So, as the right of late Dimbeswari Gogoi over the suit land could not be established by the plaintiffs, I find that they are not entitled to get the decree of partition of the suit land or any other relief as they claimed in the suit. **Accordingly, this is decided in negative against the plaintiffs.**

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**Issue No. 4**

- 21.** It is found from the counter-claim of the defendant no.1 that, he prayed for a decree of declaration that he has the right to possess the suit land and in view of adverse possession also, he has the right to hold possession over the same. The defendant no.1 has also prayed for a decree declaring his right, title and interest over the suit land.
  
- 22.** As it has already been discussed and found that, the defendant no.1 has produced the original 'kheraji patta' (Ext.2) of the suit land in the name of his father Ghanashyam Gogoi, I find that it would be sufficient and conclusive evidence on the part of the defendant no.1 to held that he has right, title and interest over the suit land. The documents produced by the plaintiffs are found to be insufficient and weaker piece of evidence in comparison to Exhibit-2. So, I find that the defendant no.1 is entitled to get a decree of declaration that, he has right, title and interest over the suit land.
  
- 23.** Regarding rightful possession or adverse possession over the suit land, in what soever manner, the defendant no.1 is claiming his right, I find that the admission of plaintiff Mina Hazarika as PW.1 that the defendant no.1 has been in possession of the suit land since the time of his father Ghanashyam Ahom, has made the issue settled. Moreover, from Exhibit- Kha(1) to Exhibit- Kha(20) the land revenue payment receipts, it has again become crystal clear that the suit land has been in possession of the defendant no.1 since 1983

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till 2015. So, from the admitted facts and evidence on record, I find that, the defendant no.1 is entitled to get a decree of declaration that he has rightful possession over the suit land and also has a right to continue the same.

**24.** The counter-claim of the defendant no.1 further shows that he has prayed for a declaration that the mutation of the name of original plaintiff no.1 in the record of rights in respect of the suit land is illegal and the plaintiffs are not entitled to get a decree of partition. At the cost of repetition, I would like to reiterate that late Maheswar Ahom had no right, in what soever manner, over the suit land and as such, his legal heirs, either his son Lila Kanta Gogoi or his wife Gulapi Gogoi or his daughter Dimbeswari Gogoi cannot legally inherit any right over the suit land from him. As such, any kind of mutation of the name of aforesaid persons over the suit land, would be illegal and correction of the Jamabandi to that effect, would be an irregularity. All such corrections in the record of right in the name of aforesaid persons would be liable to be cancelled and the defendant no.1 would be at liberty to take appropriate steps before Land Revenue Authority for cancellation of aforesaid mutations.

**25.** The defendant no.1 has also prayed for a permanent injunction against the plaintiffs, their men and agents so that they cannot disturb his possession over the suit land and in view of the fact that, the defendant no.1 has able to prove his right, title, interest and possession over the suit land, I find that he is also entitled to get the decree of permanent injunction to that effect. **In view of aforesaid**

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**discussions and findings, this issue is decided in affirmative in favour of the defendant no.1.**

**Issue No. 5**

- 26.** In view of the discussions and decisions in Issue no.3 and 4, I find that the plaintiffs are not entitled to get any relief either in equity or in law. On the other hand, I find that the defendant no.1 is entitled to get a decree as he prayed for in his counter-claim. **Accordingly, this issue is decided in favour of the defendant no.1.**

**ORDER**

- 27.** In the light of the discussions and decisions made in the foregoing issues, I find that the plaintiffs have failed to prove their cases and accordingly, they are not entitled to get any relief. On the other hand, I find that the defendant no.1 has able to prove his right, title, interest and possession over the suit land and as such, he is entitled to get the decree as he prayed for in his counter-claim. Accordingly, it is declared that the defendant no.1 has right, title, interest and possession over the suit land, the mutation of the names of Lila Kanta Gogoi, Gulapi Gogoi and Dimbeswari Gogoi in the suit patta is illegal and liable to be cancelled. It is further ordered that, the plaintiffs, their men and agents are hereby restrained permanently from entering into the suit land with an intention to dispossess or disturb the defendant no.1.

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- 28.** In view of aforesaid directions, the suit of the plaintiffs is dismissed and the counter-claim of the defendant no.1 is decreed, on contest with cost.
- 29.** The operative part of the Judgment is pronounced in the open court.
- 30.** Prepare decree accordingly.
- 31.** This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this **09<sup>th</sup> March, 2022.**

***(A.M.Md. Mahiuddin.)***  
***Civil Judge, Lakhimpur, North Lakhimpur.***

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**APPENDIX**

- A. Plaintiff's Exhibits:** Ext. 1- Power of Attorney of late Dimbeswari Gogoi  
Ext.2- Jamabandi of P.P No. 23  
Ext.3- Land revenue payment certificate.  
Ext.4- Copy of order of Circle Officer.
- B. Defendant's Exhibits:** Ext. Ka - Periodic Patta (Kheraji Patta) no. 23  
Ext. Kha (1)  
to Kha (20) – Land Revenue Payment receipts.  
Ext. Ga- The case record of partition case no. 49/2015 filed by Dimbeswari Gogoi
- C. Court Exhibits:** Nil
- D. Plaintiff's witnesses:** PW.1 – Smti Mina Hazarika Konwar  
PW.2- Sri Padmeswar Chutia  
PW.3- Sri Badan Das
- E. Defendant's witnesses:** DW.1- Sri Punnya Gogoi  
DW.2- Sri Kamaleswar Gogoi
- F. Court witnesses:** Nil

***(A.M.Md. Mahiuddin.)***  
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