

Ts 13/16
Bipul Baishya
vs
Raso Prava Baishya & others

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

IN THE ORIGINAL COURT OF THE MUNSIFF NO.1, NALBARI

Present: Rubina Yasmin, AJS

Dated: 17th day of Feb, 2020

Title suit: 13/2016

BIPUL BAISHYA.....Plaintiff

Versus

RASO PRAVA BAISHYA

ALAKA BAISHYA.....Defendant

This suit/ case coming on for final hearing on the 17th day of January, 2020 in the presence of:

Mr. Arup Baishya--- Advocate for the Plaintiff

Mr. Champak Dutta----- Advocate for the Defendant

And having stood for consideration to this day, the court delivered the following judgment:

Judgment delivered on 17.02.20

1

JUDGMENT

This is a suit for declaration and confirmation of possession and other consequential relief.

1. The case of the plaintiff in brief is that the principal defendant no. 1 and 2 are respectively the mother and elder sister of the plaintiff. Late Narayan Goswami, Late Prabhat Goswami, Late Girish Goswami, Late Ganesh Goswami, Late Harichandra Goswami and Late Sabitri Devi was the recorded pattdar of Dag no. 1636 and 1637 of NK patta no. 9 of village Jagara. Late Daniram Baishya, the grand-father of the plaintiff was possessing the land of said dags under them as riot from the times immemorial and accordingly, Khatian no. 26 in respect of the land of said two dags was issued by the revenue authority in the name of late Daniram Baishya in 1973-74. plaintiff's father Rajat Baishya has expired during the survivorship of Daniram Baishya. Hence after the death of Daniram Baishya, the name of the plaintiff was recorded as the Khatiandar in the said Khatian no. 26 and the plaintiff has been possessing the land of dag no. 1636 and his land is described in the schedule below and hereinafter referred to as the suit land.
2. Defendant no. 2 at the instigation of the defendant no. 1 fraudulently tried to dispose of 3K-3L land out of the suit land to some other and accordingly filed petition for permission for sale of the land before the Circle Officer, Pachim Nalbari. Thereafter on being inquired the plaintiff could know about one relinquishment deed no. 864/1997 executed by Harichadra Goswami and Prabhat

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Goswami in respect of the suit and in favour of the defendant no. 1.

3. Pursuant to receipt of summons defendant no. 1 and 2 appeared and filed a joint written statement. Case proceeded ex parte against other pro forma defendants.
4. The defendant admitted the khatian in the name of Daniram Baishya but contended that at the time of death of Daniram the plaintiff was minor. Defendant no. 1 is the mother of plaintiff and defendant no. 2 is unmarried daughter of Rajat Baishya. Daniram Baishya died in the year 1976 and on his death, plaintiff, defendant no. 1 and 2 and other married daughter of Rajat Baishya has been enjoying and possessing the land. Later Rajat Baishya's married daughter Ela Baishya died and on his death, his son Hirakjyoti Barman and daughter Preetismita Barman got rioti possession by heir. The said plaintiffs got possession of 1/4th share i.e. 2K-1L-1P. The plaintiff now by collusive included his name with Daniram Baishya and plaintiff is shown there as minor and defendant No. 1 is shown as his guardian. She further stated that name of defendant no. 1 and 2 and Ela Baishya ought to have been included in the said Khatian land on the death of Daniram Baishya. Defendant no. 1 and 2 have been living in the disputed land since the day of Daniram Baishya. Moreover, the owner of the suit land has executed a relinquishment deed no. 864/97 in her favour and was handed over the possession of the suit land and hence plaintiff cannot obstruct the defendant in enjoying the land.
5. Considering rival between the two parties, my learned predecessor framed the following issues in this suit:

(i) Whether there is cause of action for the suit?

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- (ii) Whether the suit is maintainable?
 - (iii) Whether the suit is bad for non joinder of necessary parties?
 - (iv) Whether the plaintiff has acquired tennacy right over one fourth portion of the suit dag land?
 - (v) Whether the plaintiff is entitled to the decree as prayed for?
 - (vi) To what other relief(s) the parties are entitled ?
6. Plaintiff side has submitted evidence on affidavit of 2 witness and exhibited documents to establish his claim. Defendant side also submitted evidence of 4 Dws and has exhibited documents.
 7. I have heard the arguments for both sides.
 8. Now let me discuss the case in hand issue wise

Point No. (I):

Whether there is cause of action for the suit and the counter claim?

9. The plaintiff in his plaint stated that his grand father was khatian holder under Lt. Narayn Goswami, Lt. Prabhat Goswami, Lt. Girish Goswami, Lt. Ganesh Goswami, Lt. Harichandra Goswami and Lt. Sabitri Devi who were the recorded pattadar of Dag no. 1636 and 1637 of NK patta no. 9 of village Jagara. He stated that after the death of his grandfather his name was entered as Khatian holder as his father died during the survival of his grand father. Since then he has been in possession but defendant no. 1 has been trying to dispose of the land by selling the same to some other person. On the other hand defendant in their written statement stated that plaintiff has fraudulently entered his name in the record as he was a minor at the time when his name was entered in khatian and that the owner of the land Harichandra Goswami and Prabhat Goswami had relinquished the suit land vide registered relinquishment deed no. 864/97 in her favour and in view of the deed plaintiff is now khatian under her and hence plaintiff alone cannot claim the

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possession of the entire suit land. Considering rival contention between the parties, I find there is cause of action for this suit. This issue is decided in favour of the plaintiff.

Issue No. (II)

Whether the suit is maintainable?

10. Though defendant has taken this plea but has not mentioned any ground as to why the suit is not maintainable. I do not find any sufficiency for non maintainability of the suit.

Issue No. (III)

Whether the suit is bad for non joinder of necessary parties?

11. Defendant has claimed that plaintiff has not impleaded his sister Late Ila Baishya's son and daughter who are necessary parties to the suit. This is a suit for declaration and confirmation of possession where the plaintiff claims his possessory right over the suit land in view of his being a khatian holder. Whereas defendant stated that she has right title over the suit land as she has a relinquishment deed with respect to the suit land in her favour and hence plaintiff claimed the relinquishment deed to be cancelled. As the relief is for cancellation of deed in my opinion Ila Baishya's legal heir is not a necessary party. Moreover defendant has admitted the khatian of late Daniram Baishya and the plaintiff being the grandson of Daniram Baishya also has at least one fourth share of tenancy right over the suit land if not whole. Therefore without impleading Ila Baishya's legal heir, Court can pass effective order hence I do not find that the suit is bad for non joinder of necessary party.

Issue No. (IV)

Whether the plaintiff has acquired tenancy right over one fourth

portion of the suit dag land?

8. Plaintiff in his evidence on affidavit has reiterated the same that he has mentioned in his plaint. To establish his tenancy right he has submitted the certified copy of khatian as Exhibit 1. The defendant side objected to the admissibility of the same on the ground that Exhibit 1 is certified copy. However Exhibit 1 is a public document within the meaning of sec 74 of Indian Evidence Act and being a public document certified copy of the same is well admissible in evidence. Perusal of exhibit 1 transpires that the name of plaintiff is written as khatian holder and he being a minor is represented by his mother that is defendant no. 1. Defendant no. 1 has contended that plaintiff has fraudulently entered his name in the khatian stating that plaintiff being a minor no right can be vested upon him and that she should have been the khatian holder being the daughter in law of original khatian holder It. Daniram Baishya. At this point I would like to mention the analysis of Sec 58 (4) of the Assam (Temporarily Settled Areas) Tenancy Act 1971 which provides that when the record of rights are produced in a suit such record of right shall be presumed to have been finally published unless the contrary is proved. Sub section 5 of section 58 of the said Act further provides that every entry in the record of rights finally published shall be conclusive evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect. The defendant could not adduce sufficient evidence to prove that the entry made in khatian is fraudulent as it is written as plaintiff being minor represented by defendant no.1.

12. It is worth mentioning here that the preparation of record of rights under Chapter X of the Assam (Temporarily Settled Area) Tenancy Act 1971 and preparation,

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signing or alteration of any document contained therein and maintenance of such record are the matters beyond the jurisdiction of the Civil Court as provided under section 66 of the said Act.

13. Though plaintiff claimed the tenancy right over the entire suit dag land but the issue was framed with regard to plaintiff's entitlement to one fourth share of tenancy right over the same. As Daniram Baishya has legal heir in form of plaintiff, defendant no. 1 and 2 and another Ila Baishya who is dead leaving legal heir, hence everyone are equally entitled to the tenancy right over the suit land.

Hence the issue was rightly framed and the same is decided in favour of the plaintiff.

Issue V

whether the plaintiff is entitled to the decree as prayed for?

To what other relief parties are entitled?

Both the issues are related to each other and hence taken together

14. Defendant though could not prove that the khatian was illegally obtained but has contended that the original owner of the suit land has executed a registered relinquishment deed no. 864/97 in her favour. When plaintiff was cross examined he admitted Late Harichandra Goswami and Late Prabhat Goswami were the original owner of the suit land. Defendant has furnished the relinquishment deed no. 864/97 as exhibit GHA. Perusal of the same transpires that the suit dag land was relinquished in favour of the defendant. As it is a registered document, section 60(2) of the Registration Act provides a document registered with the proper endorsement of the registering authority has a lot of sanctity. Moreover sec 68 of the Indian Evidence Act says once a document is registered an attesting witness is not necessary unless its

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execution by the executor is denied. Further Plaintiff could not elicit anything material by cross examining the Dws which could suggest that the relinquishment deed no. 864/97 is fraudulent. Therefore , as the deed is valid hence the Plaintiff is the tenant now under defendant no. 1. Therefore plaintiff is entitled to only one fourth share of tenancy right over the suit dag land. But he is not entitled to the relief as prayed for cancellation of the relinquishment deed the same being valid.

Hence the issue is decided partly in favour of the plaintiff.

Order

In view of the discussion made above plaintiff suit stands partly decreed on contest. It is hereby declared that plaintiff has tenancy right over one fourth portion of suit land and that he cannot be dispossessed from the said portion of land. However Plaintiff is not entitled to other relief as prayed for. No cost.

Prepare a decree accordingly.

The suit is disposed of accordingly.

Given under my hand and seal of this court on this 17th day of February, 2020.

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Appendix

Plaintiff's Witness

1. PW 1 - Bipul Baishya
2. PW 2 - Ranju Baishya

Plaintiff's Exhibits

1. Exhibit 1 - Certified copy of Khatian no. 26 of village Jagara
2. Exhibit 2 - Certified copy of Jamabandi of N patta no. 9 of vill Jagara
3. Exhibit 3 - Land revenue receipt
4. Exhibit 4 - Certified copy of relinquishment deed

Defendant's witness

1. DW 1 - Raso Prava Baishya
2. DW 2 - Alaka Baishya
3. DW 3 - Uday Baishya
4. DW 4 - Nripen Barman

Defendant's Exhibit:

1. Exhibit Ka - Certified copy Of jamabandi
2. Exhibit Kha - Certified copy of khatian
3. Exhibit GA - land revenue receipt
4. Exhibit Gha - Relinquishment deed no. 864/97

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