

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

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

Present: Rubina Yasmin, AJS

Dated: 10th day of June, 2020

Title suit: 52/2014

Sri Dasarath Hazarika

.....Plaintiff

Versus

Sri Akhil Hazarika

Sri Sankar Hazarika

Sri Naba Hazarika

Sri Ratneswar Hazarika

Sri Ranjan Hazarika

Sri Haren Hazarika

Sri Parameswar Hazarika

Sri Raman Hazarika

Sri Tapan Hazarika

Sri Basanti Hazarika

Sri Suryjya Hazarika

..... Defendants

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

This suit case coming on for final hearing on the 10th day of June, 2020 in the presence of:

Mr. Manabendra Sarma ----- Advocate for the Plaintiff
Mr. Kamal Talukdar ----- Advocate for the Defendant

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

JUDGMENT

This is a suit for declaration, recovery of Khas possession and consequential relief.

1. The plaintiff's suit in brief is that, a plot of land measuring 2 bigha 1 katha 15 lechas in KP Patta no. 280 Dag no. 22 was inherited by plaintiff from his father. He stated that his father died in the year 1966, since then present plaintiff is possessing the same land. He stated that since 1966 he has been cultivating the suit land. On 12.8.13 the defendant no. 1 and 2 forcefully entered into one part of the schedule 'A' land shown in the schedule 'B' of the plaint measuring 6 kathas which is a suit land. On enquiry defendant no. 1 and 2 answered that they have purchased the suit land from defendant no. 3-10. As plaintiff was peacefully enjoying the suit land, he did not search for any documents and record. Later when he searched for the same, he found in Jamabandi that defendant 1 and 2 has no purchase record from any body else. But it was seen that father of defendant no. 3 late Naren

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

Hazarika and predecessor of def 4- 10 got their name mutated in 1983 in place of plaintiff's father on the strength of sale deed. Late Naren Hazarika and late Dharo Hazarika were paternal uncle of the plaintiff. Plaintiff further stated that his father never sold any land to predecessor of defendant no. 3-10. He alleged that predecessor of defendant no. 3-10 illegally mutated their names. He stated that the defendant are now threatening to dispose the plaintiff from rest part of the schedule 'A' land after dispossessing from schedule 'B' land. Hence, the plaintiff has filed this suit praying for declaration of his right, title and interest over schedule 'A' land and Khas possession over schedule 'B' land by evicting the defendant.

2. Pursuant to receipt of summons defendants appeared and submitted W/S jointly.
3. Defendants denying the allegations of plaintiff stated that plaintiff is not the only heir of late Haricharan Hazarika. Surjya Hazarika is another son of late Haricharan Hazarika. He further stated that father of plaintiff late Haricharan Hazarika disposed 2 bighas 1 katha 16 lechas of land in the year 1983 in favour of defendant no. 3-9 and husband of defendant no. 10 by relinquishing his right, title and interest in the Chitha. He further stated that defendant no. 3-9 and husband of defendant no. 10 got their names mutated by virtue of purchase and since 1983 it has been in possession of the predecessor of defendant no. 3-10 and after the death of their predecessor, the contesting defendant has been possessing the same. The land possessed by predecessor of defendant no. 3 described in schedule 'Ka' in W/S and land possessed by predecessor of defendant 4-10 is the schedule 'Kha' of W/S.

Subsequently, defendant no. 3 who is son of late Naren Hazarika sold 'Kha' schedule land to defendant no. 1 by registered sale deed. They also stated that land in 'Ka' and 'Kha' schedule was originally cultivable land where the predecessor of defendant no. 3-10 cultivated the same and defendant no. 1 also cultivated the land of 'Ka' schedule for about 10 years prior to purchasing the same on 'Adhi Sukti'. After purchasing the land defendant no. 1 dug a tank covering about 2 kathas 10 lechas in his purchased land and planted various trees. The land mentioned in 'Kha' schedule has been in possession of predecessor of defendant no. 4-10 since 1983 and after the death of their predecessor, they got their names mutated by right of inheritance. Defendants further stated that plaintiff with the help of some other men trespassed into 'kha' schedule land and dispossessed defendant no. 4-10 from the said land. Hence, defendant no. 4-10 prayed for recovery of possession of the 'Kha' schedule land by evicting plaintiff by way of counter claim.

4. The plaintiff further submitted W/S against counter claim stating that his father died in 1966 and disposal of the land by some man in the year 1983 is impossible. He further stated that defendant no. 1 and 2 never revealed the purchasing detail i.e. Deed number, permission number, execution place and date. He further stated that the purchaser (defendant no. 1 and 2) believed defendant no. 3-10 and their predecessor as real purchaser of schedule 'A' land but said predecessor are neither purchaser of the sale deed nor the present defendant 3-10 has acquired their rights over the same by way of inheritance.

ISSUES FRAMED

5. Considering rival pleadings my learned Predecessor framed following issues in this suit:
1. Whether there is cause of action for the suit?
 2. Whether suit is barred by the laws of limitations?
 3. Whether the suit is bad for non-joinder of necessary parties?
 4. Whether the plaintiff is possessing the schedule 'A' land since 1966?
 5. Whether the father of the plaintiff disposed of the schedule 'A' land in the year 1983 and since then it was under the possession of the predecessor of defendant no. 3 and defendant no. 4 to 10 and after the death of their predecessor the contesting defendants has been possessing the same?
 6. Whether the defendant No. 1 & 2 forcefully entered into schedule 'B' land on 12.08.13 dispossessing the plaintiff?
 7. Whether the plaintiff has right, title and interest over the land described in the schedule 'A'?
 8. Whether the defendant no. 4 to 10 have right, title and interest over schedule 'Kha' by right of inheritance?
 9. Whether plaintiff is entitled to any decree as prayer for?
 10. Whether the defendant No. 4 to 10 are entitled to any relief as prayed for?
 11. To what other relief(s), the parties are entitled to?
6. The plaintiff has submitted evidence of 3 Pws and exhibited

other relevant documents. On the other hand, defendant has submitted evidence of 5 Dws and also exhibited documents to establish their claim.

7. I have heard argument for both sides. Both sides have also submitted the written argument.
8. Now let me decide the case in hand issue wise analysing the materials placed before me.

ISSUE NO. 1:

Whether there is cause of action for the suit?

The plaintiff has filed this suit for declaration of right, title and interest and recovery of Khas possession in the suit land. He in his plaint has stated that he has acquired the suit land by way of inheritance after death of his father and since then, he has been possessing the said land. On 12.8.13 defendant No. 1 and 2 dispossessed him from a portion of the said land. Defendant on the other hand contended that plaintiff's father has already dispossessed the suit land to predecessor of defendant no. 3-10 by way of sale and since then, they are in possession of the same and after their death, present defendant no. 3-10 are possessing the same by virtue of inheritance. Further, after acquiring title of the suit land defendant no. 3-10 has sold the suit land to defendant no. 1 and 2 by way of sale deed.

Considering the rival pleadings between the parties, it is found that that there is cause of action for filling of this suit and hence the plaintiff has right to seek relief against defendant.

ISSUE NO. 2:

Whether suit is barred by the laws of limitations?

Defendant has stated in his plaint and in his W/S, but has failed to show as to how suit is barred by law of limitation. On perusal of the plaint,

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

it is seen that plaintiff was allegedly dispossessed from the suit land on 12.8.13 and he has filed the case on 11.4.14 hence suit is well within the period of limitation. Therefore, this issue is decided in favour of plaintiff.

ISSUE NO. 3:

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

Defendants in their W/S have stated that plaintiff is not only legal heir of late Haricharan Hazarika, Surja Hazarika is another son of late Haricharan Hazarika, but he was not impleaded in the suit. Plaintiff on receipt of W/S has impleaded Surja Hazarika as defendant no. 11. Therefore, the suit cannot be said bad for non-joinder of necessary parties.

ISSUE NO. 7

Whether the plaintiff has right, title and interest over the schedule "A" land?

Plaintiff in his plaint and evidence on affidavit affirmed that he has acquired the suit land by way inheritance after the death of his father Late Haricharan Hazarika in the year 1966. He has submitted the Jamabandi of the suit pata as Exhibit 1 showing his mutation over the sschedule A land by way of inheritance. Defendant has also admitted in his written statement that the suit land was disposed of by the plaintiff's father to the predecessor of defendant 3-10 meaning thereby, the fact that the real owner of the suit land was the father of plaintiff is admitted. However, defendant no. 3-10 has contended that plaintiff's father in the year 1983 has disposed of the suit land to the predecessor of defendant no. 3-10 by way of sale deed and later their predecessor got their name mutated over said land. Hence the burden shifts on the defendant to establish that the

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

suit land was sold by plaintiff's father to their predecessor. However, defendants have failed to furnish any sale deed which could support the title of their predecessor to the suit land.

Learned counsel for the defendant in his argument and Written statement has raised a point that plaintiff in Para 6 of the plaint has admitted the fact of disposal of land by his father to the predecessor of defendant no. 3-10. Para 6 of the plaint is quoted below:

“Plaintiff was astonished to see in Jamabandi that defendant no. 1 and 2 have no purchase record from anybody else. But interestingly it is seen that father of defendant no. 3 have got their name mutated in the year 1983 in place of the plaintiff on the strength of sale deed and on the total land of the father of the plaintiff.”

On bare perusal of the said para it can be understood that the plaintiff has not admitted the disposal of the suit land by his father to predecessor of defendant no. 3-10. He has only mentioned that he was surprised to see in Jamabandi that in the year 1983 predecessor of defendant no. 3-10 got their name mutated over his father's land. Plaintiff has stated only what he has seen but has not admitted it to be true.

Moreover, plaintiff has stated that his father has died in the year 1966 and hence the said person cannot dispose of the suit land in the year 1983. Interestingly, defendant side has never raised any objection with regard to the year of death of the plaintiff's father. Moreover, plaintiff has submitted one revenue receipt of 1975 as Ext. 2 which shows that father of plaintiff is recorded as “Late” Haricharan Hazarika meaning thereby Haricharan Hazarika was a dead person in the year 1975. Defendant has also not raised any objection in respect of said exhibit during evidence or at any other time of the trial. Therefore, disposal of the suit land by the father of plaintiff in the year 1983 as averred by defendant cannot be accepted. Moreover, only mutation over any land cannot confer any right

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

and title in respect of said land unless the title is conferred by any deed of conveyance. Though defendant has stated that the land was disposed of by sale but mere saying would not suffice as he has failed to furnish the sale deed which could prove their predecessor's title to the suit land. Thus, absence of any evidence which could suggest that predecessor of defendant no. 3-10 were conferred with the title by any deed of conveyance, hence title of the said land by way of inheritance cannot be vested upon the present defendant. On such circumstances as the defendant has failed to establish his plea and discharge his burden of proof, preponderance of probability suggests that plaintiff has right, title and interest over the suit land.

Hence the issue is decided in favour of plaintiff.

ISSUE NO. 8:

Whether the defendant no. 4 to 10 have right, title and interest over schedule 'Kha' by right of inheritance?

Defendant has averred in written statement that father of the plaintiff has transferred the land mentioned in "Ka" and "Kha" schedule of written statement to the predecessor of defendant no. 3 to 10 by way of sale deed and later they got their name mutated and after their death present defendant no. 3 to 10 was vested with the right, title and interest over the same by virtue of right of inheritance. Later defendant no. 3 sold the "Ka" schedule land to defendant no. 1 and 2 and rest defendants no. 4 to 10 are in possession of the "Kha" schedule land.

It is already discussed in the aforesaid Issue No. 7 that predecessor of defendant no. 3-10 was not conferred with the title to the suit land by father of the plaintiff who was the real owner. As the predecessor of defendant no. 3 to 10 was not conferred with the perfect title hence

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

present defendant no. 3-10 also cannot be said to have acquired right, title and interest over the schedule "Kha" land in the written statement by right of inheritance.

Hence the issue is decided against the defendant.

ISSUE NO. 5

Whether the father of the plaintiff disposed of the schedule 'A' land in the year 1983 and since then it was under the possession of the predecessor of defendant no. 3 and defendant no. 4 to 10 and after the death of their predecessor the contesting defendants has been possessing the same?

Defendant has stated that after disposal of the suit land in 1983 by the father of the plaintiff their predecessor have been in possession till their lifetime and thereafter the present defendant were in possession. It is already discussed in issue no. 7 that the father of the plaintiff has not transferred his title over the land to the predecessor of defendant no. 3 - 10 and hence no title confers upon the present defendant no. 3- 10 by right of inheritance. As the present defendant has no right title and interest over the suit land hence mere possession cannot confer any title to them as their predecessor had not acquired any title over the same. Further defendants have not claimed title by adverse possession but through sale deed. In absence of any sale deed their title cannt be established, hence the defendants cannot claim title over the suit by mere possession. Furthermore, the Dws have only stated about the possession of the B schedule land by Defendant no. 1 Akhil Hazarika after his purchase. Mere saying that def 4-10 have been in possession of the "kha" schedule land would not suffice without any piece of evidence to prove their title.

Therefore the issue is decided against the defendant.

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

ISSUE NO.10

Whether the defendant No. 4 to 10 are entitled to any relief as prayed for?

Defendants in their counter claim prayed for declaration of right, title over "kha" schedule land by right of inheritance and for khas possession in respect of the said land by evicting plaintiff. But as defendants have failed to prove their title to the suit land hence they are not entitled to any relief as prayed for.

Hence the issue is decided against the defendant.

ISSUE NO. 4 & 6

Whether the plaintiff has been in possession of the schedule A land since 1966?

Whether the defendants no. 1& 2 forcefully entered into the schedule B land on 12.08.13 dispossessing the plaintiff?

It is already decided defendants have no right, title and interest over the suit land and that mere possession does not confer them any title and that plaintiff has established that he has acquired his title over the said A schedule land by right of inheritance.

Ld. Counsel for the Defendant argued that the possession of the suit land by defendant no. 1 is established from the evidence of Dws. But evidence of Dws only depicts that defendant no. 1 has constructed a tank and grown tress after his purchase which is the plaintiff's case. This could not prove otherwise that plaintiff was not in possession of the schedule A land since 1966. Hence preponderance of probability goes to show that plaintiff has been in possession of the said land since 1966.

It is an admitted position that Defendant no. 1 & 2 has purchased the B schedule in plaint (ka schedule in the written statement) from

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

defendant no. 3 and entered into the land and dug a pond and also has grown trees in the said land. As the vendor (defendant no. 3) had no perfect title to the suit land therefore no title can be transferred subsequently to the vendee(defendant no. 1 & 2). When defendant 1 & 2 has not been conferred any title hence he entering into the B schedule land cannot be termed as legal and hence plaintiff is said to have dispossessed from the B schedule land which forms a part of schedule A land.

Hence both the issues are decided in favour of the plaintiff

ISSUE NO. 9 & 11

Whether plaintiff is entitled to any decree as prayer for?

To what other relief(s), the parties are entitled to?

Plaintiff has claimed for declaration of right, title and interest over the schedule A land and khas possession over schedule B land. He could establish that he has acquired right title and interest over the schedule A land by right of inheritance and that defendant no. 1 & 2 having no right title over the schedule B land forming a part of schedule A, entered into the same and dispossessed plaintiff from the same. Hence plaintiff is entitled to the decree as prayed for.

Order

In view of the discussions made above the plaintiff suit is decreed on contest with cost. Plaintiff is entitled to the declaration of right, title and interest over the schedule A land and he is also entitled to the recovery of khas possession of schedule B land by evicting the men and materials of defendants from the same. Defendants are also restrained from entering into the suit land. Defendants could not establish their claim as mentioned

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

in counter claim and as such their counter claim is dismissed.

Prepare a preliminary decree accordingly.

Given under my hand and seal of this court on this 10th day of June
2020.

Munsiff No. 1
Nalbari

Appendix

Plaintiff's Witness

1. *PW 1 - Dasarath Hazarika*
2. *PW 2 - Kalpa Hazarika*
3. *PW 3 - Dalaram Das*

Plaintiff's Exhibits

1. *Exhibit 1 - Jamabandi*
2. *Exhibit 2 & 3 - Revenue Receipt*

Defendant's witness

1. *DW 1 - Naba Hazarika*
2. *DW 2 - Dwipen Hazarika*

TS 52/14
Dashrath Hazarika
vs
Akhil Hazarika & Others

3. *DW 3 - Bijoy Hazarika*
4. *DW 4 - Ranjan Hazarika*
5. *DW 5 - Sankar Hazarika*

Defendant's Exhibits

1. *Exhibit Ka - Sale deed no. 209*
2. *Exhibit Kha - Jamabandi*
3. *Exhibit Ga - Revenue receipt*

Munsiff No. 1
Nalbari