
(2023) 08 GAU CK 0061

Gauhati High Court

Case No: Regular Second Appeal No. 10 Of 2013

Renu Bhuyan

APPELLANT

Vs

Ananda Saikia And Anr

RESPONDENT

Date of Decision: Aug. 29, 2023

Acts Referred:

- Code of Civil Procedure, 1908 - Section 100, Order 8 Rule 5
- Evidence Act, 1872 - Section 58, 68

Citation: (2023) 08 GAU CK 0061

Hon'ble Judges: Parthivjyoti Saikia, J

Bench: Single Bench

Advocate: R.K. Bhuyan, B.D. Das

Final Decision: Allowed

Judgement

1. Heard Mr. R.K. Bhuyan, learned counsel appearing for the appellant as well as Mr. B.D. Das, learned senior counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) whereby the judgment dated 13.06.2011 passed by the

court of learned Munsiff No.2, Jorhat was reversed by the judgment dated 10.09.2012 passed by the court of learned Civil Judge, Jorhat in Title

Appeal No.16/2011.

3. Smti. Bogi Saikia gifted 1 Katha of land to her daughter/the appellant by a registered deed. In the year 1988, the appellant got herself mutated in the

records of rights in respect of the said land.

4. The aforesaid land has two shop rooms rent out to the two respondents on monthly rent w.e.f. 01.03.1986. Subsequently, they defaulted in payment

of rent. Therefore, the appellant issued a notice to them asking them to vacate the shop rooms.

5. In reply to the aforesaid notice, the respondents told her that the said land was purchased by their father Sonaram Saikia from Lakheswar Saikia in

the year 1966 by execution of a registered sale deed. Lakheswar Saikia is the father of the present appellant.

6. Ultimately, the appellant filed the suit praying for the eviction of the respondents and for recovery of vacant possession of the suit property.

7. The fact that Smti. Bogi Saikia gifted the property to the appellant by execution of a registered sale deed, is not denied by the respondents while

filing their written statement. They chose to stick to their plea that in the year 1966, Lakheswar Saikia, the father of the appellant had sold the land to

their father Sonaram Saikia.

8. The learned trial court framed the following issues:

I. Whether the plaintiff has right, title and interest over the suit land?

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

III. Whether the suit is undervalued and not properly stamped?

IV. Whether the suit is barred by law of limitation?

V. Whether the defendants are tenants under the plaintiff?

VI. Whether the defendants are defaulters?

VII. Whether the suit land/premises are required by the plaintiff for bona fide purpose?

VIII. Whether the sale deed executed by the father of the plaintiff in favour of the father of the defendants has no value in the eye of law and

therefore, the same is liable to be cancelled?

IX. To what relief/reliefs the parties are entitled?

9. During the trial of the case, the appellant and the respondents examined two witnesses each.

10. On the basis of the evidence on record, the trial court decreed the suit.

11. On appeal, the first appellate court reversed the finding and dismissed the suit.

12. The substantial questions of law on which the appeal is admitted are—

i. Whether the provisions of Section 68 of the Evidence Act can be applied in respect of Exhibit-2, the Registered Gift Deed dated 22.08.1974, which

was admittedly a 30 year document and execution of which was not challenged by the executor?

ii. Whether the learned lower appellate court has rightly decided the title of the suit property in favour of the respondents on the basis of the sale deed

(Exhibit-A) (Exhibit-KA) allegedly executed by Lt. Lakheswar Saikia who was not the owner/title holder of property in question?

13. I have considered the submissions made by the learned counsels of both sides.

14. Lt. Bogi Saikia gifted 1 Katha of land to the appellant on execution of a registered gift deed. This plea has not been denied by the respondents in

their written statement. Order 8 Rule 5 of the CPC, prescribes that every allegation of fact in the plaint if not denied specifically or by necessary

implication or stated to be not admitted in the pleadings of the defendant, shall be taken to be admitted except against a person under disability.

Similarly, the law of evidence under Section 58 of the Indian Evidence Act lays down that admitted facts need not be proved.

15. So, it is proved that Smti. Bogi Saikia had gifted 1 Katha of land to the appellant on execution of a Registered Gift Deed.

16. The learned trial court held that the respondents failed to prove the title of Lakheswar Saikia over the suit land, which empowered him to sale the

same to their father Sonaram Saikia. The trial court held that the simple sale deed does not have a legal value if the vendor did not have right, title and

interest over the property sold. I find that the trial court has correctly appreciated the evidence as well as the law.

17. After going through the judgment of the first appellate court, I find that the appellate judgment is based on some imaginary laws, which do not exist

at all.

18. I have already mentioned hereinbefore that the Registered Gift Deed i.e. the Exhibit-2 is already proved and therefore, there is no need of proving

the Gift Deed by examination of attesting witnesses. The respondents have failed to prove the title of Lakheswar Saikia over the suit property.

Therefore, the Sale Deed i.e. Exhibit-A has no value in the eye of law. The learned first appellate court erroneously set aside the judgment of the

learned trial court.

19. The first appellate court judgment dated 10.09.2012 passed by the court of learned Civil Judge, Jorhat in Title Appeal No.16/2011, is set aside.

20. In the result, the second appeal is allowed.

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