

(1999) 02 GAU CK 0008

Gauhati High Court

Case No: Second Appeal No. 8 of 1993

Sakhina Khatun and
Others

APPELLANT

Vs

Sheikh Suleman and
Others

RESPONDENT

Date of Decision: Feb. 4, 1999

Acts Referred:

- Assam Land (Requisition and Acquisition) (Amendment) Act, 1964 - Section 3, 3(1), 3(2), 3(3), 4(1)
- Assam Land (Requisition and Acquisition) Rules, 1964 - Rule 5
- Assam Land and Revenue Regulation, 1886 - Section 50, 51, 52
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 145

Citation: (1999) 1 GLT 447

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: M.M. Rahman and Y.K. Phukan, for the Appellant; P. Khatanar and K. Devi, for the Respondent

Judgement

D.N. Chowdhury, J.

This Second Appeal is directed against the judgment dated 26th August/1992 and the decree dt. 3.9.92 passed by the learned Addl. District Judge, Nowgong in T.A. No. 3/92, reversing the judgment and decree of the trial court dt. 13.1.92 and 21.1.92 passed by the Asst. District Judge, Nowgong in Title Suit No. 2/78.

2. The Plaintiff-Respondents case is that the suit land described in the schedule of the plaint originally belonged to the Defendant No. 1 Sheikh Suleman. He has got right, title and interest over the suit land. As per plaint, the suit land measuring 7 B. 1 K. covered by dag No. 417 of periodic patta No. 138 out of an area of 17 B.4K 13 Ls

of land. The suit land also consist of an area of 2 K 15 Ls which is a touji land covered by touji patta No. 416. He sold a plot of land measuring 1 B in favour of the Plaintiff by a registered dt. 25.2.66. Again by a registered sale deed dt. 3.6.77 he sold 2 K 15 Ls of the Plaintiff. Similarly defdt. No. 1 sold another plot of land measuring 2 B by a registered deed dt. 7.9.67. The defdt. thereafter transferred 1 B of land in favour of the Plaintiff by a registered deed dt. 22.10.67. Finally, on 11.2.69 he expressed his desire to sell another plot of land measuring 1 B 2 K. Again defdt. No. 1 sold 1 K of land in favour of the Plaintiff on 22.6.73. Plaintiff also purchased 1 B of land from one Aman Ali by a registered deed dt. 4.2.74. Thus, Plaintiff became the owner of 7B 1 K of land. Accordingly, possession of the land was delivered to the Plaintiff and the Plaintiff then mutated his name in the relevant patta. But the defdts. collusively and fraudulently cancelled the name of the Plaintiff from the patta for which Plaintiff filed a case before the Executive Magistrate u/s 145 Code of Criminal Procedure. after that Defendants tried to dispossess the Plaintiff from the suit land. Hence, the Plaintiff praying for his right, title and possession over the suit land. Further, Defendants assert that the Defendant No. 1 sold 3 Bighas of land to Abdul Suban and Fatik Bibi. Fatik Bibi and Abdus Suban sold the land to the Defendant No. 1 Rajab Ali. After purchasing these Defendants have been possessing the land without any disturbance. The trial court on the basis of the pleadings framed as many as 9 issues. The issue Nos. 5, 6, 7 and 8 relevant to this proceeding are quoted below:

5. Whether the suit is hit by adverse possession and limitation?

6. Whether the suit land was sold to the Plaintiff, if any, get Defendants and possession delivered?

7. Whether the Plaintiff has got right, title and interest over the suit land?

8. Whether the Defendant Abdul Sobhan and Mustt Fatik Bibi have saleable right to sell 3 Bighas of land covered by dag No. 207 under P.P. No. 46 to Defendant Miraj Ali and Mohammed Ali and Sabaj Ali?

3. Learned trial court on examination of Ext. Ka and Kha in favour of the sons of Defendant No. 1 by Abdul Subhan, DW 2 and his wife Mustt. Fatik Bibi in the year 1971 was not a valid transfer and accordingly issues were decided in favour of the Plaintiff. The learned trial court decided the issues in favour of the Plaintiffs and decreed the suit. On appeal, learned trial court affirmed the issue Nos. 5 and 6 in favour of the Plaintiff. The learned appellate court came to a finding that the Plaintiff purchased the suit land and taken possession thereof.

4. Learned appellate court in deciding the Issue No. 7 held that Dag No. 207 of periodic patta No. 46 is converted to new Dag No. 417 of P.P. No. 138. The Plaintiff alleged that Abdul Sobhan has no right and title over the land as he has mutated his name collusively. The Defendants admitted that Suleman sold this 3 B of land to Abdul Sobhan and Fatik Bibi by executing a registered deed and gave delivery of possession. Ext. Kha. is the certified copy of the sale deed.

5. I have heard learned Counsel Mr. A.S. Choudhury for the Appellant and Mr. Khatoniar, learned Counsel for the Respondent. Mr. Choudhury, learned Counsel appearing on behalf of the Appellant submitted that land belonging Ext-"Kha" & "Ka" are not the suit land which is subject matter in this suit. Mr. Khatoniar, learned Counsel appearing on behalf of the Respondents submitted that land measuring 3 B is the subject matter in this suit.

6. In the instant case, from the documents and also from the evidence on record, it is seen that 2 K 15 Ls of land is a touzi land, Plaintiff cannot acquire any right and title over this land until settlement is made by the concerned authority. Thus there cannot be any scope to differ from the findings of the learned appellate Court that Plaintiff did not acquire any right, title and interest in respect of 2 K 15 Ls of the touzi land. There is no finding of the learned appellate Court as to the issues No. 6 and 7 for the remaining part.

7. On consideration of the entire facts and circumstances of the case, I am of the view that ends of justice will be met if the appeal is remanded to the appellate Court of first instance to decide the issues Nos. 6 and 7 afresh only in respect of the 4 Bs 1 K of the land. The finding of the appellate Court as regards 2 Ks 15 Ls of the land is affirmed. The appellate Court shall now decide the above issues on merit as per law as indicated above. The judgment and order of the learned appellate Court of first instance is set aside to the extent indicated.

8. The parties are directed to appear before the Court on 1st April, 1999 and thereafter the learned District Judge shall fix a date for hearing of the appeal and dispose the same as expeditiously as possible in accordance with law. The appeal is partly allowed. Parties to bear their own costs.