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**(2003) 07 GAU CK 0034**

**Gauhati High Court**

**Case No:** S.A. No. 115 of 1996

Abdul Latif and Others

APPELLANT

Vs

On the Death of  
Digendra Nath his legal  
heirs and Wife

RESPONDENT

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**Date of Decision:** July 24, 2003

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 7

**Citation:** (2003) 3 GLR 611 : (2003) 3 GLT 606

**Hon'ble Judges:** P.G. Agarwal, J

**Bench:** Single Bench

**Advocate:** N. Dhar and M.H. Rajbarbhuiya, for the Appellant; B.C. Das, S.S. Dey, M. Nath, S. Roy and R.C. Paul, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

P.G. Agarwal, J.

Heard Mr. N. Dhar, learned counsel for the appellants and Mr. B.C. Das, learned counsel for the respondents.

2. The respondent plaintiff Digendra Nath and others instituted T.S. No. 225 of 1976 before the Munsiff (2), Karimganj stating inter alia that the suit land described in the schedule to the plaint originally belonged to the landlord Dewan Manik Chand and the plaintiff and other inhabitants of the two villages Brahmansasan and Kapurpur were in possession of the suit land on payment of annual rent. Thereafter, the suit property devolved on Sorojini Senapati and her husband Girija Kumar Das and they transferred their right, title and interest to the tenants vide registered sale deed No. 3716 of 1945. The plaintiff claims right, title and interest over the suit land as they possessed the same by cultivating grass for the foddors of their cattle. However, the defendants in collusion with one another threatened to dispossess the plaintiff. Hence the suit.

3. The suit was contested by the defendants by filing written-statement whereupon the trial court framed as many as 6 issues which read as follows :-

1. Is there any cause of action for the suit?
2. Is the suit maintainable in present form?
3. Is the suit bad for defect of parties?
4. Is the suit bad for waiver, acquiescence and estoppel?
5. Whether the plaintiff have right, title and interest over the suit land?
6. To what reliefs if any are the plaintiffs entitled?

4. On conclusion of the trial, the learned Munsiff decreed the suit by affirming the right, title and possession of the plaintiff over the suit land.

5. Feeling aggrieved, the present appellants filed Title Appeal No. 55 of 1984 before the appellate court of Asstt. District Judge, Karimganj and the appellate court vide judgment and decree dated 6.4.1996 dismissed the appeal and affirmed the judgment and decree passed by the trial court. Hence, the present second appeal.

6. When the appeal was admitted, the following substantial question of law was formulated :

Whether the court could declare title of the plaintiff on the facts and circumstances of the case and grant consequential relief for possession?

7. Upon hearing the learned counsel for both sides and in view of the law, the substantial question of law is reformulated as follows :

Whether the plaintiffs are entitled to a decree for declaration of right, title over the suit land in absence of prayer to that effect in the plaint?

8. Para 9 of the plaint including the note reads as follows :

"9. That the plaintiffs for themselves and for and on behalf of their co-villagers of villages Brahmansashan and Kapurpur having same and similar right, title and possession in the suit lands do hereby pray that-

(a) declaration may very kindly be made in their favour for retaining the possession of the suit lands as their khamar lands and for confirmation of their existing possession and

(b) for issuing a permanent injunction against the defendants restraining them from entering into the suit lands and from creating any obstruction, or hindrance to the plaintiffs and their co-villagers of village Brahmansashan and Kapurpur having same and similar

right, title, interest and possession on the suit lands and

(c) for the costs of the suit and

(d) for such other further reliefs as the court would fit,

N.B.A. petition under Order 1 Rule 8 of the C.P.C. 1908 has been submitted by the plaintiffs herewith seeking permission from the Court, for filling this suit by the plaintiffs in representative capacity for themselves and for and on behalf of their co-villagers of villages Brahmansashan and Kapurpur, having same and similar right, title, interest and possession in the suit lands alongwith the plaintiffs"

9. The learned counsel for the appellant submits that there was no prayer on behalf of the plaintiff for declaration of their right, title over the suit land and hence, both the courts below have committed grave error and illegality in declaring the right, title of the plaintiff.

10. Mr. B.C. Das, the learned counsel for the respondent plaintiff submits that so far the declaration of right, title is concerned, the plaintiff has right, title and interest over the suit land but in the prayer portion, the same has been missing or left out inadvertently. It is submitted that both sides knew their cases. We have perused the written statement filed by the defendant wherein it is stated that the plaintiff has no right, title and possession over the suit land. It is submitted that issue No. 5 was also framed by the trial court regarding right, title over the suit land and both the parties contested the suit by adducing evidence to that effect.

11. In the case of [Kidar Lall Seal and Another Vs. Hari Lall Seal](#), the Apex Court observed :-

"I would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however, clumsily or inartistically the plaint may be worded. In any event, it is always open to a Court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs."

12. The learned counsel for the respondent has submitted that similar view was taken by the Apex Court in the case of [Ram Sarup Gupta \(Dead\) by Lrs. Vs. Bishun Narain Inter College and Others](#), wherein the Apex Court observed:

"6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts

should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleadings is raised the enquiry should not be so much about the form of the pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties "knew the case and they proceeded to trail on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In [Bhagwati Prasad Vs. Shri Chandramaul](#), a Constitution Bench of this Court considering this question observed (at page 738 of AIR):

If a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would "introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

13. Mr. Das submits that this being a second appeal and when there is a concurrent finding of fact by both the courts below, the suit can not be thrown out on the ground of lack of details in the pleadings. In support of the submission, the learned counsel has referred to a decision of the Apex Court in the case of [Hari Singh Vs. Kanhaiya Lal](#),

14. On hearing the learned counsel for both sides we find that admittedly there was no prayer for declaration of right and title in the plaint but there is specific averment that the plaintiff had acquired right, title over the suit land in view of the sale deed executed in 1945 by Sarojini and her husband Girija Kumar Das. An application under Order 1 Rule 8

CPC was filed in representative capacity seeking permission for instituting the suit for a declaration of right, title, interest and for confirmation of possession against the defendants and for and on behalf of the co-villagers of the two villages having same and similar right, title, interest and possession in the suit land along with the plaintiff.

15. As stated above a specific issue, namely issue No. 5 was framed by the court below and the appellant never raised or challenged the same and both the parties knew that the suit was for a declaration of right, title and possession over the suit land.

16. We therefore hold that in view of the settled proposition of law there is no illegality or infirmity in the impugned judgment and decree passed by the courts below declaring right, title and possession of the plaintiff.

17. Mr. Dhar, the learned counsel has referred to a decision of the Apex Court in the case of [Ishwar Dass Jain \(Dead\) Thr. Lrs. Vs. Sohan Lal \(Dead\) By Lrs.](#), wherein it was held that interference with findings of fact is permissible when material or relevant evidence is not considered which if considered would have led to an opposite conclusion.

18. We have perused the memo of appeal filed by the appellant in this second appeal and there is no whisper that the courts below have failed to consider the entire relevant facts leading to perverse findings,

19. In view of what has been stated above, we find no merit in this second appeal and the second appeal is dismissed with costs.