

(1995) 07 GAU CK 0017**Gauhati High Court****Case No:** Civil Revision No. 348 of 1990

Kishan Gopal Agarwalla

APPELLANT

Vs

Smt. Ramdulari Sah and Others

RESPONDENT

Date of Decision: July 31, 1995**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 9
- Evidence Act, 1872 - Section 116

Citation: AIR 1996 Guw 39**Hon'ble Judges:** S.L. Saraf, J**Bench:** Single Bench**Advocate:** B.K. Goswami, T. Goswami and N. Choudhury, for the Appellant; A. Serif and A. Hazarika, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

S.L. Saraf, J.

This is a revision application challenging the judgment and decree dated 19-7-95 passed by the learned District Judge, Nagaon in Title Appeal No. 6/88 dismissing the appeal filed against the judgment and decree dated 4-4-88 passed by the Assistant District Judge, Nagaon in Title Suit No. 33/85. In the instant case plaintiff filed a suit against the original defendant No. 1 alleging that the Defendant No. 1 was a defaulter and the suit property was bona fide required by the plaintiff. Another question taken for eviction was that the defendant No. 1 has sublet the said property without the permission of the landlord to the defendant No. 2. Subsequently the defendant No. 1 expired and defendants Nos. (a), (b), (c), (d), (e) were substituted being the legal heirs and representatives of the deceased. The matter was heard and the trial Court held that the suit was not maintainable and liable to be dismissed for non-joinder of the necessary party. According to him

Kashilal elder son of Punam Chand Agarwalla was not made one of the plaintiffs in the suit as such original suit filed against the defendant No. 1 was bad for non-joinder of parties and could not be entertained. The plaintiff, however submitted before the Court that Kashilal was adopted by Jaikishan as his son and as such he was not the owner of the said property and Kishengopal Agarwalla was the sole owner of the property in dispute. In the evidence both Kishengopal and Kashilal have deposed that Kashilal was given in the adoption to Jaikishen, Mr. Goswami learned counsel for the plaintiff placed before the Court Registered deed of lease dated 2nd Oct. 1977 between Punam Chand Agarwalla and Kashilal and defendant Mahadev Shah whereby the relationship of landlord and tenant was created and said document avers that Kashilal Agarwalla was the son of Jaikishen Agarwalla resident of Nagaon, Assam. Inasmuch as the original defendant had himself entered into an agreement with Kashilal in order to get his tenancy of the suit property accepting Kashilal to be the son of Jaikishen Agarwalla, it does not lie in the mouth of defendants to challenge the Status of Kashilal Agarwalla as an adopted son of Jaikishen Agarwalla. For the purpose of this suit the Court does not think it necessary to go into the question whether the adoption of Kashilal to Jaikishen Agarwalla was legal or valid as long as parties involved in the suit have accepted Kashilal to be the adopted son of Jaikishen Agarwalla. The defendants on the principles of estoppel are debarred from raising the issue of the status of Kashilal in the suit. As such I hold that Kashilal Agarwalla was not a necessary part in the suit and Kishengopal Agarwalla was the sole owner of the property and he was entitled to file the suit and the suit was maintainable. In this connection Mr. Goswami referred AIR 1970 SC 2335. The Supreme Court has held that a co-owner is, as much, an owner of the entire property as any sole owner of the property. The Supreme Court at page 2337 has held:--

"There are two reasons for our not being able to accept the above submission. Firstly the plea pertains to the domain of the frame of the suit as if the suit is bad for non-joinder of other plaintiff. Such a plea should have been raised for what it is worth at the earliest opportunity. It was not done. Secondly the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit of eviction. The tenant in such a suit is estopped from questioning the title of the landlord u/s 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the General Law in a suit between landlord and tenant the question of title to the leased property is relevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owner as such."

2. The Supreme Court judgment clearly applied in the instant case and the tenant is estopped from challenging the title of the landlord and the plaintiff who in any event, is the co-owner of the property and as such suit is maintainable.

3. Further I have gone through the written statement filed by the defendant in the instant case. I find no allegation in the written statement that at any time after the death of Punamchand Agarwalla the defendant had paid any rent to plaintiff Kishengopal Agarwalla or even to Kashilal. In view of the same, I hold that the defendant is a defaulter and he is liable to be ejected from the suit property. The defendant No. 2 is in the business of the defendant Nos. (a), (b), (c), (d), (e) and as such all defendants are liable to be ejected. So, I allow Civil Revision No. 348/90 and there will be no order as to costs. It is recorded that counsel for the opposite party appeared on last occasion and prayed for time till today. However, when the matter was called and argued today nobody appears. Judgments passed by the Court below by Asstt. District Judge and District Judge are set aside and plaintiff gets a decree in the suit.