
(2015) 5 GLT 147

Gauhati High Court

Case No: RSA No. 90 of 2009

Birendra Sankar Sanyal
and Others

APPELLANT

Vs

Dinesh Chandra Sarma

RESPONDENT

Date of Decision: Sept. 9, 2015

Acts Referred:

Constitution of India, 1950 - Article 136#Evidence Act, 1872 - Section 101, 102

Citation: (2015) 5 GLT 147

Hon'ble Judges: Suman Shyam, J.

Bench: Single Bench

Advocate: D. Mazumdar, Sr. Advocate, for the Appellant; P.K. Kalita, for the Respondent

Final Decision: Dismissed

Judgement

Suman Shyam, J.

This second appeal has been preferred against the judgment and decree dated 19.03.2009 passed by the learned Addl.

District and Sessions Judge (FTC), Kamrup, Guwahati in Title Appeal No. 11/2007 allowing the appeal, thereby, setting aside the judgment and

decree dated 30.06.2007 passed by the learned Civil Judge (Sr. Div.) No. 3, Kamrup, Guwahati in Title Suit No. 159/2005. The plaintiffs' case

in brief, as projected in the plaint, is that land measuring 4B-10L covered by Dag No. 2017 of KP Patta No. 253 of Village-Betkuchi under

Beltola Mouza originally belonged to one Shyama Kachari. The plaintiffs had jointly purchased the said plot of land from Shyama Kachari by

means of a registered deed of purchase executed in the year 1967 whereafter, their names were also jointly mutated in respect of the said plot of

land vide order dated 04.03.1970 passed by the learned SDC in connection with Mutation Case No. 1493/1966-67. Accordingly, the revenue

records were corrected and the names of the plaintiffs were mutated way back in the year 1972. The aforesaid plot of land measuring 4B-10L

was a low laying land and the plaintiffs used to cultivate paddy there-upon without any hindrance or obstruction from any quarters. The plaintiffs

have been possessing the said plot of land by paying land revenue. On 26.02.2004 the plaintiff No. 1 visited the office of the Mouzadar, Beltola

Mouza to pay the land revenue in respect of the suit land for the year 2004 but to his utter shock and dismay, the plaintiff No. 1 could come to

know from the records that the plaintiffs were no longer the recorded owners of the suit land and that the name of one Dinesh Chandra Sarma, i.e.

the defendant herein, had been recorded as the owner of the suit land in place of the plaintiffs. It is also the case of the plaintiffs that immediately

having come to know about the aforesaid fact the plaintiffs had engaged an Advocate to carry-out search in the land records whereafter, the

plaintiffs could go through the copy of the jamabandi of the suit patta maintained in the office of the Settlement Officer and thereafter, could come

to know that the names of the plaintiffs had been deleted and in their place the name of the defendant had been recorded on the basis of the order

dated 12.07.1993 passed in Mutation Case No. 5952/92-93. It has been pleaded in the plaint that the plaintiffs could come to know about the

aforesaid illegal entry of the name of the defendant in the revenue records only on 19.03.2004 upon inspection of the records.

2. The plaintiffs have further stated in the plaint that they had filed an application on 24.03.2004 before the Settlement Officer for cancellation of

the order dated 17.02.1993 passed in Mutation Case No. 5952/1992-93 granting mutation in favour of the defendant in respect of the suit land

which was registered as Misc. Case No. 62/2003-04. The defendant had filed written objection whereby he had submitted a copy of the

agreement for sale dated 05.02.1982, copy of the registered deed of sale dated 05.05.1993 as well as a copy of the mutation order dated

12.07.1993 claiming his title and possession over the suit land thereby praying for dismissal of the application filed by the plaintiffs. The plaintiffs"

pleaded stand is that although an agreement for sale had been executed by the plaintiff No. 1 on 05.02.1982 for selling the suit land to the

defendant, yet, save and except making a payment of Rs. 7,000/- as advance amount the defendant had failed to make payment of the balance

amount within the period of four months as stipulated in the said agreement. As a result of the default in making payment of the balance amount by

the defendant, the agreement for sale stood cancelled and the possession of the land, which was earlier delivered to the defendant, stood

automatically restored to the plaintiffs. It has also been pleaded that the plaintiffs had neither executed the registered deed of sale dated

05.05.1993 in favour of the defendant nor have they executed Power of Attorney in favour of any of the co-plaintiffs so as to execute such

agreement for sale in favour of the defendant. The plaintiffs have further stated that the plaintiff No. 1 was not authorized to enter into an agreement

for sale with the defendant in the absence of consent from the other two co-owners and, therefore, the agreement for sale was a fake document.

On the basis of such pleadings the plaintiffs had instituted the aforesaid title suit, inter alia, praying for a decree declaring that the sale deed No.

2785/1993 dated 05.05.1993 is void, illegal, inoperative and not binding upon the plaintiffs; for issuing a percept for striking off the name of the

defendant from the revenue records; for a decree of permanent injunction and for other consequential reliefs.

3. The defendant had entered appearance on receipt of summons and contested the suit by filing written statement thereby questioning the

maintainability of the suit on various grounds including that for want of cause of action; suit being barred by limitation; for nonpayment of adequate

court fee etc. The defendant has categorically stated that suit land has been purchased by him by means of registered sale deed bearing No. 2785

dated 05.05.1993 executed by the plaintiffs whereafter the name of the defendant was also duly recorded in the revenue records based on

purchase and possession on the strength of the order dated 12.07.1993 passed by the Asstt. Settlement Officer in Mutation Case No.

5952/1992-93. The defendant has categorically denied the allegation made by the plaintiffs that mutation had been obtained by him in a fraudulent

and collusive manner with the help of the revenue officials. The defendant has also claimed that since 05.02.1982 i.e. the date of agreement for sale

he has been in continuous and uninterrupted physical possession of the suit land and neither the plaintiffs nor their agent had possession over the

suit land since 05.02.1982.

4. Based on the pleadings of the parties the learned Trial Court had framed the following issues:

1. Whether there is cause of action for the suit?
2. Whether the suit is barred by limitation?
3. Whether the suit is properly valued and paid ad valorem court fees?
4. Whether the suit is maintainable?
5. Whether the plaintiff paid land revenue as claimed in the plaint?
6. Whether the plaintiff sold the land by executing the sale deed No. 2785/93 on 5.5.93 and whether the sale deed is void, illegal and inoperative,
not binding upon the plaintiffs?
7. Whether the plaintiffs are entitled to get any relief as prayed for?
8. To what any other relief/reliefs the plaintiff are entitled.

5. During the course of trial the plaintiff side had examined three witnesses. The defendant had also examined equal number of witnesses in support

of his case. On the basis of the evidence available on record the learned court below had answered issue Nos. 1 to 7 in favour of the plaintiffs.

However, curiously enough, as regards issue No. 8 the learned Trial Court had observed that neither parties were entitled to any relief.

Notwithstanding same, the suit filed by the plaintiff was decreed by the learned trial court.

6. Being aggrieved and dissatisfied with the judgment and decree passed by the Trial Court in Title Suit No. 159/2005 the defendant as appellant

had preferred Title Appeal No. 11/2007 in the court of Addl. District and Sessions Judge (FTC), Kamrup, Guwahati. Upon hearing the learned

counsels for the parties the learned lower Appellate Court had reversed the findings of the Trial Court in respect of issue Nos. 2 and 6 by holding

that the suit was barred by limitation and that the plaintiffs have not been able to prove and establish their case by leading cogent evidence on

record to show that the sale deed dated 05.05.1993 was a fraudulent document. On the basis of such findings the appeal was allowed by the

lower Appellate Court. Consequently, suit filed by the plaintiffs stood dismissed.

7. Being aggrieved by the judgment and decree dated 19.03.2009 passed by the lower Appellate Court in Title Appeal No. 11/2007 the plaintiffs

as appellants had approached this Court by filing the instant second appeal which was admitted to hearing by framing the following substantial

questions of law:

(A) Whether the learned Lower Appellate Court was correct in its interpretation of section 101 of the Evidence Act, 1872, while placing the

burden of proof Exhibit-X(4) and Exhibit-(6), the certified copy of the Sale Deed upon the Plaintiffs?

(B) Whether the finding of the learned lower Appellate Court to the effect that the Suit was barred by limitation, in view of the materials on record

of the case.

8. I have heard Mr. D. Mazumdar, learned Sr. counsel appearing for the appellant. Also heard Mr. P.K. Kalita, learned counsel representing the

respondent.

9. Mr. D. Mazumdar submits that the learned First Appellate Court committed manifest illegality in failing to consider the fact that the defendant

having claimed that the registered deed of sale bearing No. 2785/1993 dated 05.05.1993 had been duly executed by the plaintiffs in his favour, the

burden of proving and establishing the said fact was upon the defendant since the plaintiffs could not be expected to prove a negative fact. In the

instant case, not to speak of proving the deed, the defendant could not even produce the original sale deed dated 05.05.1993. It would be difficult

for the plaintiffs to prove that the sale deed is a forged document. Such being the position, the impugned judgment and decree passed by the lower

Appellate Court is liable to be set aside on this count alone. In support of his aforesaid argument, Mr. Mazumdar has relied upon a decision of the

Hon"ble Supreme Court reported in Anil Rishi Vs. Gurbaksh Singh, to contend that in this case since it is the defendant who had asserted the

validity of the sale deed dated 05.05.1993 the burden of proving and establishing the same would be upon the defendant and the plaintiff would

have no duty to prove and establish that the aforesaid sale deed is a forged document.

10. By referring to an un-reported decision of the Madras High Court rendered in case of Dhanalakshmi v. Devaki Animal, decided on

26.04.2013, Mr. Mazumdar submits that the principle of ""burden of proof is embodied on the following maxims- Affirmatis est probare, meaning

thereby that he who affirms must prove. Since the plaintiffs cannot prove the negative fact that they have not executed the sale deed, hence, the

lower Appellate Court ought not to have reversed the finding of the Trial Court by holding that the plaintiffs have failed to discharge their burden of

proof so as to entitle them to the decree as prayed for.

11. Mr. Mazumdar, further submits that the finding recorded by the First Appellate Court on issue No. 2 holding the plaintiffs' suit to be barred by

limitation is also not based on any evidence on record, inasmuch as there is nothing to show that plaintiffs were aware of the registered deed of sale

dated 05.05.1993 way back in the year 1993.

12. Per contra, Mr. P.K. Kalita, learned counsel for the respondent submits that a bare perusal of the pleadings contained in the plaint would go to

show that the plaintiffs' suit is founded on baseless allegations and the same is a completely frivolous one. He submits that despite having admitted

that the possession of the suit land had been delivered to the defendant pursuant to the agreement for sale dated 05.02.1982 and notwithstanding

the evidence on record establishing the fact that the suit land has been in possession of the defendant ever since 05.02.1982, the plaintiffs have

neither prayed for recovery of possession of the suit land nor have they prayed for confirmation of possession. He submits that even if the

pleadings contained in the plaint are taken on the face value, even in that case, the assertion made by the defendant would cloud the title of the

plaintiffs over the suit land. Therefore, in the absence of a prayer for a decree declaring the right, title and interest of the plaintiffs over the suit land

followed by a decree of recovery of possession, the plaintiffs suit itself would not be maintainable in the facts and circumstances of the case. In

support of his argument as aforesaid Mr. Kalita has relied upon two decisions of the Hon"ble Apex Court reported in Ram Saran and Another Vs.

Smt. Ganga Devi, , as well as Rakhal Chandra Ghosh Vs. Laxmi Ghosh and Others-->

13. Mr. Kalita further submits that the plaintiffs having asserted that the sale deed dated 05.05.1993 was a fraudulent one, the burden to prove and

establish the said fact was upon the plaintiff, which they have failed to discharge. On the contrary, the defendant has produced the volume register

to show the due execution of the sale deed. The introduction of the said register not having been objected to by the plaintiffs at the time of leading

evidence, the defendant has proved and establish the fact that he had in fact purchased the suit land by means of registered deed of sale. In such

view of the matter the lower Appellate Court was wholly justified in law as well as in the facts and circumstances of the case in dismissing the suit

filed by the plaintiffs.

14. Mr. Kalita, further submits that from the pleadings contained in the plaint as well as the materials on record, more particularly, Exhibit-"Ka" it is

apparent that the plaintiff No. 1 was aware of the claim of the defendant over the suit land by way of right of purchase way back in the year 1993.

Such being the position, the suit of the plaintiff was evidently barred by law of limitation and has been rightly declared so by the lower appellate

court. As such, submits Mr. Kalita, there is no merit in the appeal and the same deserves to be dismissed.

15. I have considered the rival submission made by and on behalf of the parties and have also perused the materials on record. From an

examination of the pleadings contained in the plaint what can be seen is that the plaintiffs have not denied the execution of the agreement for sale

dated 05.02.1982 and the delivery of possession in respect of the suit land in favour of the defendant. What can be seen from a close scrutiny of

the plaint is that having admitted the execution of the agreement for sale the stand taken by the plaintiffs as regards alleged cancellation of the same

followed by recovery of possession from the defendant remained completely vague and evasive in nature. In the above context it may be useful to

briefly refer to the pleadings contained in the plaint.

16. The plaintiffs' case is that since the agreement for sale is not signed by the other two brothers who are the co-owners of the suit land, hence,

same is a forged document. Having pleaded as above, the plaintiffs have further stated that although the defendant had paid an advance amount of

Rs. 7,000/- at the time of execution of the agreement for sale, yet, the defendant had failed to pay the balance amount which was required to be

paid within a period of four months from the date of signing of the agreement for sale dated 05.02.1982 and as such if the clause contained in the

agreement for sale dated 05.02.1982 is relied upon then the deed of sale having been registered after 11 years 03 months from the date of

execution of the agreement for sale would not be valid. That apart, as per the condition contained in the agreement for sale, the possession of the

suit land could be restored back to the plaintiffs if the balance amount was not paid within the period of four months as mentioned therein, hence,

the possession of the suit land stood automatically restored to the plaintiff and the said agreement also stood cancelled due to default of the

defendant to pay the balance amount within time. Therefore, the deed of sale dated 05.05.1993 being a document not having the support of the

agreement for sale, the same was not valid in the eye of law and is a forged document that has been manufactured by the defendant. The aforesaid

statements made by the plaintiffs are at best arguments in support of their claim but the same cannot be construed as statements of fact throwing

light upon the factual position. Moreover, the plaintiffs have also failed to establish the said averments made in the plaint by leading evidence.

17. In his written statement the defendant, while denying the averments made in the plaint, has categorically stated that he had purchased the suit

land from the plaintiffs by means of a registered deed of sale bearing No. 2785/1993 dated 05.05.1993 for valuable consideration and the

possession of the land was also handed over to him by the plaintiffs. Thereafter, the defendant had got his name duly mutated in respect of the suit

land and has been possessing the same by regularly paying the land revenue. The defendant has also categorically pleaded that the possession of

the suit land measuring 4B-10L has been with him since past many years covering the period even before execution of the sale deed. In paragraph

19 of the written statement the defendant has also categorically stated that after execution of the registered deed of sale, the plaintiffs neither

handed over the receipt of the sale deed nor did they hand over the original sale deed to the defendant as a result of which the defendant was

compelled to obtain a certified copy of the registered deed of sale bearing No. 2785/1993 for the purpose of obtaining mutation in respect of the

suit land.

18. From the pleadings contained in the plaint it was thus evident that the plaintiffs were, in effect, seeking a declaration of their right, title and

interest over the suit land, although no such relief had been claimed. That apart, a decree declaring the registered deed of sale dated 05.05.1993 as

null and void and not binding upon the plaintiffs was also sought for in the plaint. Therefore, the burden to prove and establish the fact that the

plaintiff had right, title and interest and possession over the suit land and that the registered deed of sale bearing No. 2785/1993 dated 05.05.1993

was a fraudulent and void document was clearly upon the plaintiffs under Section 101 read with 102 of the Indian Evidence Act, 1872.

19. In the case of Anil Rishi (Supra) the Hon"ble Apex court has made the following observations in the context of burden of proof under Section

101 of the Evidence Act:-

18. Difficulties which may be faced by a party to the lis can never be determinative of the question as to upon whom the burden of proof would

lie. The learned trial Judge, therefore, posed unto himself a wrong question and arrived at a wrong answer. The High Court also, in our considered

view, committed a serious error of law in misreading and misinterpreting Section 101 of the Evidence Act. With a view to prove forgery or

fabrication in a document, possession of the original sale deed by the defendant, would not change the legal position. A party in possession of a

document can always be directed to produce the same. The plaintiff could file an application calling for the said document from the defendant and

the defendant could have been directed by the learned trial Judge to produce the same.

19. There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right

to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the

question is, which party is to begin. Burden of proof is used in three ways; (i) to indicate the duty of bringing forward evidence in support of a

proposition at the beginning or later; (ii) to make that the establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in

which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on

the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those

circumstances, if any, which would disentitle the plaintiff to the same.

20. In a full bench decision of the Andhra Pradesh High Court reported in *Nelluru Sundararamareddi and Others Vs. State of Andhra* (now

Andhra Pradesh) and *Others*, it has been observed as follows:-

Section 101 gives effect to the ancient rule founded on considerations of good sense that the party who substantially asserts the affirmative of an

issue has to prove it. It is well-settled that the effect of the rule cannot be circumvented by manipulating the words of the issue. Phipson in his book

on "The Law of Evidence" (9th Edition, p. 33) Says--I have omitted the authorities cited--

In deciding which party asserts the affirmative, regard must of course be had to the substance of the issue and not merely to its grammatical form,

which latter the pleader can frequently vary at will; moreover, a negative allegation must not be confounded with the mere traverse of an affirmative

one. The true meaning of the rule is that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the

proof of such allegation rests on him.

21. In the case of *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , the Hon"ble Apex court while taking note of the

confusion centering around the phrase burden of proof has made the following observations in paragraphs 17 and 18:

17. The application of rules relating to burden of proof in various types of cases is thus elaborated and illustrated in Phipson by reference to

decide cases (see p. 40, para 93):

In deciding which party asserts the affirmative, regard must of course be had to the substance of the issue and not merely to its grammatical form,

which later the pleader can frequently vary at will, moreover a negative allegation must not be confounded with mere traverse of an affirmative one.

The true meaning of the rule is that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of

such allegation rests of him; e.g. in an action against a tenant for not repairing according to covenant, or against a horse-dealer that a horse sold

with a warranty is unsound, proof of these allegations is on the plaintiff, so in actions of malicious prosecution, it is upon him to show not only that

the defendant prosecuted him unsuccessfully, but also the absence of reasonable and probable cause; while in actions for false imprisonment, proof

of the existence of reasonable cause is upon the defendant, since arrest, unlike prosecution, is *prima facie* a tort and demands justification. In

bailment cases, the bailee must prove that the goods were lost without his fault. Under the Courts (Emergency Powers) Act, 1939, the burden of

proving that the defendant was unable immediately to satisfy that judgment and that that inability arose from circumstances attributable to the war

rested on the defendant. But it would seem that is an election petition alleging breaches of rules made under the Representation of the People Act,

1949, the court will look at the evidence as a whole, and that even if breaches are proved by the petitioner, the burden of showing that the election

was conducted substantially in accordance with the law does not rest upon the respondent. Where a corporation does an act under statutory

powers which do not prescribe the method, and that act invades the rights of others, the burden is on the corporation to show that there was no

other practical way of carrying out the power which would not have that effect.

18. Turning now to the provision of our own Evidence Act, we find the general or stable burden of proving a case stated in Section 101 as follows:

101 Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove

that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

The principle is stated in Section 102 from the point of view of what has been sometimes called the burden of leading or introducing evidence

which is placed on the party initiating a proceeding. It says:

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

In practice, this lesser burden is discharged by merely showing that there is evidence in the case which supports the case set up by the party which

comes to court first, irrespective of the side which has led that evidence. An outright dismissal in limine of a suit or proceeding for want of evidence

is thus often avoided. But, the burden of establishing or general burden of proof is heavier. Sometimes, evidence coming from the side of the

respondents, in the form of either their admissions or conduct or failure to controvert, may strengthen or tend to support a petitioner's or plaintiff's

case so much that the heavier burden of proving or establishing a case, as distinguished from the mere duty of introducing or showing the existence

of some evidence on record stated in Section 102 is itself discharged. Sufficiency of evidence to discharge the onus probandi is not, apart from

instances of blatant perversity in assessing evidence, examined by this Court as a rule in appeals by special leave granted under Article 136 of the

Constitution. It has been held that the question whether an onus probandi has been discharged is one of fact (see AIR 1930 PC 914). It is

generally so.

22. In the case of Moslem Mondal and Others Vs. Union of India (UOI) and Others, of this court while interpreting while referring to the work of

Phipson has observed as follows:-

(71) We have already pointed out that according to Phipson on Evidence, which Mr. Dutta relies upon, the phrase "burden of proof carries three

meanings, namely, (i) the persuasive burden, the burden of proof as the matter of law and pleading the burden of establishing a case, whether by

preponderance of evidence or beyond a reasonable doubt, (ii) the evidential burden, the burden of proof in the sense of adducing evidence and (iii)

the burden of establishing the admissibility of evidence.

23. The general principles of law that can be gainfully culled out from the judicial pronouncements noted above is that the burden of proof cast

under Sections 101 and 102 of the Indian Evidence Act, 1872 is the persuasive burden or the onus probandi. The persuasive burden to prove and

establish the case always lies upon the plaintiff and the said burden never shifts upon the defendant. What may, however, shift is the onus to lead

evidence in the sense that once the plaintiff side succeeds in prima facie establishing his pleaded case by leading evidence, the onus will then shift

upon the defendant side to lead evidence so as to disprove the case. The parties may also have to discharge the burden of establishing the

admissibility of the evidence by leading evidence in respect thereof. The initial burden to establish the basic allegations made in the plaint

constituting the foundational facts, regardless of whether such assertion is couched in the affirmative or in the negative, would undoubtedly lie upon

the plaintiff and the failure to discharge the said burden must lead to the dismissal of the suit.

24. In the instant case, since the plaintiffs have asserted that the sale deed dated 05.05.1993 was void, illegal and in-operative in law, and since the

suit itself was founded on such assertion, it was the duty of the plaintiffs to lead evidence to prima facie establish their case. However, record

reveals that the plaintiffs have failed to discharge that burden. The plaintiffs have also failed to prove and establish their right, title, interest and

possession over the suit land. As such, it is evident that the initial burden of proving their case under Section 101 and 102 of the Evidence Act

could not be discharged by the plaintiffs. Such being the position there was no further duty on the part of the defendant to lead evidence to

disprove the plaintiffs case. Notwithstanding the same, the defendant had not only laid the factual foundation in the written statement but has also

adduced the volume register in evidence marked as Exhibit-"X" to prove the execution of the registered deed of sale dated 05.05.1993 besides

establishing his possession over the suit land. During the course of trial the defendant had also examined D.W. -1 i.e. an official of the sub-registrar

who had not only proved the contents of the deed but had also established the due execution of the same by identifying the signatures of the

plaintiffs in the sale deed. During cross-examination, the plaintiffs' side did not even make any suggestion to the said witness denying their

signature. In that view of the matter I am of the opinion that the learned lower appellate court has rightly decided the issue No. 6 in favour of the

defendant and, therefore, the submissions made by Mr. Mazumdar does not merit acceptance. The first substantial question of law would

accordingly stand answered against the appellants.

25. In so far as the second substantial question of law is concerned the learned lower Appellate Court while deciding the issue No. 2 had taken

cognizance of the document marked as Exhibit-"Ka" which is an application dated 04.03.2004 submitted by the plaintiff No. 1 before the

Settlement Officer, Ulubari seeking cancellation of the mutation order dated 12.07.1993 granted in favour of the defendant. In paragraph 4 of the

said application the plaintiff No. 1 has stated as follows:

4. That, in the year 1993, when the 1st party had gone to pay land revenue the recipient had refused to receive the revenue from his side. Because

of some Mr. Dinesh Sarmah Prop. of M/S Eastern Pipes Pvt. Ltd. has got mutated over the said plot of land.

26. Taking note of the aforesaid statement made by the plaintiff No. 1 and also in view of the fact that the suit land has been admittedly under the

possession of the defendant since 1993 the learned lower Appellate Court was of the opinion that it would be difficult to believe that the plaintiff

did not have the knowledge about the sale deed till the year 2004 as has been claimed by him. As such the learned lower Appellate Court was of

the view that the plaintiff did have knowledge about the sale deed since the year 1993 and therefore, the suit having been filed after 13 years from

the date of execution and registration of the sale deed No. 2785/1993, the same was barred under the law of limitation. I am in agreement with the

view taken by the learned lower Appellate Court, more so in view of the fact that the plaintiffs having admitted the execution of the deed of

agreement for sale dated 05.02.1982 (Exhibit-"Kha") and further having admitted the fact that the possession of the land was with the defendant

since the year 1993, it would not be possible for any prudent person to believe that the plaintiffs had no knowledge about the execution of the sale

deed, that too on the face of the clear admission that in the year 1993 when the plaintiff No. 1 gone to pay land revenue, the recipient had refused

to accept the same on the ground that the name of the defendant had been mutated over the said plot of land as a owner. As such, I do not find

any illegality or infirmity in the findings recorded by the learned lower Appellate Court as regards issue No. 2. There is no force in the arguments

made by the learned counsel for the appellants and accordingly, the second substantial question of law framed by this court is also answered

against the appellants. During the course of hearing, the appellants have also tried to raise an issue pertaining to improper description of the suit

land taking the plea that in the sale deed the dag number has been mentioned as 2071 whereas the suit land is actually covered by dag No. 1071.

The learned lower Appellate Court has extensively dealt with the said objection by holding that the objection is untenable on account of the fact

that the suit patta No. 253 admittedly contains only one dag and the boundary given in the schedule of the land in the sale deed tally with that of the

suit land. I do not find any perversity in the view adopted by the learned lower Appellate Court in the aforesaid aspect of the matter.

In view of what has been discussed hereinbefore, I am of the opinion that the instant second appeal is devoid of any merit and hence, the same is

hereby dismissed. Parties to bear their own cost.

Registry may send back the records.