

IN THE COURT OF CIVIL JUDGE NO. 2, KAMRUP, GUWAHAI.

Present : ***Sri S.N. Sarma , LLM. AJS,***
Civil Judge No. 2,
Kamrup, Guwahati.

Reference : ***Title Suit No. 367/04***

Plaintiffs : ***Sri Hari Das & 3 others.***

vs

Defendants : ***Sri Tarini Das & 12 others.***

For the plaintiff : ***Sri J.N. Bhuyan , Advocate***

For the defendant : ***Sri G.Misra , Advocate***

Date of hearing : ***24/7/12***

Date of Judgment : ***7/8/12***

JUDGEMENT

This is a suit for declaration of right, title, interest and confirmation of possession .

The brief of the plaintiff's case is that plaintiff is the son of late Maheswar Das and Nephew of late Nabasundari Das. Smti. Nabasundari Das , original pattadar , wife of Hari Das own and

possessed a plot of land covered by K.P. Patta No. 97 of Dag No. 582 and 588 measuring an area of 1 bigha 4 kathas 14 lechas and 1 bigha 4 kathas 13 lechas total area 3 bighas 4 kathas 7 lechas of village Sadilapur under Mouza Jalukbari in the district of Kamrup, Assam. As the pattadar Nabasundari Das and Hari Das having no children of their own handed over the physical possession to the plaintiff as the plaintiff is the son of brother of the pattadar Nabasundari Das many years back to take care and cultivated over the said land more particularly mentioned in the schedule below. The plaintiff as the legal heir of Nabasundari Das possessed the schedule land by cultivating "Baou" Dhan in every year and earned their livelihood income derived from the land without and disturbance till date. During the life time of Nabasundari Das the name of the plaintiff has been recorded in Chitha register with the consent of the pattadar . On 26/11/85 Nabasundari Das was expired without having any children and left behind the plaintiff as her legal heir to succeed her movable as well as immovable properties enjoying the properties till date. After the death of Nabasundari Das and her husband Hari Das the plaintiff filed petitions before the Settlement Officer for mutation of his name in place of original pattadar Late Nabasundari Das as legal heir (Nephew) against the land measuring 1 bigha 4 katha 14 lechas in Dag No. 582 (old Dag No. 825 as per draft Chitha 1957 – 1964) Patta No. K.P. Patta No. (old-41) and land measuring 1 bigha 4 katha 13 lechas in Dag No. 588 (old dag No. 824 as per draft Chitha 1957-1964) Patta No. K.P. 97 (old-41) of village Sadilapur, Mouza Jalukbari (previously it was Ramcharani Mouza) implicating the defendants No. 3 to 13 as opposite party as they were claimed to be the owner of the land. On inquiry plaintiff came to know that sale deed Nos. 2080, 2081, 1621, 1622, 2079, 1874, 1876, 1873, 1877, 1875, 1878 has been registered by the defendant

No. 2 in favour of the defendants No. 3 to 13 on the strength of sale deed vide No. 4609 dated 24/11/54 executed by the defendant No. 1 in favour of the defendant 2 in respect of the land . It is reflected from the sale deed No. 4609/54 that the defendant No. 1 showing himself as the son of late Hari Das and the attorney of late Navasundari Das executed the sale deed in the name of Sri Charls Stuwart Farewell in respect of land covered by K.P. Patta No. 41 in Dag No. 824. The defendant No. 2 without mutating her name for last 42 years executed the registered sale deed in favour of 11 numbers of different names of sale deeds. On 15/7/04 Settlement Officer rejected the prayer of the plaintiff / petitioner directing him to approach appropriate Civil Court to determine his claim of ownership , title and possession over the land. Defendant No. 1 is not the son of late Nava Sundari Das and late Hari Das and as such the defendant No. 1 having no family relation with the pattadar as well as the plaintiff and during the life time of Nava Sundari Das and hence the power of attorney vide 1403/1982 registered in favour of Tarani Das is fraudulently obtained by the defendant No. 1. Defendant No. 1 on the strength of fraudulent and forge power of attorney executed the sale deed vide No. 4609/54 in favour of 11 nos. of sale deeds are illegal and forge sale deeds in the eye of law. Hence, all the sale deeds are liable to be cancelled and declared null and void. Plaintiff having physical and constructive possession over the schedule A land and also paying revenue regularly. Neither the purchaser of sale deed No. 4609 dated 24/11/54 has mutated his name nor the legal heirs of late Charls Stuwart Farewell registered their name against the land purchased through the sale deed till date. The eleven numbers of sale deeds did not mutated their name and revenue records are not corrected by deleting the name of Nava Sundari Das in K.P. Patta No. 97 of Dag No. 582 of village

Sadilapur under mouza Jalukbari in the district of Kamrup and as such the suit has been filed for praying declaration of right, title, interest and confirmation of

possession .

Defendant Nos. 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 contested the suit by filing written statement. The suit was dismissed against the defendant No. 1, 2 and 4. Defendants' case is that the suit is not maintainable in law , there is no cause of action for the suit, suit is barred by limitation, suit is bad for non-joinder of necessary parties , the plaintiff has no locus-standi to file this suit. The defendants admitted that late Nabasundari Das wife of late Hari Das the exclusive owner and possessor of 3 bighas 4 kathas 7 lechas of land of village Sadilapur under mouza Jalukbari which is covered by Dag No. 582 and 588 of K.P. Patta no. 97. Pattadars Navasundari Das and Hari ?Das having no children of their own handed over the physical possession to the plaintiff as the plaintiff is the son of brother of pattadar Nabasundari Das many years back to take care and cultivated over the said land . The land was all along under exclusive possession of late Nabasundari Das. Neither the plaintiff was ever cultivated the schedule land nor his name was ever recorded in the revenue record. The question of possession of the plaintiff for 50 years does not arise at all as the schedule land was sold to Charles Stuwart Farewell the father-in-law of the defendant No. 2 in the year 1954 and possession was handed over to them. During the life time of Late Nabasundari Das the total land of 3 bighas 4 kathas 7 lechas was sold out through her attorney son, the defendant No. 1. Except the defendant No. 1 there was no Class – I heir of Late Nabasundari Das and as such it is absolutely false that the plaintiff peacefully enjoyed the properties till date. Plaintiff despite his best

illegal effort could not get his name mutated as he is nothing but a stranger to the properties of late Nabasundari Das. The defendant No. 1 being the son and attorney of Late Nabasundari Das sold the entire land to the father-in-law of the defendant No.2, and delivered possession. As the sale was completed at the instance of Late

Nabasundari Das, she never made any complaint against such sale till her death. Therefore, the plaintiff being a stranger cannot have right to challenge such sale after 50 years. Even if late Nabasundari Das would not have sold the land during her life time then also the said land would have devolved upon the heirs of her husband late Hari Das. The plaintiff being a stranger neither has any right to object about such sale nor has any locus standi to file the suit and as such prays to dismiss the suit.

In support of his claim , the plaintiff side adduced evidence of following witnesses :

- 1. Sri Haladhar Das***
- 2. Allauddin Ali***
- 3. Umesh Kalita***
- 4. Jogen Chandra Kalita***
- 5. Hari Das***

However, P.W.1 died before cross-examination. Therefore, evidence was expunged. Defendant also adduced evidence of three witnesses namely D.W.1 (Sri Ranidhar Pattowary), D.W.2 (Sri Sabin Kalita) and D.W.3 (Narayan Sharma).

Plaintiff exhibited the following documents.

Exhibit – 1 is the sale deed dated 28/1158

Exhibit – 2 is the sale deed dated

Exhibit – 3 is the sale deed

Exhibit – 4 is the sale deed
Exhibit – 5 is the sale deed
Exhibit – 6 is the sale deed
Exhibit – 7 is the sale deed
Exhibit – 8 is the sale deed
Exhibit – 9 is the sale deed
Exhibit – 10 is the sale deed
Exhibit – 11 is the sale deed
Exhibit – 12 is the sale deed
Exhibit – 13 is the copy of Jamabandi
Exhibit – 14 is the copy of Jamabandi
Exhibit – 15 is the copy of Chitha
Exhibit – 16 is the revenue receipts
Exhibit – 17 is the copy of order dated 15/7/04
Exhibit – 18 is the
Exhibit – 19 is the death certificate of Hari Das
Exhibit – 20 is the death certificate of Nabasundari

Defendants exhibited the following documents.

Exhibit – A is the copy of sale deed No. 4609/54
Exhibit – B is the registered sale deed No. 1875/96
Exhibit – C is the registered sale deed No. 1621/96

Exhibit – D is the sale deed No. 2079/96
Exhibit – E is the sale deed No. 2081/96
Exhibit – F is the sale deed No. 2080/96

Exhibit – G is the sale deed No. 1876/96

Exhibit – H is the sale deed No. 1876/96

Exhibit – I is the sale deed No. 1874/96

Exhibit – J is the sale deed No. 1877/96

Exhibit – K is the sale deed No. 1873/96

Exhibit – L is the Patta

POINTS FOR DETERMINATION

ISSUE NO. 1

Defendants in their written statement has taken the plea that the suit filed by the plaintiff is not maintainable as the defendant himself has no locus-standi to file this suit. Learned counsel for the defendant has submitted that plaintiff since deceased Haladhar Das has more relation with Nabasundari Das and as such he has no locus standi to file this suit.

In the plaint, plaintiff in his plaint has stated that the plaintiff is the son of late Maheswar Das and Nephew of late Nabasundari Das. Order 1 Rule 1 of CPC says as to who may be joined as plaintiff it speaks that all persons may be joined in one suit as plaintiffs wherein right to relief in respect of or arising out of , the same act or transaction or serious acts or transaction is alleged to exist in such persons whether joined, severally or in the alternative. From bare

reading of Order 1 Rule 1 it is clear that it is not necessary to be plaintiff that he must be relation of some one having interest in the property in view of law, the plaintiff has locus standi to file this suit. Hence, this issue is in favour of the plaintiff.

ISSUE NO. 2

The defendant has also taken the plea that the suit is barred by limitation to cancel or set aside an instrument the limitation and to obtain any other declaration the limitation period is three years. Defendant has taken the plea that the suit is bad for non-joinder of necessary parties because of the fact that the plaintiff without impleading Sri Dilip Thomas has challenged the power of attorney being deed No. 1403/82 . However; defendant has failed to show as to how and why Sri Dilip Thomas is necessary party. Therefore, this issue is in favour of the plaintiff.

ISSUE NO. 4 & 5

Issue No. 4 and 5 are co-related and as such both the issues are taken together for consideration. In the plaint, it is stated that Smti. Nabasundari Das , original pattadar , wife of Hari Das own and possessed a plot of land covered by K.P. Patta No. 97 of Dag No. 582 and 588 measuring an area of 1 bigha 4 kathas 14 lechas and 1 bigha 4 kathas 13 lechas total area 3 bighas 4 kathas 7 lechas of village Sadilapur under Mouza Jalukbari in the district of Kamrup, Assam. As the pattadar Nabasundari Das and Hari Das having no children of their own handed over the physical possession to the plaintiff as the plaintiff is

the son of brother of the pattadar Nabasundari Das many years back to take care and cultivated over the said land more particularly mentioned i the schedule below. The plaintiff as the legal heir of Nabasundari Das possessed the schedule land by cultivating “Baou” Dhan in every year and earned their livelihood income derived from the land without and disturbance till date. During the life time of Nabasundari Das the name of

*the plaintiff has been recorded in Chitha register with the consent of the pattadar . On 26/11/85 Nabasundari Das was expired without having any children and left behind the plaintiff as her legal heir to succeed her movable as well as immovable properties enjoying the properties till date. After the death of Nabasundari Das and her husband Hari Das the plaintiff filed petitions before the Settlement Officer for mutation of his name in place of original pattadar Late Nabasundari Das as legal heir (Nephew) against the land measuring 1 bigha 4 katha 14 lechas in Dag No. 582 (old Dag No. 825 as per draft Chitha 1957 – 1964) Patta No. K.P. Patta No. (old-41) and land measuring 1 bigha 4 katha 13 lechas in Dag No. 588(old dag No. 824 as per draft Chitha 1957-1964) Patta No. K.P. 97 (old-41) of village Sadilapur, Mouza Jalukbari (previously it was Ramcharani Mouza) implicating the defendants No. 3 to 13 as opposite party as they were claimed to be the owner of the land. **PW1** died prior to his cross-examination and as such evidence of PW1 was expunged . **PW2 Allauddin Ali** who was the gaonbura in his cross-examination stated that he lives at Garigaon and he did not know the persons who reside at Bharalamukh. He further stated that he does not know the person resided at Machkhowa. He further stated that to show that Hari Das is the owner of land. No document has been filed by him. He further stated that Hari Das did not reside at his village and he cannot say whether Hari Das resides at Machkhowa or not. He also stated that no*

document has been filed to show that Haladhar was the owner of suit land. Further he stated that to show that Haladhar is the cousin of Nabasundari Das no document has been filed. In this suit it is claimed that the plaintiff was the legal heirs of Nabasundari Das and the plaintiff Haladhar acquired right, title and interest of the suit land as legal heir of Nabasundari Das but interestingly no relatives of Nabasundari Das was examined to prove the fact that Haladhar was the legal heirs of Nabasundari Das. It is argued by the learned counsel for the defendant that Nabasundari expired on 16/11/85

without having any children and plaintiff applied for mutation his name after 18 years of death of Nabasundari Das. It creates a doubt regarding the truthfulness of the evidence of plaintiff side . **P.W.3. Umesh Kalita** in his cross-examination stated that no document has been filed to show that the suit land are possessed by Hari Das . He further stated that he did not know if Nabasundari had sold the land to somebody. **P.W.4. Hari Das** who is the son of deceased plaintiff Haladhar Das in his evidence stated that Haladhar Das was the cousin of Nabasundari Das . This witness further stated that Haladhar Das was the sole heir of Nabasundari Das and Nabasundary Das did not have any issue. After the death of Nabasundari Das all funeral lights including Shardha etc. were performed by Haladhar Das. He also stated that on 26/11/1985 Nabasundari died and after her death on 9/9/03 and 19/12/03 he applied for mutation as legal heirs and at that time only he came to know about the defendants action. Prior to that he did not know about the sale of the suit land by Nabasundari Das or her husband. In this suit four PWs were examined and cross-examined and the plaintiff side has not brought any relatives of Nabasundari Das to prove their case. In this case, the suit has been filed for right, title , interest and possession.

Right, title and interest upon a particular immoveable property can be obtained by way of registered sale deed , by way of inheritance or otherwise. In the instant case, the plaintiff has claimed that he was the legal heir of Nabasundari Das. However, to prove the fact that he is the legal heir of Nabasundari Das. No document has been relied upon the oral evidence adduced by PW2, 3, 4 and 5 are also not sufficient to prove as the same has been rebutted by way of cross-examination by the defendant side and as such it is not prove that deceased plaintiff was the legal heir of Nabasundari Das . It was the bounden duty of the plaintiff side to prove that Haladhar Das was the legal heirs of Nabasundari Das . But the plaintiff has failed to prove the said fact .

In view of the above discussion , I am of the view that the plaintiff side has failed to prove that Haladhar Das was the legal heir of Nabasundari Das and as such Issue No. 4 and 5 are decided against the plaintiff.

ISSUE NO. 1

In view of the decision and discussion of Issue No. 4 and 5 , plaintiff is not entitled for any relief.

ORDER

In the result, the suit is dismissed on contest without cost.

Given under my hand and seal of this court on this the 7th day of August, 2012 at Guwahati.

***Civil Judge No. 2,
Kamrup, Guwahati.***

Dictated & corrected by me

*Civil Judge No. 2,
Kamrup, Guwahati.*