GAHC010198732010

2026:GAU-AS:13100

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/16/2010

STRUCK OFF and ANR
APPELLANT NO 1 STRUCK OFF VIDE HON'BLE COURT'S ORDER DATED 02.04.2025

2: MINA RANI SAHA

W/O JATINDRA MOHAN SAHA
BOTH ARE R/O SUKHCHAR BAZAR
P.S. SOUTH SULSARA
DIST. DHUBRI

VERSUS

ON THE DEATH OF MOZUAMMEL HAQUE HIS LEGAL HEIRS and ORS NAMELY-

1.1:AJOPA BEWA
W/O LATE MOZUAMMEL HAQUE

R/O VILLAGE HATSINGIMARI (MAHAMAYA) UNDER P.S. MANKACHAR
DIST DHUBRI

1.2:MONOWARA KHATUN
D/O LATE MOZUAMMEL HAQUE

R/O VILLAGE HATSINGIMARI (MAHAMAYA) UNDER P.S. MANKACHAR
DIST DHUBRI

1.3:RAFIQUL ISLAM
S/O LATE MOZUAMMEL HAQUE

R/O VILLAGE HATSINGIMARI (MAHAMAYA) UNDER P.S. MANKACHAR
DIST DHUBRI

1.4:WALILUL ISLAM
S/O LATE MOZUAMMEL HAQUE

R/O VILLAGE HATSINGIMARI (MAHAMAYA) UNDER P.S. MANKACHAR
DIST DHUBRI

1.5:MORSHASU KHATUN
D/O LATE MOZUAMMEL HAQUE

R/O VILLAGE HATSINGIMARI (MAHAMAYA) UNDER P.S. MANKACHAR
DIST DHUBRI

2:SADEK HUSSAIN

S/O L. SAFURUDDIN SARKAR.

3:SAMSUL HAQUE

S/O L. SAFURUDDIN SARKAR.

4:KEBA ALAM

S/O L.SAFURUDDIN SARKAR.

5:ABDUL KALAM

S/O L. SAFURUDDIN SARKAR.

6:1.MAZIBAR RAHAMN'S HEIRS

NAMELY-

6.1:KAMRUL ISLAM
S/O LATE MAZIBAR RAHMAN
R/O KASHARIPARA UNDER P.S. FULBARI
GAROHILLS
MEGHALAYA.

6.2:JULFIKAR ALI
S/O LATE MAZIBAR RAHMAN
R/O KASHARIPARA UNDER P.S. FULBARI
GAROHILLS
MEGHALAYA.

6.3:BREDUL ISLAM
S/O LATE MAZIBAR RAHMAN
R/O KASHARIPARA UNDER P.S. FULBARI

GAROHILLS
MEGHALAYA.

6.4:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 25/06/201

Advocate for the Petitioner : S P CHOUDHURY, S K GHOSH,S C KEYAL

Advocate for the Respondent : MS.J PURKAYASTHA, ,MRG P BHOWMIK

Linked Case : RSA/17/2010

STRUCK OFF and ANR
APPELLANT NO 1 STRUCK OFF VIDE HONBLE COURTS ORDER DATED 02.04.2025

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BOTH ARE R/O SUKHCHAR BAZAR
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4:KEBA ALAM

S/O L.SAFURUDDIN SARKAR.

5:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 28/8/2012 PASSED IN RSA 17/2010

6:1.MAZIBAR RAHAMN'S HEIRS

NAMELY-

6.1:KAMRUL ISLAM
S/O LATE MAZIBAR RAHMAN
ALL ARE R/O KASHARIPARA UNDER P.S. FULBARI
GAROHILLS
MEGHALAYA.

6.2:JULFIKAR ALI
S/O LATE MAZIBAR RAHMAN
ALL ARE R/O KASHARIPARA UNDER P.S. FULBARI
GAROHILLS
MEGHALAYA

6.3:BREDUL ISLAM
S/O LATE MAZIBAR RAHMAN
ALL ARE R/O KASHARIPARA UNDER P.S. FULBARI
GAROHILLS
MEGHALAYA.

6.4:STRUCK OFF

VIDE HON'BLE COURT'S ORDER DATED 28/8/2012 PASSED IN RSA 17/2010

Advocate for : S P CHOUDHURY

Advocate for : appearing for ON THE DEATH OF MOZUAMMEL HAQUE HIS LEGAL HEIRS and ORS

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the appellants : Mr. S.K. Ghosh, Advocate
For principal respondents : Mr. D. Kalita, Advocate

Date on which judgment is reserved : 16.05.2026

Date of pronouncement of judgment : 09.09.2026

Whether the pronouncement is of the operative part of the judgment? : No.

Whether the full judgment has been Pronounced? : Yes.

JUDGMENT AND ORDER

(*CAV*)

These two appeals arise out of the same suit and counter-claim made therein. Therefore, as prayed for by both sides, these two appeals have been taken up for analogous hearing.

2) RSA 16/2010 is an appeal under Section 100 of the CPC by the appellants-defendants against the suit of the respondents- plaintiffs being decreed by the learned Civil Judge, Dhubri, in Title Appeal No. 15/2005, thereby reversing the decree of dismissal of the suit by the learned Civil Judge (Junior Division) No.1, Dhubri, by judgment and decree dated 31.03.2005, passed in Title Suit No. 111/1998.

3) RSA No. 17/2010 is an appeal under Section 100 of the CPC by the appellants- defendants against the dismissal of the Title Appeal No. 14/2005, by which the decree of dismissal of the counter-claim of the appellants by the learned Civil Judge (Junior Division) No.1, Dhubri, by judgment and decree dated 31.03.2005, passed in Title Suit No. 111/1998 was affirmed.

4) Heard Mr. S.K. Ghosh, learned counsel for the appellants and Mr. D. Kalita, learned counsel for the principal respondents.

5) It may be stated that the proforma respondent nos.2, 3, 6(a), 6(b) and 6(c) had entered appearance through their learned counsel, but he had submitted that he has nothing to submit until the interest of the said respondents is adversely affected. The names of the respondent nos. 5 and 6(d) have been struck off vide order dated 28.08.2012, passed in RSA No. 17/2010. It is noticed that the notice was not served and despite the order dated 15.03.2013, passed by the Lawazima Court, the appellants had not taken steps for service of notice on the said respondent, as such, the name of respondent no.4 is ordered to be struck-off.

6) The appellants in RSA 16/2010, namely Jatindra Mohan Saha and Mina Rani Saha are the defendants in T.S. 111/1998, which was assigned to the Court of the learned Civil Judge (Junior Division) No. 1, Dhubri, for disposal. Apart from contesting the suit, the defendant no.1 had also filed his counter-claim. The learned Civil Judge (Junior Division) No.1, Dhubri had decreed the suit and dismissed the counter-claim. However, the learned First Appellate Court, i.e. Civil Judge, Dhubri, had decreed the suit and affirmed the dismissal of the counter-claim.

7) The appellant no.1 had died during the pendency of this appeal and as his legal heir, being the respondent no.2 is already on record, the name of appellant no.1 was allowed to be struck-off. The said suit was instituted by Mozammel Haque, as plaintiff. On his death during the pendency of these appeals, he was substituted by the respondent nos. 1(a) to 1(e).

Case of the plaintiff and the defendants:

8) In the plaint, the case of the plaintiff is that he had entered into an agreement with the defendant No. 1 in the middle part of the Bengali year 1929, thereby agreeing to sell a plot of land on a total sale consideration of Rs.23,000/- (Rupees Twenty three thousand only), on condition that an advance amount of Rs.10,000/- (Rupees Ten thousand only) be paid and the balance sale consideration was to be paid within a period of 3 (three) months from the date of the agreement. It was agreed that after execution of the sale deed, possession of land described in Schedule- B would be handed over.

9) The plaintiff had alleged that as the balance payment was not made despite repeated demands within the stipulated and extended time, the agreement for sale was rescinded and consequently, neither any sale deed was executed nor possession was handed over to the defendants. It was projected that in the year 1991, the plaintiff had shifted his homestead to the suit land due to river erosion and started to reside there by constructing houses by doing plantation and by cultivating the land.

10) It was projected that the defendant no. 1 had conspired with the land revenue staff and secretly got the land mutated on 03.12.1992 in the name of defendant no. 2. Thereafter, the defendants had filed a petition before the

Court of Executive Magistrate under section 107 Cr.P.C., alleging attempt to dispossess them from the suit land. Subsequently, on the basis of police report on 21.12.1992, proceedings under section 145 Cr.P.C. was also instituted, which was disposed of by the Executive Magistrate, Hatsingimari, by order dated 31.07.1996, thereby relegating the parties to seek relief in the civil court.

11) The defendant no.1 had filed a criminal revision petition before Court of the learned Sessions Judge. The said learned Court by an order passed in C.M. No. 16(3)/1996, remanded the matter back to the Court of the learned Executive Magistrate. Accordingly, after fresh hearing, the learned Executive Magistrate, by an order dated 13.10.1997, passed in Case No. 1^{M}/93, declared possession of the suit land in favour of the defendants and directed the police to deliver the disputed land in favour of the defendants. However, the operation of the said order dated 13.10.1997, was stayed by the Court of the learned Sessions Judge in Crl. Rev. No. 11(4)/97.

12) The further case of the plaintiff is that without title, possession or any deed for transfer, the defendant no.1, by illegal means, obtained mutation of the name of defendant no.2 over the suit land on the basis of which he had started proceeding under Section 145 CrPC, against which the plaintiff had filed his objection. In the proceeding of Mutation Case No. 3/1993, on the basis of record and possession, by an order dated 30.12.1993, the name of the plaintiff and proforma defendants were mutated. Subsequently, the name of the defendant no.2 was struck off.

13) Accordingly, facing apprehension of dispossession from the suit land described in Schedule-B, and in order to remove the cloud over the title of

the plaintiff in the land of Schedule-A, and to supersede the erroneous order of the criminal court, the plaintiff had filed the suit for declaration of right and title over Schedule-B land, for perpetual injunction, the plaintiff, by stating that the cause of action for the suit arose on 03.12.1992, 21.12.1992, 31.07.1996 and 13.10.1997, the plaintiff had filed T.S. No. 111/1998, *inter alia*, praying for:

a. *A decree declaring that the plaintiff has existing right, title, and continuous possession over the land of Schedule-B;*

b. *A decree declaring that order dated 13.10.1997 passed in Misc. Case No. 1/1993 is erroneous, not enforceable in law, unexecutable, and is unable to supersede the decree of Civil Court;*

c. *A decree for perpetual injunction restraining the defendants, their agents, and men from taking possession and from entering into the suit land of Schedule-B or any part of Schedule-A; and*

d. *Decree for cost, suit and other reliefs*.

14) The defendants, apart from taking the usual defence that the suit was not maintainable, there was no cause of action, suit was barred by limitation, suit was barred by *res judicata*, suit was bad under Order II, Rule 2 CPC and Section 34 of the Specific Relief Act, 1963, etc., it was stated that the plaintiff had received the balance sale consideration and delivered possession of the suit land to the defendants in the month of November, 1989, and they had constructed a thatched house thereon, collected building materials and planted banana trees on the suit land. It was stated that the name of the defendant no.2 was mutated during field mutation with consent of the plaintiff given to the revenue staff and thus, it was denied that there was any collusion for mutation of the name of defendant no.2 in respect of the suit land.

15) It was stated that in order to misappropriate money of the

defendants and take back possession of the suit land, the plaintiff had started to disturb the defendants in peacefully possessing the suit land and as such, the defendants were compelled to file Misc. Case No. 1/1993 against the plaintiff and Misc. Case No. 1/1993 and Criminal Revision No. 11(4)97 were decided in favour of the defendants. It was stated that by order passed in C.R. 11(4)97, the police delivered possession of the suit land to the defendants as per Court order on 02.09.1998, with a note that a house of the plaintiff existed in the suit land, which was alleged to have been constructed before the verdict was delivered in C.R. 11(4)97. Accordingly, the plaintiff is now claiming his possession over the suit land. It was stated that the mutation was not illegal and possession was declared in favour of the defendants and the mutation of the suit land in the name of the defendant no.2 exists and the right of the defendants by the criminal court cannot be ignored. Accordingly, it was prayed that the suit be dismissed.

16) The defendants, in their counter-claim, contended that pursuant to the agreement for sale dated 05.06.1989, the plaintiff had agreed to sell 4 katha, 1 lecha land to the defendants and took an advance of Rs.10,000/- (Rupees Ten thousand only) on 05.06.1989 out of the total consideration amount of Rs.23,000/-. The plaintiff again received a sum of Rs.10,000/- from the defendants on 20.06.1989 and the rest of the money was paid to the plaintiff through his agents, as follows – Rs.1,000/- was paid to Rafiqul Islam (son) on 23.06.1989; Rs.600/- was paid to Rafiqul Islam (son) on 17.08.1989; and a sum of Rs.1,500/- was paid to Samsul Haque (brother) on 22.11.1989, and on payment of entire sale consideration of Rs.23,000/- and a sum of Rs.100/- in excess, the plaintiff had delivered the suit land to the defendants in the last week of November, 1989. Thereafter, the defendants had constructed a

thatched house, collected bricks and gravels for construction of building on the suit land and also grown banana trees on the suit land.

17) It was stated that registration of the sale deed was suspended by the Govt. for Hatsingimari village. The plaintiff and the defendants/ counter-claimants approached the Revenue/ Settlement authority for mutation of the suit land and on consent given by the plaintiff and accordingly, the name of the defendant/counter-claimant was mutated by order dated 03.12.1992, and the plaintiff agreed to execute and register the same deed after the Government gave permission. But as the plaintiff, for illegal gain, threatened the defendants, they had instituted proceedings against the plaintiff and Case No. 1^{M}/93, under Section 145 Cr.P.C. was decided in favour of the defendants/ counter-claimants. It was stated that during the pendency of the litigations between the parties, the plaintiff, by ignoring the court orders, illegally and forcibly constructed houses in the suit land to defeat the case of the defendants/ counter-claimants, possession of the counter-claimants was declared by the Court of Addl. Sessions Judge in Crl. Rev. No. 11(4)/97 and accordingly, as per direction issued by the said learned Court, the police gave delivery of possession of the suit land to the defendants on 02.09.1998, and in its report, the police had referred to the house constructed by the plaintiff on the suit land.

18) It was stated that failing in all proceedings since 1992, the plaintiff had filed T.S. No. 111/98 for declaration and injunction. It was claimed that the defendants/ counter-claimants had acquired right, title and interest over the suit land as the plaintiff had executed the *baina patra* and received the consideration money, delivered possession of the suit land to the defendants and gave consent for mutation of land in favour of defendant no.2 and

therefore, the plaintiff was bound to execute and register a sale deed and give-up possession in favour of the defendant/ counter-claimant no.2.

19) It was stated that the cause of action for the suit arose on 05.06.89, November, 1989, 1992, 1997, 12.05.98, 05.06.98, 02.09.98 and every subsequent date thereafter within the jurisdiction of the Court. Accordingly, the following prayers were made in the counter-claim:-

a. The counter-claim be decided in favour of the defendants/ counter-claimants for the suit land.

b. The defendants are entitled to get registration of sale deed for the land from the plaintiff and in case of failure of the plaintiff, through the Court as per law.

c. The plaintiff/O.P. was legally bound to execute registered sale deed in favour of the defendants. Counter-claimant no.2 for the suit land, remove his house from the suit land, give-up possession of the same in favour of the defendants/ counter-claimant.

d. A permanent injunction be granted restraining the plaintiff/ O.P. from transferring constructing new structure or in any way damage the suit land.

e. Costs, etc. and any other relief for which the plaintiff is entitled to in law and equity.

20) The plaintiff had submitted his written statement against the counter-claim, wherein he had denied the genuineness of Annexure-A and Annexure-B and except for receipt of sum of Rs.600/-, the plaintiff had denied

the allegations made in para-2; the payment of Rs.23,000/- by the plaintiff; and delivery of possession of the land to the defendants. It was denied that the defendants had constructed any thatched house over the suit land and claimed that mutation was fraudulently made behind him. It was stated that fake litigation was created by the defendant by imaginary threat and to harass the plaintiff by criminal litigation, but had not been able to succeed in getting possession of the suit land. Thus, it was stated that the defendants were not entitled to any relief and prayed for dismissing the counter-claim with compensatory cost.

Submissions by the learned counsel for the appellant:

21) The learned counsel for the appellant had submitted that as the plaintiff did not make any prayer in the suit for cancellation of the agreement for sale, the suit would be hit by proviso to Section 34 of the Specific Relief Act, 1963, which bars any declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Accordingly, it was submitted that the suit of the plaintiff would not be maintainable.

22) In respect of the decision of the learned courts below on issue no. 6, it was submitted that the decision was not correct and that by efflux of time, the agreement for sale by Ext.A had lost its force and thereby holding that the plaintiff could not be held to be legally bound by the contract vide Ext.A.

23) It was submitted that in so far as the possession is concerned, by a memorandum made by the police, and pursuant to orders passed by the Executive Magistrate, the police had handed over the possession of the suit land to the defendant on 02.09.1998. Accordingly, it was submitted that the order of the Appellate Court, to the effect that the possession on 02.09.1998 was

symbolic, was incorrect.

24) In respect of the counter-claim, it was submitted that while it was held by the learned First Appellate Court that the counter-claim was within time, but it exercised discretion not to grant any relief to the appellant. Moreover, it was submitted that by not granting relief to the appellants as defendants, the learned First Appellate Court did not take into consideration that the entire sale consideration money was already paid. It was submitted that the payment of the balance sale consideration is available in the evidence, but the said evidence was not discussed by the learned Trial Court and the learned First Appellate Court.

25) The defendants had admitted the ownership and title of the plaintiff, however, the plaintiff, by filing the suit seeking declaration of right, title, and interest, had clouded his own title.

26) It was also submitted that the defendants had exhibited the order dated 05.06.1998 (Ext.H), by which Criminal Revision No. 11(4)/1997 was dismissed, thereby the order passed by the learned Executive Magistrate was affirmed.

27) It was further submitted that against the finding of the counter-claim that the sale was barred by limitation, the plaintiff has not filed any cross-objection, and therefore, that finding by the learned First Appellate Court has attained finality.

Submission of learned counsel for the respondents:

28) Per contra, the learned counsel for the respondents had submitted that though possession of the suit land was given to the plaintiff by virtue of the orders passed by the learned Executive Magistrate vide Ext.G, the

right, title, and interest of the plaintiff was clouded, and therefore, the suit filed was maintainable.

29) By referring to paragraph nos. 2 and 3 of the plaint, it was submitted that it is the specific case of the defendants that the agreement was rescinded and therefore, there is no requirement to seek any declaratory relief in the suit in so far as the agreement is concerned so as to seek cancellation of the said agreement for sale.

30) By referring to paragraph nos. 9 and 10 of the written statement, it has been submitted that the defendants had stated that there was no condition requiring the sale to be executed within 3 (three) months. It was submitted that the defendants had taken a defence to the effect that the balance amount of money was paid and therefore, possession of the suit land was given to the defendants. Moreover, in paragraph-12 of the written statement, reference is made to proceedings of M.C. 1/1993 and C.R. 11(4)/1997, which was showed that multiple criminal proceedings was filed against the plaintiff and therefore, the plaintiff had to approach the Court by filing a suit.

31) It was submitted that though the defendants took a plea that the balance amount was paid, but there was no evidence as to how the money was paid, and moreover, no proof was tendered to show that Rafiqul and Samsul were authorised to receive part sale consideration on behalf of the plaintiff.

32) It was submitted that in the written statement and the counter-claim, the defendants have not pleaded the date of refusal by the plaintiff to register the sale deed and therefore, as criminal proceedings were lodged way

back in 1993, the suit filed in the year 1999 would be obviously barred by limitation.

33) It was submitted that in paragraph 5 of the written statement, a plea was taken that the registration of the sale deed was suspended in the year 1995 and therefore, the illegal mutation carried out on 03.12.1992, gave rise to a cause of action for the plaintiff to file the suit.

34) By referring to statements made in paragraph-6 of the written statement, it was submitted that as the defendants admitted that in 1992, the plaintiff tried to evict them, the counter-claim would be barred by limitation as it can be presumed that there was refusal on the part of the plaintiff to register the sale deed.

35) It was submitted that if the finding to the effect that the suit was barred by limitation is correct, then there cannot be a cause of action for a counter-claim from the date of receipt of summons and therefore, it is submitted that the appellate judgment was not sustainable. Accordingly, it was submitted that the prayer for specific relief was barred by limitation.

Reasons and decision:

36) This Court, by order dated 15.02.2010, had admitted this appeal on the following substantial questions of law:-

> i. *Whether the learned lower appellate court committed error in holding that the suit of the plaintiff was not barred by limitation while reversing decision of the learned trial court on the issue?*
>
> ii. *Whether the suit of the plaintiff was barred under the proviso to Section 34 of the Specific Relief Act, 1963?*
>
> iii. *Whether on the fact of the evidence on record, the learned lower appellate court erred in law in declaring title of the plaintiff over the*

suit land?

37) As this is a case of reversal of the decree by the learned First Appellate Court, the submissions made at the bar and the materials available on record have been carefully considered.

38) In this case, it is seen that the three substantial questions of law can be answered together by considering all the pleadings and evidence on record the pleadings and evidence on record are appreciated together.

39) On a perusal of the records received from the learned Trial Court and the learned First Appellate Court, it is seen that during trial, the plaintiff's side had examined 4 (four) witnesses, namely, Mozammel Hoque (PW-1), Alom Nur Rahman (PW-2), Sarhob Ali (PW-3), and Samsul Hoque (PW-4). The said witnesses had exhibited documents as follows:-

a. PW-1, Mozammel Haque, in his examination-in-chief, had exhibited (i) photocopy of agreement (Ext.1); copy of order in Misc. No. 03/93 (Ext.2); (iii) revenue receipt (Ext.3 and Ext.4); (iv) certified copy of deposition [Ext.5(1) to Ext.5(6)]. In his cross-examination, PW-1 had referred to his signature on Ext.1 [Ext.1(1)] and he had stated that Ext.A is the Deed of Agreement in original and exhibited his signature [Ext.A(1)]; (vii) letter in original (Ext.B) and his signature [Ext.B(1)]; (viii) letter by Abdul Gani Sarkar (Ext.C) and his signature [Ext.C(1).

b. PW-4, Samsul Haque, had stated in his cross-examination that in Ext.1, his signature is Ext.1(2).

40) The defendant nos. 1 and 2 had examined 3 witnesses, namely, (a) Jatindra Mohan Saha (DW-1); (b) Anil Chandra Paul (DW-2); and Md. Sofiyar Rahman (DW-3). The said witnesses had exhibited the following documents as follows:-

a. DW-1, Jitendra Mohan Saha, in his examination-in-chief, had exhibited (i) plaintiff's receipt of Rs.10,000/- (Ext.D) and signature of plaintiff [Ext.D(1)] and signature of Samsul Haque [Ext.D(2)]; (ii) order dated 07.02.1994, by the Executive Magistrate in Misc. Case 1^{M}/93 (Ext.E); (iii) written argument of plaintiff

in Misc. Case 1^{M}/93 (Ext.F); (iv) order dated 13.10.1997 by the Executive Magistrate Misc. Case 1^{M}/93 (Ext.G); (v) order dated 05.06.1993 in Crl. Rev. No. 11(4)/1997 (Ext.H); (vi) police report in Crl. Rev. No. 11(4)/1997 (Ext.I); (vii) money receipt by plaintiff (Ext.J) and plaintiff's signature [Ext.J(1)]; (viii) Money receipt of Rs.1,500/- (Ext.K) and signature of plaintiff [Ext.K(1)]; (ix) deposition of plaintiff in Misc. Case 1^{M}/93 [Ext.L].

41) The issue no.5 framed by the learned Trial Court is whether the plaintiff has right, title and possession over B- Schedule land. On appreciation of the pleadings and evidence, the learned Trial Court had taken notice of the admitted fact that the principal defendants had instituted a proceeding against the plaintiff under Section 145 Cr.P.C., which was registered as Case No. 1^{M}/93 before the learned Executive Magistrate, Hatsingimari. The said learned Executive Magistrate, in its order dated 07.02.1994 (Ext.E), had recorded to the effect that upon enquiry of the disputed land, the second party i.e. the defendants had constructed a thatched house on the suit land since last 1 (one) year and that on the same land, the plaintiff's side has stacked bricks, stones, etc. building materials. Thus, the finding by the learned Trial Court is to the effect that as per order dated 07.02.1994, passed by the learned Executive Magistrate, in Case No. 1^{M}/93 (Ext.E), the defendants were not in clear possession of the suit land. However, it was held that as per the order dated 13.10.1997, passed by the learned Executive Magistrate, in Case No. 1^{M}/93 (Ext.G), the possession of the suit land was declared in favour of the defendants. It was held that the police report (Ext.I), reveals that on 02.09.1998, police had delivered only symbolic possession of the Schedule-B land in favour of the defendants because the police found that the plaintiff at that time was already possessing the same by constructing a house and residing with his family over the disputed land. The learned Trial Court had held that

paragraph 14(c) of the counter-claim clearly and palpably shows that the defendants have practicably no possession over the Schedule-B land for which they have prayed for *khas* possession by removing the plaintiff. Moreover, as no sale deed was registered, it was held that right, title, interest and possession of the said land remained with the plaintiff and accordingly, the issue no. 5 was declared in the affirmative and in favour of the plaintiff, thereby concurring with the decision of the learned Trial Court on issue no.5.

42) The learned First Appellate Court further held that the suit was filed for declaration of title; declaration of possession; declaration that the finding in the criminal proceeding under Section 145 Cr.P.C. is erroneous; and decree for perpetual injunction. Accordingly, it was held that the suit was not merely for declaration and accordingly, it was held that the suit was not barred by Section 34 of the Specific Relief Act, 1963.

43) In paragraph 13 above, the prayers made in the plaint have been extracted. Thus, as the relief claimed in the plaint was not for declaration alone, but other reliefs were also sought for, the substantial question of law no. (ii) is decided in the negative by holding that the suit of the plaintiff is not barred by Section 34 of the Specific Relief Act, 1963. Consequently, the decision of the learned First Appellate Court on the point is affirmed.

44) Coming to the point as to whether or not the defendants have been able to show that they were in possession of the suit land, the learned First Appellate Court had referred to the four boundaries of the suit land as mentioned by the defendant no.1 (DW-1) in his cross-examination, which was stated as – East: PWD Road; West: Land of Bokto Jamal Sk; North: Land of Matiur Rahman; and South: Land of Sohrab and Hatsingimari College. The DW-1

had stated in his cross-examination that at the time of giving his deposition, the suit land was not in his possession and that he had lived about 3 (three) km. away from the suit land. However, by referring to the description of the suit land in the counter-claim, the learned First Appellate Court had recorded that the boundary of the suit land therein was – North: Kahinur Begum; South- Sohrab, Nur Mohammad and Hatsingimari College; East- plaintiff and others; and West- P.W.D. Thus, it was held that there was variance in the description of the boundary of the suit land. Moreover, as stated hereinbefore, it is reiterated at the cost of repetition that it was also held that the police report (Ext.I), reveals that on 02.09.1998, police had delivered only symbolic possession of the Schedule-B land in favour of the defendants because the police found that the plaintiff at that time was already possessing the same by constructing a house and residing with his family over the disputed land. It was also observed that the learned Trial Court had held that paragraph 14(c) of the counter-claim clearly and palpably shows that the defendants have practicably no possession over the Schedule-B land for which they have prayed for *khas* possession by removing the plaintiff. Accordingly, the learned First Appellate Court had held that the defendants were not in possession of the suit land.

45) The case of the defendants is that the registration of the sale deed for Hatsingimari village was suspended by the Government. However, no such evidence was produced before the learned Court. The case of the defendants is that they were put in possession of the suit land and they had constructed a house thereon. In this case, except for the oral evidence, the defendants have not been able to show from any documentary evidence that they were in actual physical possession of the suit land and therefore, the decision of the learned First Appellate Court cannot be faulted that the

possession given to the defendants by the police was symbolic because the police report referred to the existence of the house of the plaintiff and construction materials lying there.

46) In his cross-examination, the plaintiff/DW-1 had admitted that at present the suit land was not in his possession and now there stands houses (chapra) of Mozammel on the suit land and there is a bakery on the suit land and there are no other houses on the suit land. He had stated that Mozammel made the house in May, 1992 and later on says 11th November, 1992. He had stated that Mozammel used to live in that shed house but two months ago he established a thrashing machine therein. He knows that Mozammel has a family but does not know where they are residing. The land is at Masarpara and Mozammel has a house at Masarpara and he does not know if he still has that residence. Some parts of the land at Masarpara was eroded but he cannot say if his residence was also eroded. The DW-1 had stated that police gave him possession of the suit land in October, 1997 and after taking possession he had built a thatched house there. He had given names of 4 (four) persons and others who were present when police gave him possession of the land but he cannot say whether they signed as witness in police papers. He had stated that he cannot say if Mozammel stays there with his family although he visits the suit land. DW-1 had admitted that Ext.A did not contain his signature. He had stated that it was written in Hatsingimari Bazar by Abu Bakkar Mandal, who was still alive. Ext.D was written at the house of Lot Mandal Sohrab at village- Malirchar by Moniruddin. Writer Moniruddin was not present when payment was made vide Ext.A. He had stated that Ext.D is dated 20.06.1989. Ext.J was received from the son of Mozammel and in Ext.J, there is no mention of Rs.10,000/- (Rupees Ten thousand only) of Ext.D. He did keep the receipts on the basis of Ext. nos.

B, C, J and K. He does not know if mutation still remains in his name, which was dated 28.08.1992 and made in the name of his wife, Mina Rani Saha. He had stated that at that time by same order mutation was made in the name of Aladdin Saha, w/o Haren Ch. Saha, Kohinoora Begum, w/o Motiur Rahman Mandal and Khaleq Mandal's name was also mutated by the same order, Alladin's name was mutated with respect to the suit land alongwith his wife. He had stated that Ext.J and Ext.K are not money receipt but requests to pay money. He had denied that it was not a fact that money was received and mutation was given. He had denied that mutation was made in collusion with the Mandal without making payment to the plaintiff. He had denied that the contract was not performed by him and he was not entitled to the suit land. He had denied that Mozammel had never delivered possession to him or that he never constructed a thatched house there, or that after erosion Mozammel had constructed a house there. He had stated that after he had constructed house Mozammel forcibly constructed house there. He had denied that during 145 proceeding Mozammel had a house there, but he had stated that now Mozammel has a house there. He had denied as false that police did not deliver possession to him or that he has no right and title over the suit land and cannot get any relief.

47) In his cross-examination, DW-2, Sri Anil Ch. Paul had stated that the agreement was made in a tea stall at Singhimari Bazar and a transaction of Rs.10,000/- (Rupees Ten thousand only) took place. After 15 (fifteen) days another transaction of Rs.10,000/- (Rupees ten thousand only) took place at Sohrab's house where he was present but did not sign. He had heard that a document was written. He was not present when other payments were made. He had stated that he was present at the first incident but subsequently why

the dispute arose he cannot say. He had stated that now the plaintiff has one residential *chapra* house on the suit land and a biscuit bakery and a husking machine are there. He had stated that Mozammel had his original house at Nasirapara, which was eroded by river Jinjiram in 1993-1994 or so and thereafter, he had shifted his house over the suit land. He had stated that there are five or six houses on the suit land.

48) The DW-3, Sofiyar Rahman had stated in his cross-examination that he had gone to the house of Sohrab Mandal for taking his Govt. relief to the river eroded people and the Mozammel went there to sell his land and Jatin Master told him that he had purchased four katha land from Mozammel at Rs.23,000/- (Rupees Twenty three thousand only). He was there for about half and hour or so and the transaction was reduced in writing by Moniruddin, a resident of Pipulbari, who went there at the instance of Jatin Master. He cannot say what was written in the document and he cannot say about the particulars of the land sold in the agreement for sale prepared in his presence. Dag no.45 and khatian no. 33. However, he could not say about dag and khatian number of his own land until he hears from the Mandal. He had stated that after three/four years of making payment dispute arose between the plaintiff and the defendant. There were sand and gravel in the land of Mozammel, but it is not there now. He had denied the suggestion that there was no sand and gravel on the land of Mozammel. He had denied the suggestion that it was false that the agreement was made in his presence and Rs.10,000/- was paid or that Moniruddin did not go there and wrote the agreement or that he knew nothing and was deposing falsely.

49) The undeniable fact is that the agreement for sale was made on 05.06.1989. There are two versions where the agreement was made. However,

no sale deed was registered by the plaintiff in favour of the defendants. It is not the case of the defendants that during the settlement process, the land revenue staff found the defendant no.2 in possession of the suit land, but the case of the principal defendants is that with the consent of the plaintiff, the name of the defendant no.2 was mutated in respect of the land. Therefore, in this case, as no sale deed for the suit land was registered, it would be the onus of the defendant to prove that mutation of land by consent of the plaintiff was in accordance with law, which the defendants had failed to prove.

50) It is the case of the defendants that the plaintiff had entered into an agreement with defendant no.1 for the sale of the suit land with him. However, the learned Trial Court and the learned First Appellate Court had failed to appreciate that the fact that the mutation of the suit land was done in the name of the defendant no.2, would mean as if there was a novation of contract when the plaintiff allegedly gave his consent for mutation of land in the name of defendant no.2, i.e. the wife of defendant no.1, but there is no corresponding prayer in the counter-claim for novation of contract. Therefore, the agreement for sale dated 05.06.1989, in the present form cannot be legally enforced in favour of the defendants, the agreement for sale dated 05.06.1989 was admittedly superseded by another writing dated 20.06.1989, which was again superseded by the oral consent allegedly given the plaintiff to mutate the land in favour of the plaintiff no.2.

51) The case of the defendants is that on 05.06.1989, a part sale consideration of Rs.10,000/- (Rupees Ten thousand only) was paid to the plaintiff; payment of Rs.10,000/- was made on 20.06.1989; and the rest of the money was paid to the plaintiff through his agents, as follows – Rs.1,000/- was paid to Rafiqul Islam (son) on 23.06.1989; Rs.600/- was paid to Rafiqul Islam

(son) on 17.08.1989 and a sum of Rs.1,500/- was paid to Samsul Haque (brother) on 22.11.1989, and on payment of entire sale consideration of Rs.23,000/- and a sum of Rs.100/- in excess, the plaintiff had delivered the suit land to the defendants in the last week of November, 1989. It may be stated that the plaintiff, in his written statement against the counter-claim, had denied the genuineness of Annexure-A and Annexure-B and except for receipt of sum of Rs.600/- (Rupees Six hundred only), the plaintiff had denied the allegations of receiving payment of Rs.23,000/- and also denied the delivery of possession of the land to the defendants.

52) The PW-1 had exhibited a photocopy of so-called agreement for sale (Ext.1) and in his cross-examination, PW-1 had stated that Ext.A is the deed in original. On a perusal of Ext.1/Ext.A, the so-called agreement for sale dated 05.06.1989, the same is not drawn on a non-judicial stamp paper but the same is written on a page. The document that was exhibited as Ext.1/Ext.A is made on a sheet of paper and has two distinct parts, the first part being a hand note of a sum of Rs.10,000/-, which contains the signature of the plaintiff over two numbers of twenty paise revenue stamps, however, the second part is the agreement to sell the land, but the said part does not bear the signature of the plaintiff. The DW-1 had exhibited the receipt of Rs.10,000/- paid to the plaintiff. The said document is a photocopy and the contents of Ext.D is at variance to the writing contained in Ext.1/Ext.A. Therefore, from Ext.1/Ext.A and Ext.1(1)/Ext.A(1), the Court is of the considered opinion that DW-1 had only proved the hand note and/or payment of Rs.10,000/- to the plaintiff, but PW-1 had admitted that Ext.A is the deed and therefore, though the Deed of Agreement dated 05.06.1989 is duly proved, yet, the fact remains that the contents of Ext.D is in variance to the contents of Ext.1/Ext.A and thus, they are

two separate and distinct documents. However, the said Ext.D, being a photocopy, has not been proved in accordance with law. In his cross-examination, DW-1 had stated that Ext.D signed on 20.06.1989. The PW-1, in his cross-examination, had admitted his letter dated 17.08.1989 (Ext.C) as well as the receipt of Rs.600/- (Rupees Six hundred only). It may be stated that the contents of the said Ext.A, Ext.B, Ext.C and Ext.D were not proved by the defendants.

53) From the cumulative reading of the cross-examination of the DW-1, DW-2 and DW-3, referred above, it cannot be said that the plaintiff had handed over the possession of the suit land to the principal defendants on 05.06.1989, the date when agreement for sale dated 05.06.1989 was made. As stated hereinbefore, it is reiterated at the cost of repetition that DW-1 had stated in his cross-examination that the plaintiff had constructed the house on the suit land in May, 1992 and later on he had stated that the house was built on 11th November, 1992 and the DW-1 had also stated that police gave him possession of suit land in October, 1997 and after taking possession he had built a thatched house there. Therefore, from the pleadings, it appears that the defendants claim taking over possession of the suit land in November, 1989 and that just before the verdict in Case No. 11(4)97, the plaintiff had taken over the possession of the suit land. The records show that Case No. 11(4)/97 was decided on 05.06.1998. Therefore, the period when the defendants were occupying the suit land is not proved.

54) Therefore, in light of the discussions above, the substantial question of law is answered as follows:-

a. The plaintiff had not lost his title over the suit land. The sale of the

land having not been registered, the mutation of land in favour of the defendant no.2, not being in accordance with law, would not be sufficient to extinguish the title of the plaintiff. Therefore, his suit, based on present and previous possession, the learned First Appellate Court is not found to have committed any error in holding that the suit of the plaintiff was not barred by limitation. Therefore, the finding by the learned Trial Court is held to have been correctly reversed.

b. Moreover, in light of the discussions above, the suit of the plaintiff is not merely for declaration alone but the prayers are also for consequential reliefs and therefore, the second substantial question of law is answered by holding that the suit of the plaintiff was not barred under the proviso to Section 34 of the Specific Relief Act, 1963.

c. In light of the discussions above, and in view of the decision on the first substantial question of law, the third substantial question of law is answered by holding that the learned First Appellate Court had not erred in law in declaring title of the plaintiff over the suit land.

55) Therefore, the substantial questions of law are answered accordingly.

56) Thus this appeal is dismissed.

57) The respondent would be entitled to cost of this appeal.

58) The Registry shall return the records of the suit and first appeal to the concerned Courts alongwith a copy of this judgment and order to be made a part of the record by the learned Trial Court and the learned First Appellate Court.

59) The Registry shall draw-up the decree and in due course, the Registry shall transmit a copy thereof to the learned Trial Court and the learned First Appellate Court for their record.

JUDGE

Digitally signed by Champak Rajbongshi
Date: 2026.09.09 16:28:57 +05'30'

Comparing Assistant **Private Secretary**