

GAHC010007982015



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

Case No. : CRP/37/2015

ON THE DEATH OF KISHAN CHAND DUSHAD HIS LEGAL HEIRS NAMELY
DIBRUGARH, ASSAM

1.1: SRI RAJENDRA DUSHAD
S/O LATE KISHAN CHAND DUSHAD

JYOTINAGAR
BORBARI ROAD
P.O.
P.S AND DIST- DIBRUGARH
ASSAM

1.2: SMT. JULIE
D/O LATE KISHAN CHAND DUSHAD

JYOTINAGAR
BORBARI ROAD
P.O.
P.S AND DIST- DIBRUGARH
ASSAM

2: 2B. SMTI. SONGITA DUSHAD @ PASWAN.

3: 2C. MASTER NIKHIL DUSHAD.

4: 2D. MISS GITA DUSHAD.
ALL ARE SONS and DAUGHTERS OF LT. DIPLAL DUSHAL
R/O. SEOJPUR
JYOTI NAGAR
NEW P.K. KONWAR ROAD
P.O. JALAN NAGAR
P.S. and DIST. DIBRUGARH

ASSAM. APPLICANT 2C and 2D BEING MINOR ARE REP. BY THEIR MOTHER SMTI. BASNTI DUSHAD I.E. APPLICANT 2A.

5: ON THE DEATH OF DIPLAL DUSHAD HIS LEGAL HEIRS NAMELY

6: 2A. SMTI. BASNTI DUSHAD

W/O. LT. DIPLAL DUSHA

VERSUS

SMTI DIPTI RANI SEAL

W/O- SRI ANIL KUMAR SEAL @ ANIL SEAL, R/O- JYOTINAGAR, BORBARI ROAD, DIBRUGARH UNDER P.O., P.S. and DIST.- DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR.A K GUPTA, MR.P J SAIKIA,MR.R S MISHRA

Advocate for the Respondent : MRG P BHOWMIK, MR D KALITA, FOR CAVEATOR, MR.B DEB, MR.R HAZARIKA

**BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA**

JUDGMENT

Date : 24-03-2026

[1] Heard Mr. A.K. Gupta, learned counsel for the petitioners and Mr. D. Kalita, learned counsel for the sole respondent.

[2] This revision is directed against the appellate court judgment and decree dated 20.06.2014, passed by the learned Civil Judge Dibrugarh in Title Appeal No. 64 of 2012 reversing the judgment and decree dated 28.08.2012 of the learned Munsiff No. 1, Dibrugarh, which decreed the suit of the plaintiff in Title Suit No. 11

of 2010 vide judgment and decree dated 07-09-2012.

[3] The facts leading to the present revision may be briefly discussed as follows :- The plaintiff is the absolute owner of a plot of land measuring 0B-1K-0L covered by dag No. 495 of PP Patta No. 66 situated at Jyotinagar, Gabharupathar Ward, Dibrugarh Town Mouza in the District of Dibrugarh, Assam and also the houses standing thereon. The plaintiff has been paying the land revenue and taxes etc. in respect of the said land. On 01.02.1990, the defendant Sri Kishan Chand Dushad came into the occupation and possession of the houses described in the schedule of the plaint as a tenant by executing a tenancy agreement for 11 months on various terms and conditions. After about 7 months of execution of the tenancy agreement, the suit house was extended to 25 feet x 15 feet.

[4] In the month of December, 1990, the tenancy agreement expired and no renewal was done. The plaintiff therefore, asked the defendant to vacate the premise but the defendant took time to do so. Sometime in June, 1994, the defendant Kishan Chand Dushad inducted Sri Diplal Dushad and Smti Nandi Dushad in the tenanted premise as guests but they continued staying there without any permission of the plaintiff. Since January, 2008, the defendant has also stopped paying the monthly rent of the tenanted premise @ Rs.100/- in spite of repeated requests and thus, they became defaulters. On 19.2.2009, the plaintiff again asked the defendants to

pay the arrear rents and vacate the tenanted premise but it was in vain.

[5] Instead of vacating the suit premise, the defendants started threatening the plaintiff and as such, on 24.2.2009, a complaint was also made to police. Thus, the defendants neither made any payment of rent nor vacated the suit premise for which the instant suit is filed seeking eviction of the defendants from the suit premise and also for recovery of arrear rents.

[6] The defendants have contested the suit by filing their written statement. The case of the defendants is that they have been occupying the land measuring OB-1K-18-1/2 Ls of PP No.66 covered by Dag No.494 & 495 of Gabharupathar ward in Dibrugarh District owned by Borbari Land Development Corporation by constructing residential houses thereon. The defendant has got papers to show that the land belongs to Borbari Land Development Corporation and the plaintiff also purchased land from Borbari Land Development Corporation and now trying to grab the land of the defendant by illegal means.

[7] It is also the case of the defendant that he has been occupying the land for more than 100 years since the days of his forefather and has also agreed to purchase the land from the owner and paid an amount of Rs.25,000/- and got a deed of agreement for sale executed in this regard. It is also stated that there was no

relation of landlord and tenant between the plaintiff and defendant and the defendant has been staying in his own land and so, no question of payment of any rent to the plaintiff arises.

[8] The learned trial court considered the pleadings of both the sides and also the evidence, both documentary and oral led by the parties and having heard the arguments, passed the impugned judgment and decree which was challenged in appeal.

[9] The learned appellate court while deciding the principal issue involved i.e. whether the defendant is a tenant under the plaintiff and is a defaulter in payment of rent from January 2008, found in favor of the plaintiff and held that there was a landlord tenant relationship between the plaintiff and the defendants and further that the defendant was a defaulter and accordingly decreed the suit.

[10] Mr. A.K. Gupta, learned counsel appearing for the appellant has drawn the attention of the court to the discussion on the issue No. 4 by the learned trial court and has pointed out certain statements made by the plaintiffs as PW 1 and 2 which the learned trial court had taken into consideration to hold that the plaintiff could not prove that he or she was the landlord. Referring to the schedule of the sale deed which was a plaintiff's document and comparing the same with the schedule to the plaintiff, it is submitted that the boundaries are different and totally mismatched. Learned counsel has

also referred to the agreement for sale between the defendants with the Borbari Corporation and comparing it with the schedule to the plaint submitted that both of them were the same.

[11] As per learned counsel for the appellant, the plaintiff had failed to prove the existence of any landlord tenant relationship, but rather it was the defendant who was able to establish that he was the owner of the scheduled land and therefore, there does not arise any question of the defendant being a defaulter who is liable to be evicted from the suit land.

[12] Per contra learned counsel appearing on behalf of the respondents submitted that the schedule mentioned in the plaint was part of the bigger parcel of land, which is mentioned in the schedule to the sale deed and the schedule mentioned in the plaint is the schedule of the tenanted premises whereas, the schedule mentioned in the sale deed is the schedule of the entire 1 Khata of land and hence there is no mismatch as submitted by learned counsel for the appellant and that is the reason why the schedule in the plaint also matches with the schedule of the defendants alleged agreement for sale. Moreover, the defendants in their written statement nowhere denied the authenticity of the sale deed in question and neither did they do so during cross examination of the PWs and therefore, the plaintiff has been able to prove the sale deed in question as rightly held by the learned appellate court. Referring to the sale agreement

between the defendants and the Borbari Corporation, it is pointed out that the same was prepared in the year 2009 after the defendants stopped paying rent in the year 2008.

[13] Therefore, the defendants who are the purchasers as per the said agreement for sale has manufactured a document in the form of the agreement for sale only in order to escape from the liability of being branded as the tenant and hence a defaulter. Moreover, the dag numbers i.e. 494 and 495 does not match with the schedule of the tenanted premises. It is further submitted that the deceased defendant Kishan Dushad is a party to the tenancy agreement and he did not take a stand in the witness box to offer himself for cross examination whereas, DW 1 knows nothing about the tenancy as he came to the tenanted premises much later.

[14] The contents of the Exhibit 6 tenancy agreement clearly proves the existence of the tenancy. It is further submitted that the schedule of the Exhibit 6 and the schedule to the plaint reflects different names on the western boundary due to subsequent purchase of the land by one Mr. Dr. P K Konwar from Borbari corporation which owned a large parcel of land which it sold to different purchasers. Furthermore, DW 1 admitted in cross- examination that the plaintiff has land towards his southern border and that the signature of Kishan Dushad appears in both Hindi and English in the Tenancy Agreement.

[15] In reply, learned counsel for the appellant submitted that the only admission is that the plaintiff purchased the land vide the exhibit- sale deed, but did not admit that it also included the land of the defendants and the entire schedule has changed in the plaint and the sale deed although only one side can change.

[16] At this stage it would be appropriate to refer to the findings of the learned appellate court on the issue which is reproduced herein below:-

“17. In the present suit, undoubtedly the plaintiff has-to-prove his case by adducing evidence because he has asserted certain facts. The plaintiff being PW1 (Smti Dipti Rani Seal) has clearly deposed in her evidence that she is the owner of a plot of land measuring 08-1K-OL. covered by Dag No.495 of PP No. 66, situated at Jyotinagar, Gabharupathar ward, Dibrugarh Town Mouza, in the District of Dibrugarh, Assam. It is also stated that on the said land stands some houses which are covered by Municipal Holding No. of Ward No.19 of Dibrugarh Town, in support of the ownership of the land involved, Ext sale deed has been tendered into evidence which is seen and it is found that the land was purchased by PW1 from the Borbari Land Development Corporation. This position is however, not challenged in this suit. Ext-2 is the sketch map of the land which also clearly shows the position of the land. Ext 3(1), 3(2) and 3(3) are the land revenue paying receipts in respect of the land of PW1.

18. PW1 has further stated in her evidence that on 1.2.1990, the defendant Kishan Chand Dushad came into occupation of the house premisa situated on her land as a monthly tenant for 11 (eleven) months and a deed of tenancy agreement was also executed. Ext-6 is produced as the said tenancy agreement. I have gone through the said Ext-6 and I have found that Ext-6 clearly shows that the defendant no.1 executed the said tenancy agreement with PW-1 for 11 months and the tenancy commenced on 1.2.1990. The schedule

of the tenanted house further shows that the house is shown to have been situated on a part of land which is again a part of Dag no. 495 covered by PP No.66 of Gabharupathar Ward, in Dibrugarh Town Mouza. Thus, in my considered opinion, the plaintiff has been clearly able to show that the land measuring 08-1K-OL covered by dag no. 495 of PP. No.66 of Gabharupathar ward in Dibrugarh Town Mouza belonged to her and there stood tenanted house in question which was let out to the defendant no.1 on 1.2.1990."

[17] The learned appellate court also upon consideration of the material available on record noticed that the schedule of the land described in the agreement for sale relied on by the defendant is different from the schedule of the land on which the alleged tenanted house is stated to be situated and therefore, proof of the plea of the defendants that they are under an agreement of purchase of the land from Borbari Land Development Corporation would not by itself negate the case of the plaintiff for the plain reason that the claim of the plaintiff is not towards any land, but towards only the houses standing on the land. It also appears that the learned appellate court rightly held that the learned trial court had given undue stress on certain issues relating to description of boundary of the land as well as certain oral evidence that came to be recorded in course of the trial.

[18] From the above it appears that despite certain shortfalls in the oral evidence, the plaintiff has been successfully able to prove his title over the suit land by exhibiting the best evidence in this regard

that is the Exhibit- 1 Sale Deed which was not denied by the defendants either in its written statement or by way of cross - examination. It also cannot be said that based on the evidence on record, the tenancy agreement is to be viewed with suspicion which fact led the appellate court to hold that there existed a landlord tenant relationship between the parties.

[19] The learned appellate court also took note of the decision of this high court *in Bhupati Bhushan Dey versus Julfi Begum and others LRs of Attaur Rahman reported in 2006 1 GLT 161* wherein it was held that in a suit for ejection of a tenant if the plaintiff fails to prove the relationship of landlord and tenant but proves his title, the court has the discretion under order 7 Rule 7 CPC to grant equitable relief of ejection on the basis of the title provided that the plaintiff has done nothing to disqualify him from receiving equitable relief and the issue of title has been raised and fairly tried but the learned appellate court on the basis of the documents, particularly Exhibit 6 tenancy agreement has come to the view that the plaintiff has been able to prove the relationship of landlord and tenant and moreover since January 2008, the defendant has been unable and failed to make payment of the monthly rent in spite of repeated requests.

[20] Further since the defendant has denied the landlord tenant relationship he would certainly not pay any rent to the landlord and in

view of the fact that the landlord tenancy relationship has been established, this goes to show that the defendant is a defaulter.

[21] In order to invoke the revisional jurisdiction of the High Court, the party concerned is required to satisfy the court that by the order impugned, the subordinate court has exercised jurisdiction not vested in it by law or failed to exercise jurisdiction vested in it by law or acted in the exercise of jurisdiction illegally or with material irregularity. It is not expected of the revisional court to embark upon a reassessment of the evidence.

[22] In view of the aforesaid discussion of the evidence on record and the findings of the learned appellate court I do not find any illegality or material irregularity in the exercise of its jurisdiction by the appellate court warranting interference under section 115 CPC.

[23] Consequently the petition stands dismissed.

[24] The connected Misc. Case Nos. 228/2015 and I.A. Civil 114 of 2025 are also closed.

JUDGE

Comparing Assistant