

HIGH COURT FORM NO.(J) 3
:: HEADING OF JUDGMENT ON APPEAL ::

**IN THE COURT OF THE DISTRICT JUDGE, SONITPUR
AT TEZPUR**

PRESENT : **Sri A. Borthakur**
 District Judge
 Sonitpur, Tezpur

TITLE APPEAL NO. 5 OF 2006

(From the judgment and decree, dated 15-05-2006, passed
by Smt. D. Bhuyan, Civil Judge (Senior Division), Sonitpur,
Tezpur, in Title Suit No. 17 of 1999)

- 1. Smt. Basanti Devi**
Wife of Late Munnilal Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam
- 2. Sri Subhas Singh**
Son of Sri Bhujuan Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam
- 3. Sri Dukhaharan Singh**
Son of Sri Bhujuan Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam
- 4. Sri Papu Singh**
Son of Late Munnilal Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam
- 5. Sri Sonu Singh**
Son of Late Munnilal Singh
Resident of Bhitarpurua
Mouza – Haleswar
District – Sonitpur, Assam

6. Sri Akash Singh

Son of Late Munnilal Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam

7. Smt. Guriya Singh

Daughter of Late Munnilal Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam

8. Smt. Gayetri Singh

Daughter of Late Munnilal Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam

9. Smt. Radha Singh

Daughter of Late Munnilal Singh
Resident of Bhitarpurua
Mouza - Haleswar
District – Sonitpur, Assam

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Defendant/Appellants

-VERSUS-

1. Sri Mahesh Singh

Son of Late Ram Chandra Singh
Resident of Parmaighuli
Mouza - Haleswar
District – Sonitpur, Assam

2. Smt. Dhaneswari Devi

Wife of Late Ram Chandra Singh
Resident of Parmaighuli
Mouza - Haleswar
District – Sonitpur, Assam

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Plaintiff / Respondents

This appeal having been heard, on 14-06-2012, in presence of :

Sri J. K. Baishya

Advocate

:

For the Defendant -Appellants

Sri P.K. Dutta

Advocate

:

For the Plaintiff -Respondents

And having stood for consideration this day, the 6th day of July, 2012 the Court delivered the following Judgment :-

J U D G M E N T

This Title Appeal has been preferred against the judgment and decree, dated 15-05-2006, passed, by the learned Civil Judge (Senior Division), Sonitpur at Tezpur in Title Suit No. 17 of 1999.

The facts, in brief, of the plaintiff – respondents, herein, are that, one Tufelluddin Seikh (since deceased) was the original owner and possessor of the plot of land, measuring 4 bighas 2 kathas, described in Schedule ‘A’, in T.S. No. 17 of 1999. On the death of the said original owner, namely, Tufelluddin Seikh, his heirs, namely, his wife Musstt. Amirun Nessa and son Md. Derajuddin succeeded to the ownership of the suit land and accordingly, got their names mutated in the land records. The said Late Tufelluddin Seikh made a verbal agreement of sale of the suit land, at a consideration of Rs.13,000/-, in the year, 1982, with Smt. Kausalya Devi, wife of Late Sediram Kohar, and accordingly, delivered vacant possession thereof to her. The said vendee Smt. Kausalya Devi had been possessing the suit land by cultivating sugar-cane thereon. However, after the death of Tufelluddin Seikh, his heirs, namely, Musstt. Amirun Nessa (wife) and Md. Derajuddin (son), aforementioned, executed a registered Sale Deed, vide No. 323/92, dated 05-03-1992, in favour of the said Smt. Kausalya Devi in respect of the suit land and accordingly, she had mutated her name in the land records. Subsequently, the said Smt. Kausalya Devi sold the suit land to Late Ram Chandra Singh, the father of Sri Mahesh Singh, the plaintiff-respondent No.1 and husband of plaintiff-respondent No.2 Smt. Dhaneswari Devi, on 26-11-1992, on consideration, by executing a registered Sale Deed, vide No. 1885 / 92 and delivered possession thereof. After taking over the possession of the suit land, Late Ram Chandra Singh erected bamboo boundary fencing

thereon and thus, became the owner and possessor of the suit land, by right of purchase, and further, got his name mutated in the land records. The said Ram Chandra Singh died, on 08-08-1998, and therefore, his wife Dhaneswari Devi and his son Sri Mahesh Singh, the plaintiff-respondents, herein, became the joint owner and possessors of the suit land by right of inheritance and further, continued actual possession by cultivating sugar-cane thereon till 29-05-1999. On 29-05-1999, the defendant-appellants, herein, forcibly trespassed into the suit land by breaking the plaintiff-respondents' boundary bamboo fencing thereon, cut and removed the trees from the suit land, which is specifically shown in Schedule 'B' of the plaint, and have constructed 'ek-chali' tin house and erected new bamboo fencing thereon. The defendant-appellants thereby claimed the ownership on the suit land and denied the title of the plaintiff-respondents. The defendant No.3 Sri Subhas Singh had mutated his name in respect of the suit land by an order, dated 22-02-1997, which was noted, on 07-10-1998, in place of Ram Chandra Singh on the basis of relinquishment of the suit land by the said Late Ram Chandra Singh. It has been stated that the said Late Ram Chandra Singh never relinquished the suit land in favour of the said defendant No.3 and had also not executed any registered Release Deed in favour of him during his life time. It has been averred that the defendant-appellants have no right, title and interest over the suit land. Hence, the instant suit was instituted for declaration of the plaintiff-respondents' right, title and interest on the suit land, described in Schedule 'A' of the plaint, and for recovery of possession of the suit land by evicting the defendant-appellants therefrom and recovery of Rs.25,000/- by way of compensation for damaging the plaintiff-respondents' trees, specifically shown in Schedule 'B' of the plaint and further, for permanent injunction restraining and prohibiting the defendant-appellants and their men, agents and employees etc. from entering into the suit land.

The defendants have contested the suit by filing a written statement on the grounds, inter-alia, that the suit is barred

by Law of Limitation ; that the suit is bad for non-joinder of necessary party, namely, Smt. Kausalya Devi ; that Late Tufelluddin Seikh never made any verbal contract for sale of the suit land in the year, 1982 with Smt. Kausalya Devi and never delivered vacant possession of the suit land to her and further, she was never in possession of the suit land at any point of time ; that prior to the year, 1982, the suit land was in peaceful possession of the defendants, which was open and hostile against the true owner and the right, title, if any, of Tufelluddin Seikh, over the suit land, was extinguished in favour of the defendants. It is a fact that Musstt. Amirun Nessa and Derajuddin Ahmed executed a registered Sale Deed, vide No. 323 of 1992, dated 05-03-1992, in favour of the said Smt. Kausalya Devi. However, neither the vendors could deliver possession of the land described in the said Sale Deed nor the vendee could take delivery of possession thereof due to continuous peaceful possession enjoyed by the defendant-appellants, herein. It is also admitted that, on 26-11-1992, Smt. Kausalya Devi executed a registered Sale Deed, vide No. 1885/92, in favour of Ram Chandra Singh. However, no physical delivery of possession of the land, described in the said registered Sale Deed, was effected by Smt. Kausalya Devi in favour of Ram Chandra Singh due to continuous peaceful possession of the defendant-appellants, herein, since the life time of Tufelluddin Seikh. It has been denied that Ram Chandra Singh and the plaintiff-respondents, herein, possessed the suit land by growing sugar-cane thereon till 29-05-1999. Further, it is denied that the defendant-appellants, herein, trespassed into the suit land, on 29-05-1999, and never removed any tree therefrom. However, Ram Chandra Singh made attempts in vain to oust the defendant-appellants, herein, from the suit land by force. Thereafter, Ram Chandra Singh expressed his willingness to give up his claim over the suit land provided some money was paid to him by the defendant-appellants, herein. Pursuant to the repeated request made by Ram Chandra Singh, the defendant No.3 paid a sum of Rs.80,000/- to him, on 16-02-1994, and thereafter, Ram Chandra Singh gave up his claim over the suit land by creating an

unregistered sale deed in favour of him. The other defendant-appellants, herein, also approved the said sale deed and by a family arrangement, gave up their possession also in favour of the defendant No.3. Ram Chandra Singh gave up his claim over the suit land in favour of the defendant No.3, before the revenue authority and accordingly, the name of the defendant No.3-appellant was mutated in the record of rights, vide order, dated 22-02-1997. Since the defendant-appellants, herein, and more particularly, the defendant No.3 – appellant, were in continuous and hostile possession of the suit land against its true owner, that is, Tufelluddin Seikh, since the year, 1980, the right, title and interest, if any, of the said owner was extinguished and continuous possession of the defendant No.3 - appellant was ripened to title. Hence, prayed to dismiss the suit with cost.

In view of the above pleadings of both the sides, the learned Civil Judge (Senior Division), Sonitpur at Tezpur, framed the following issues, in order to arrive in a just decision of the suit :

- (1) Whether there is any cause of action for the suit ?
- (2) Whether the suit is barred by law of limitation ?
- (3) Whether the suit is bad for non-joinder of necessary parties ?
- (4) Whether one Tufeluddin Seikh made verbal contract for sale of the suit land in the year 1982 to Smt. Kaishalya Devi and delivered vacant possession to her in the year 1982 and whether Smt. Kaishalya Devi was in possession of the suit land ?
- (5) Whether defendants were in possession of the suit land which prior to 1982 and whether their possession become adverse against the true owner ?

- (6) Whether the plaintiff is entitled for any decree as prayed for ?
- (7) To what other relief/s the parties are entitled to ?

In order to prove the suit, the plaintiff-respondents, have examined five witnesses, while the defendant-appellants, cross-examined them, at length, and exhibited as many as 10 (ten) documents. The defendant-appellants have examined three witnesses, while the plaintiff-respondents cross-examined them, at length.

The learned Court of the Civil Judge (Senior Division), Sonitpur at Tezpur, after hearing the argument of both the sides, and appreciation of the evidence, adduced by both the sides, passed the impugned judgment and order, dated 15-05-2006, decreeing the suit in favour of the plaintiff-respondents, herein.

Being aggrieved by the above judgment and decree, passed by the learned Trial Court, the defendant – appellants, have assailed it, inter-alia, on the following grounds :

- (1) that the learned Trial Court failed to frame proper issues on the basis of the pleadings of the parties and as a result, wrong decision has been passed ;
- (2) that in clubbing and deciding the Issue Nos. 4 and 5, together, the learned Trial Court committed error of law by holding that the defendants failed to prove adverse possession of the suit land as they travelled beyond their pleadings and hence, Issue Nos. 4 and 5 are proved ;

- (3) that in deciding the Issue No.4, the learned Trial Court, has put the burden of proof of that issue on the defendants, which is wrong and not based on legal dictum ;

Upon perusal of the pleadings and hearing of both the parties as well as ground of appeal of the defendant-appellants, the above issues have been re-cast / re-arranged, on the basis of the material propositions of parties to the suit, in place of the above **Issue Nos. 4 and 5**, so as to give finality to the disputed material facts.

Issue No.4 : Whether Tufelluddin Seikh made a verbal agreement for sale of the suit land at Rs.13,000/-, in the year, 1982, with Smt. Kausalya Devi and accordingly, delivered possession thereof, in the year 1982 and further, whether pursuant to entry into the suit land, she continued possession by cultivating sugar-cane thereon till sold out to Late Ram Chandra Singh, on 26-11-1992 ?

Issue No.5 : Whether the defendant-appellants have been in peaceful continuous possession of the suit land, since the year 1980, which ripened to adverse possession against Tufelluddin and others ?

I have heard the argument of the learned counsel appearing for the parties and also perused the impugned judgment and decree, dated 15-05-2006, passed, by the learned Civil Judge (Senior Division), Sonitpur at Tezpur, in Title Suit No. 17 of 1999.

THE DECISION AND THE REASONS THEREOF

ISSUE NO. 1 :

Cause of Action

The learned Trial Court has held that from the bundle of facts, narrated in the plaint and the exhibited documents, it

appeared that the plaintiff-respondents, herein, have sufficient causes of action for the suit. Upon perusal of the pleadings, and the evidence, oral and documentary, adduced by both the parties, this Court also finds that since the bundle of basic facts alleged by the plaintiff-respondents have been denied by the defendant-appellants, there are causes of action for the suit in favour of the plaintiff-respondents and accordingly, this Issue is decided in the affirmative.

ISSUE NO. 3 :

Non-joinder of Smt. Kausalya Devi

The learned trial court has decided this Issue in the negative on the grounds, inter-alia, that under Order 1 Rule 9 of CPC lays down that no suit shall be defeated for non-joinder of any party except a necessary party, in whose absence, no decision could be taken ; that the defendant- appellants, herein, have pleaded right to adverse possession of the suit land much prior to the year, 1982 and admission of the plaintiff-respondents' document, Ext.2, the registered sale deed No. 323/92, dated 05-03-1992, whereby Amirun Nessa and Derajudin Ahmed, the wife and son respectively of the original pattadar Late Tufelluddin sold the suit land in favour of Smt. Kausalya Devi, but without delivering possession thereof. Here it may be added that subsequently, the said Kausalya Devi by Ext.3, the registered sale deed No. 1885/92, dated 26-11-1992, sold the suit land to Late Ram Chandra Singh, the father of the plaintiff-respondent No.1 (PW-1) and husband of the plaintiff-respondent No.2, which is admitted by the defendant-appellants, herein, but denied delivery of possession thereof. Accordingly, the name of Late Ram Chandra Singh was entered in the land records, vide Ext.1, the certified copy of Jamabandi. Thus, the right and title of the suit land passed to the said Late Ram Chandra Singh and on his death, to his successors, namely, the plaintiff-respondents, herein. Therefore, the sale deeds, aforementioned, being not in issue in the instant suit, except the fact of delivery of possession of the suit land, pursuant thereto, it

cannot be said that the suit is bad for non-joinder of necessary party, namely, Smt. Kausalya Devi, in view of the further fact of right of adverse possession raised by the defendant-appellants.

For the above stated reasons, this Issue is decided in the negative holding the finding of the learned Trial Court in the affirmative.

ISSUES NO. 4 and 5

Both the above issues being inter-related, they are taken together for decision.

According to the plaintiff-respondents, herein, the original owner Tufelluddin Seikh, made a verbal agreement for sale of the suit land at a consideration of Rs.13,000/- only, in the year 1982, with Smt. Kausalya Devi and pursuant to the said oral agreement, put her in possession of the suit land, in the same year, that is, in the year 1982, and further, the said Smt. Kausalya Devi continued her physical possession thereon by cultivating sugar-cane. The defendant-appellants, herein, have vehemently denied this plea of the plaintiff-respondents.

PW-1 Sri Mahesh Singh, the plaintiff-respondent No.1, herein, has categorically supported the above material fact pleaded in the plaint and in cross-examination, specifically deposed that Tufelluddin Seikh, pursuant to the said verbal agreement, put Kausalya Devi, in physical possession of the suit land, on 12-02-1982. The suit land was converted to 'myadi' patta, in the year 1989/1990. PW-2 Sri Dina Nath Koiri, a neighbouring resident of the suit land, has corroborated the evidence of PW-1, inter-alia, in respect of the negotiation for sale of the suit land by Tufelluddin Seikh to Kausalya Devi and effecting delivery of possession thereof and further, continuation of her physical possession of the suit land by cultivating sugar-cane thereon until purchased by executing a sale deed from the successors of the

original owner, aforementioned, vide Ext.2, which aspect is discussed later on at an appropriate place. From the cross-examination of PW-3 Sri Robi Tanti, it appears that Chedilal, the deceased husband of Smt. Kausalya Devi, cultivated in the suit land. Likewise, PW-4 Sri Jowahid Chowdhury has also corroborated the fact of growing of sugar-cane by Chedilal, the deceased husband of said Smt. Kausalya Devi, on the suit land. Therefore, the suit land, being an annual patta land, until receipt of 'Myadi' patta, issued in the year 1989/1990 thereon, it can be held that Smt. Kausalya Devi acquired a good annexed ownership of the suit land, by virtue of transfer of possession from Tufelluddin, on the strength of verbal agreement for sale, and delivery of actual possession over the suit land, u/s 11 of the Assam Land and Revenue Regulation, 1886 read with Rule 1(c) made thereunder, in absence of any evidence of cancellation or non-renewal of the annual patta, during the relevant period. However, it may be mentioned here that the plaintiff –respondents, herein, have claimed their right and title over the suit land based on purchase of the same by executing the registered sale deed from Smt. Kausalya Devi, vide Ext.3.

The plaintiff- respondents' further plea is that by right of succession, Tufelluddin's wife Musstt. Amirun Nessa and son Md. Derajuddin, muted their names in the revenue records, vide Ext.1, and by executing the registered sale deed No. 323/92, dated 05-03-1992, sold the suit land to Smt. Kausalya Devi and thus, she had become the owner and possessor of the suit land within the meaning of Section 50 of the Assam Land Revenue Regulations. The defendant-appellants, herein, have admitted the execution and registration of the sale deed, aforementioned, vide Ext.2, but denied delivery of possession pursuant thereto. Thus, the sale deed, Ext.2, is not disputed.

In the above context, turning to the evidence of PW-1 Sri Mahesh Singh, the plaintiff-respondent No.1, herein, it appears that after the death of Tufelluddin, the names of his wife Musstt.

Amirun Nessa and his son Md. Derajuddin were mutated in the revenue records, vide Ext.1, the certified copy of Jamabandi, raising the presumption of transfer of title accompanied by possession, over the suit land, in favour of Smt. Kausalya Devi, who continued the possession as annexed to the original owner Tufelluddin, from whom, on verbal agreement of sale, entered into possession thereof, in the year 1982. The evidence further shows that by Ext.2, the registered sale deed, dated 05-03-1992, Smt. Kausalya Devi acquired the right of ownership by purchase, over the suit land from Tufelluddin's (since deceased) wife Musstt. Amirun Nessa and son Md. Derajuddin, the plaintiff-respondents, herein. Subsequently, by Ext.3, the registered sale deed, dated 26-11-1992, Smt. Kausalya Devi sold out the suit land to Late Ram Chandra Singh, the father of the plaintiff-respondent No.1 (PW-1) and husband of the plaintiff-respondent No.2, and accordingly, Late Ram Chandra Singh's name was entered in the revenue records, vide Ext.1, the certified copy of Jamabandi, aforementioned. On the other hand, besides the registered sale deeds, Ext.2 and Ext.3, the defendant-appellants have not disputed the revenue payment receipts, vide Ext.4, dated 26-07-1993, Ext.5, dated 10-10-1994, Ext.6, dated 16-10-1996, Ext.7, dated 26-08-1998, Ext.8, dated 16-06-1999 and Ext.9, dated 13-03-2001. Therefore, these documents in testimony of payment of land revenue clearly establish the possession of Late Ram Chandra Singh and by succession, his son Sri Mahesh Singh (PW-1), during the period from 26-07-1993 to 13-03-2001 including the constructive possession since 29-05-1999, that is, the date of alleged trespass by the defendant-appellants, herein, though claimed the right of adverse possession, over the suit land against them.

However, Ext.1, the Jamabandi shows that the Circle Officer, by order, dated 22-02-1997, caused mutation of the name of the defendant No.3-appellant Sri Subhas Singh, in the revenue records, and accordingly mutated his name, on 07-10-1998. In this connection, PW-5 Sri Sarbeswar Borah, the Revenue Official, has

deposed that the plaintiff No.1 – respondent, herein, filed a case, being Misc. Case No. 31/99-2000 praying for cancellation of the mutation of the name of Sri Subhas Singh, aforementioned, vide Ext.10, the relevant case record and by order, dated 27-03-2001, vide Ext.10(1), the mutation in favour of said Sri Subhas Singh was cancelled. Therefore, it is apparent that Ext.10(1), the relevant mutation made by the Revenue Department, in favour of Sri Subhas Singh, the defendant No.3–appellant, was palpably in contravention of Section 50 of the Assam land Revenue Regulation.

Plea of Adverse Possession :

The defendant–appellants, herein, have denied the – plaintiff- respondents’ case pleading that they, more particularly, the defendant No.3 have / has been in continuous and hostile possession of the suit land against its true owner, that is, Tufelluddin Seikh and others from the year, 1980, and as such, the right, title and interest, if any, of the said owners, in succession, was extinguished and continuous actual possession of the defendant No.3, on the suit land, has ripened to title. As discussed above, the defendant – appellants have admitted the plaintiff-respondents’ documents, Ext.2, the registered sale deed No.323/1992, dated 05-03-1992, and Ext.3, the registered sale deed No.1885/92, dated 26-11-1992, executed in respect of the suit land, but denied delivery of possession of the land by the vendors to the vendee, pursuant thereto, in view of their adverse possession.

The learned counsel for the defendant- appellants, during argument, has primarily laid emphasis on the fact of adverse possession and contended that by virtue of execution of the sale deeds, aforementioned, title did not pass to the vendee as possession of the suit land could not be taken over due to the adverse possession of the defendant-appellants, herein. The learned counsel has submitted that the learned trial court did not

decide the issue No.4, which is the moot issue that fell for consideration in the suit, assigning reasons.

Controverting the above argument advanced by the learned counsel for the defendant-appellants, the learned Senior Counsel for the plaintiff- respondents has submitted that the concept of adverse possession requires possession which is hostile, either expressed or implied, or title or the real owner. Therefore, it is essential that the possessor should know the real owner of the property and that the possession must be peaceful, continuous and open, capable of being known by the parties interested. According to the learned Senior Counsel, under Articles 64 and 65 of the Limitation Act, it is the burden of the defendant-appellants to prove that their possession had become adverse to the plaintiff – respondents, herein, beyond 12 years of the suit and that thereby, acquired title by adverse possession. It has been further submitted that the animus possidendi must be proved at the commencement of possession, as claimed. Therefore, the defendant-appellants' claim of long possession beyond the prescribed period of limitation, over the suit land, without specific date of legal entry into the suit land and since then continuous physical possession thereof does not ripen into title by adverse possession. The learned Senior Counsel has further submitted that the defendant-appellants' document, Ext.A, the unregistered sale deed, and the oral evidence adduced by the side of the defendant-appellants do not satisfy all these essential factual requirements to prove an adverse possession, more particularly, when the documents, Ext.2, and Ext.3, the registered sale deeds, aforementioned, have not been disputed and further, when the evidence shows that the alleged continuous actual possession was being without knowing the real owner of the suit land. The learned Senior Counsel has fairly submitted that the principal issues that fall for consideration in the instant appeal are, plaintiffs' right, title, interest and possession over the suit land and the defendants' counter claim of adverse possession, thereon, which is denied. He has placed reliance on the case laws reported in AIR 1985 ORISSA 40 ; AIR

2008 SUPREME COURT 363 ; AIR 2008 SUPREME COURT 346 ; AIR 1996 SUPREME COURT 869 ; (2006) 7 SCC 570 ; (2007) 6 SCC 59 ; AIR 2006 BOMBAY 120 ; 1990 GHC 219 ; 2004 (1) GLT (SC) 8.

It may pertinently be mentioned here that in the case of UTTAM KUMAR SEN and ORS., APPELLANTS -VS- GITA DAS CHOUDHURY and ORS., RESPONDENTS [1998 (3) GLT 299], the Hon'ble Gauhati High Court held as follows :

....“ 20) The Courts-below also dealt with the plea of adverse possession taken by the defendant-appellants. The plea of adverse possession is not always a legal plea. It is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession was open and undisturbed. These are all questions of facts and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them.”....

In the instant suit, as stated above, the defendant-appellants have raised the plea of adverse possession against the plaintiff-respondents, which the latter vehemently denied. In this context, therefore, let us look into the evidence adduced by the defendant-appellants, vis-à-vis, the evidence adduced by the plaintiff-respondents.

DW-1 Sri Subhas Singh, the defendant No.3 – the appellant, through his evidence in-chief on affidavit, supported the contentions made in the written statement. In cross-examination, he has, inter-alia, deposed that he does not know who was the original owner of the suit land and that he has been in possession of the suit land since the year 1982, when it was vacant. He does not know Tufelluddin and his wife Amirun Nessa and son

Derajuddin and further, the execution of a registered sale deed in favour of Kausalya Devi, on 05-03-1992. In the year, 1983, a quarrel broke out with the family of Late Ram Chandra which led to institution of a criminal case, - a fact, which has not been mentioned in the written statement. According to him, by Ext. 'A', an unregistered sale deed, dated 16-02-1994, he purchased the suit land from Ram Chandra Singh, on payment of Rs.80,000/-. He, however, could not say whether Ext. 'A', aforementioned, contained the disclosure that on its very day of purchase, Ram Chandra delivered the possession to him, that is, on 16-02-1994. On the other hand, from the evidence of DW-2 Sri Ramjanam Singh Bhuyan, it appears that Ram Chandra Singh was in possession of the suit land, during his life time, who died 5/6 years ago, that is, in the year 2000 / 2001. He (DW-2) could not say since when Sri Subhas Singh (DW-1) has been possessing the suit land. Likewise, DW-3 Sri Sankar Dayal Singh has deposed in cross-examination that he does not know what is written in his evidence on affidavit, but he has seen Subhas possessing the suit land for last 15/16 years, since long even before the life time of Ram Chandra Singh. However, he does not know how Subhas acquired or came into possession of the suit land.

Thus, a close scrutiny of the evidence adduced by the defendant-appellants, and reading of the contents of Ext.'A', it does not reveal that their animus possidendi commenced in the year, 1982, as pleaded in the written statement or much before the year 1982 or on 16-02-1994, as per Ext. 'A' an unregistered sale deed, aforementioned, or in the year 2000/2001 or 15/16 years ago, that is, in the year, 1989-1990 against the true owners, namely, Late Tufelluddin, the original owner whom the defendant No.3 – appellant (DW-1) categorically stated did not even know. Further,

there is no evidence to show that the defendant- appellants, herein, paid land revenue and applied ever even for occupancy rights having the effect of abrogation of their animus to hold the suit land adversely to the plaintiff-respondents. The plea of the defendant-appellants that Late Ram Chandra relinquished the suit land in favour of the defendant No.3 – appellant, on 16-02-1994, is not proved, because, neither he nor his successors, the plaintiff-respondents, cease to pay the land revenue forfeiting the status as owner thereof. Therefore, the defendant-appellants' entry into the actual possession of the suit land even by virtue of the unregistered instrument, Ext. 'A', dated 16-02-1994, which is a void and inoperative instrument, their possession cannot be held adverse to the plaintiff-respondents, much later, from the very day of commencement of alleged entry into possession of the suit land by erecting 'ek-chali' tin house and boundary wall thereon, on 29-05-1999, as no transfer of title was conveyed, under law, thereby. As such, the plaintiff-respondents' plea of illegal and forcible trespass by the defendant-appellants into the suit land and occupation thereof, on 29-05-1999, has to be believed, in the absence of unimpeachable evidence showing prior possession of the suit land to the said date. The totality of evidence, adduced by both sides, on the factum of actual possession and its manner, as discussed above, therefore, lead to the only presumption that the possession of the defendant-appellants, on the suit land had not become adverse to the plaintiff – respondents, by prescription under Article 64 of the law of Limitation against the proved title of the plaintiff-respondents.

Situated thus, it is held that pursuant to a verbal agreement for sale, though not specifically based for the reliefs claimed by the plaintiff-respondents, herein, Late Tufelluddin put Smt. Kausalya Devi in actual possession of the suit land and thus,

she became the annexed owner of the land with Late Tufelluddin, on 12-02-1982, and thereafter, she became the sole pattadar of the suit land, by purchase executing the admitted registered sale deed, dated 05-03-1992, vide Ext.2, from Musstt. Amirun Nessa and Md. Derajuddin, the successors of said Late Tufelluddin. It is, further, held that said Smt. Kausalya Devi sold the suit land to Late Ram Chandra Singh, by executing the admitted registered sale deed, dated 26-11-1992, vide Ext.3, and accordingly, the names of his successors, the plaintiff-respondents were mutated in the land records, vide Ext.1, the Jamabandi, Ext.4 to Ext.9, the revenue payment receipts, and further, continuation of actual possession over the suit land, until dispossessed on 29-05-1999.

Accordingly, the Issue No 4 is decided in the affirmative, while the Issue No. 5, that is, the plea of adverse possession of the defendant-appellants, is decided in the negative.

Issue No. 2 :

Whether the suit is barred by Limitation ?

In view of my discussions on evidence and findings on the foregoing Issue Nos. 1, 3, 4 & 5, I find that the defendant-appellants forcibly trespassed and occupied the suit land, on 29-05-1999, and the instant suit for recovery of possession of the suit land by evicting the defendant-appellants, based on right, title and interest of the plaintiff-respondents was instituted, on 28-06-1999, being apparently within the period of limitation, prescribed under Article 64 of the Limitation Act, as has been held by the learned Trial Court, this Issue is decided in the negative.

Issues No. 6 and 7 : Relief(s)

In respect of Schedule 'B'

With regard to the issue of damage caused to the alleged standing trees on the suit land, described in the Schedule 'B' of the plaint, by the defendant-appellants, herein, though it has

come in evidence, being the value of damage of the said property, not assessed by way of issuing a Commission, as required under Rule 9 of Order 26 CPC, the same cannot legally be accepted and as such, held not proved. Accordingly, the reasons and finding of the learned Trial Court, on this Issue, is affirmed.

O R D E R

In the result, the appeal is dismissed, on contest.

The impugned judgment and decree, dated 15-05-2006, passed, in Title Suit No. 17 of 1999, by the learned Civil Judge (Senior Division), Sonitpur, Tezpur, is affirmed.

Parties are to bear their own costs.

Return the original suit record to the learned Trial Court with a copy of this judgment.

Given under my hand and seal of this Court, on this the, 6th day of July, 2012, in the open Court.

**(A. BORTHAKUR)
DISTRICT JUDGE
SONITPUR : TEZPUR**

Typed to my dictation and corrected by me, and each page bears my signature :

(A. BORTHAKUR)
DISTRICT JUDGE,
SONITPUR :: TEZPUR

Typed on dictation
by me :

(J.K. Muru, Steno)

* * * * *

