

HIGH COURT FORM NO.(J) 2
HEADING OF JUDGMENT ON ORIGINAL APPEAL

IN THE COURT OF THE CIVIL JUDGE, SONITPUR, TEZPUR

Present: **Dr. C. Khanikar**
Civil Judge
Sonitpur, Tezpur

17th September, 2022

TITLE APPEAL NO. 01/2022

Sri Narayan Bhawal

S/o- Lt. Santosh Bhawal
Resident of N.T Road, Ward No.6
PO- Tezpur, PS- Tezpur
Dist - Sonitpur, Assam

----- Appellant/defendant No.2

-Versus-

(1) Sri Rinku Bhawal

S/o Lt. Santosh Bhawal

----- Respondent/Plaintiff

(2) Sri Subhash Bhawal

S/o Lt. Santosh Bhawal
Both are residents of N.T Road, Ward No.6
PO- Tezpur, PS- Tezpur
Dist - Sonitpur, Assam

----- Co-Respondent/Defendant No.1

This appeal has been preferred u/O-XLI
r/w Sec. 96 of CPC, against judgment
and decree dated 26-11-2021 passed by
the learned Munsiff, No.2, Tezpur, in
Title Suit No.65 of 2015, decreeing the
suit, and came up for final hearing on

08-09-2022 in presence of following
Advocates:-

For the Appellant : - Sri J.K Baishya, Advocate

For the Respondents : - Sri N. Sarma, Advocate

J U D G M E N T

1. This appeal is preferred against the judgment and decree dated 26-11-2021 passed by Id. Munsiff No.2, Tezpur in Title Suit No.65 of 2015.
2. Before I go into the grounds of appeal, I would precisely refer here to the case of both the parties in the aforementioned Title Suit.
3. The case of the plaintiff in brief is that, the father of the plaintiff Santosh Bhawal, after the death of his first wife Devi Bhawal, married Chinu Rani Bhawal. The plaintiff is the only child of Chinu Rani Bhawal, out of the 6 children of Sri Santosh Bhawal. During her life time Chinu Rani Bhawal purchased 2 B 10 L of land covered by Dag No. 295 , P.P No. 80 of village Bhitarsuti, Mouza-Bhairabpad, District-Sonitpur (herein after referred to as suit land) from Sailen Biswas and Jogendra Biswas vide Registered Sale Deed No. 106 of 2002 dated 19-07-2002 of Tezpur Sub-Registry. She has taken the possession of the said land and mutated her name accordingly. Upon the death of Chinu Rani Bhawal on 28-06-2005, the suit land devolved upon the plaintiff being her sole heir and

hence the plaintiff became the sole and absolute owner of the suit land by way of inheritance. When the plaintiff, for the purpose of applying for mutation of his name in the suit land, applied for certified copies of the registered sale deed, it came to the knowledge of the plaintiff that the defendants have most illegally mutated their names over the suit land in place of the mother of the plaintiff Chinu Rani Bhawal. The defendants also obstructed the plaintiff from mutating the suit land in his name and restrained the plaintiff from entering into the suit land. The defendant Sri Narayan Bhawal has also illegally and fraudulently kept the original Registered Sale Deed No. 1076 of 2002 dated 19-07-2002 with him and refused to hand over the same to the plaintiff. Therefore, having no other way the plaintiff has filed this suit for declaration of plaintiff's right, title over the suit land, permanent injunction and cancellation of mutation order in the name of defendants in the suit land along with cost of the suit.

4. The defendant No.1 appeared and admitted the claim of the plaintiff. Defendant No.2 contested the suit by filing Written Statement and denied the claims of the plaintiff and stated that there is no cause of action for the suit. The suit of the plaintiff is hit by estoppel, waiver and acquiescence and is liable to be dismissed.

5. According to defendant No.2, after the death of the first wife of Santosh Bhawal, he married Chinu Rani Bhawal and then Chinu Rani Bhawal became the mother

of all the children of Santosh Bhawal. Chinu Rani Bhawal has never purchased the suit land on her own and she never took delivery of possession of the suit land. The suit land was purchased by joint family of Santosh Bhawal and the consideration amount was paid from the joint family partnership business of all the children of Santosh Bhawal. Vide family settlement dated 27-05-2013 all the 3 brothers namely Subhash Bhawal, Narayan Bhawal and Rinku Bhawal came to a settlement and mutually divided/partitioned all their movable and immovable properties as well as the partnership business. The suit property devolved upon the 3 sons of Santosh Bhawal. The Revenue village Bhitarsuti is generally known as Gotlong and accordingly in the family settlement it was mentioned as Gotlong. The plaintiff has clear knowledge about the mutation of the suit land and it was mutated with his consent. The suit of the plaintiff is devoid of any merit and is liable to be dismissed with cost.

6. Upon the pleadings of both the parties the following issues have been framed:-

1. Whether there is a cause of action for the suit?
2. Whether Lt. Chinu Rani Bhawal had right, title and interest over the suit land?
3. Whether the plaintiff has any right, title and interest over the suit land by right of inheritance?

4. Whether the defendants have illegally mutated their names in the suit land without having any right, title and interest? If so whether same is liable to be cancelled?
5. Whether the plaintiff is entitled to the decree as prayed for?

7. At the trial the plaintiff has adduced one witness and also placed reliance on three documents in support of his case which are marked as Exhibits. The defendants have also adduced two witnesses and also adduced one documentary evidence.

8. At the end of the trial both sides have adduced oral arguments in support of their case.

9. After hearing both sides, the Id. trial court decreed the suit.

10. Having been highly aggrieved by the said judgment and decree, dated 26-11-2021, the appellant/defendant No.2 preferred this appeal on the grounds enumerated in the Memorandum of Appeal, such as that the Id. Trial Court has committed error by holding that Ext. 'Ka' has no bearing and also committed error by not framing the issue on the point that the suit of the plaintiff is hit by principle of estoppel, waiver and acquiescence.

11. Having considered the ground arisen in the Memorandum of Appeal, I have formulated the following point for determination in this appeal :

POINTS FOR DETERMINATION :

- A. Whether the impugned judgment and decree passed by the Id. trial court is just and proper or needs any interference in this appeal?*
- B. Whether any separate the issue needs to be framed on the point that the suit of the plaintiff is hit by principle of estoppel, waiver and acquiescence?*

DECISION AND REASONS THEREOF

12. I have heard arguments advanced by Id. counsels appearing for the appellants as well as respondents and carefully examined the entire materials on record for arriving at a just decision in the case. To decide the appeal, let me deal with the findings of the Id. trial court issue wise :

Issue No. 1 – Whether there is a cause of action for the suit?

13. Cause of action is nothing but the bundle of facts averred by one party and denied by the other. In this case the plaintiff has averred that the suit land was purchased by his mother Chinu Rani Bhawal. The plaintiff being the

sole heir of Chinu Rani Bhawal became the absolute owner and title holder of the suit land after the death of Chinu Rani Bhawal by the right of inheritance. On the other hand, the defendants have claimed that there is a family settlement by virtue of which the defendants acquired right, title and interest over the suit land. Apart from them after the death of mother of defendants, their father married Chinu Rani Bhawal and as such they became the children of Chinu Rani Bhawal. Hence, the defendants have also right, title and interest over the suit land by way of inheritance. The defendants have also claimed that the suit land was purchased in the name of Chinu Rani Bhawal from the income of joint family business of all the children of Santosh Bhawal. As such, the defendants have right, title over the suit land. In view of this contradictory plea, it appears that there is cause of action to be decided by Civil Court of law in a suit. Hence, I uphold the decision of the Ld. Trial Court in issue No.1 and I hold that **there is cause of action for the suit.**

Hence, issue No. 1 is decided **affirmative.**

Issue No.2 – Whether Lt. Chinu Rani Bhawal had right, title and interest over the suit land?

14. On perusal of the plaint, it appears that the plaintiff has claimed that the suit land was purchased by his mother Chinu Rani Bhawal from Sailen Biswas and Jogendra Biswas vide Registered Sale Deed No. 1076 of

2002 dated 19-07-2002 of Tezpur, Sub-Registry Office and obtained delivery of possession thereof. Accordingly, the suit land was also mutated in the name of Chinu Rani Bhawal vide order dated 13-09-2005 of the Circle Officer, Tezpur Revenue Circle. In support of his plea, the plaintiff has exhibited the Registered Sale Deed as Ext.1. DW.1 during his cross-examination has admitted that the suit land was purchased in the name of the mother of the plaintiff Chinu Rani Bhawal through Registered Sale Deed. Thus, the fact of purchase of land by Chinu Rani Bhawal through Registered Sale Deed is admitted by the defendant No2.

15. The defendant No.2 has claimed that the suit land was purchased in the name of Chinu Rani Bhawal from the income of joint family business of all the children of Santosh Bhawal. But except merely taking the plea, the defendant side could not adduce any proof/evidence to show that the suit land was purchased in the name of Chinu Rani Bhawal from the income of joint family business.

16. Thus, from the aforesaid discussion it appears that it is proved that the suit land was purchased in the name of Chinu Rani Bhawal through Registered Sale Deed No. 1076 of 2002 dated 19-07-2002 of Tezpur, Sub-Registry Office. As the title deed is proved in the name of Chinu Rani Bhawal and her title could not be disproved by

defendants side on any other ground, I hold that **Chinu Rani Bhawal had right, title and interest over the suit land.**

Hence, issue No. 2 is decided **affirmative.**

Issue No.3 – Whether the plaintiff has any right, title and interest over the suit land by right of inheritance?

17. The plaintiff has claimed that he is the sole biological child of Chinu Rani Bhawal. This fact is not disputed by the defendant side. However, the defendant No.2 has claimed that after the death of their mother, their father married Chinu Rani Bhawal and as such Chinu Rani Bhawal became the mother of all the children of their father Santosh Bhawal. As such, being the sons of Chinu Rani Bhawal, they are also legal heirs of Chinu Rani Bhawal. On perusal of the entire pleadings and evidences nothing is found that there was any adoption of the children of first wife of Santosh Bhawal by Chinu Rani Bhawal. The defendants are neither the adoptive nor the legitimate/illegitimate children of Chinu Rani Bhawal. Only because of the fact that Chinu Rani Bhawal got married to the father of the defendants does not mean that the defendants became the children of Chinu Rani Bhawal also. The defendants for becoming the children of Chinu Rani Bhawal, there should be a lawful process of adoption. Thus, in absence of any plea or proof of adoption, they can

not be considered as the children of Chinu Rani Bhawal for the purpose of succession or inheritance.

18. The defendant No.2 has further stated that there is a family settlement which is exhibited by DW.1 as Ext. 'Ka', by virtue of which the defendants have acquired right, title over the suit land. From the cross-examination of PW.1 as well as the evidence of DW.1, it appears that the suit land is situated at Bhitarsuti village and Bhitarsuit Revenu village is also commonly known as Gotlong. From Ext. 'Ka', it appears that land measuring 10 ½ K of Gotlong is mentioned in Ext. 'Ka'. However, no Dag No., Patta No. or boundary of the land of Gotlong is mentioned in Ext. 'Ka'. Thus, the land mentioned in Ext. 'Ka' is not identifiable. From the contents of Ext. 'Ka', it can not be ascertained that the land mentioned in Ext. 'Ka' is the suit land.

19. Ext. 'Ka' is neither a will nor a relinquishment deed. By Ext. 'Ka', three persons agreed to share some parental properties among them by excluding some other heirs of their parents. In the Ext. 'Ka', the daughters of Santosh Bhawal are not shown as heirs of Santosh Bhawal and no property was given in the name of the daughters of Santosh Bhawal. Where there is a clear and unambiguous law of succession and the predecessor-in-interest of the parties died intestate, one can not acquire property in contravention of law of succession. Thus, the Ext. 'Ka' family settlement which is even though entered into by the

parties with their conscious knowledge and voluntarily consent, same being executed in contravention of the law of succession, is illegal, inoperative, null and void.

20. The fact that the plaintiff is the sole biological child of Chinu Rani Bhawal is not disputed. The existence of any other adoptive or legitimate/illegitimate child of Chinu Rani Bhawal is not pleaded or proved. As such, the plaintiff is the sole class-I heir of Chinu Rani Bhawal. Hence, according to the Hindu Succession Act, 1956, on the death of Chinu Rani Bhawal, the suit land devolved upon the plaintiff by the right of inheritance. Hence, I hold that **the plaintiff is right, title and interest over the suit land.**

Hence, issue No. 3 is decided **affirmative.**

Issue No.4 – Whether the defendants have illegally mutated their names in the suit land without having any right, title and interest? If so whether same is liable to be cancelled?

21. From the discussion of issue No.2 and 3, it was seen that being the purchaser of the suit land Chinu Rani Bhawal was the absolute owner and title holder of the suit land. On her death the plaintiff became the absolute owner and title holder of the suit land. The defendant side could not lead any proof to the fact that the said right, title and interest of the plaintiff over the suit land was transferred to the defendants by any legal means. As such, it appears

that the defendants have no right, title and interest over the suit land. But the defendants have mutated their names in the suit land without having any right, title and interest over there. The defendants have not disputed the fact of mutating the suit land in their names. But the plea of the defendant No. 2 is that the names of the defendants are mutated in the suit land with the knowledge and consent of the plaintiff. But the defendants could not prove the fact of mutating their names with the knowledge and consent of the plaintiff. Apart from that even if the suit land was mutated in the name of the defendants with the knowledge and consent of the plaintiff, the said mutation is illegal in the eye of law as the defendants have no right, title and interest over the suit land. As such, I hold that the defendants have illegally mutated their names in the suit land without having right, title and interest and as such, the said mutation order is liable to be cancelled.

Hence, issued No. 4 is decided **affirmative**.

Issue No.5 – Whether the plaintiff is entitled to the decree as prayed for?

22. From the discussion of issue No.1, it is seen that there is cause of action for the suit. From the discussion of issue No. 3, it is seen that the plaintiff has right, title and interest over the suit land. From issue No. 4, it is seen that the defendants have illegally mutated their names in the suit land. As such, I am of the opinion

that the plaintiff is entitled to the decree for declaration of plaintiff's right, title and interest over the suit land, cancellation of mutation of the suit land in the name of defendants and as a consequential relief the plaintiff is also entitled to permanent injunction, restraining the defendants from transferring the suit land in any manner to any 3rd party or from entering the suit land and the cost of the suit. Hence, I found no infirmity in the decision of Id. Trial Court in issue No.5 and I concur and uphold the decision of the Id. Trial Court in issue No.5.

Point No. A – *Whether the impugned judgment and decree passed by the Id. trial court is just and proper or needs any interference in this appeal?*

23. From the detail discussion of issue No.1, 2, 3, 4 and 5, I am of the opinion that the Id. Trial Court has rightly decided all the issues which are upheld by this court. Hence, I am of the opinion that the impugned judgment and decree passed by the Id. trial court is **just and proper and needs no interference.**

Point No. B – *Whether any separate the issue needs to be framed on the point that the suit of the plaintiff is hit by principle of estoppel, waiver and acquiescence?*

24. The appellant/ defendant No.2 has claimed that there was a family settlement which is exhibited as

Ext. 'Ka', by virtue of which the defendants have acquired right, title and interest over the suit land. By that Ext. 'Ka', the plaintiff has waived his right, title over the suit land and as such the suit of the plaintiff is barred by the principle of estoppel, waiver and acquiescence. But Id. Trial Court has not considered this important point and no issue was framed upon that. However, as seen from the discussion of issue No. 3, it appears that already the legality and validity of Ext. 'Ka' is thoroughly discussed in issue No. 3. After discussion, it was hold in issue No. 3 that Ext. 'Ka' is illegal, inoperative, null and void. As such, Id. Trial Court has rightly held that Ext. 'Ka' has no bearing, As such, separate issue on the point that the suit of the plaintiff is hit by estoppel, waiver and acquiescence, which was claimed by appellant/defendant No.2 on the basis of Ext. 'Ka' is not required to be framed. Hence, I hold that **no separate issue needs to be framed on the point that the suit of the plaintiff is hit by principle of estoppel, waiver and acquiescence.**

Hence, point No. B is decided **negative**.

ORDER

25. The appeal is **dismissed on contest with cost.**

26. The judgment and decree dated 26-11-2021 passed by Id. Munsiff No.2, Tezpur in Title Suit No.65 of 2015 is hereby upheld.

27. Prepare the decree accordingly.
28. Send down the case record of T.S No.65/2015 to the trial court with a copy of this judgement and decree.
29. Let copy of this Judgment be furnished to the parties subject to payment of cost.

Given under my hand and seal of this court on this the 17th day of September, 2022.

Dictated and corrected by me.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

APPENDIX

Plaintiff's witnesses:

PW-1: Sri Rinku Bhawal, plaintiff

Defendant's witnesses:

DW-1: Sri Narayan Ch. Bhawal, defendant

DW-2: Sri Ashok Das

Exhibits of the Plaintiff:

- Ext.1 : Registered Sale Deed bearing Registration
No. 1076 for 2002 dated 19-07-2002
- Ext.2 : Certificate issued by the Ward Commissioner
dated 02-06-2015 as to legal heir of Chinu
Rani Bhawal
- Ext.3 : Certificate issued by the Ward Commissioner
dated 02-06-2015 as to legal heir of Lt. Devi
Bhawal

Exhibits of the defendants :

- Ext. 'Ka' : Family settlement

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur