

GAHC010176012009



undefined

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

Case No. : RSA/23/2009

ON THE DEATH OF MD. MURAD IMAN, HIS LEGAL HEIRS and ORS
NAMELY-

1.1: MD ARJU IMAM
S/O LATE MD MURAD IMAM
R/O KHANAJAN
MOUZA BAOBOICHA
PS NORTH LAKHIMPUR
DISTRICT LAKHIMPUR
PIN 787001

1.2: MD MINTU IMAM
S/O LATE MD MURAD IMAM
R/O KHANAJAN
MOUZA BAOBOICHA
PS NORTH LAKHIMPUR
DISTRICT LAKHIMPUR
PIN 787001

1.3: CHUN CHUN BEGUM
D/O LATE MD MURAD IMAM
R/O KHANAJAN
MOUZA BAOBOICHA
PS NORTH LAKHIMPUR
DISTRICT LAKHIMPUR
PIN 787001

1.4: BABY BEGUM
R/O KHANAJAN
MOUZA BAOBOICHA
PS NORTH LAKHIMPUR
DISTRICT LAKHIMPUR
PIN 787001

1.5: SWEETY BEGUM
R/O KHANAJAN
MOUZA BAOBOICHA
PS NORTH LAKHIMPUR
DISTRICT LAKHIMPUR
PIN 787001

2: MD. KASIM IMAM ALIAS MD. KASHIM
SON OF LATE MULTAN SHEIKH.

3: MD. HASIM IMAM

S/O LATE MULTAN SHEIKH.

4: MD. ALI IMAM

SON OF LATE MULTAN SHEIKH.

5: MD. MUJAFAR IMAM

SON OF LATE MULTAN SHEIKH.

6: ON THE DEATH OF MUSTT. HEDAYATUN NESSA
HER LEGAL HEIRS
NAMELY

6.1: ZAMILA KHATUN
D/O LATE HEDAYATUN NESSA
RESIDENTS OF KHANAJAN
MOUZA NAOBOICHA
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR. PIN 787031

6.2: ANWARI KHATUN
D/O LATE HEDAYATUN NESSA
RESIDENTS OF KHANAJAN
MOUZA NAOBOICHA
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR. PIN 787031

6.3: FAKHRUN NESSA
D/O LATE HEDAYATUN NESSA
RESIDENTS OF KHANAJAN
MOUZA NAOBOICHA
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR. PIN 787031

6.4: ROUKAIYA KHATUN

D/O LATE HEDAYATUN NESSA
RESIDENTS OF KHANAJAN
MOUZA NAOBOICHA
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR. PIN 78703

VERSUS

ON THE DEATH OF MD. SULEMAN SHEIKH HIS LEGAL HEIRS and ORS
NAMELY-

1.1:IRSHAD SHEIKH
S/O LATE SULEMAN SHEIKH

R/O WARD NO 2
BIHPURIA TOWN
MOUZA AND PS BIHPURIA
PIN 784161

1.2:ASHIK SHEIKH @ KHURSHED
S/O LATE SULEMAN SHEIKH

R/O WARD NO 2
BIHPURIA TOWN
MOUZA AND PS BIHPURIA
PIN 784161

1.3:MAHTAB ALAM @ LAL

S/O LATE SULEMAN SHEIKH

R/O WARD NO 2
BIHPURIA TOWN
MOUZA AND PS BIHPURIA
PIN 784161

1.4:KAMAR JAHAN
W.O SAJAD RAHMAN

R/O PACHRUKHI
MOHAMEDPUR
PO PACHRUKHI
DIST SIWAN(BIHAR)
PIN 841241

2:MD. EHSAN

SON OF LATE SULTAN SHEIKH

3:ON THE DEATH MD. MOTIUR RAHMAN

HIS LEGAL HEIRS

3.1:TALKDIRAN NESSA
W/O MOTIUR RAHMAN
R/O VILLAGE BHAGOWTTA
LAXMIGANJ
(BLOCK- GORIA KOTHI) VIA MUSTAFABAD
DIST SIWAN (BIHAR)
PIN 841439

3.2:MAHSINA RAHMAN @ CHANDA
D/O MOTIUR RAHMAN
R/O VILLAGE BHAGOWTTA
LAXMIGANJ
(BLOCK- GORIA KOTHI) VIA MUSTAFABAD
DIST SIWAN (BIHAR)
PIN 841439

3.3:MOZIBUR RAHMAN @ BABLU
S/O MOTIUR RAHMAN
R/O VILLAGE BHAGOWTTA
LAXMIGANJ
(BLOCK- GORIA KOTHI) VIA MUSTAFABAD
DIST SIWAN (BIHAR)
PIN 841439

3.4:SABNAM PARWEN @ TARA
D/O MOTIUR RAHMAN
R/O VILLAGE BHAGOWTTA
LAXMIGANJ
(BLOCK- GORIA KOTHI) VIA MUSTAFABAD
DIST SIWAN (BIHAR)
PIN 841439

4:MD. ANISUR RAHMAN

SON OF LATE SULTAN SHEIKH.

5:ON THE DEATH OF MD. AZIMUDDIN
HIS LEGAL HEIRS

5.1:MAJRUL SHEIKH
S/O LATE AZIMUDDIN
R/O WARD NO 2

BIHPURIA TOWN
MOUZA AND PS BIHPURIA
PIN 784161

5.2:NAJRUL SHEIKH
S/O LATE AZIMUDDIN
R/O WARD NO 2
BIHPURIA TOWN
MOUZA AND PS BIHPURIA
PIN 784161

5.3:ISHARUL SHEIKH
S/O LATE AZIMUDDIN
R/O WARD NO 2
BIHPURIA TOWN
MOUZA AND PS BIHPURIA
PIN 784161

5.4:ITRAT JAHAN
W/O LATE ABDUL GAFAR
R/O LUKAMPUR VIA LALUK
PO SONAPUR
PIN 784160
NORTH LAKHIMPUR
PIN 784160

6:ON THE DEATH OF MD. NIZAMUDDIN
HIS LEGAL HEIRS
KAKBUNNESSA AND ORS.
SON OF LATE ABDUL AZIZ. ALL ARE RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR.

6.1:KAKBUNNESSA
RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

6.2:ROUNAK @ FIROZ SHEIKH
RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

6.3:RAJU @ AFARSOH SHEIKH
RESIDENTS OF WARD NO.2

BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

6.4:MITHU BABAR SHEIKH
RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

6.5:BOBY BEGUM
RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

6.6:CHIMKY BEGUM
RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

6.7:NURI BEGUM
RESIDENTS OF WARD NO.2
BIHPURIA TOWN
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

7:SRI KANAKESHWAR KALITA

SON OF LATE MOHORAM SAIKIA. RESIDENT OF DUKHARA
KACHIKATA
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR.

8:SRI RAJIB BHARALI

SON OF LATE DEBEN SARMA BHARALI.

9:SRI SANJIB BHARALI

SON OF LATE DEBEN SARMA BHARALI. BOTH ARE RESIDENT OF WARD
NO.1
BIHPURIA
MOUZA AND P.S. BIHPURIA
DIST. LAKHIMPUR

YADAV,MS.T GOSWAMI

Advocate for the Respondent : , MR.P P BARUAH,MR.M K DUTTA,,MR.R SARMA

B E F O R E

HON'BLE MR. JUSTICE KALYAN RAI SURANA

JUDGMENT AND ORDER

(Oral)

04.06.2026

Heard Mrs. K. Bhattacharjee, learned counsel for the appellants. Also heard Mr. P.P. Baruah along with Mr. R. Sarma, learned counsel for the respondents.

2) The appellants herein are the plaintiff nos. 3 to 7 in T.S. No.10/2002, that was filed and adjudicated before the learned Civil Judge (Senior Division), Lakhimpur, North Lakhimpur.

3) This appeal under Section 100 of the CPC has been preferred by the appellants (plaintiff nos.3 to 7) to assail the judgment and decree dated 13.06.2008, passed by the learned Additional District Judge (F.T.C.), Lakhimpur at North Lakhimpur in T.A. No.15/2006. By the impugned judgment and decree, the appeal was dismissed and the judgment and decree dated 06.09.2005, passed by the learned Civil Judge (Senior Division), Lakhimpur, North Lakhimpur, in T.S. No.10/2002, by which the suit was dismissed, was affirmed.

4) This appeal under Section 100 of the CPC has been admitted for hearing, vide an order dated 27.02.2009 on the following substantial questions of law:-

1. *Whether the judgments of the learned courts below suffers from perversity on account consideration of material evidence both oral and documentary, misreading*

of some documentary evidence and non-application of mind?

2. *Whether the learned Addl. District Judge being the first appellate authority failed in its duty to re-appreciate the evidence on record?*
3. *For that the decision of the learned Addl. District Judge that no decree for partition could be passed because, according to him, the Civil Court is not the proper forum for passing a decree for partition and that partition is matter within the jurisdiction of Revenue Authority only, is tenable under the law?*

5) In brief, the pleaded case of the appellants in T.S. No. 10/2002 was as follows:-

- a. Previously, two persons, namely, Sultan Seikh and Multan Seikh, were in joint possession of the land suit after purchasing the same from one Siva Nath Sarma. Thereafter, the said land was mutated in their names vide order dated 06.06.1933, and consequential correction of the revenue record was made. It may be stated that the purchased land was measuring 1 Katha, 2 Lecha, covered by Dag no. 33 of Patta no. 33. At the time of filing of the suit, the said land was covered by Dag No. 653 of Patta No. 52 of Ward No. 1, Mouza- Bihpuria.
- b. It was pleaded that late Badal Hussain was the father of Abdul Aziz, Md. Khalil, Md. Sultan Seikh and Md. Multan Seikh. The plaintiff no. 1 is the son of Md. Khalil; plaintiff no.2 is the son of Md. Iddris; plaintiff nos. 3 to 7 are the sons of Multan Seikh; and plaintiff no. 8 is the wife of Multan Seikh.
- c. It was pleaded that vide Partition Deed dated 21.08.1961 and Deed of Agreement dated 18.03.1971, the suit land was partitioned amongst the sons of late Badal Hussain by way of a registered deed. Accordingly, the sons and legal heirs of late Badal Hussain were enjoying undisturbed possession over their respective share of land.

- d. It was also stated that after a complaint was made, the names of defendant nos. 1 to 4, which were entered in the *chitha* was deleted and the names of Sultan Seikh and Multan Seikh were entered into the patta land.
- e. It is also pleaded that on 21.03.1993, there was an amicable partition of the suit land and all the respective parties and the witnesses had put their signatures on the map showing definite boundaries and each of the parties were enjoying possession of their respective shares as shown in the said sketch map dated 21.03.1993.
- f. It was stated that at about 3.40 AM on 06.04.2002, the shops and rented houses on the suit land were gutted by fire and taking advantage of the situation, the defendant nos. 1 to 4 took possession of more than their entitled shares and dispossessed the plaintiffs from their rightful share. It was stated that the defendant no. 1, by executing the sale deed dated 04.11.1993, sold more than his share of land to defendant no.7 and accordingly, the defendant no.7 was in illegal possession of such excess land. It was also stated that as per the partition dated 21.03.1993 and as real share holders, the plaintiff nos. 1 and 2, in addition to their $\frac{1}{4}$ th share of the entire scheduled land, the plaintiff no. 2 is the owner of additional $\frac{1}{2}$ share by virtue of his purchase of Md. Tasrulla's $\frac{1}{2}$ (half) share. Accordingly, it was stated that the plaintiff nos. 3 to 8, in addition to their becoming joint holders of $\frac{1}{4}$ th share of the scheduled land on the strength of partition dated 21.03.1993, the plaintiff no. 8 is the owner of the land that he had purchased from Matiur Rahman.

- g. The further pleaded case of the plaintiffs was that though requests were made on several occasions to partition the Scheduled land after demarcation, but the defendants did not pay any deed to it and continued to dispossess the plaintiffs and continued to realize rent for houses from the proforma defendants and misappropriated the same.
- h. It was stated that apart from opening shops on the suit land, the proforma defendant nos.12 to 14, the son of defendant no.2, proforma defendant no. 15, had rented the shop houses and are realizing rent and proforma defendant no. 16 was the tenant of defendant no.1 and therefore, they were made parties to the suit. It was stated that the defendant no.5 had also sold his share of land to the defendant nos. 8 and 9 and the said two defendants were enjoying possession of more than the defendant no.4's share and everything will come out after measurement of the land. Similarly, it was stated that the defendant no.1 had also sold his share of land to the defendant no. 7 and the defendant no. 7 was enjoying possession of more than the defendant no.1's share. It was stated that the defendant no. 7 had rented out shops on his purchased land to proforma defendant no.11 and defendant no. 1 has rented out shop to proforma defendant nos.17 and 18 and therefore, the proforma defendant nos. 11, 17 and 18 were made parties in the suit. The defendant no. 3 had also sold his share to the plaintiff no.8 and proforma defendant no. 20 has a shop there for which he has been impleaded as proforma defendant.
- i. It was stated that the houses on the suit land was gutted by fire on 06.04.2002 and the boundaries, which were settled, had disappeared and therefore, taking advantage of the situation the defendants had

taken possession of suit land in excess of their share and refused to demarcate the boundaries of the land.

- j. Accordingly, the plaintiffs had filed the said T.S. No. 10/2002 with the following players:

“Ka) That, plaintiff nos. 1 and 2's and 3, 4, 5, 6, 7, 8's right, title and interests in respect of $\frac{1}{4}$ th share i.e., $5\frac{1}{2}$ lechas each out of the scheduled land and in respect of $2\frac{1}{2}$ lechas (36 squee. feet) and 4 lechas (18 square feet) which were purchased by plaintiff no.2 and 8 separately be confirmed.

Kha) That, the scheduled land be measured initially through a Commissioner appointed by court and plaintiffs possession over their shares be confirmed.

Ga) That, on the basis of Commissioner's report the final decree be executed.

Gha) That, the plaintiffs be given decree for khas possession upon ejectment of the defendants from their illegal possession by dismantling their houses etc.

Unga) That, a permanent injunction be issued against the defendants restraining them from creating any disturbance to plaintiffs' shares.

Cha) That, the suit be decreed with costs in favour of the plaintiffs.

Chha) That, a decree for any other or further relief to which the plaintiffs may be considered fit be passed.”

- 6) The suit land described in the Schedule of the plaint is also extracted hereinbelow:

:SCHEDULE:

That in addition to partition of plaintiff nos.1 and 2's $\frac{1}{4}$ th share and 3,4,5,6,7,8's $\frac{1}{4}$ th share i.e., in respect of $5\frac{1}{2}$ lechas in Dag no.653 of K.P. Patta no. 52, as shown in No.1 Ward map of Bihpuria Mouza as per the Deed of Partition and sketch map dtd. 21.3.93 of the plaintiffs, and the $2\frac{1}{2}$ lechas 36 square feet and 4 lechas 18 square feet purchased separately by plaintiff nos. 2 and 8 respectively, be partitioned.

A three roomed house measuring 10'X10' each was constructed on the said land on 14.12.2002 and R.C.C. walls were raised. In addition to that a 6'X30 square feet long verandah in the direction east and west was constructed. The

plinth walls of the said verandah would be 2 feet. A decree for partition and khas possession of the land be passed.

7) The defendant nos. 1, 2, 5 and 6 had filed their written statement wherein it was denied that Seikh Badal Hussain was the legal *pattadar* of the suit land. Accordingly, it was stated that his legal representatives had no right to get partition of the suit land. In respect of the land purchased from Md. Tasrulla and Md. Iddris, it was stated that they did not get mutation by right of inheritance and therefore, the vendors might take possession by right of their title acquired from purchase. However, the seller would only be responsible and Md. Iddris and Md. Tasrulla can claim land from seller's share. It was stated that none of the defendants had accepted any partition or map and it was denied that the defendant nos. 1 to 4 had put their signature on the sketch map and stated that the sketch map was drawn after cancelling the previous partition as illegal. Accordingly, the said defendants have taken over possession of half of 1 katha 2 lechas, which is their father's share and rest of the statement in the plaint was denied including the challenge to the sale of land by defendant no. 4 in favour of the defendant nos. 8 and 9. Accordingly, in the counter-claim, it was prayed that the Annexure- 2 and 3 of the plaintiffs and the sketch map be partially declared as illegal and prayed for compensation.

8) The defendant nos. 7 and 11 had filed their written statement separately and it was stated that which the defendant no. 7 had possession of the land purchased through a registered deed and claimed right over the land which was purchased from the defendant no. 1, vide registered Deed dated 04.11.1993 in respect of 455 sq. feet of land.

9) The defendant nos. 8 and 9 had filed their separate written statement and stated that they had purchased land vide registered Deed No. 61

dated 02.02.1998, from Anisur Rahman measuring 250 sq. feet of land out of an area of 1 katha 2 lecha of suit land and prayed for dismissal of the suit.

10) The plaintiffs had filed their written statement against the counter claim of the defendant nos. 1, 2, 5 and 6 and denied the right of the defendants to be entitled to a declaration that the Settlement Register No. 32/71 and the Partition Register No. 596/61 are ineffective. It was also asserted that the defendant nos. 4 and 6 and the plaintiff no. 1 had jointly mortgaged their share of 1 Katha- 2 Lecha land, bearing Dag no. 653 to the plaintiff no. 3 and the said land was freed from mortgage on 21.05.1976 and thereafter, the defendant no. 4 sold 10 lecha 66 sq. feet of land to one Smti. Anjalee Bora Deori on the strength of the earlier Deed of Partition. It was stated that the defendants had lost the right to claim for cancellation of the said sketch map and the sketch map dated 21.03.1993 claiming that they have been possession of the land. It was also stated that the defendant no. 6 had filed a case, being Case No. 131RA(L)/94 before the learned Assam Board of Revenue against the plaintiff no. 1 and had stated that having failed to come out successful, he had filed Civil Rule No. 4820/1995 before this Court. Accordingly, he had prayed for dismissal of the counter claim.

11) On the basis of the pleadings, the learned trial Court had framed the following 6 issues:

1. *Whether there is any cause of action for the suit?*
2. *Whether the suit is barred by the law of limitation and by estoppel?*
3. *Whether the S/L is an ancestral, property of both the plaintiffs and defendants side, and both the parties acquired their right, title and interest over the suit land as partitioned?*
4. *Whether the plaintiff and the defendants executed any amicable settlement in possessing their respective shares over the suit land?*
5. *Whether the defendants trespassed the land of the plaintiffs on or after 6-4-2002 violating the settlement?*

6. *To what relief/reliefs the parties are entitled to?*

12) It may be stated that though in the written statement filed by defendant nos. 1, 2, 5 and 6, there is a narration in the cause title thereof to the effect that the written statement is for declaration that the Registered Document 596/61 (Annexure-II) and Registered Document 32/71 (Annexure-III) will not be applicable against the defendants and both the deeds are illegal and the so-called partition map dated 21.03.93 are not acceptable as per provision of law and in the said respect prayer nos. *ka, kha, ga* and *gha* were made, but the plaint does not contain any statement that the counter-claim was valued and any court fees was paid therein. Therefore, it appears that no issue on counter-claim was framed.

13) The learned trial Court, on considering the pleadings and evidence on record, had taken up issue nos. 3 and 4 for consideration together. It was held that the evidence of the plaintiff, namely, Aftab Alam, was inconsistent and contradictory and in view of the pleadings that the land was purchased by Sultan Seikh and Multan Seikh, it was held that there was no plea in the plaint to show that deceased Badal Hussain had owned and possessed over the said suit land at that point of time. Moreover, as Ext. 2 and 3 did not contain the signature of Sultan Seikh, the said documents were held to be illegal. Accordingly, it was held that as there was nothing to show that the land was purchased by Sultan Seikh and Multan Seikh, an amicably partition was not found to be in accordance with the law and therefore, it was held that it was not proved that the suit land was in excess to the share of the plaintiffs and the defendants. Moreover, it was held that it cannot be stated that the plaintiffs and the defendants had exhibited an amicable settlement for possessing their respective shares. Accordingly, both the issues nos. 3 and 4 were decided

against the plaintiffs. Resultantly, in respect of issue no. 5, it was held that in view of the discussions on issue nos. 3 and 4, it was held that issue no. 5 was not required to be discussed. In respect of issue no. 2, it was held that the suit was filed within the period of limitation and held that there was a cause of action of the suit. In respect of issue no.1 and 6, it was held that the plaintiffs were not found entitled to partition of suit land in the instant suit.

14) In view of the provisions of Assam Land and Revenue Regulation for partition, the plaintiffs were directed to take resort to the same and file a separate suit for partition. Accordingly, in absence of partition as well as right, title and interest of the plaintiffs, the plaintiffs were not found any relief.

15) The present appellants, who were in plaintiff nos. 3 to 8, had preferred the appeal against the judgment passed by the learned trial Court. It may be stated that the name of the appellant no. 6 (defendant no.8) is found to spelt as Mustt. Hedaitun Nessa in the plaint. In the decree of the learned trial Court, her name is spelt as Mustt. Hedayut Nessa. In the memo of first appeal her name is Mustt. Hedaitun Nesa. In the first appellate decree, her name is spelt as Mustt. Bedayatun Nessa wife of Lt. Multan Sheikh. However, it may be stated that her identity is not being disputed at the bar.

16) The learned counsel for the appellant had submitted that the judgment and decree passed by the learned first appellate court is not sustainable as no points of determination, as required under Order XLI, Rule 31 CPC was not framed. However, under the unique facts of the case, it cannot be held that the First Appellate Court had committed any error by not framing the points of determination in the judgment and decree dated 13.06.2008 passed TA No.15/2006.

17) The learned First Appellate Court had discussed all the issues based on the pleadings and evidence on record and thereupon, the finding of the learned Trial Court on all the issues were affirmed and accordingly, the appeal was dismissed.

18) The learned counsel for the appellant had submitted that the learned First Appellate Court had not discussed all the witnesses examined by both sides and did not refer all the exhibited documents, which had vitiated the proceedings. It had also submitted that the learned trial Court had also neither discussed all the witnesses examined by the parties nor there was any discussion on the exhibited documents. By referring to the evidence of DW-1, it has been submitted that the DW-1 had admitted that the Badal Hussain was his grandfather and had also admitted that the plaintiff nos. 3 to 8 were sons of Multan Seikh. He had admitted that they were 4 brothers of Sultan Seikh. Thus, it has been submitted that the partition of the joint property was not disputed between plaintiff and defendant. Hence, Ext.2 and Ext.3 are required to be properly appreciated and considered.

19) On a perusal of the plaint written statements and evidence available in the TCRs, it is seen that the facts of this case is unique. The Court takes note of the fact that neither the learned Trial Court had referred to all the evidence and exhibited documents nor the First Appellate Court had referred to the evidence of the witness examined or to all the exhibited documents. Thus, it is required to be examined as to whether any error was committed by the learned Courts below in not referring to and/or discussing the entire evidence on record, including documentary evidence.

20) The pleadings made in the plaint and defendants have briefly

been referred above. The plaintiffs including the appellants (defendant nos. 3 to 8) claim that right, title and interest in respect of the $\frac{1}{4}$ the share on the suit land. Specific prayer for declaration of the right, title, interest and for recovery of the possession of their share of land after ejection of those found to be in illegal possession thereof. It was also prayed for issuance of a commission for measurement of the land. The specific pleading in the plaint is to the effect that the previously Sultan Seikh and Multan Seikh were enjoying the suit land after purchasing the same from Siva Nath Sarma. However, the sale deed which the said Sultan Seikh and Multan Seikh had purportedly purchased the land has not been exhibited. The plaintiffs, in order to prove their title over the suit land, had exhibited the draft *jamabandi* as Ext.4, in respect of the land covered by Patta No. 33(old)/ 32(new), measuring 1 katha 2 lecha and the final *jamabandi* was exhibited by PW-6 as Ext.11. The said Ext.11 contains the name of Sultan Seikh and Multan Seikh as the recorded pattadar of the said land. Moreover, the PW-6 had also exhibited the entries in the old *jamabandi* as Ext.12, 13 and 14 respectively. All the 3 entries reflect the name of Sultan Seikh and Multan Seikh as the *pattadar* of the said land. The PW-7 had exhibited a *jamabandi* as Ext.17. However, there is no pleadings or any evidence on the record to link the land measuring 1 Bigha- 3 Katha- 14 Lecha, covered by Dag no. 20 with the suit land, which is measuring 1 Katha- 2 Lecha. The learned counsel for the appellant, also could not show how to connect land measuring 1 Katha- 2 Lecha with the larger plot of land measuring 3 Bigha- 1 Katha- 14 Lecha. The PW-7 had also exhibited another *jamabandi* as Ext.21, which is in respect of land measuring 1 Katha- 2 Lecha, covered by Patta no. 52, containing the name of the recorded *pattadar*. Except for the name of Sultan Seikh, the entries of other *pattadars* in the *jamabandi* are by way of purchase and possession. There are

other *jamabandi* exhibited as Ext.25 and Ext.26. Thus, on an examination of the documentary evidence on record, there is no evidence to show as to how any share of land out of 1 katha- 2 lecha would fall in the name of Badal Hussain.

21) In a suit for partition of land, such partition can only be occurred amongst the parties who would otherwise have derived right, title and interest over the suit land. In the event a Deed of Partition creates, declares or assigns right, title or interest over any plot of land which is more than Rs.100/- (Rupees One hundred only), such an instrument is required to be compulsorily registered as per the mandate of Section 17(1)(b) of the Registration Act, 1908. Therefore, any document which is required to be compulsorily registered under Section 17 of the Registration Act, 1908, cannot be read in evidence in view of the bar created by operation of Section 49 of the Registration Act.

22) As discussed hereinbefore, in this case, there is failure on part of the plaintiffs to prove their entitlement to title in favour of any of the plaintiffs as none of the documentary exhibited by the plaintiffs shows that any right, title or interest in favour of any of the plaintiffs has been created, claiming through Badal Hussain. Moreover, the pleaded case in the plaint is that Sultan Seikh and Multan Seikh were in joint possession of the land suit after purchasing the same from one Siva Nath Sarma. It has not been pleaded in the plaint as to how Badal Hussain derived or acquired a valid title over any part of the suit land.

23) Therefore, under the unique facts of this case, the Court does not find any error in the judgment and consequential decree of dismissal of the suit, passed by the learned Trial Court, which has been affirmed by the learned First Appellate Court. As discussed hereinbefore, in this case, there is no necessity for any Court to deal with the plaintiff's evidence, which is otherwise

found unnecessary.

24) It is a well settled principle of law that though entries in the *jamabandi* would have some relevance under Regulation 40 of the Assam Land and Revenue Regulation, 1886. However, when the plaintiffs claim a legal right to the land, a mere entry of a name of *jamabandi* or a *chitha*, not supported by any title deed, would not confer any right whatsoever over the suit land.

25) In this case, the plaintiffs had filed a title suit and had prayed for a declaration of their respective right, title and interest and for recovery of khas possession of their so-called share in the suit land, the Court is unable to accept that a mere entry of a name in the *jamabandi*, in absence of any title, would confer any right, title or interest, better than one which could be derived from the person though whom land is claimed. In this case, as stated hereinbefore, the title deed of the original owners of the suit land, namely, Sultan Seikh and Multan Seikh was also not exhibited. As per the revenue record discussed above, the name of Multan Seikh has been struck off, which is reflected in the *jamabandi*, that was exhibited as Ext.21 and Ext. 25.

26) Therefore, the suit not being filed as a suit for partition and no prayer was made in terms of the requirement of a partition suit for determination the shares of the land, the learned Trial Court had dismissed the suit. Similarly, the learned First Appellate Court had also dismissed the appeal and thereby affirming the judgment and decree passed by the learned Trial Court.

27) Though the learned first appellate Court did not frame any points of determination as required under the provisions of Order 41, Rule 31 CPC, in this case, the learned First Appellate Court is found to have dealt with all

the issues. Therefore, when no documentary exhibit has been proved to prove the title of the plaintiffs or their predecessor-in-interest, namely, Badal Hussain, the non-framing of the points of determination, as required under Order 41, Rule 31 CPC is not found to be fatal. The case of the appellants, as plaintiff nos.3 to 8 is that they derive title through Badal Hussain. It is reiterated at the cost of repetition that there is no pleading or evidence as to how Badal Hussain, the projected elder brother of Sultan Seikh and Multan Seikh would derive right, title or interest on any part of the suit land, which could lawfully be inherited by any of the appellants (plaintiff nos. 3 to 8) in the suit. The plaintiff nos. 1 and 2 appears to have accepted the decree of dismissal of the suit as they have not assailed the decree of dismissal of the suit.

28) The Court has referred to the pleadings and the relevant evidence of some of the witnesses examined. However, the discussion of the evidence of all the witnesses and documents exhibited by them in their respective evidence is not found necessary as the plaintiffs did not prove their title, so as to have an effective partition amongst the parties to the suit.

29) Accordingly, in light of the discussions above, the first substantial question of law is answered by holding that the Court does not find any perversity in the judgments and consequential decree passed by learned trial Court and the learned First Appellate Court on account of non-discussion of the evidence of all witnesses including documentary exhibits. Thus, under the facts unique to this case, the Court does not find that the concurrent finding of both the learned Courts below is vitiated by non-application of mind.

30) In respect of the substantial question of law no.2, for the reasons already assigned hereinbefore and in the light of the discussion made

above, the Court is inclined to hold that in this case, the plaintiffs including the appellants had claimed right, title and interest and prayed for declaration of their right, title and interest, the Courts are required to appreciate all those evidence on record, which proves the creation of right, title and interest, supported by pleadings disclosing the basis of how such right, title or interest is created. The so-called partition on 21.03.1993, vide signatures of some persons on a rough map drawn by the parties, cannot be said to be a document which creates a valid title of those persons over a plot of land as the appellants (plaintiff nos. 3 to 8) claim through one Badal Hussain and Multan Seikh, in respect of whom, there is no pleadings as to how they derived title. In this case, there is no document which creates any right, title or interest over the suit land in favour of the appellants.

31) It is reiterated herein at the cost of repetition that as per the pleadings in the plaint, late Badal Hussain was the father of Abdul Aziz, Md. Khalil, Md. Sultan Seikh and Md. Multan Seikh. The plaintiff no. 1 is the son of Md. Khalil; plaintiff no.2 is the son of Md. Iddris; plaintiff nos. 3 to 7 are the sons of Multan Seikh; and plaintiff no. 8 is the wife of Multan Seikh.

32) In respect of the substantial question of law no. 3, the Court is inclined to hold that learned Courts below had arrived at a correct decision that in that suit, the decree of partition could not be permitted. In this case, the suit was not filed for partition, which is evident from the fact that there is no prayer for passing of a preliminary decree, so as to have the shares determined in accordance with the suit for partition. Therefore, while deciding issue no. 6, the learned trial Court had granted the liberty to the plaintiffs to move the Revenue authorities under the Assam Land and Revenue Regulation for partition or to file

a partition suit.

33) There is no doubt that a Civil Court would have the power for passing a decree for partition of the suit land and determine the shares of the various sharers of the suit land. However, in this case, the suit was not structured as a suit for partition, though prayers were for partition. However, be that as it may, in this case, the appellants have failed to successfully demonstrate the existence of their right, title or interest over the suit land. Therefore, whether the learned Civil Court could have ordered partition would be a mere academic decision.

34) Accordingly, all the substantial questions of law are answered as indicated hereinbefore.

35) This Court has not found any error or perversity in the judgment and consequential decree of dismissal of the suit, passed by the learned trial Court and affirmed by the learned First Appellate Court. Accordingly, the appeal fails and the same is dismissed.

36) At this stage, the learned counsel for the appellants has submitted that in view of the leave granted by the learned Trial Court while deciding issue no. 6, the appellants be granted the same liberty by this Court to enable the appellants to file a case for partition under Assam Land and Revenue Regulation or to file a suit of partition.

37) Considered the said prayer. In the considered opinion of the Court, leave to the appellants in terms of the observation made by the learned Trial Court in respect of issue no. 6 cannot be granted at this stage because the concurrent finding of the fact regarding the lack of right, title and interest of the

plaintiffs in respect of the suit land. Therefore, in absence of the right, title and interest of the plaintiffs being proved, it would not be permissible for this Court to grant leave to the appellants as granted by the learned trial Court while discussing issue no.6.

38) Accordingly, the appeal is dismissed. Under the circumstances, there shall be no order as to cost in this appeal.

39) The Court appreciates the effort put in by the learned counsel for both the parties.

JUDGE

Comparing Assistant