

GAHC010003152012



2026:GAU-AS:12126

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

Case No. : RSA/22/2012

ON THE DEATH OF NUR MOHAMMAD ALL HIS LEGAL HEIRS AND 7 ORS
NAMELY-

1.1: SEKANDAR ALI
R/O VILL HATIJANA
PO JASHIHATIPARA
MOUZA GHILAJARI
PS DISTRICT BARPETA
ASSAM
PIN 781316

1.2: HANIF ALI
R/O VILL HATIJANA
PO JASHIHATIPARA
MOUZA GHILAJARI
PS DISTRICT BARPETA
ASSAM
PIN 781316

1.3: ALI AKBAR
R/O VILL HATIJANA
PO JASHIHATIPARA
MOUZA GHILAJARI
PS DISTRICT BARPETA
ASSAM
PIN 781316

2: NURL ISLAM

S/O LATE YAD ALI

3: POLU MIA

S/O LT. ABU BAKKAR

4: NUR MOHAMMAD SHEIKH

S/O LATE ABU BAKKAR

5: ON THE DEATH OF RAMELA KHATUN
HER LEGAL HEIRS
NAMELY

5.1: RUKIA BEGUM
W/O SHAHIDUL ISLAM
RESIDENT OF VILLAGE HABIBHANGA
PO AND PS KALAIGAON
DIST UDALGURI
BTR
ASSAM 784525

5.2: GAFUR ALI

S/O RUSTAM ALI
RESIDENT OF VILLAGE SINGRIMARI
BAGICHA
PO AND PS KALAIGAON
DIST UDALGURI
ASSAM
BTR
ASSAM 784525

5.3: NURJAHAN BEGUM
W/O JULFIKAR ALI
RESIDENT OF VILLAGE NO. 2
SINGRIMARI
PO AND PS KALAIGAON
DIST UDALGURI
BTR
ASSAM
784525

5.4: RAHIMA BEGUM (WIDOW)
D/O RUSTAM ALI
RESIDENT OF SINGRIMARI BAGICHA
PO AND PS KALAIGAON
DIST UDALGURI
BTR
ASSAM 784525

5.5: NAZRUL ALI
S/O RUSTAM ALI

RESIDENT OF VILLAGE HABIBHANGA
PO AND PS KALAIGAON
DIST UDALGURI
BTR
ASSAM
784525

6: FUL KHATUN

D/O RABIA KHATUN

7: RABIA KHATUN

D/O LATE YAD ALI

8: MAMELA KHATUN @ SAMELA KHATUN

D/O LATE YAD ALI
ALL AE RESIDENT OF HATIJANA
MOUZA GHILAJARI
P.S. and DIST BARPETA
ASSAM

VERSUS

LEGAL HEIRS OF LATE TARUBALA SAHA , ON THE DEATH OF JAGADISH
CH. SAHA HIS LEGAL HEIRS AND ORS
NAMELY-

1.1:MINATI SAHA
WO LATE SRI JAGADISH CH SAHA
RO HOWLY TOWN
WARD NO 2
MOUZA GHILAJARI
PO HOWLY
PS AND DIST BARPETA
ASSAM

1.2:PRANAB KUMAR SAHA
SO LT SRI JAGADISH CH SAHA
RO HOWLY TOWN
WARD NO 2
MOUZA GHILAJARI
PO HOWLY
PS AND DIST BARPETA
ASSAM

1.3:PRABIR SAHA

SO LT SRI JAGADISH CH SAHA
RO HOWLY TOWN
WARD NO 2
MOUZA GHILAJARI
PO HOWLY
PS AND DIST BARPETA
ASSAM

1.4:NABIN SAHA
SO LT SRI JAGADISH CH SAHA
RO HOWLY TOWN
WARD NO 2
MOUZA GHILAJARI
PO HOWLY
PS AND DIST BARPETA
ASSAM

2:PRADIP KR. SAHA

S/O LATE RAKHAL CH. SAH
BOTH ARE RESIDENT OF HOWLY TOWN
WARD NO. 2
MOUZA GHILAJARI
P.O. HOWLY
P.S. and DIST. BARPETA
ASSAM.

3:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

4:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

5:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

6:STRUCK OFF
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7:STRUCK OFF
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467/2013

8:STRUCK OFF

VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

9:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

10:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

11:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/2013

12:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 29/05/2015 PASSED IN MC NO.
467/201

Advocate for the Petitioner : MR.S HUSSAIN, MR.R ALI,MD.M Z SHAH

Advocate for the Respondent : MR.A KALAM, MR.A R SIKDAR,MR.A HUSSAIN,MR.M H
TALUKDAR,MR.N AHMED

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocates for the appellants	: Mr. R. Ali, Mr. S. Hussain, : Mr. M.Z. Shah.
Advocates for respondent nos.1 and 2	: Mr. A.R. Sikdar, Mr. M.H. Talukdar, : Mr. N. Ahmed, Mr. A. Hussain, : Mr. A. Kalam.
Date on which judgment is reserved	: 13.05.2026.
Date of pronouncement of judgment	: 24.08.2026.
Whether the pronouncement is of the operative part of the judgment?	: No.
Whether the full judgment has been Pronounced?	: Yes.

JUDGMENT AND ORDER

(CAV)

Heard Mr. R. Ali, learned counsel for the appellants. Also heard Mr. A.R. Sikdar, learned counsel for the respondent nos.1 and 2.

2. It may be mentioned that names of respondent nos.3 to 12 were struck off vide order dated 29.05.2015, passed in M.C. No.467/2013.

3. The appellants herein were the defendants in T.S. No. 122/2008. The said suit was filed by Smt. Tarubala Saha, the predecessor-in-interest of the present respondents. From the judgment and decree of the learned trial court, it appears that the original plaintiff had died during the pendency of the suit and the present respondents were substituted as her legal representatives. The suit was partly decreed on contest by the learned Court of Munsiff No.1, Barpeta vide judgment and decree dated 15.03.2011, by declaring title of the respondent/ plaintiff over the suit land and by granting relief that she is entitled to recover vacant possession of the suit land by evicting the defendants, their men and agents. However, the counter-claim of the defendants, seeking declaration that the sale deed is void was dismissed, being barred by limitation.

4. The appellant/ defendants had preferred an appeal against the said judgment and decree dated 15.03.2011, passed by the learned Trial Court, which was registered as Title Appeal No.23/2011. However, the learned Civil Judge, Barpeta, vide first appellate judgment and decree dated 06.09.2011, dismissed the said appeal.

5. Accordingly, this appeal under Section 100 of the CPC has been preferred by the appellant/defendant, aggrieved by the said first appellate

judgment and decree dated 06.09.2011, by which the dismissal of the suit vide judgment and decree dated 15.03.2011, passed by the learned Munsiff No.1, Barpeta in T.S. No. 122/2008 was affirmed.

6. This appeal under section 100 CPC has been admitted for hearing by order dated 10.02.2012 on the following substantial question of law:

“Whether the Lower Appellate Court committed grave error of law in holding that the plaintiff has right, title and interest over the suit land, although the said sale deed no. 2913/75 dated 18.02.75 by which the plaintiff purchased the suit land is void.”

7. In brief, the case of the plaintiff, in the plaint is that she had purchased 4 bigha, 2 katha, 10 lecha land from Nagar Ali, Ful Khatun, Shomela Khatun, Nur Mohammad and Nomela Khatun by registered Sale Deed No. 2912/75 dated 18.02.1975 and since then she was possessing the suit land peacefully from the date of purchase and paying land revenue regularly.

8. The land which is described in Schedule-A of the plaint, which is 73 bighas, contained in various Dag and Patta numbers originally belonged to one Yad Ali, who died many years ago and after his death, his legal heirs acquired right over the Schedule-A land. It is projected that at the time of death of the said Mohammad Yad Ali, most of his legal heirs were minors, except Nagar Ali. The said Nagar Ali, for himself and acting as guardians of his 4 (four) minor brothers and sisters Ful Khatun, Shomela Khatun, Nur Mohammad and Nomela Khatun, by registered Sale Deed No. 2912/75 dated 18.02.1975, sold the land described in Schedule-B of the plaint, measuring 4 bigha, 2 katha, 10 lecha land, covered by Dag No. 344 of Periodic Patta No. 27, of village-Hatizana, Mouza- Ghilazari, Dist. Barpeta to the predecessor-in-interest of the respondent nos. 1 and 2, i.e. the substituted plaintiffs. It was claimed that since

the date of sale of the said land described in Schedule-B of the plaint, the plaintiff was in possession of the said land without any disturbance and she was cultivating on the said land through *adhia*/labourers. The names of the plaintiff also mutated in respect of the suit land described in Schedule-B of the plaint.

9. The case of the plaintiff is that the defendants had illegally dispossessed her from the suit land described in Schedule-B of the plaint on 15.02.2009, and they had constructed a C.I. Sheet roof house, one asbestos *chali* and one bamboo plastic *chali* over the suit land.

10. In the plaint, the plaintiff had pleaded that the suit patta had many dags and there are many pattadars and all pattadars have no interest over the suit land and therefore, only those co-pattadars whose names are mutated in respect of the specific Dag No. 344, have been made party in the suit. It was stated that the plaintiff has right title interest and possession over the suit land and it has become necessary to evict the defendants (i.e. appellants herein) from the suit land and for creating a new patta and new dag number.

11. The plaintiffs have made the following prayers in the suit: -

- (a) *To declare the plaintiff's right, title and interest as purchases and for khas possession evicting the defendants from the suit land.*
- (b) *To remove the C.I. Sheet chali Asbestos Chali and bamboo plastic house from the suit land.*
- (c) *To cause perfect partition for correcting a new patta and a new Dag in respect of the legitimate share of the plaintiff i.e. the suit land.*
- (d) *To send precept to the concerned revenue authority for correcting the reason of the land.*
- (e) *Decree the costs of the suit in favour of the plaintiff and against the defendants.*
- (f) *To decree any other relief and reliefs which the plaintiff is entitled to under the law and equity.*

12. The defendants had filed their written statement -cum- counter claim in the suit, among others, claiming that the registered Sale Deed no. 2913/75 dated 18.02.1975 is illegal, fraudulent and *void ab initio* and not binding on the main defendants. It was stated that Late Yad Ali, who was the original pattadar of the suit land, died leaving behind 14 (fourteen) legal heirs and representatives, whose names are disclosed in paragraph-3 of the written statement, but out of them, only Halimon Nessa, Surutjan, Nabiran Nessa, Sajiran Nessa, Hamida Khatun, Kariman Nessa, Samela Khatun were impleaded in the suit. Accordingly, it was pleaded that the suit was bad for non-joinder of necessary party. The defendants had also stated that the plaintiff had purchased the suit land from the defendants under the guardianship of Nagar Ali, but Nagar Ali was not the guardian of the defendants and no Guardianship Certificate was obtained and therefore, title could not be claimed over the suit land and therefore, the suit was not maintainable.

13. The defendants had projected that they were occupying the suit land and accordingly, it was stated that the case of the plaintiff was barred by the law of limitation. Moreover, it was stated that the case of the plaintiff was fabricated and concocted, it is claimed that the entire 73 bigha land, covered by various dags stood in the name of Yad Ali, who had 2 (two) wives. Through one wife, namely, Halimon Nessa, he had 5 (five) daughters, namely, Surutjan, Sabiran, Nabiran, Shajiran, Hamida Khatun and from Rabia Khatun, the other wife, he had 3 (three) sons, namely, Najar Ali, Nur Islam, Nur Mohammad, and 6 (six) daughters, namely, Karimon Nessa, Shahiton Nessa, Ful Khatun, Shomela Khatun and Romela Khatun. Moreover, it was claimed that the said Yad Ali had also adopted one son, namely, Kitab Ali.

14. It was stated that during his lifetime, Yad Ali had gifted 6 Bigha

out of the Schedule-X land described in the written statement – cum- counter claim to Kitab Ali, the adopted son, who accepted 6 bigha land. In the lifetime, Yad Ali had donated 1 bigha land to Jnanada High School; 2 katha, 10 lecha land to Hatizana Masjid; and 2 bigha, 2 katha 10 lecha land was orally gifted to his sister Sokina Khatun and they had all taken possession of the gifted or donated land and out the balance land, and 5 bigha land was taken in construction of PWD road. Thus, Yad Ali was possessing 58 bigha land out of the total land described in Schedule-X and after his death the said 58 bigha land were inherited by two wives, three sons and eleven daughters. It was stated that out of Schedule-X land, Rabia Khatun and Halimon Nessa and were entitled to 7 bigha, 1 katha, 5 lecha land each and the three sons, Nagar Ali, Nur Islam and Nur Mohammad were entitled to get 5 bigha, 4 katha, 17 lechas land each and that each daughter was entitled to get 2 bigha, 4 katha, 18½ lecha land by way of inheritance. It was further stated that the defendants were minors when their father Yad Ali had died and their shares were sold illegally to the plaintiff.

15. It was further stated that on receipt of summons of the case, the defendants came to know that the suit land was purchased by the plaintiff through a registered sale deed dated 18.02.1975 from Nagar Ali and other defendants. Thus, it is stated that the defendants had never sold any land to the plaintiff and they have no knowledge about the registered sale deed by their deceased brother Nagar Ali. They also claimed that the plaintiff had never possessed the suit land and that the defendants were in possession of the suit land since the death of their father.

16. It was also stated that as the sale deed disclosed that Ful Khatun, Somela Khatun, Nur Mohammad and Ramela Khatun were minors and the land was sold under the guardianship of their elder brother Nagar Ali. It was

stated that Nagar Ali, having not obtained guardianship certificate had no right to sell the land in favor of the plaintiff. Accordingly, it was claimed that the defendants had the right, title and interest and possession of the suit land and the suit was liable to be dismissed and accordingly, by filing a counter-claim, prayed as follows:-

- a. *That the suit of the plaintiff be dismissed with cost.*
- b. *That a decree be passed declaring right, title, interest and confirmation of possession over the suit land in favour of the defendants.*
- c. *That a decree be passed that the plaintiff cannot claim any right, title, interest in the light of deed no. 2913/75 over the suit land.*
- d. *That a decree be passed declaring the deed no. 2913/75 is illegal, inoperative and as such liable to be cancelled and issue a precept to concerning authority regarding the cancellation of the said deed.*
- e. *That the cost of the counter claim be decreed in favour of the defendants and against the plaintiff and any other relief or reliefs to which the defendants may be deemed to entitle under the law and equity may also be deemed in favour of the defendants and against the plaintiff.*

17. On the basis of the pleadings, the learned trial court had framed the following issues for trial:-

1. *Whether there is cause of action for the suit as well as the counter claim?*
2. *Whether the suit is undervalued?*
3. *Whether the suit is bad for non-joinder of necessary parties?*
4. *Whether the suit is maintainable in the present form?*
5. *Whether the suit is barred by limitation?*
6. *Whether the suit is barred by law of limitation?*
7. *Whether the plaintiff has right, title and interest over the suit land by way of purchase? If so whether the plaintiff is entitled to a decree for khas possession over the suit land?*
8. *Whether the plaintiff is entitled to decree as prayed for?*
9. *Whether the defendants have right, title and interest and possession over the suit land?*
10. *Whether the sale deed no. 2913/75 is illegal inoperative and hence liable to be cancelled?*
11. *Whether the defendants are entitled for the decree as prayed for in the counter claim?*

12. *To what relief or reliefs the parties are entitled for?*

18. The learned trial court, upon examination of the pleadings and evidence on record, and decided the issues as follows:-

- a. In respect of the issue no. 1, it was held that there was cause of action for the suit.
- b. In respect of issue no.2, it was held that the value of the suit land was Rs.2,500/- in the year 1975 and the suit valued at Rs.70,000/- and court fee paid thereon was proper.
- c. In respect of issue no.3, the learned trial court had considered the defence that impleading of only the pattadars of dag no. 344 was not proper and held that all those against whom relief of declaration of right, title and recovery of possession is claimed and against whom dispossession is alleged have been impleaded and accordingly, it was held that the suit is not bad for non-joinder of necessary parties.
- d. In respect of issue no.4, it was held that suit for recovery of possession and declaration of title is maintainable under the Specific Relief Act.
- e. In respect of issue no.5, it was held that a suit for recovery can be filed within 12 years from the date when the title becomes adverse, but in this case the defendants had claimed that the plaintiff was never in possession and hence, the suit was barred by limitation and accordingly, it was held that whether the plaintiff ever possessed the suit land would be a question of fact, to be decided in the suit and if it was found that the plaintiff never possessed the suit land, the suit would fail for want of cause of action and thus, on face value, the suit

was held to be within limitation.

- f. Issue nos. 6 to 11 were taken up together. The learned trial Court, took into consideration the pleadings and evidence to the effect that the claim of the plaintiff is based on title to the suit land upon the sale deed (Ext.1) exhibited by Nagar Ali for self and his guardian and the other legal heirs of late Yad Ali. The learned Court had observed that the written statement and the counter claim does not reveal that the execution of Ext.1 is in dispute and further observed that the dispute is with regard to the authority of Nagar Ali to execute the sale deed and that another contention of the defendants was that the possession of the suit land was never delivered to the plaintiff. In this regard, it is submitted that the learned Trial Court, upon examination of pleadings and the evidence tendered by Tarubala Saha (plaintiff/PW-1); Jagadish Chandra Saha, PW-2, son of the plaintiff; Nurul Islam (PW-3), Jalal Uddin Mandal (PW-4); Kurban Ali (PW-5), Abdul Gofur (PW-6); who had claimed to be the persons who used to cultivate on the suit land for the plaintiff, held that on the point of verbal evidence, the plaintiff has parabolized her possession on the suit land.
- g. The learned trial Court had also considered the evidence of Nur Islam (DW-1); Romela Khatun (DW-2); Sukur Ali (DW-3); Ibrahim Ali (DW-4); Iqbal Hussain (DW-5);
- h. The learned trial Court held that though the *jamabandi* was not exhibited by the plaintiff, but the defendants had exhibited the *jamabandi* (Ext.Ka), which reflected that against sl. No.58, the name of plaintiff was mutated in the suit patta on 08.08.1988, which according to the plaintiff assumed importance because field mutation is granted

on the basis of actual possession of the parties. Accordingly, it was held that the existence of mutation raises a rebuttable presumption that it was granted because the plaintiff was in possession of the suit land. Accordingly, it was held by the learned trial Court that from oral as well as documentary evidence, the plaintiff had been able to establish that she has been in possession of the suit land and that such a label of probability excludes the probability of defendants ever possessing the suit land.

- i. The learned Court further held that so far as knowledge of plaintiff's title is concerned, the defendants were denying the existence of registered sale deeds in favour of the plaintiff but the existence of mutation in the same patta amounts to actual notice about the title and possession of the plaintiff being shown in the records of right and the defendants cannot possibly deny the existence of such a mutation entry. It was further observed that there is no pleading in the written statement regarding the mutation in the name of the plaintiff. Accordingly, it was held that the counter claim, so far as declaration of sale deed (Ext.1) as void is concerned, is barred by limitation. Accordingly, it was held that the sale of suit land to the plaintiff by Nagar Ali for self and for defendant nos.1, 4, 5 and 6 has attained finality and is not open to question any further and since the plaintiff has been able to prove her possession, the defendants' possession becomes improbable.
- j. Accordingly, issue nos. 6, 7 and 8 were decided in affirmative and issue nos. 9, 10 and 11 were decided in the negative.
- k. In respect of issue no.12, it was held that the plaintiff has proved her

title and possession over the suit land to the exclusion of the defendants and she has also proved her dispossession by cogent oral evidence and hence, the plaintiff was found entitled to relief for recovery of possession. However, it was held that the relief of partition cannot be granted in view of the finding that all the pattadars have not been joined in the suit. Accordingly, issue no.12 was partially decided in the affirmative. Hence, the suit was partly decreed on contest and the counter claim was dismissed. The title of the plaintiff over the suit land was declared and the plaintiff was entitled to recover vacant possession of the suit land by evicting the defendants, their men and agents.

19. The defendants had preferred an appeal, which was registered as Title Appeal No. 23/2011. The said appeal was dismissed by judgment dated 06.09.2011 by the learned Civil Judge, Barpeta.

20. The learned first appellate court, on the grounds of appeal, formulated the point of determination as under:-

Whether the decree passed by the learned trial court is just and proper or needs interference?

21. The learned first appellate court had observed in respect of issues nos. 1 and 2, observed that there was no serious challenge to the finding on the said issues and accordingly, held that the said issue was rightly decided. In respect of issue no.3, it was held that all the pattadars of the suit patta were not impleaded in the suit for partition and therefore, found no irregularity in the decision of the learned trial court on the said issue. In respect of issue no.4, relating to maintainability of the suit, it was held that the defendants had failed to disclose how the suit was not maintainable. Thus, as the plaintiff had filed

the suit for declaration of right and title and for recovery of possession by paying ad valorem court fees and the defendant had resisted the suit by filing counter-claim and accordingly, it was held that the suit was maintainable in the present form and it was held that the issue no.4 was rightly decided by the learned trial court. In respect of issue no.5, relating to whether the suit is barred by limitation, it was held that as the plea of the plaintiff was that after purchase, she was in possession of the suit land and was dispossessed on 15.02.2008, and the suit was filed on 14.05.2008. Accordingly, it was held that the suit was not barred by limitation and that the issue was rightly decided by the learned trial court.

22. In respect of the issue nos. 6 to 11, the learned first appellate court had discussed the pleadings and evidence of the plaintiff on record. Upon considering the registered sale deed no. 2913/75 (Ext.1), it was observed that the said sale deed was executed by five legal heirs of Yad Ali, by Nagar Ali, for himself and as guardian of 4 (four) minors, namely, Ful Khatun, Shomela Khatun, Nur Mohammad and Romela Khatun. As the sale deed was 30 (thirty) years old and under Section 90 of the Evidence Act, 1872, it was held that no separate proof of execution was required. It was observed that as per the sale deed, it was executed on their necessity of cash amount. On the basis of the said sale deed the plaintiff had prayed for declaration of right, title and interest and recovery of possession. On the other hand, the defendants had prayed for declaration of the sale deed as illegal, inoperative, and for cancellation of the same, as well as for declaration of their right, title and interest and confirmation of possession. In their counter-claim, the defendants had pleaded that they got knowledge of such sale only on receipt of the notice of the case on 01.08.2008, when defendants had obtained certified copy of the deed in question.

23. The learned first appellate Court, by referring to the provisions of Section 31 of the Specific Relief Act, 1963 and Article 59 of the Schedule to the Limitation Act, 1963, held that the counter-claim was filed within time. However, on appreciating the evidence of the PWs, it was observed that DW-2, Romela Khatun, one of the seller had admitted that she did not know who sold the land to whom and she could not say that the suit is for which land the suit was pending and moreover, she had admitted that Noor Islam possessed his share and that Noor Islam (PW-3) and Kurban (PW-5) had cultivated the land on 'adhi' for others. DW-3 had also admitted in his cross-examination that Noor Mohammad had constructed house on the land only about 6-7 years back. Moreover, DW-4 had also admitted in his cross-examination that the defendants had constructed their houses in the suit land only about 3-4 years back and he as well as DW-5 that Noor Islam (PW-3) and Kurban (PW-5) had cultivated the land on adhi basis. Accordingly, it was held that that part of the evidence of the DWs supported the evidence of the plaintiff's side regarding possession of the suit land through PW-3 and PW-5. Accordingly, it was held that from the oral evidence coupled with Ext.1, it is proved that the plaintiff had entered into the suit land in the year 1975 and continued to be in possession till evicted by the defendants and thus, the plaintiff had possessed the suit land through PW-3 and PW-5 for 30-33 years. It was observed from the evidence of DW-2 that her age was 58 years and during this period she lived in the same village. The learned Court arrived at a finding that DW-1 was not the party to Ext.1 and he possessed land outside the suit land. It was held that the vendors knew that suit land was possessed by others, i.e. PW-3 and PW-5 and they did not raise any objection even after 3 (three) years of attaining majority or even after within 12 (twelve) years of any such possession by plaintiff. It was held that the

pleading that they came to know of the sale after obtaining certified copy of sale deed was held to be unreliable and thus, disbelieved and it was held that from the oral evidence, as discussed, it was clear that the plaintiff was in possession till the date of eviction which was open to all.

24. The learned first appellate Court held that as per Mohammedan law, father and grandfather are guardians of minors and other relatives of minors, e.g., mother and brother are de-facto guardian only, who would not have any right to sell the property without being appointed as guardian by a Court of law. Accordingly, the submission that de-facto guardian can sell the property owing to necessity, was rejected and such transaction was held to be void and not voidable. In this regard, reliance was placed on the decision of the Supreme Court of India in the case of *Mohammad Amin v. Vakil Ahmed*, MANU/SC/0080/1952: AIR 1952 SC 358, which was followed in the case of *Syed Shah Ghulam Ghouse Mohiuddin & Ors. V. Syed Shah Ahmed Mohiuddin Kamisul Quadri (Dead) by LRs.*, MANU/SC/ 0486/1971: AIR 1971 SC 2184. However, as the plaintiff could show that she was in possession over the suit land for more than 30 (thirty) years, on the point that whether a person can acquire title under a void and/or partially void instrument only because the other side did not come forward to challenge the instrument within time, by relying on the case of *Hamida Begum @ Alo Bibi v. Umran Bibi & Ors.*, MANU/WB/0393/2008: 2008 (3) CHN 639, decided by Calcutta High Court, wherein it was held that the plaintiff who acquired title through an alleged void transaction was out of possession and prayed for recovery of possession and such suit was decreed and the defence was found to be barred as no suit was filed by the defendant for avoiding the transaction after attaining majority within the period of limitation. Accordingly, it was held that though the sale deed (Ext.1) was

void, but due to non-raising of objection by the defendants or affected parties within the period of limitation, their claim over the suit land for declaration of their right, title and interest and also for cancellation of the instrument, being void and inoperative as hit by Article 59 of the Limitation Act. It was held that the defendants ought to have raised their claim within 3 (three) years of attaining majority or within 12 (twelve) years of delivery of possession i.e. latest by 1987 and that by not claiming the same even after such knowledge, the counter-claim as preferred by defendant so far it relates to declaration of right, title and interest and prayer of cancellation of the sale deed of the plaintiff is barred under Article 59 of the Limitation Act.

25. Thus, issue nos. 6, 9 and 10 was held to have been rightly decided by the learned trial court to the effect that the defendants are not entitled for the reliefs as prayed for in the counter-claim and the claim of the defendants was held to be barred by limitation. In respect of issue no. 7, regarding declaration of right, title and interest of the plaintiff, section 27 of the Limitation Act had a role to play and it was held that the plaintiff, in spite of having a void sale deed for the $\frac{4}{5}$ th share, has perfected her title by way of inaction of the defendants within the period of limitation and thus, the sale has become final and binding on the parties affected by it. Hence, it was held that the substituted plaintiffs (on death of original plaintiff) are entitled to get the declaration of their right, title, interest for the same and it was held that the learned trial court had rightly decided issue no.7 in favour of the plaintiffs.

26. It was further held that in view of the decision on issue nos. 6, 7, 9 and 10, the learned trial court had rightly decided issue nos. 8, 11 and 12, which relates to relief in suit and counter-claim. As a result, the appeal was

dismissed and the decision of the learned Trial Court was affirmed.

27. As stated hereinbefore, the instant appeal was admitted for hearing on the following substantial question of law- *“Whether the Lower Appellate Court committed grave error of law in holding that the plaintiff has right, title and interest over the suit land, although the said sale deed no. 2913/75 dated 18.02.75 by which the plaintiff purchased the suit land is void.”*

28. The Principles of Mohammedan Law by Sir Dinshaw Mulla does not contain anything from which it can be said that there exists a concept of joint family under Mohammedan Law. Yet, existence of fiduciary relationship exists. The High Court of Telangana, in the case of *Mohd. Naseeruddin Ahmed Khan (Died) v. Mohd. Muzefferuddin Mahmood Khan*, 2024 3 ALT 313; (2023) 0 Supreme(Telangana) 968, observed as follows:-

23. The Apex Court in the case of Mohammadbhai Kasambhai Sheikh vs. Abdulla Kasambhai Sheikh, (2004) 13 SCC 385, held that succession in the Mohammedan Law is to a specific share as tenants in common. Mohammedan heirs are not coparceners and he has merely a right to defend a minimum share in each part of the estate. In other words, the concept of joint family is reign to Muslim Law. Further, Mohammedan Law does not recognise theory of representation. Interest of each heir is separate and distinct. There is nothing contrary to law for Mohammedan adult male members of a family carrying on trade for the benefit of all the interested members, including minors and females. When the adult male member holds assets for carrying on business on behalf of all the persons interested, then he stands in fiduciary relationship to such other persons. If the plaintiff makes out a case of partnership or agency or fiduciary relationship, which is permissible to contend that the property purchased in the name of one is for the benefit of all.

29. Therefore, it is seen that the finding of the learned Trial Court, as modified by the finding by the learned first appellate court that the sale deed was void in respect of $\frac{4}{5}$ th share is the correct appreciation of Mohammedan

Law, which does not recognize Nagar Ali, son of Yad Ali, who is also the elder brother of other four minor siblings, to act as their guardian so as to validly sell-off the land covered by the registered sale deed no. 2913/75 dated 18.02.1975. Thus, the learned trial court is found to have correctly decided the issue no. 10 in the negative, meaning thereby that the sale deed no. 2913/75 dated 18.02.1975 (Ext.1) is valid. The said decision of the learned Trial Court has been affirmed by the learned First Appellate Court, by explaining that the said sale deed was valid so far as it relates to one-fifth share of Nagar Ali. However, in view of the possession that the plaintiff enjoyed over the suit land for 30-33 years, the learned Trial Court had decided issue no. 7 in the affirmative and thus, declared the right, title and interest of the plaintiff over the suit land and also entitled to recovery of possession of the suit land. The said decision was affirmed by the learned Trial Court. This Court also concurs with the concurrent finding by the learned Trial Court and the learned First Appellate Court on issue nos. 7 and 10, because the plaintiff has been able to prove that she was in possession of the suit land since purchasing it and cultivating through adhiar, i.e. PW-3 and PW-5. The evidence of the PW-1, PW-3 and PW-5 remains impeached during cross-examination.

30. Both the learned Courts are found to have given sound and acceptable reasons to hold that said sale deed no. 2913/75 dated 18.02.75, by which the plaintiff purchased the suit land is void, which is clarified in the finding of the learned First Appellate Court that the said sale deed was void in respect of $\frac{4}{5}$ th share. Thus, the said sale deed was never bad in respect of $\frac{4}{5}$ th share of Nagar Ali. However, as the plaintiff was found to be in possession of the suit land since last 30-33 years from the date of judgment and decree, passed by the learned Trial Court. Accordingly, the plaintiff has been able to

perfect her right, title and interest over the suit land and thus, the concurrent finding by both the learned courts that the plaintiff (now the substituted plaintiffs) was entitled to recovery of the suit land, stands on sound legal footing.

31. The learned First Appellate Court has discussed the provisions of Article 59 of the Limitation Act, 1963. In this regard, reference may also be made to the provisions of Section 27 of the Limitation Act, which reads as under:-

27. Extinguishment of right to property.- At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

32. In this regard, the concurrent finding of fact as regards the issue no.5 regarding period of limitation in respect of the plaintiff to institute the suit is to the effect that the plaintiff was dispossessed from the suit land on 15.02.2008 and the suit for recovery of khas possession, based on title, was filed on 14.05.2008, which was well within limitation. Moreover, while discussing issue nos. 6 to 11, the concurrent finding of the learned Trial Court and the learned First Appellate Court, in so far as it relates to possession of the suit land by the defendants is to the effect that DW-2 could not say during her cross-examination that the suit is pending for which land and that Nur Islam (defendant no.1/DW-1) had possessed his share of land elsewhere and that DW-3, DW-4 and DW-5 had admitted during cross-examination that PW-3 and PW-5 had cultivated the land as *adhiar* on *adhi* basis. Therefore, it was held that the plaintiff was in possession till he was dispossessed from the suit land and that the plea of the defendants that they had come to know about the registered sale deed no. 2913/75 dated 18.02.1975, after receipt of summons of

the case and on obtaining certified copy of the sale deed on 01.08.2008, was disbelieved. Accordingly, both the learned Courts had held that the counter-claim of the defendants was barred by limitation. Therefore, the concurrent finding on issue nos. 6 to 11 by both the learned Courts is not found to be incorrect and/or perverse. In this regard, the Court finds support from the decision of the Supreme Court of India in the case of *Sujauddin v. Babasaheb*, (2002) 10 SCC 115, where the facts are somewhat similar. In the said case, the respondent-plaintiff became major in 1970 but filed his suit for declaration in 1984. On such facts, it was held that the High Court had erred in confirming the decree passed by the first appellate court in respondent's favour without determining the effect of section 27 of the Specific Relief Act, 1963 and Article 65 of Limitation Act, 1963.

33. The appellants have not been able to demonstrate that the learned trial court or the learned first appellate court had committed any error in appreciating the pleadings and evidence on record or that any part of their respective finding on any issue was incorrect or perverse, for not considering the pleadings and evidence or for taking into consideration any extraneous materials on record.

34. Accordingly, the substantial question of law framed by this Court is answered by holding that the learned Trial Court and the learned First Appellate Court are not found to have committed any grave error of law in holding that the plaintiff has right, title and interest over the suit land.

35. It is a well settled legal proposition that while deciding a Second Appeal under Section 100 of the CPC, the concurrent finding of fact is liable to be interfered with when a very important piece of evidence in the nature of admission by the defendant has been overlooked by the courts below. In this

regard, the decision of the Supreme Court of India in the case of *Deva v. Sajjan Kumar*, (2003) 7 SCC 481 may be referred to.

36. Hence, this appeal fails and the same is dismissed with cost.

37. The Registry shall draw up a decree of dismissal of the appeal and send the same to the learned Trial Court for their record.

38. Let the records of the learned Trial Court and the learned First Appellate Court be returned back along with a copy of this judgment and order.

JUDGE

Comparing Assistant

Private Secretary