

GAHC040015552024

2025:GAU-AP:1266



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

Case No. : RSA/4/2024

Dabin Soki @ Tabin Soki
Son of Late Nada Soki, a resident of Prem Nagar (B Sector) Naharlagun, PO and PS Naharlagun, Papum Pare District, Arunachal Pradesh.

VERSUS

Smti Yama Yekar
Wife of Tapu Yekar, Prem Nagar (B Sector) Naharlagun, PO and PS Naharlagun, Papum Pare District, Arunachal Pradesh.

Advocate for the Petitioner : Muk Pertin, Senior Advocate, Mukbom Pertin, Dusu Rillung, Tshering Yangzom Bhutia, Dakjum Riba, Rimo Riba, Karyom Dabi

Advocate for the Respondent : Puto Bui, K Gao, Honi Tana Tara, K Chotton, Oken Duggong, Nikita Danggen, Tashap Nima

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER (CAV)

Date : 13-11-2025

Heard Mr. M. Pertin, learned Senior Counsel assisted by Mr. K. Dabi, learned counsel for the appellant. Also heard Ms. N. Danggen, the learned counsel for the respondent.

2. The background facts leading to filing of the present appeal are briefly

stated hereinbelow:-

(i) The respondent herein as plaintiff filed an injunction suit against the appellant herein as defendant for restraining the appellant permanently from encroachment of her Govt. allotted land measuring 374 Sq. Mtrs. located at Prem Nagar, 'B' Sector, Naharlagun by way of a mandatory injunction. The same was registered as Title Suit No. 30/2017. The facts as have been narrated in the plaint are that in the year, 2005, the appellant persuaded the respondent to buy a plot of land measuring 374.5 Sq. Mtrs. located at 'B' Sector, Naharlagun. Accordingly, the aforesaid land was sold to the appellant for an amount of Rs.2,20,000/- (Rupees Two Lakhs Twenty Thousand) only and a deed of agreement dated 18.02.2005 was executed between the appellant and the respondent. The appellant in acknowledgment of the receipt of the aforesaid amount, executed a money receipt dated 18.02.2005. At the time of the aforesaid purchase, the respondent was unaware of the fact that the actual owner of the land was the ex-wife of the appellant, namely, Smti. Yama Soki as the land was a Government allotted land to her. Accordingly, the respondent constructed an Assam Type house on the aforesaid land and rented it out by procuring electricity and water connection.

(ii) As the respondent came to know that the aforesaid land was in fact a Government allotted land, and the same can only be transferred by way of a gift, a gift deed dated 24.01.2005 was executed between the respondent and the aforesaid Smti. Yama Soki for an area measuring 374 Sq. Mtrs out of total area of 450 Sq. Mtrs. Accordingly, land measuring 374.5 Sq. Mtrs was gifted to the respondent. Thereafter, the respondent applied before the competent authority for a formal transfer and allotment of the aforesaid land measuring 374 Sq. Mtrs by submitting the original gift deed and deed of agreement dated 18.02.2005. The competent authority accordingly approved the application of the respondent on 13.04.2006 and the Government Land Pass Book No. NLG/9/77/06 was issued to the respondent. The respondent has been paying the revenue for the aforesaid land to the Government since such allotment.

(iii) The respondent was in a peaceful possession of the aforesaid land and there was no disturbance from anyone including the appellant. The problem arose when Naharlagun General Hospital was upgraded to Tomo Riba Institute of Health and Medical Sciences (TRIHMS) and there was a sudden change in the attitude of the appellant as he started to pick up quarrels with the respondent as well as her tenants for petty issues. The appellant encroached the respondent's land by threatening her tenants and due to that, the tenants vacated their rooms. Faced with the aforesaid situation, on a complaint, the Commissioner, Capital Complex, Itanagar directed the eviction of the appellant but the appellant never complied with such directions. Rather, the appellant forcefully encroaching over the respondent's land illegally set up a wine shop and constructed one RCC structure over her portion of land.

(iv) On 26.07.2017, the respondent approached the Addl. District Magistrate, Capital Complex, Itanagar and the Officer-in-Charge of Naharlagun Police Station was directed to do a verification of the land. Accordingly, the aforesaid Investigating Officer after recording the statements of the appellant, respondent and other witnesses, submitted a report on 31.07.2017, wherein, it was specifically stated that the appellant had encroached upon the land of the respondent but surprisingly, instead of initiating an action against the appellant, the respondent was directed to approach the competent authority for any relief.

(v) Faced with the aforesaid situation, the respondent as a plaintiff filed the Title Suit No. 30/2017 with a prayer for following reliefs:

(a) A decree declaring the wine shop and RCC structure of the appellant/defendant as illegal and constructed within allotted plot of plaintiff's land;

(b) A decree to dismantle the wine shop and RCC building structure of the defendant in the allotted plot of the plaintiff's land or to order, direct the department of land, Govt. of Arunachal Pradesh, Itanagar to verify the actual

encroachment of plaintiff's plot of land;

(c) Direct the defendant to pay compensation as to loss of income and damages to the rent house of the plaintiff and cost of the present suit.

(d) Any other reliefs.

(vi) The appellant/ defendant filed a written statement in the aforesaid Title Suit denying the claims of the plaintiff and categorically pleaded that the appellant/defendant has developed the land through his hard earned money and at present, there exists structures/houses belonging to him under his possession, namely, a three (3) storied RCC building, a Kutcha house, two (2) shops (a grocery and wine shop), one RCC toilet, a Kutcha house illegally constructed by the respondent/ plaintiff.

(vii) The appellant/defendant pleaded that the respondent/plaintiff forged his signature and in fact, the respondent/Plaintiff never purchased the aforesaid 374.5 Sq. Mtrs of land from the appellant/defendant and the agreement dated 15.02.2005 is a fabricated document.

(viii) The appellant/defendant pleaded that he had divorced his wife Smti Yama Soki on 29.10.2000 by a Keba proceeding held at Naharlagun and as per the divorce settlement deed, Smti. Yama Soki should not claim the land and other properties of the appellant/defendant. It was pleaded that the aforesaid Yama Soki later on remarried and therefore, Yama Soki is not the owner and in possession of the suit land. Therefore, it was pleaded that the so-called gift deed executed by Yama Soki is invalid, void abinitio, illegal and not binding upon the appellant/defendant. It was pleaded by the appellant/defendant that the aforesaid Yama Soki could not have legally gifted the land to the respondent/plaintiff as she was not in possession of the land.

(ix) The appellant/defendant denied having received a sum of Rs.2,20,000/- (Two Lakhs Twenty Thousand) only from the respondent/plaintiff. It was pleaded that the aforesaid deed of agreement relied upon by the respondent/plaintiff was a forged document and the signatures on them are forged by the respondent/plaintiff.

3. In addition to the filing of the aforesaid written statement by the appellant/defendant, the appellant/defendant filed a cross suit, namely, Title Suit No. 39/2017 with prayers for the following reliefs:-

(a) The allotment/ mutation of land made to defendant No. 2 totalling an area of 450 Sq. Mtrs as null, void abinitio and illegal;

(b) The gift deed of an area measuring 374.5 Sq. Mtrs made to the defendant No. 2 as null, void abinitio and illegal and not binding upon the plaintiff and subsequent transfer/ approval of land allotment based on the said gift deed as null, void abinitio and illegal;

(c) The sale agreement deed dated 18.02.2005 as fake/fabricated/ manipulated and null, void abinitio and illegal and not binding upon the plaintiff;

(d) The plaintiff is in physical possession of the land measuring 450 Sq. Mtrs.

4. In the aforesaid Title Suit No. 39/2017, the appellant as plaintiff had pleaded as follows:-

(i) That since 1985, he is in peaceful possession of the land measuring 450 Sq. Mtrs at B-Sector, Prem Nagar, Naharlagun (the same land which also includes the subject matter of the Title Suit No.30/2017 filed by the appellant);

(ii) That he and his wife i.e. the defendant No. 2 in the Title Suit

No.39/2017 were divorced on 29.10.2000 and as per the settlement deed, the defendant No. 2 cannot claim landed and other properties of the respondent;

(iii) That in the year, 2005, the respondent/plaintiff approached him to allow her to construct a one room kutch house for staying whenever she visits Capital Complex. Accordingly, he received Rs.1,50,000/- (Rupees One Lakh Fifty Thousands) only as an advance/ part payment at Naharlagun in presence of witness, Shri Taru Gumja and a money receipt was executed between the parties.

(iv) That in the year, 2010, he got 76 square meters for residential purpose out of the total suit land transferred by way of gift deed from his ex-wife/defendant No. 2 and land Pass Book No. NLG-09/61/2012 was issued to him;

(v) Subsequently, he converted the 76 square meters plot from residential to commercial vide allotment No. LRB-095136/200 (pt) dated 30.09.2011 and he was kept in dark about the gift deed and subsequent transfer of land to respondent/plaintiff;

(vi) That it is only after completion of RCC building that the respondent/plaintiff started claiming the land;

(vii) That thereafter, he received the notice of Title Suit No.30/2017. It is only after that he for the first time learnt that his ex-wife/defendant No. 2 had got the allotment for 374.5 square meters.

(viii) That he has never sold any land to the respondent/plaintiff as shown in the sale agreement dated 18.02.2005 and the respondent/plaintiff has forged his and other witnesses' signatures;

(ix) that he has neither received Rs.2,20,000/- (Rupees Two Lakhs Twenty Thousands) only as consideration of land nor received Rs.35,000/- (Rupees Thirty Five Thousands) only for

boundary wall as mentioned in the alleged sale deed. The agreement dated 18.02.2005 has been forged and fabricated by the respondent/plaintiff.

5. The learned Trial Court i.e. the learned Civil Judge, Senior Division vide order dated 28.08.2018 amalgamated the two suits i.e. Title Suit 30/2017 and Title Suit No. 39/2017 and on the basis of the pleadings and documents relied upon by the parties, the learned Trial Court framed the following issues:

(i) Whether the suit is maintainable in present form and in it's context?

(ii)Whether the plaintiff has got allotment of land measuring about 374.5 Sq. Mtrs. located at 'B' Sector, Naharlagun in Prem Nagar, purchased /gifted by defendant No. 1 on 15.02.2005?

(iii)Whether the defendant has encroached upon the plaintiff's allotted land by constructing permanent structure?

(iv)Whether Smti. Yama Soki @ Tarh is competent to gift the land to the plaintiff which is now allotted in the name of the plaintiff?

(v)Whether the plaintiff had forged the signatures of defendant No. 1 in the sale deed to get land belonging to defendant to be allotted in her name?

(vi)Whether the plaintiff is entitled to a decree as prayed for?

(vii)Any other relief or reliefs parties are entitle for?

6. Six witnesses were examined and seven documents were exhibited on behalf of the respondent/plaintiff whereas five witnesses were examined and five documents were exhibited on behalf of the appellant/defendant. After completion of the trial, the learned Trial Court, vide it's judgment dated 16.05.2023 decided the issue number nos. 1, 4, 6 & 7 in favour of the appellant whereas, the issue

nos. 2, 3 & 5 were decided in favour of the respondent and consequently, the Suit was dismissed by ordering that the respondent/ plaintiff is not entitled to any relief.

7. Thereafter, the respondent/plaintiff preferred an appeal before the Court of the District Judge, Yupia by filing Appeal No. 3/2023. The learned District Judge, vide it's judgment and order dated 09.09.2024, reversed the findings of the Civil Judge, Senior Division, Yupia and all the issues were decided in favour of the respondent/plaintiff.

8. Being aggrieved, the instant appeal being RSA No. 04/2024 is preferred by the appellant, i.e. Shri Dobin Soki @ Tabin Soki amongst others, on the following grounds:-

(i) That the Appellate Court erred in law in concluding that mere eviction suit is maintainable despite the fact that the plaintiff is not possession of the suit land. It is a settled position of law that mere injunction suit without declaration of possession/ title is not maintainable and the remedy is to file a possessory suit or title suit. The plaintiff being not in possession cannot seek the relief of injunction simpliciter without claiming the relief of possession and title;

(ii) that the Appellate Court erred in coming to a conclusion that since the respondent's name is already registered in the Government records, she is in possession of the land allotted to her by the Government and therefore, she need not require to file a title suit. The entry in revenue records or mere mutation of land does not give automatic ownership and revenue record is only for fiscal purpose for paying land premium and land rent. The

mutation in revenue record neither creates nor extinguishes title nor does it have any presumptive value on title.

(iii) The Appellate Court erred in deciding that the appellant did not raise any complaint before the Deputy Commissioner against the allotment given to the respondent which implied that the defendant is not against the allotment of land in favour of the appellant and the said allotment order is still in force as not have been challenged. In fact, the appellant has come to know about the aforesaid allotment only through the Title Suit No. 30/2017 and therefore, the appellant was not in a position to challenge the aforesaid allotment not being aware of such allotment.

(iv) The Appellate Court erred in deciding the issue No. 3 i.e. whether the appellant had encroached upon the land of the respondent by constructing permanent structures. The Appellate Court wrongly relied upon the report of the I.O. of Naharlagun Police Station submitted to Addl. District Magistrate, Itanagar dated 21.07.2017 and other documents like Status report of Deputy Commissioner, Itanagar, vide order no. DC/ICC/JUD-88/2016 dated 08.12.2016. The aforesaid reports were neither exhibited nor proved during the trial.

(v) The Appellate Court erred in reversing the finding of the Trial Court in regard to the issue No. 4, whether Smti. Yama Soki is competent to give the land to the respondent. The respondent neither exhibited the purported gift deed in between her and the ex-wife of the appellant nor brought the ex-wife before the Court to prove the gift deed. Therefore, the Appellate Court erred in

relying upon an un-exhibited and un-proved document which is contrary to the settled legal position.

(vi) The Appellate Court erred in coming to a conclusion that Naharlagun Welfare Women Committee has no authority to decide on ownership of land by any woman that has been granted to her by the Government. The Kebang settlement was conducted under the supervision of Head Gaon Burah as per the consent of both the husband and wife and accordingly, the divorce settlement was arrived at. As per the divorce settlement, the ex-wife of the appellant agreed to forego the land by agreeing not to interfere with the properties of the appellant. She had agreed for separation from the land and therefore, she did not have any right or power to gift the aforesaid land to the respondent.

(vii) The Appellate Court erred in holding the document of the Department of Land Management, Itanagar dated 13.04.2006 as a valid document. Though no such document was exhibited and proved during the trial.

(viii) The Appellate Court erred in coming to a conclusion that the tenants of the respondent were threatened and chased away by the appellant as the evidence available on records are contrary to the aforesaid findings. The Appellate Court erred in coming to the finding that the appellant had admitted to have received Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) only from the respondent and he was ready to repay the same and thereby,

admitted to have sold the land to the respondent.

(ix) The Appellate Court erred in deciding the issue No.6, whether the plaintiff is entitled to decree as prayed for. The purported gift deed and report of S.I. G. Basar were relied on by the Appellate Court which were not exhibited or proved by the respondent/plaintiff in the course of trial.

(x) The Appellate Court has erroneously directed the Department of Land, Govt. of Arunachal Pradesh to verify actual encroachment of the respondent's plot of land and further directed the O.C., Naharlagun Police Station to take proper steps to dismantle the wine shop and RCC structures of the appellant in the encroached allotted plot of the respondent. In fact, such order is erroneous as any eviction on encroachment could be done only in terms of the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupant) Act, 2003.

(xi) The Appellate Court erred in passing an order to pay compensation of Rs.1,00,000/- (Rupees One Lakh) only to the respondent without having any materials and evidence to suggest any loss of income of the respondent.

9. While admitting the instant RSA, the following substantial questions of law were framed for consideration in this appeal:-

(i) Whether the first Appellate Court has acted contrary to express provisions of law or binding precedents or ignoring the same in reversing the finding of the Original Court that the suit of mere injunction is not maintainable when the title is in dispute;

(ii) Whether allotment of Government land by issuing a Pass-Book confers or creates absolute title in favour of the allottee and whether allotment/Pass-Book is a mutation certificate or entry in records or mere mutation of land for payment of land premium and rent; and

(iii) Whether a claim can be laid that substantively, there was no pleadings of recovery of the possession and consequential relief when the appellant/defendant knew the case to be that of recovery of possession and consequential reliefs?

10. Mr. M. Pertin, learned Senior Counsel appearing for the appellant submits that it is a settled position of law that a mere injunction without declaration of possession/title is not maintainable and the remedy of the respondent/plaintiff is to file Possessory Suit or Title Suit. He submits that the respondent who is out of possession cannot seek the relief of injunction simpliciter without claiming the relief of Possession and title. Therefore, he submits that the Title Suit filed by the respondent is not maintainable. He submits that from the evidence of all the witnesses, namely, PW 2 Shri Tayom Mothu, PW 4 Shri Toko Soul, PW 5 Shri Likha Rebia, PW 6 Smti. Devi Yekar Toko and PW 7 Shri Mission Yekar in their examinations-in-chief had categorically admitted that the Assam type house, i.e. the Kutcha house is not in possession of the respondent. He submits that the respondent/plaintiff had not specified how much areas of land has been allegedly encroached by the appellant/defendant and therefore, it is very difficult to defend the case without knowing the exact claim of the appellant/plaintiff. He further submits that there exists structures of the appellant/defendant since 1985 and an area of 76 Sq. Mtrs has been allotted in the name of the appellant/defendant and the same are disputed facts. He submits that Order VII Rule 3 of Code of Civil Procedure, 1908 provides that where the subject matter of a suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and the plaint should specify the boundaries and numbers. He submits that the pleadings made in the plaint in the instant case are vague and not specific and as

such, the suit is not maintainable. Therefore, he submits that unless the land claimed is specified in the plaint, the recovery and eviction of suit itself is not maintainable. To buttress his arguments and submissions, the learned Senior Counsel relied on the case of **Anathula Sudhakar-Vs-P. Buchi Reddy and Others**; reported in **(2008) 4 SCC 594** and **T. V. Ramakrishna Reddy-Vs-M. Mallapa** and Others, reported in **(2021) 13 SCC 135**.

11. The learned Senior Counsel submits that in the State of Arunachal Pradesh there are two types of land documents which have been issued by the Government, namely, (i) Land Possession Certificate (LPC) for private ownership and (ii) Allotment on Lease of Government Land/Pass-Book for 30 years (i.e. Land acquired by the Government as per Land Acquisition Act). The learned Senior Counsel submits that as per Section 88 (1) (A) of the Arunachal Pradesh (Land Settlement and Records) Act, 2000, when an LPC is issued to an individual, he becomes the owner of the land, however, as per proviso to section 88, all such land allotment/ Lease Land of Government land/ Pass-Book shall remain as lease only without having clear title over the land. Therefore, he submits that the land Pass-Book/ Allotment is only for fiscal purpose, i.e. for collection of revenue and not for conferring any ownership.

12. To strengthen his arguments, the learned Senior Counsel relied on the following Judicial Pronouncements of the Hon'ble Apex Court:

(i) Suraj Bhan and Others-Vs-Financial Commission and Others; reported in **(2007) 6 SCC 186**;

(ii) P. Kishore Kumar-Vs-Vittal K. Patkar; reported in **2023 SCC Online SC 1483**;

(iii) Balwant Singh and Another-Vs-Daulat Singh and Others; reported in **(1997) 7 SCC 137**.

13. In view of the aforesaid submissions, the learned Senior Counsel submits that the Judgment and Order dated 09.09.2024 and Decree dated 16.10.2024 passed in Appeal No. 03/2023 by the District Judge, Yupia, Papumpare, Arunachal Pradesh is liable to be set aside and quashed.

14. Per contra, Ms. N. Danggen, the learned counsel appearing for the respondent submits that the first Appellate Court clearly held that the prayers in the original pleadings were substantially claiming the reliefs of possession and other consequential reliefs. She submits that in the prayer portion, a clear prayer had been made for demolishing the structure of the appellant and also the property have been claimed on the basis of the allotment order/Pass-Book in which the schedule of the land is clearly given. She submits that the law is settled that even if the pleadings are not very specific but by implication if the parties are aware that such plea is involved then the mere fact that the plea was not expressly taken in the pleadings would not disentitle a party from relying upon it if it is satisfactorily proved by evidence. She submits that where substantial matters relating to the title of both the parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been laid about them, than the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. She submits that what the Court has to consider in dealing with such an objection is "did the parties know that the matter in question was involved in the trial, and did they lead evidence about it". If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it that undoubtedly would be a different matter. She submits that in the instant case, the parties knew about the issue and evidences were led in that effect. Therefore, she submits that only on the ground that the specific word "repossession" was not used, it cannot be

claimed that the issue was not adjudicated upon. She submits that the parties specially the parties, including the appellant knew that the issue was covered by necessary implication.

15. The learned counsel appearing for the respondent submits that the first Appellate Court did not act contrary to the settled position in law inasmuch as, it had clearly found that the law as stated would be applicable only if there is a cloud over the title of the respondent and in the instant case, it was found that there existed no cloud over the title of the respondent.

16. The learned counsel appearing for the respondent submits that there is a clear finding both by the learned Trial Court as well as the first Appellate Court on issue no. 3, i.e. whether the defendant has encroached upon the plaintiff's allotted land by constructing permanent structure and that the appellant did encroach upon the land of the respondent on the basis of the evidence on record. She submits that even if the report of the Police in this regard was not exhibited there was clear finding on the issue as per the statements of the witnesses examined. Therefore, she submits that it cannot be said that the respondent was never in possession as claimed by the appellant in the instant appeal. She submits that, in fact, this fact has not even been controverted in the instant appeal.

17. The learned counsel for the respondent relied on the following cases to buttress her arguments and submissions:

*(i) **Bachhaj Nahar-Vs-Nilima Mandal and Another**, reported in (2008) 17 SCC 491;*

*(ii) **Muddasani Venkata Narsaiah-Vs-Muddasani Sarojana**; reported in (2016) 12 SCC 288.*

18. The learned counsel appearing for the respondent further submits that the

allotment Pass-Book is not merely record of rights of individual holdings of land. She submits that since the land is essentially a Government land and under the Capital Complex of Arunachal Pradesh Township, allotment is the only way one can hold land and that too, under a lease. The allotment Pass-Book, she submits, is issued to respective allottees/ lease holders and that becomes the basis of a respective rights over an allotted land. Therefore, she submits that the allotment Pass-Book is not merely a record of rights to be entered into a revenue register and no change/ mutation can be done in favour of any person unless the concerned Government approves and allots any person a Government land. She submits that it is the Government who is the owner of the land under township areas who can confer/allot a land and who can also cancel the allotment order. She submits that rights over land is created and extinguished by the authority of the Government only. She submits that since it is not a heritable land and is under the discretion of the Government, no ownership rights can be claimed by any person other than the Government itself.

19. The learned counsel appearing for the respondent submits that the pervasive rights and control over Government land in terms of provisions of Arunachal Pradesh Land Records and Settlement Rules, 2012 is clear from Rule 124 (7) that no Government land once allotted can be transferred without the permission of the Government. She submits that as per Rule 133 (8), the Government is at liberty to cancel an allotment once given. In view of the aforesaid provisions, she submits that the status of the Government land is different from other private land which can be entered into record of rights like Jamabandi Patta or Khata. She further submits that the practice of record of rights like Jamabandi, Patta or Khata are yet to be implemented in the State of Arunachal Pradesh, as survey for the same is still under process. She submits that in terms of the Rules, 2012, in case of transfer of allotted lands, there is no specific mode of transfer except the approval/ permission of the Government.

She submits that once such approval is given, the question of gift deed being registered or not as raised by the appellant, is irrelevant. In support of her arguments and submissions, the learned counsel has relied on the case of **Md. Akbor Ullah-vs-Md. Rahmat Ullah and Others**, reported in **(2022) SCC Online TRI 579**, wherein, it was held that in cases of allotment of Government land, it is not for the Court to question such authorization but for the appropriate authorities look into the matter in case of any complaint.

20. In view of the aforesaid submissions made, the learned counsel appearing for the respondent submits that the instant appeal is bereft of any merit and is liable to be dismissed.

21. Having heard the submissions made by the respective counsel appearing for the parties, I have carefully gone through the Memo of Appeal, the grounds mentioned therein, the impugned Judgment and Order dated 09.09.2024 and Decree dated 16.10.2024 passed by the learned District Judge, Yupia, Papumpare District as well as the Judgment and Decree dated 16.05.2023 passed by the learned Trial Court, i.e. learned Civil Judge, Senior Division, Yupia in Title Suit No. 30/2017. I have also gone through the decisions referred by the learned counsel for both the parties and the written arguments submitted by the parties.

22. The substantial questions of law which have been framed in the instant RSA, the substantial question of law under 1 & 3 being interrelated and the findings of question no. 3 will have a bearing on question no. 1, both the questions are taken for examination together.

23. The learned Trial Court while considering the issue no. 1 that was framed in the Title Suit, i.e. whether the present suit is maintainable in present form and in present context, came to a finding that since the title is disputed and plaintiff is unable to establish possession, the plaintiff ought to have filed a suit for

declaration, possession and injunction. Therefore, the learned Trial Court held that since the plaintiff had only filed suit for injunction simpliciter in the suit, the suit was not maintainable. Whereas in appeal, the first Appellate Court came to a finding that the appellant's/plaintiff's name was already registered in the Government record and she was in possession of land allotted to her by the Government, so, she need not require to file any application before the Court seeking for title on the suit which was already in her name and accordingly, reversed the finding of the learned Trial Court.

24. The first Appellate Court has already come to a clear cut finding that the respondent was in possession of the land allotted by the Government after following the due process for approval. Therefore, this Court is not required to enter into a fact finding mission. Now, the question is that whether a person who is already in possession of a particular land being armed with valid Government allotment, is required to file a suit for seeking for title of the aforesaid land or a mere injunction suit is sufficient in that regard.

25. From the records, it is seen that the Department of Land Management, Government of Arunachal Pradesh approved the application of the respondent for transfer of ownership of the concerned land, vide letter from Land Department which was exhibited as P/Ext.5. Further, the Government Land allotment Pass-Book Order dated 05.06.2006 along with the sketch map was issued in favour of the respondent, which were exhibited as Ext.6 and Ext.6 (a). It is also seen from the record that at regular intervals land revenue and electricity bill were paid by her which were also exhibited as Ext. 6, Ext. 4 and Ext. 4 (a). On the contrary, the appellant could not produce any evidence to show that the land allotment Pass-Book was not issued by a competent authority. It is also seen from the cross-examination of the appellant that he did not raise any complaint, whatsoever, against such allotment of land to the respondent. It is also seen from

the records that the appellant subsequently got 76 Sq. Mtrs. of land out of the disputed 450 Sq. Mtrs. to his name after the approval of the Government. It is also seen from the records that the Assam Type house which was constructed by the appellant in her land was occupied by various tenants and they had to vacate from their rented places due to the threats by the appellant. PW 1 to 5 have specifically stated in their evidence that they vacated from their rented premises as the same was forcibly occupied by the appellant. On the basis of the aforesaid materials on record, the first Appellate Court had come to a conclusion that the respondent was actually in possession of the land allotted to her by the Government. I am also of the considered opinion that the respondent was, in fact, in possession of the aforesaid 374.5 Sq. Mtrs of land. Therefore, it can be safely concluded that though there was a dispute raised by the appellant as far as ownership and possession of the aforesaid land by the respondent, his such claim cannot be sustained in view of the materials and evidences brought on record.

26. The learned Senior Counsel for the Appellant submitted that mere injunction suit without declaration of possession is not maintainable and the remedy of the respondent is to file a Possessory Suit and therefore, the Title Suit filed by the respondent before the trial Court is itself is not maintainable when the title is in dispute. In this connection, the learned Senior Counsel relied on the case of **Anatula Sudhakar (Supra)** wherein the Hon'ble Apex Court in the facts and circumstances of the case, held that a person out of possession, cannot seek a relief of injunction simpliciter, without claiming the relief of possession. It was held that where the title of the plaintiff is in cloud or in dispute and he is not in possession or not able to establish possession, necessarily, the plaintiff will have to file a suit for declaration, possession and injunction. The learned Senior Counsel further relied on the case of **T. B. Ramakrishna Reddy (Supra)**, wherein, the Hon'ble Apex Court while relying on the case of **Anatula Sudhakar**

(Supra) came to the same finding that when there is a cloud or dispute about the possession then a suit for declaration and possession, with or without a consequential injunction is the remedy.

27. I have carefully gone through the cases cited by the learned Senior Counsel. There is no question or doubt about the propositions laid down by the Hon'ble Apex Court. However, in the instant case on hand, from the materials brought on record, it is apparent that the respondent was in fact in possession of the concerned land of 374.5 Sq. Mtrs. Therefore, since there is no admitted dispute as far as her right, title and possession of the land, the aforesaid case laws unfortunately shall not be applicable to the facts of the instant case.

28. The learned Senior Counsel submitted that the respondent did not specify how much of land was actually encroached by the appellant and therefore, it was difficult for the appellant to defend the case without knowing the exact claim of the plaintiff. He submitted that under Order VII Rule 3 of the Code of Civil Procedure, where the subject matter of the suit is immovable property, the plaint shall contain description of the property sufficient to identify it. He submitted that in the instant case, the pleadings were vague in the plaint and not specific and as such, suit is not maintainable. However, from the materials on record, it is clearly seen that the suit land was duly allotted to the respondent after the Government had approved the transfer of the aforesaid land in favour of the respondent. It goes to demonstrate the absolute right, title and interest of the respondent over the suit land and when such is being established on the strength of credible evidence, I am of the opinion that the respondent can make a prayer for injunction as there was a specific prayer in the suit for declaring that the construction so carried out by the appellant being illegal. It is also apparent from the land Pass-Book and other evidences that the remaining land measuring 76 Sq. Mtrs. was transferred to the appellant through a gift deed dated 05.02.2010,

executed by his ex-wife Smti. Yama Soki.

29. The learned counsel appearing for the respondent relied on the case of **Bachaj Nahar (Supra)** to argue that in order to have a fair trial, it is imperative that the parties should state the essential materials facts so that the other party may not be taken by surprise. She submitted that the pleadings, however, should receive a liberal construction. She submitted that in the present case, though, the specific word repossession was not used, it cannot be claimed that the issue was not adjudicated upon. She submitted that the parties knew that it is covered by necessary implications. She submitted that the land Pass-Book makes it clear that out of the aforesaid land 450 Sq. Mtrs., the respondent had been allotted with clear demarcation, a portion of land admeasuring to 374.5 Sq. Mtrs. Therefore, she submitted that the pleadings as far as the description of property in the plaint are sufficient to adjudicate the issue by the Trial Court. In this connection, she relied on the case of **Mudda Venkata (Supra)** to primarily stress her argument that when there is no cloud over the right, title and possession of the property, a prayer for declaration of title may not be necessary in the instant case.

30. I have considered the submissions made by the respective counsel appearing for the parties as regarding the substantial questions of law involved in the instant appeal and in this connection, it shall be relevant to reproduce the principles laid down by the Hon'ble Apex Court in the case of **Bachaj Nahar (Supra)** herein below:-

"The principle was reiterated by this Court in [Ram Sarup Gupta-vs-Bishun Narain Inter College](#):

"6. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and

purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance if the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties knew the case and they proceeded to trial on those issue by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

31. Further, the following paragraphs from the case of **Mudda Venkata (Supra)** being relevant are reproduced herein below:-

"Furthermore, (2016)12 SCC 288, it has been held by the Hon'ble Apex Court that:

12. We are fortified in our aforesaid conclusion by a decision in Kurella Naga Druva Vudaya Bhaskara Rao v. Galla Jani Kamma, wherein this Court has examined the question of maintainability of suit for possession without prayer for declaration of title. This Court has referred to its earlier decision in Anathula Sudhakar Vs. P. Buchi Reddy, wherein the plaintiff had purchased the suit land under registered sale deed dated 10-4-1957 and the defendant did not claim the title with reference to any document but claimed to have perfected title by adverse possession. It was held by this Court that the said plea did not prima facie put any cloud over the plaintiff's title calling him to file suit for declaration of title. Unless there is serious cloud over the title of the plaintiff there

is no need to file suit for declaration of title. The suit for possession was maintainable. This Court laid down as follows: (Galla Jani Kamma case, SCC p. 157, para 16)

16. The plaintiff had purchased the suit land under registered sale deed dated 10-4-1957. Defendant did not claim title with reference to any document but claimed to have perfected title by adverse possession. A mere claim by the defendant that he had perfected his title by adverse possession, does not mean that a cloud is raised over the plaintiff's title and that the plaintiff who is the owner, should file a suit for declaration of title. Unless the defendant raises a serious cloud over the title of the plaintiff, there is no need to file a suit for declaration. The plaintiff had title and she only wanted possession and therefore a suit for possession was maintainable. We are fortified in this view by the following observations of this Court in Anathula Sudhakar v. P. Buchi Reddy (SCC p. 604, para 14).

14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title for an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration."

32. In view of the aforesaid ratios laid down by the Hon'ble Apex Court and the finding arrived at by this Court that there is a clear right, title and possession over the suit land of the respondent, I do not find any infirmity in the finding arrived at by the first Appellate Court, therefore, the substantial questions of law nos. 1 & 3 are answered in negative and in favour of the respondent.

33. As for substantial question of law no. 2, admittedly, the learned Trial Court

as well as the first Appellate Court came to a finding that the allotment of 374.5 Sq. Mtrs of the suit land to the respondent by the Government is not questionable as the same was neither challenged by the appellant. Therefore, the only question that needs to be answered is whether such allotment by issuing a Pass-Book confers or creates any absolute title in favour of the allottee i.e. the respondent. Another question which is also linked in the issue is that whether such allotment is merely a mutation certificate or entry in records or mere mutation of land for payment of land premium and rent. In this connection, the learned Senior Counsel appearing for the appellant submitted that in the State of Arunachal Pradesh, two types of land documents are being issued by the Government, namely, (i) Land Possession Certificate (LPC) for private ownership and (ii) Allotment of Lease of Government Land/Pass-Book for 30 years. He submitted that as per Arunachal Pradesh (Land Settlement and Records) Act, 2000 when an LPC is issued to an individual he becomes the owner of the land. However, as per proviso of Section 88, all land allotment/Lease Land of Government Land/Pass-Book shall remain as leased. Therefore, the Land Pass-Book-allotment is only for fiscal collection of revenue and it does not confer any ownership to the allottee. In this connection, he relied on the case of **Suraj Bhanu (Supra)**, wherein, the Hon'ble Apex Court held that an entry in revenue records does not confer title on person whose name appears in record of rights. The learned Senior Counsel relied on **P. Kishore Kumar (Supra)**, wherein, the Hon'ble Apex Court held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. The learned Senior Counsel further referred the case of **Balwant Singh (Supra)**, there also, Hon'ble Apex Court held that mutation of a property in revenue records does not create or extinguish title nor has it any presumptive value on title.

34. Relying on the aforesaid case law, the learned Senior Counsel submitted that the land Pass-Book does not confer any right, title, ownership on the allottee

of the Government land and therefore, the Judgment and Order dated 09.09.2024 and Decree dated 16.10.2024 passed in Appeal No. 03/2023 passed by the learned District Judge, Yupia, Papumpare is liable to be set aside and quashed.

35. On the other hand, the learned counsel appearing for the respondent submitted that allotment Pass-Book is not merely a record of rights, in fact, no change/ mutation can be done in favour of any person unless the Government approves and allots any person a Government land. She submitted that it is only the Government, i.e. the owner of the land under the Township Areas, as in the instant case, who can confer/ allot a land and who cancel the allotment order. She submitted that the rights over land is created and extinguished by the authority of the Government only. While referring to the provisions of Arunachal Pradesh (Land Records and Settlement) Rules, 2012, she submits that Rule 124 (7) provides pervasive right and control over Government land by Government is clear that no Government land once allotted can be transferred without the permission of the Government. She further submits that Rule 133 (8) provides that the Government is at liberty to cancel an allotment once given. In view of the aforesaid legal position, she submitted that in Township Areas, the Government allotment of land provides absolute right to the allottee over a plot of land until the same is cancelled by the Government itself. She submits that under the aforesaid Rules, 2012 there is no specific mode of transfer except the approval/permission of the Government and therefore, once the approval/ permission is given, the question of not having right, title over the land does not arise. The learned counsel further reiterated that in the State of Arunachal Pradesh, the practice of record of rights like Jamabandhi, Patta or Khata are yet to be implemented. Therefore, she submitted that the land allotment Pass-book is the most important and vital piece of document which provides right and title over the land within the Township Areas.

36. The learned counsel relied on the case of **Md. Akbar Ullah (Supra)**, wherein, the Hon'ble High Court of Tripura held that in cases of allotment of Government land it is not for the Court to question such authorization but for the appropriate authorities to look into the matter in case of any complaint.

37. In view of the aforesaid submission, the learned counsel appearing for the respondent prays that the instant RSA should be dismissed by confirming the Judgment and Order dated 09.09.2024 and Decree dated 16.10.2024.

38. I have given due consideration to the submissions made on behalf of the respective parties and also perused the case laws cited by the respective parties. It is found that the land Pass-Book was issued by the Government to the respondent under Rule 123 of Arunachal Pradesh (Land Settlement and Records) Rules, 2012 on being qualified or eligible for such allotment of land. Rule 124 (1) provides for allotment of land to any Arunachal Pradesh Schedule Tribe who has attained 18 years of age irrespective of gender and is eligible for allotment of Government land, maximum 500 Sq. Mtrs for commercial and maximum 1000 Sq Mtrs for residential in his/her birth districts and Capital Complex. Rule 124 (5) provides for allottee to pay annual lease rent and pay premium as fixed by the Government. Rule 124 (7) further provides that the land shall not be transferred by the allottee/ lessee without prior consent in writing from the competent authority. A cumulative reading of the aforesaid Rules makes it clear that the allotted land can be transferred by the allottee/lessee with the prior consent in writing from the competent authority. In view of the aforesaid position, in the instant case, as the allotted land was transferred and the same was approved by the competent authority by way of issuing a Land Pass-Book in the name of the respondent, the respondent shall have the right and title over the aforesaid land until the same is cancelled or withdrawn by the competent authority of the

Government. Therefore, this is not agreeable that the Land Pass-Book is only for the purpose of payment of revenue and fiscal record and not for the purpose of conferring any right, title over the allotted land by the Government. The Land Pass-Book allotted in the instant case cannot be equated with the Jamabandi, Patta or Khata as has been submitted by the learned Senior Counsel appearing for the appellant.

39. After due consideration of the case laws as well as the submissions made by the respective counsel, I am of the view that the suit land which was allotted by the Government to the ex-wife of the appellant, who in turn transferred the land to the respondent, who subsequently, got the land allotted to her after due approval from the competent authorities, shall have the right and title and possession over the land until the same is cancelled by the competent authority of the Government by following the due process of law. In view of this finding, the substantial question of law no. 2 is answered positive to the effect that allotment of Government land by issuing a Pass-Book confers or creates absolute title in favour of the allottee. Accordingly, the question as to whether allotment/Pass-Book is a mutation certificate or entry in records or mere mutation of land for payment of land premium and rent is answered in negative. Therefore, the substantial question of law no. 2 is answered in favour of the respondent.

40. In view of the aforesaid findings arrived at by this Court, I do not find any reason to interfere with the Judgment and Order dated 09.09.2024 and Decree dated 16.10.2024 passed by the District Judge, Yupia in Appeal No. 03/2023.

41. With the aforesaid, the instant RSA is dismissed and disposed of.

JUDGE

Comparing Assistant