

GAHC010004412009



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

Case No. : RSA/61/2009

SRI RAJU KUMAR PATOR,
S/O LT. TARUN PATOR, R/O VILL. LOKAKUCHI, MAUZA and P.O. DANDUWA
PATROBORI, P.S. and DIST. MORIGAON, ASSAM.

VERSUS

SRI UMA RAM DAS
S/O MIKIR CH. DAS, R/O VILL. MORIHIRA GAON MORIGAON TOWN,
MAUZA, P.S. AND DIST. MORIGAON, ASSAM.

Advocate for the Petitioner : Mr. D. K. Das, Advocate

Advocate for the Respondent : Mr. A. K. Purkayastha, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 13.06.2023

Date of Judgment : 13.06.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. K. Das, the learned counsel for the appellant and Mr. A. K. Purkayastha, the learned counsel appearing on behalf of the respondent.

2. This Court vide an order dated 09.04.2009 had admitted the instant second appeal by formulating three substantial questions of law which are enumerated herein under:-

1. Whether the Exhibit-1 is admissible in evidence as a promissory note when the same is not duly stamped?

2. Whether the evidence of plaintiff's witness Nos.2 & 3 are misread and misinterpreted by the lower appellate Court and as such its findings on Issue No.1 are vitiated by perversity?

3. Whether on the fact of the evidence given by P.W.2 denying the monetary transaction as well as the execution of Exhibit-1 in his presence, the findings of the lower appellate Court that the Exhibit-1 has been duly proved is vitiated in law?

3. For the purpose of adjudicating as to whether the above three substantial questions of law arise in the instant appeal, this Court finds it relevant to take note of the brief facts of the case.

4. For the purpose of convenience, the parties herein are referred to in the same status as they stood before the Trial Court.

5. The respondent herein as plaintiff had instituted a suit being Money Suit No.6/2006 claiming recovery of an amount of Rs.80,000/- along with interest.

6. The case of the plaintiff in brief is that the plaintiff had advanced a loan of Rs.80,000/- to the defendant and on the basis of which a hand note was executed on 24.07.2003. The defendant thereupon was required to return the money but having failed to do so, the plaintiff issued a legal notice and thereupon as the defendant failed to repay the said amount, the suit was filed which was registered and numbered as Money Suit

No.6/2006. The defendant filed the written statement. From a perusal of the writ statement, it appears that there was a categorical denial as regards the taking of the loan of Rs.80,000/- and the execution of hand note dated 24.07.2003. On the basis of the above pleadings, there were as many as five issues framed which are as herein under:-

1. *Whether there is any cause of action for the suit?*
2. *Whether the suit is maintainable in its present form?*
3. *Whether the defendant had taken Rs.80,000/- from the plaintiff by executing a hand note dated 24.07.2003?*
4. *Whether the plaintiff is entitled to the recovery of Rs.80,000/- along with 10% interest per annum with effect from 24.11.2005?*
5. *Any other relief/reliefs the parties are entitled to?*

7. Both sides thereupon adduced evidence. It is further relevant to take note of that taking into account the dispute between the parties as regards the execution of the hand note dated 24.07.2003, the learned Trial Court in exercise of the powers under Order XXVI Rule 10A of the Code of Civil Procedure, 1908 issued a commission for the purpose of examination of the signatures appearing in the hand note dated 24.07.2003. The report was duly submitted and in the said report, it was opined that the signatures in Question matched with the specimen signatures of the defendant. It further appears that on the basis of the evidence, i.e. the report of the Handwriting Expert and corroborated by the evidence adduced by the plaintiff, the learned Trial Court vide the judgment and decree dated 13.10.2007 decreed the suit in favour of the plaintiff thereby decreeing that the plaintiff would be entitled to recover the amount of Rs.80,000/- from the defendant along with interest @10% per annum

w.e.f. 24.11.2005 till realization of the said amount.

8. Being aggrieved, the defendant preferred an appeal before the Court of the Civil Judge, Morigaon which was registered and numbered as Money Appeal No.1/2008. The First Appellate Court vide the judgment and decree dated 13.08.2008, dismissed the appeal thereby affirming the judgment and decree dated 13.10.2007 passed by the Trial Court. Being aggrieved, therefore, the instant appeal has been preferred by the defendant as the appellant.

9. In the backdrop of the above, let this Court take into account as to whether the three substantial questions of law so formulated by this Court as quoted herein above arises in the instant appeal. A perusal of the substantial question of law Nos.2 & 3, in the opinion of this Court, are purely the questions of facts and for deciding the same, this Court would have to reappreciate the evidence. However, taking into account the limited scope of interference as regards the question of facts while exercising jurisdiction under Section 100 of the Code, this Court is of the opinion that the substantial question of law Nos.2 & 3 so formulated by this Court do not arise in the instant appeal.

10. As regards the substantial question of law No.1 which relates to as to whether the Exhibit No.1 is admissible in evidence as a promissory note when the same is not duly stamped, this Court finds it relevant to take note of that from a perusal of the written statement filed by the defendant, there is no foundation laid in the pleadings for the said substantial question of law. It further reveals from the record that at the time of tendering Exhibit-1 as evidence, there was no objection raised as regards the admissibility of the said document.

11. Considering the above, this Court is, therefore, of the opinion that as there is no foundation laid in the pleadings and there was also no objection taken at the time of tendering the Exhibit-1 into evidence, the same cannot be raised as a substantial question of law in the instant appeal. Accordingly, the substantial question of law No.1 as formulated, in the opinion of this Court, does not arise in the instant appeal.

12. Consequently, the instant appeal, therefore, stands dismissed.

13. Send back the LCR. The Registry shall prepare the decree accordingly.

JUDGE

Comparing Assistant