

GAHC010010002015



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

Case No. : RSA/41/2015

BINDU BASINI ROY
D/O LT. MAHENDRA NARAYAN SARKAR, R/O DIMATOLA, WARD NO. 3,
BILASIPARA TOWN, P.O. BILASIPARA, DIST. DHUBRI, ASSAM.

VERSUS

KANAK BALA SARKAR WIDOW and 6 ORS
HEIRS OF LATE DIJENDRA NARAYAN SARKAR

2:JOUTSNA SARKAR

DAUGHTER

3:CHANCHALA SARKAR

DAUGHTER

4:MONJULA SARKAR

DAUGHTER

5:BIMALA SARKAR

DAUGHTER

6:PURNIMA SARKAR

DAUGHTER

7:BULI SARKAR

DAUGHTER
NO. 2 TO 7 ARE UNDER CARE OF KANAK BALA SARKAR AND ALL ARE
R/O DIMATOLA

WARD NO. 3
OF BILASIPARA TOWN
P.O. BILASIPARA
DIST. DHUBRI
ASSAM
PIN 78334

Advocate for the Petitioner : MR. S S ROY

Advocate for the Respondent : MR. M HOSSAIN (R1-R6)

Linked Case : RSA/58/2019

SMTI BINDU BASINI ROY
R/O DIMATOLA
WARD NO. 3
BILASIPARA TOWN
P.O. BILASIPARA
DIST. DHUBRI ASSAM
PIN 783348

VERSUS

HEIRS OF LATE DIJENDRA NARAYAN SARKAR KANAK BALA SARKAR and 5
ORS
R/O DIMATOLA
WARD NO. 3
OF BILASIPARA TOWN
P.O. BILASIPARA
DIST. DHUBRI ASSAM
PIN 783348

2:JOUTSNA SARKAR
DAUGHTER @ BULI SARKAR

3:CHANDHALA SARKAR
DAUGHTER

4:MONJULA SARKAR
DAUGHTER

5:BIMALA SARKAR
DAUGHTER

6:PUERNIMA SARKAR

DAUGHTER NO. 2 TO 7 ARE UNDER CARE OF KANEK BALA SARKAR AND
ALL ARE R/O DIMATOLA

WARD NO. 3
OF BILASIPARA TOWN
P.O. BILASIPARA

DIST. DHUBRI ASSAM
PIN 783348

Advocate for : MR D KALITA
Advocate for : MR DEBA KUMAR DAS appearing for HEIRS OF LATE DIJENDRA
NARAYAN SARKAR KANAK BALA SARKAR and 5 ORS

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. D. Kalita,
Advocate.

For the Respondents : Mr. D.K. Das,
Advocate.

Date of Hearing : 15.06.2023.

Date of Judgment : 27.07.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. D. Kalita, learned counsel representing the appellant as well as Mr. D.K. Das, learned counsel appearing for the respondents.

2. This is a common judgment for these two items. These are Regular Second Appeals under Section 100 of the Code Procedure Civil (CPC) whereby the judgment dated 28.05.2014 passed by the court of learned Civil Judge, Dhubri in Title Appeal No.34/2009, arising out of Title Suit No.157/2007 (Original T.S. 95 of 1997), is under challenge.

3. One of the substantial questions of law is as to whether the judgment and decree passed by the first appellate court is in consonance with the provisions of Order 41 Rule 31 of the Code Procedure Civil, 1908.

4. Mr. Kalita has relied upon judgment of a Supreme Court that was delivered in *Manjula v. Shyamsundar*, (2022) 3 SCC 90. Paragraph 8 of the

said judgment is quoted as under:

“8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

(a) points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.”

5. *Per contra*, Mr. Das has relied upon the decision of the Supreme Court in *G. Amalorpavam v. R.C. Diocese of Madurai*, (2006) 3 SCC 224. Paragraph 9 of the said judgment is quoted as under:

“9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with

the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC."

6. I have considered the submissions of the learned counsels of both sides.
7. *Manjula* and Ors. (supra), was delivered after *G. Amalorpavam* (supra). In *Manjula*, the Supreme Court has laid down that the provision

of Order 41 Rule 31 of the Code of Civil Procedure is a mandatory one and it is to be followed by the first appellate court. The Supreme Court has further held that the first appellate court's jurisdiction involves re-hearing of the appeal on questions of law as well facts.

8. After going through the impugned first appellate court judgment, I find that Order 41 Rule 31 has not been complied with. The first appellate court failed to draw up a point for determination and also failed to answer all the issues with reasoning. Therefore, the impugned first appellate court judgment is bad in law for not in consonance with the provisions of Order 41 Rule 31 of the Code.

9. The impugned first appellate court judgment is set aside. The appeals are allowed.

10. The cases are remanded to the first appellate court of learned Civil Judge, Dhubri for passing a fresh judgment in compliance with the provisions of Order 41 Rule 31 of the Code of Civil Procedure.

LCR shall be returned.

JUDGE

Comparing Assistant