

GAHC010004572010



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

Case No. : RSA/42/2010

ANUWARA SULTANA ISLAM and 5 ORS

2: MRS. ELIZA SULTANA

3: MRS. SALEHA SULTANA

4: MS. MERISA SULTANA

5: MS. WAHEEDA SULTANA

6: MD. IFTIKAR ALI

1 TO 5 ARE ALL DAUGHTERS AND NO. 6 IS THE SON OF LATE ZUBAID ALI
AND ARE ALL RESIDENTS OF JENGANIKATIA DUI ALI MAJGAON
MOUZA-NAGARMAHAL
DIST. SIVASAGAR
ASSAM

VERSUS

ON THE DEATH OF MD. NADIR SHAH HIS LEGAL HEIR MD. JANBA ALI
AND ORS
S/O LATE MD. NADIR SHAH

2:MUSTT. MULUKI BEGUM

W/O LATE MUR MOHAMMAD.

3:MD. SIRAJ ALI

S/O LATE NUR MOHAMMAD.

4:MD. SARIF ALI

S/O LATE NUR MOHAMMAD.

5:MUSTT. SAZU BEGUM

D/O LATE NUR MOHAMMAD
1 TO 5 ALL R/O JENGANIKATIA
NATIONAL HIGHWAY
MOUZA-NAGARMAHAL
DIST. SIVASAGAR
ASSAM.

6:MD. NAJIUR RAHMAN

S/O LATE EYAR MOHAMMAD.

7:MD. KHOLILUR RAHMAN

S/O LATE EYAR MOHAMMAD.

8:MD. ABTABUR RAHMAN

S/O LATE EYAR MOHAMMAD
6
7 and 8 ARE ALL R/O JENGANIKATIA
NATIONAL HIGHWAY
MOUZA-NAGARMAHAL
DIST. SIVASAGAR
ASSAM.

9:MISMAI BEGUM

D/O LATE ALAWATDIN
R/O DEHAJAN BAGAN
MOUZA-THOWRA
DEMOW
DIST. SIVASAGAR
ASSAM.

10:MERI BEGUM

D/O LATE ALAWATDIN
R/O DEOPANI BAGAN
MISAJAN
DIST. SIVASAGAR
ASSAM.

11:BULBUL HAZARIKA
S/O LATE LIYAKAT HAZARIKA
R/O STATION CHARIALI
DIST. SIVASAGAR
ASSAM

Advocate for the Petitioner : MR.B CHAKRABORTY

Advocate for the Respondent : MR. G CHOUDHURY

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. B. Chakraborty,
Advocate.

For the Respondents : Mr. G. Choudhury,
Advocate and
Ms. Shweta Sarma,
Advocate.

Date of Hearing : 16.05.2023

Date of Judgment : 26.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Chakraborty, learned counsel representing the appellants as well as Mr. G. Choudhury, learned counsel appearing for the respondents.

2. This is a Regular Second Appeal under Section 100 of the Code of Civil

Procedure (CPC) whereby the judgment dated 10.12.2009 passed by the court of learned Addl. District Judge (FTC), Sivasagar in Title Appeal No.8/2007, reversing the judgment and decree dated 14.06.2007 passed by the court of learned Civil Judge, Sivasagar in Title Suit No.8/1995, is under challenge.

3. Since the year 1980, the appellants have been in occupation of a plot of land measuring 5 Bighas 1 Katha and 6 Lechas covered by Dag No.255 of PP No.80 (old)/9 (new) of Dui Ali Majgaon, Mouza- Nagarmohal, District Sivasagar. In the year 1983, the appellants sold 3 Kathas 15 Lechas of their land to Md. Najiur Rahman. In the same year, they sold another plot of land measuring 3 Kathas 10 Lechas to Balubul Hazarika. In this way, after selling a total land of 1 Bigha 2 Kathas 5 Lechas, the appellants continued to occupy 3 Bighas 4 Kathas and 1 Lecha of land.

4. On 04.11.1994, the respondents tried to occupy a part of the said plot of land by erecting bamboo fencing. The respondents allegedly claimed that their names were mutated in respect of the said land. The appellants found out that Md. Najiur Rahman, Khalilur Rahman and Nur Md. had got their names mutated in the land records in the month of November, 1994 in respect of the said land. The appellants then moved the revenue authorities challenging the aforesaid facts.

5. The respondents again on 26.12.1994, wrongly entered into the suit land and began erecting bamboo fencing covering an area of 2 Bighas 2 Kathas 10 Lechas. Finally, the appellants filed the suit against the respondents praying for declaration of their right, title and interest over the suit land and for recovery of the vacant possession of the said land.

6. The respondents contested the case by filing a written statement. They

denied all the allegations made in the plaint.

7. On the basis of the pleadings of the parties, the trial court framed 11 nos. of issues. During the trial, the appellants examined two witnesses whereas the respondents examined 4 witnesses.

8. On the basis of the evidence on record, the trial court decreed the suit in favour of the appellants.

9. The first appellate court reversed the findings of the trial court.

10. I have gone through the impugned judgment of the appellate court.

11. At this stage, Order 41 Rule 31 of the Code of Civil Procedure is relevant. It reads as under:

“31. Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state—

(a) the 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, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring there in.”

12. The judgment of the first appellate court reveals that the court failed to draw up a point for determination. The appellate court judgment further reveals that there is no issue wise discussion. Under Section 96 of the Code of Civil Procedure, an appeal is a continuation of proceedings of the original court and court of first appeal must record its findings after dealing with all issues of law as well as facts. Writing of a judgment by a court of law, is guided by certain legal provisions. Order 41 Rule 31 of the CPC lays down

the contents, which should be there in a first appellate court judgment. If it is not there, then it is not a judgment at all.

13. Under the aforesaid circumstances, I find that the appellate court judgment is not at all sustainable in law. Therefore, the appeal is allowed. The impugned appellate court judgment passed in Title Appeal No.08/2007 is set aside.

14. The case is remanded to the appellate court at Sivasagar for passing a fresh judgment after compliance of the provisions of Order 41 Rule 31 of the Code of Civil Procedure.

Send back the LCR.

JUDGE

Comparing Assistant