

GAHC010006272009



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

Case No. : RSA/156/2009

SUJAT UDDIN CHOUDHURY
SON OF LT. MABARAK ALI CHOUDHURY, VILL. DHARIARGHAT, P.S.
KATLICHERRA, DIST.- HAILAKANDI, ASSAM.

VERSUS

MD. ALI AHMED BARBHUIYA and 59 D ORS
S/O LT. KUTUB ALI BARBHUIYA

2:MD. ALI ASKAR BARBHUIYA
S/O LT. KUTUB ALI BARBHUIYA
BOTH ARE OF VILL. DHARIARGHAT
P.S. KATLICHERRA
DIST. HAILAKANDI
ASSAM.

3:MOIN UDDIN CHOUDHURY

S/O LT. HAMID ALI CHOUDHURY.

4:KOCHIR UDDIN CHOUDHURY

S/O LT. HAMID ALI CHOUDHURY
VILL. UTTAR JUSHNABAD
P.S. LALA.

5:FAIJUL HAQUE CHOUDHURY

S/O ABDUL JABBAR CHOUDHURY

6:SAFIQUL HAQUE CHOUDHURY

S/O LT. ABDUL JABBAR CHOUDHURY.

7:MOHIB RAJA CHOUDHURY

S/O LT. ABDUL JABBAR CHOUDHURY.

8:RAFI UDDIN CHOUDHURY

S/O LT. ABDUL JABBAR CHOUDHURY.

9:ISLAM UDDIN CHOUDHURY

S/O LT. ABDUL JABBAR CHOUDHURY.

10:ALGON NESSA

W/O MUSADDAR ALI
VILL. MATIJARI
P.S. HAILAKANDI.

11:AFTARUN NESSA

W/O SIRAJ UDDIN
VILL. NIZVERNERPUR.

12:RABJUN NESSA

D/O LT. ABDUL JABBAR CHOUDHURY
UTTAR JUSHNABAD.

13:MEHERUN NESSA

D/O LT. ABDUL JABBAR CHOUDHURY.

14:RAFIKUN NESSA

D/O LT. ABDUL JABBAR CHOUDHURY.

15:BADRUL HAUE CHOUDHURY

S/O ABDUL MOSABBIR CHOUDHURY.

16:SIRAJUL HAQUE CHOUDHURY

S/O ABDUL MOSABBIR CHOUDHURY.

17:SALIM UDDIN CHOUDHURY

S/O ABDUL MOSABBIR CHOUDHURY.

18:TAHIR UDDIN CHOUDHURY

S/O ABDUL MOSABBIR CHOUDHURY
VILL. UTTAR JASNABAD.

19:SAMSUL HAQUE

S/O ABDUL MOSABBIR CHOUDHURY.

20:NAZRUL ISLAM CHOUDHURY

S/O ABDUL MOSABBIR CHOUDHURY
VILL. UTTAR JASHNABAD

21:HAWATUN NESSA
W/O AKRAM ALI
VILL. SUDARSHANPUR
P.S. LALA.

22:SURAIYA KHANOM

W/O NAZRUL ISLAM
VILL.- BROJOPAR
PT.-I
P.S. HAILAKANDI.

23:ANOWARA BEGUM

W/O BADRUL HUSSAIN
VILL. LALA BAZAR
P.S. LALA.

24:JAHANARA BEGUM

D/O ABDUL MOSABBIR CHOUDHURY
UTTAR JASHNABAD
P.S. KATLICHERRA.

25:KULSUMA BIBI

W/O ABDUL MOSABBIR CHOUDHURY
VILL. UTTAR JUSHNABAD.

26:ALFATUN BIBI
W/O LT. MOBARAK ALI
VILL. DHARIAGHAT.

27:MOJIBA KHANOM CHOUDHURY

D/O LT. MOBARAK ALI
VILL. DHARIAGHAT.

28:RAKIBA KHANOM

W/O ALA MIA
VILL. SHABAD
P.S. KATLICHERRA.

29:MOJIBA KHANOM CHOUDHURY

D/O LT. MOBARAK ALI.

30:HAFSA KHANOOM

D/O LT. MOBARAK ALI CHOUDHURY
VILL. DHARIAGHAT.

31:CHAYNA KHANOM

D/O LAT. MOBARAK ALI CHOUDHURY
VILL. DHARIAGHAT.

32:HASNA KHANOM

D/O LT. MOBARAK ALI CHOUDHURY
VILL. DHARIAGHAT.

33:ASMA KHANOM

D/O LT. MOBARAK ALI CHOUDHURY
VILL. DHARIAGHAT.

34:RAFIQUE UDDIN

S/O MOIN UDDIN
VILL. DHARIAGHAT.

35:JAMAL UDDIN

S/O MOIN UDDIN

36:KHALIL UDDIN

S/O MOIN UDDIN

37:ABDUL KHADIR

S/O MOIN UDDIN
OF VILL. DHARIAGHAT
P.S. KATLICHERRA.

38:ABDUL KHALIQUE

S/O ABDUL SAMAD

39:ABDUL SATTAR

S/O MONTAJ ALI
VILL. DHARIAGHAT
P.S. KATLICHERRA.

40:AFTAR ALI

S/O LT. JONAB ALI

41:ABDUL JABBAR

S/O MONTAJ ALI

42:ABDUL MANNAF

S/O MONTAJ ALI.

43:ADDUL KHALIQUE

S/O ABDUL SAMAD

44:ABDUL HASIM

S/O ABDUL SAMAD
VILL. DHARIAGHAT
KATLICHERRA
DIST. HAILAKANDI.

45:SHARIF UDDIN CHOUDHURY

46:FARIJ UDDIN CHOUDHURY

BOTH ARE SONS OF LT. MABARAK ALI CHOUDHURY.

47:RAJAB ALI

S/O LT. ATOR ALI

48:AZIR UDDIN

S/O LT. MOSON MIA

49:BOTU MIA

S/O LT. TOYAB ALI

50:AKTAR UDDIN

S/O LT. BITU MIA

51:KUTI MIA

S/O MANTAJ ALI

52:KHALIL UDDIN

S/O MONTAJ ALI

53:KARIM ALI

S/O MOJOROT ALI

54:FAKAR UDDIN

S/O LT. MOJOROF ALI

55:TAJ UDDIN

S/O LT. HASSAN RAJA

56:MANU MIA

S/O SUNA MIA

57:MAJOROF ALI

S/O ATOR ALI

58:ON THE DEATH OF TABORAK ALI NAME OF HIS LEGAL HEIRS

59A. SAMIRUN NESSA WIDOW

59:59B KHAIRUN NESSA
MINOR DAUGHTER

60:59C. NEHARUN NESSA LASKAR
MINOR DAUGHTER

61:59D. SAIDUL HAQUE MINOR SON
REPRESENTED BY MOTHER SAMIRAN NESSA

Advocate for the Petitioner : MR.A M BARBHUIYA

Advocate for the Respondent : MD.M H RAJBARBHUIYAN

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant: Mr. A.M. Barbhuiya,
Advocate.

For the Respondents: Mr. M.H. Rajbarbhuiyan,
Advocate

Date of Hearing: 08.06.2023.

Date of Judgment: 15.06.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.M. Barbhuiya, learned counsel representing the appellant as well as Mr. M.H. Rajbarbhuiyan, learned counsel appearing for the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) whereby the judgment dated 29.06.2009 passed by the court of learned District Judge, Hailakandi in Title Appeal

No.33/2006, affirming the judgment and decree dated 20.09.2002 passed by the court of learned Civil Judge, Senior Division, Hailakandi in Title Suit No.48/2000, is under challenge.

3. Kukicherra Tea Company sold 509 Bighas, 13 Kathas and 12 Chatak of land to Lt. Md. Hamid Raja Choudhury and five others. Registered sale deeds were executed and delivery of possession were also given. Hamid Raja Choudhury and five other buyers divided the land between themselves and since then, all of them have been enjoying the possession of the land.

4. After amicable division of land between themselves, Hamid Raja Choudhury got about 160 Bighas of land. Hamid Raja Choudhury had five sons and two daughters. The sons are- Lt. Abdul Jabbar Choudhury, Lt. Abdul Masabbir Choudhury, Lt. Mubarak Ali Choudhury, Md. Moin Uddin Choudhury and Md. Kochir Uddin Choudhury. The daughters are- Morium Nessa Choudhury and Khairun Nessa Choudhury.

5. During the lifetime of Hamid Raja Choudhury, his sons jointly enjoyed the land by cultivating paddy in low lying areas.

6. Hamid Raja Choudhury donated 12 Kader of land to his elder sons Lt. Abdul Jabbar Choudhury and Abdul Musabbir Choudhury. After the death of Hamid Raja Choudhury, the remaining lands were amicably partitioned between the five sons.

7. The two daughters of Hamid Raja Choudhury died unmarried.

8. In the meantime, Abdul Jabbar Choudhury also died. Therefore, his five sons inherited the property left behind by him. Those sons even sold 2

plots of land to Abdul Sattar and Akhtar Ali.

9. Similarly, after the death of Abdul Musabbir Choudhury, his sons and daughters inherited his share of land. They also sold some of their lands to some other persons.

10. The other sons of Lt. Hamid Raja Choudhury and his grandsons continued to occupy their respective shares. They also sold some portion of their land.

11. The sons of Lt. Abdul Musabbir Choudhury even leased out 6 Bighas 10 Kathas of land for an amount of ₹25,000/-.

12. The sons of Lt. Abdul Musabbir Choudhury had sold some lands to the respondents. Since then i.e. from 07.05.1999, the respondents have been occupying their lands.

13. On 17.05.2000, the appellants trespassed into the land of the respondents and dispossessed them. Therefore, the respondents filed the suit for declaration of their right, title and interest over the suit land and for recovery of vacant possession.

14. The appellants contested the case by filing written statement. They have claimed that the respondents never had possession of the suit land. They specifically denied the allegation dated 17.05.2000.

15. On the basis of the pleadings of the parties, the trial court framed the following issues:

- 1) Is there any cause of action ?
- 2) Is the suit bad in law ?

- 3) Is the suit barred by waiver, estoppels and acquiescence ?
- 4) Is the suit bad for non-joinder ?
- 5) Whether the plaintiff acquired title in a specific plot & got possession without may valid partition over the patta ?
- 6) To what relief the plaintiff is entitled ?

16. The respondents examined 6 witnesses and the appellants examined 3 witnesses in order to prove their respective cases.

17. On the basis of the evidence on record, the trial court decreed the suit of the respondents. On being aggrieved by the judgment of the trial court, the appellants preferred an appeal before the court of the District Judge, Hailakandi. The first appellate court dismissed the appeal and the trial court judgment was affirmed.

18. I have gone through the judgment of the first appellate court.

19. I find that at this stage, Order 41 Rule 31 of the Code of Civil Procedure is required to be visited. Order 41 Rule 31 of the CPC 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.”

20. On a plain reading of the appellate court judgment, it is found that

the appellate court has failed to draw up a point for determination. The Civil Procedure Code has laid down the rule as to how the appellate court judgment is to be written. If the rule is not followed, then it is not a judgment at all. Therefore, the first appellate court judgment cannot be considered to be a judgment according to Order 41 Rule 31 of the Civil Procedure Code. Such a judgment is not sustainable in law.

21. Accordingly, the appeal is allowed. The impugned judgment is set aside. The case is remanded to the first appellate court of the District Judge, Hailakandi to draw up a point for determination and for passing a fresh judgment on all issues.

Send back the LCR.

JUDGE

Comparing Assistant