

GAHC010091532009



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

Case No. : RSA/29/2009

PEWGALI BASUMATARI and ORS.

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2: ISHAN CH. BASUMATARI.

.

3: KISHAN CH. BASUMATARI.

NO. 1 IS WIDOW AND 2 and 3 ARE SONS OF LATE SUMUDHAR
BASUMATARI

R/O-VILLAGE DIABARI

P.O. BHOTGAON VIA-KOKRAJHAR

P.O. and DIST-KOKRAJHAR

ASSAM

VERSUS

RABIT BASUMATARY and ORS.

.

2:SANKARDHAR BASUMATARI

.

3:NILAMBAR BASUMATARI ALIAS ANKADHAN BASUMATARI.

.

4:TAPAN KUMAR BASUMATARI.

ALL ARE SONS OF LATE NAKUL BASUMATARI NO.1 IS RESIDENT OF
VILLAGE SIMBARGAON

NO.2 IS RESIDENT OF VILLAGE SUDEMPUR

NO.3 IS RESIDENT OF VILLAGE GUAJPURI

AND 4 OF VILLAGE BOWBAZAR

ALL VILLAGES HAVING P.O.

P.S. and DIST-KOKRAJHAR

ASSAM

Advocate for the Petitioner : MRG JALAN

Advocate for the Respondent : MR. C K S BARUAH

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. B.J. Mukherjee,
Advocate.

For the Respondents : Mr. CKS Baruah,
Advocate.

Date of Hearing : 12.09.2023.

Date of Judgment : 21.09.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. B.J. Mukherjee, learned counsel representing the appellants as well as Mr. CKS Baruah, 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 and decree dated 19.05.2008 passed by the court of learned District Judge, Kokrajhar in Title Appeal No.02/2006, reversing the judgment and decree dated 19.05.2006 passed by the court of learned Civil Judge, Kokrajhar in Title Suit No.18/2004, is under challenge.

3. Late Nakul Basumatary had five sons namely- Sumadhar Basumatary, Rabit Basumatary, Sankadhar Basumatary, Nilambar

Basumatary and Tapan Kumar Basumatary. After the demise of Nakul Basumatary, his sons jointly occupied a plot of land measuring 3 Bighas 2 Kathas and 10 Lechas covered by Khatian No.101 (New) 50 (Old) Dag No.102 situated at revenue village Boro-Bhatarmari, Dihidokora, Paraga-Khutaghat (A/E) under Kokrajhar Revenue Circle in the district of Kokrajhar.

4. In the meantime, Sumadhar Basumatary died. The plaint has not disclosed when he actually died. Then, his wife and his two sons filed the suit before the court below praying for partition of the aforesaid suit land.

5. The other sons of Late Nakul Basumatary (hereinafter referred to as respondents) contested the case by filing a written statement. They claim that when Sumadhar Basumathary married Pewgali Basumatary, Nakul Basumatary was upset. Therefore, he gave him about 20 Bighas of different types of land and separated him from the family. The respondents claimed that Sumadhar Basumathary had sold off the said lands.

6. The respondents further claimed that that Sumadhar Basumathary did not die; rather he was missing for a long time.

7. According to the respondents, about half a Bigha of land out of the suit land was given to Chayarani Basumatary, the second wife of their father Nakul Basumatary. It was done during the lifetime of Nakul Basumatary and the land was mutated in favour of the said lady.

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

- i. Whether there is any cause of action for the suit?
 - ii. Whether the suit is maintainable in present form?
 - iii. Whether the suit is barred by law of limitation?
 - iv. Whether suit is bad for non-joinder and mis-joinder of necessary parties?
 - v. Whether the plaintiffs are legal heirs of Late Sumadhar Basumatary inherited the suit land belongs to their father? (sic)
 - vi. Whether plaintiffs are entitled to share and partition as prayed for?
 - vii. Whether the plaintiffs are entitled to relief as prayed for?
 - viii. To what other relief/reliefs the parties are entitled?
- 9.** During the hearing of the case, the appellants/plaintiffs examined 3 witnesses whereas the respondents examined 4 witnesses.
- 10.** On the basis of the evidence on record, the trial court decreed the suit of the appellants.
- 11.** The present respondents preferred the appeal before the first appellate court. The first appellate court interfered and set aside the judgment and decree passed by the learned trial court.
- 12.** I have considered the submissions made by the learned counsels of both sides.
- 13.** I have gone through the impugned judgment passed by the first appellate court.
- 14.** I find that the first appellate court did not draw up any point for

determination as required by the provision of law as laid down under Order 41 Rule 31 of the Code of Civil Procedure.

15. The framing of points for determination by the Appellate Court is only to enable it to concentrate and rivet its attention on the controversy between the parties and to facilitate the weighing and balancing of the evidence, facts and considerations appearing on both sides and to arrive at a conclusion on the merits of the controversy.

16. The provisions of Order 41, Rule 31 of the Code of Civil Procedure are mandatory and if the judgment of the Appellate Court does not follow the provisions of Order 41, Rule 31, the judgment is vitiated.

17. For the aforesaid reasons, the impugned judgment of the first appellate court is not sustainable in law and is accordingly set aside.

18. The case is remanded to the first appellate court of the learned District Judge, Kokrajhar for passing a fresh judgment in compliance with the provisions of law as laid down under Order 41 Rule 31 of the Code of Civil Procedure. The parties to the case shall have the liberty to submit their oral submissions.

19. The appeal is accordingly allowed and disposed of.

Send back the LCR.

JUDGE

Comparing Assistant