

GAHC010092272009



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

Case No. : RSA/151/2009

ON THE DEATH OF KALIA KACHARI HIS LEGAL HEIRS MAKANI BARO
DAU

VERSUS

DALIMI GARO and ANR
W/O LATE SRI PABAN AGARWALLA, DEORA HOUSING COLONY COMPLEX
NO. 7, FLAT-B TYPE, BELTOLA, GUWAHATI.

Advocate for the Petitioner : MR.N KALITA

Advocate for the Respondent : M HAZARIKA (R-1)

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. R.P. Sarmah,
Senior Advocate.

For the Respondent : Ms. M. Hazarika,
Senior Advocate.

Date of Hearing : 29.09.2023.

Date of Judgment : 05.10.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. R.P. Sarmah, learned senior counsel appearing for the appellants as well as Ms. M. Hazarika, learned senior counsel representing the respondent.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) whereby the judgment dated 18.07.2009 passed by the court of learned Civil Judge No.3, Kamrup, Guwahati is under challenge.

3. Late Fakira Garo was the only child of late Naria Garo. Fakira Garo married twice. The first wife is Ramuni Bala Garo and the second wife is Powali Bala Garo.

4. The wives did not have any children. Therefore, Fakira Garo, with the consent of his wives, adopted the present respondent Dalimi Garo during her childhood. The natural mother of Dalimi Garo had died immediately after her birth.

5. Dalimi Garo grew up in the house of Fakira Garo.

6. On 02.02.1969, Fakira Garo died in an accident.

7. It may be stated that after death of Naria Garo, his only child Fakira Garo had inherited all his landed properties. Accordingly, he continued to possess those properties including the suit land measuring 12 Bighas 1 Katha 8 Lechas covered by Dag No.674 of KP Patta No.88 at village Maidam under Beltola Mouza, District- Kamrup.

8. Similarly, after the death of Fakira Garo, the present respondent Dalimi Garo inherited his properties.

9. Dalimi Garo came to know that one Kalia Kachari (hereinafter referred to as the appellant) had mutated himself in respect of the aforesaid suit land claiming to be another son of late Naria Garo.

10. Therefore, Dalimi Garo filed the Title Suit being T.S. 441 of 2006 seeking her right, title and interest over the suit land and for a direction for cancellation of the mutation that was done in favour of the appellant.

11. Kalia Kachari contested the case by filing a written statement. He denied the averments in the plaint.

12. Kalia Kachari claimed that Naria Garo was also known as Naria Kachari and he is the son of Habo Boro, the second wife of Naria Kachari. Kalia Kachari further claimed that during the life time of Naria Kachari, there was a partition of family properties and the suit land fell into his share and since then, he has been occupying the said property.

13. On the basis of the pleadings of both sides, the trial court framed the following issues:

- i. Whether this suit is maintainable?
- ii. Whether the plaintiff has cause of action for the suit?
- iii. Whether the suit is barred by limitation?
- iv. Whether the suit is bad for non-joinder of necessary party, viz the heirs of late Fakira Garo?
- v. Whether the plaintiff acquired right, title over the suit land by virtue of inheritance?

vi. Whether the plaintiff has been possessing the suit land through her mother Powali Bala Garo?

vii. Whether the defendant obtained mutation fraudulently by claiming to be the son of Naria Garo?

viii. Whether the plaintiff is entitled to reliefs as prayed for?

ix. What relief or reliefs the parties are entitled to?

14. On conclusion of trial, the court of the Munsiff No.2, Kamrup, Guwahati dismissed the suit of the respondent.

15. She preferred an appeal and the appellate court of Civil Judge No.3, Kamrup set aside the trial court judgment and allowed the appeal.

16. I have gone through the appellate court's judgment.

17. The appellate court judgment failed to draw up a point for determination as required by Order 41 Rule 31 of the Code of Civil Procedure. 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.

18. 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.

19. Apart from that aspect, I find that the learned appellate court simply allowed the appeal by setting aside the judgment passed in T.S. 441 of 2006 without mentioning anything about the relief granted to the

appellant/present respondent.

20. This Court is of the opinion that for the aforesaid two reasons, the appellate court judgment passed in T.A. 30/2008 is bad in law. Accordingly, the said appellate court judgment is set aside.

21. The appeal is allowed. The case is remanded to the first appellate court of Civil Judge No.3, Kamrup, Guwahati for passing a fresh judgment after compliance of the provision of law as laid down in Order 41 Rule 31 of the Code of Civil Procedure.

22. It is an old pending case. Therefore, the appellate court shall make an endeavour to dispose of the appeal within 3(three) months of receiving the records. The appellate court shall also provide opportunity to both sides to submit oral arguments.

23. With the aforesaid direction the appeal stands disposed of.

Send back the LCR.

JUDGE

Comparing Assistant