

GAHC010095472022



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

Case No. : Review.Pet./91/2022

BHUPENDRA KUMAR DAS
S/O SRI LAKSHI KANTA DAS,
RESIDENT OF HOUSE NO. 8, PIYOLI PHUKAN ROAD, REHABARI,
GUWAHATI 781008, DIST KAMRUP M ASSAM

VERSUS

ANIMA PRAVA DAS
W/O SRI BHABEN CHANDRA DAS,
RESIDENT OF K.C SEN ROAD, SOLAPARA, PALTAN BAZAR, PS PALTAN
BAZAR GUWAHATI 781008, KAMRUP M ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY
Advocate for the Respondent : MR H K SARMA (r-1)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

10.05.2023

Heard Mr. K.N. Choudhury, learned senior counsel appearing for the petitioner. Also heard Mr. H.K. Sarma, the learned counsel representing the respondent.

2. This is an application under Order 47 Rule 1 and 2 of the Civil Procedure praying for review of the judgment and order dated 28.04.2022 passed by this Court in Civil Revision Petition No.83 of 2019.

3. The respondent filed the Title Suit being T.S. No.307 of 2012 against the present petitioner praying for his ejectment from the suit premises. The trial court decreed the suit in favour of the respondent. The first appellate court dismissed the appeal.

4. The present petitioner filed the revision petition no.CRP 83 of 2019 under Section 115 of the Code of Civil Procedure challenging the judgment and order dated 07.05.2019 passed by the appellate court of Civil Judge No.1, Kamrup (M), Guwahati. This Court dismissed the revision petition.

5. The learned senior counsel Mr. Choudhury has pointed out that the appellate court judgment is not in terms of law as laid down in Order 41 Rule 31 of the Code of Civil Procedure because the appellate court failed to frame a point for consideration.

6. *Per contra*, Mr. Sarma has supported the appellate court judgment.

7. I have considered the submissions made by the learned counsels of both sides.

8. At this stage, a brief visit to Order 41 Rule 31 of the Code of Civil Procedure would be fruitful. It reads as under:

“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 therein."

9. So, it is clear that the appellate court should have framed a point for consideration. The appellate court did not do so. Therefore, such an appellate court judgment is bad in law.

10. While disposing of CRP No.83/2019, this fact somehow escaped the eyes of this Court. It is an error committed by this Court. The error is apparent on the face of the record. Therefore, the present review petition is maintainable in law.

11. Accordingly, the review petition is allowed. The judgment of the appellate court of Civil Judge No.1 Kamrup (M) at Guwahati in T.A. No.7 of 2017 is bad in law and is set aside on account of non-compliance of the provision of law as laid down in Order 41 Rule 31 of the CPC.

12. The appellate court is directed to pass a fresh judgment complying with the provision of Order 41 Rule 31 of the Code of Civil Procedure.

The review petition is disposed of.

JUDGE

Comparing Assistant