

GAHC010105172016



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

Case No. : RSA/1/2016

THE SCHOOL MANAGING COMMITTEE OF NAGAON L.P. SCHOOL and 2
ORS
VILL. CHALIADI, P.O. LATU, P.S. and DIST. KARIMGANJ REPRESENTED BY
ITS SECY.

2: SRI MANIK DAS
S/O LATE NANI RAM DAS
THE HEAD TEACHER OF NAGAON L.P. SCHOOL AND THE EX-OFFICIO
SECY.
SCHOOL MANAGING COMMITTEE OF NAGAON L.P. SCHOOL
VILL. CHALIADI
P.O. LATU
P.S. and DIST. KARIMGANJ.

3: MANMATH MALAKAR
S/O LATE MATILAL MALAKAR
TEACHER OF NAGAON L.P. SCHOOL
VILL. CHALIADI
P.O. LATU
P.S. and DIST. KARIMGANJ

VERSUS

THE STATE OF ASSAM and 5 ORS
REPRESENTED BY THE COMMISSIONER and THE SECY. TO THE GOVT. OF
ASSAM, EDUCATION DEPTT. ELEMENTARY, DISPUR, GUWAHATI 781006

2: THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI 781019
ASSAM.

3: THE DEPUTY INSPECTOR OF SCHOOL

KARIMGANJ
PIN 788710
ASSAM.

4:THE DIST. ELEMENTARY EDUCATION OFFICER
KARIMGANJ
P.O. and DIST. KARIMGANJ
PIN 788710
ASSAM.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

NORTH KARIMGANJ
DIST. KARIMGANJ
PIN 788724
ASSAM.

6:KARUNAMOY DAS

S/O LATE KUMUD CH. DAS
VILL. CHALIADI
P.O. LATU
P.S. and DIST. KARIMGANJ
PIN -78878

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

23.02.2023.

Heard Mr. H. R. Choudhury, learned counsel for the appellants. Also heard Mr. R. Mozumdar, learned Standing Counsel for the Elementary Education Department representing the respondent Nos. 1, 2, 3, 4 and 5. Also heard Ms. R. Choudhury, learned counsel for the respondent No. 6.

2. The present appeal under Section 100 of the Code of Civil Procedure, is

directed against the Judgment and Decree dated 20.04.2015, passed by the learned Civil Judge, Karimganj in Title Appeal No. 13/2014, whereby the Judgment and Decree dated 17.01.2014, passed by the learned Munsiff No. 2, Karimganj in Title Suit No. 220/2011 was reversed.

3. This Court under its order dated 25.01.2016 admitted the second appeal on the following substantial questions of law:-

“1. Whether findings the learned First Appellate Court in regard to Ext.2 and 14 are perverse?

2. Whether the learned First Appellate Court committed error in quashing the judgment of the learned Trial Court without dealing with the reasons rewarded therein”?

4. To determine, whether such substantial questions of law arises, let this Court now look at the factual background at nutshell.

I. The plaintiffs, the School Managing Committee of Nagaon L.P. School in the district of Karimganj, along with the Head Teacher of the School and another Teachers joined as plaintiffs and prayed for a declaration that the plaintiff's School and the plaintiff Nos. 2 and 3 are entitled for Govt. grants and aids as sanction from time to time and for a declaration that they are entitled to receive the grants, pursuant to a letter No. K-DEO/2010-11/Verification/LP/2169-209 DTD. 20.06.2011 issued by the defendant No.4 i.e. District Elementary Education Officer, Karimganj. The plaintiffs' further prayed for a direction to the defendants to release the financial assistance. A further prayer for permanent injunction was made restraining the defendant Nos. 1 to 5 from issuing any cheque or release

fund in favour of the defendant No. 6.

II. The basic ground for seeking such declaration pleaded in the plaint is that the School was established by the local people on 15.12.1983 through a resolution (Exhibit-3) and a School Managing Committee was formed headed by one Kumud Das i.e. the father of the defendant No. 6. It was also contended by the plaintiffs' that through Exhibit 3 resolution, the plaintiff No. 2 was appointed as Head Teacher of the school and a proposal to appoint defendant No. 6 as Assistant Teacher was also made in lieu of a proposal for gifting a plot of land by his father in favour of the School. Though the said School, according to the plaintiffs, continued to function and the defendant No. 6 donated the land in favour of the Deputy Inspector of Schools, Karimganj for the purpose of construction of school building by Exhibit-5 and the defendant No. 6 was appointed as Assistant Teacher but he never performed his duty till 1991. It is the further contention of the plaintiffs that in the meantime, the defendant No. 6 resigned from the school and such resignation was accepted through Exhibit-6 and the defendant No. 6, took back the possession of the land gifted. Thereafter, the plaintiff Nos. 2 and 3 purchased a plot of land (Exhibit-7) with a purpose to donate the same in favour of the Education Department and in the year 2011, constructed the present school building.

III. It is the further contention of the plaintiffs that School had duly been inspected by the competent authorities as per requirement for grant of financial assistance. However, defendant No. 4 and 5 in collusion with defendant No. 6, did not grant financial assistance in favour of the plaintiffs, though in terms of the inspection report, the plaintiffs are

entitled for such financial assistance.

IV. Thus, the basic ground of seeking declaration, as discussed hereinabove, is that the plaintiffs school qualifies the requirement for grant of financial aid from the State authorities i.e. respondent Nos. 1, 2, 3, 4 and 5, as they fulfill all the conditions. However, in collusion with defendant No. 6, same has not been granted.

5. The respondent Nos. 1, 2, 3, 4 and 5 as defendants filed a joint written statement and they took a stand that suit is bad for want of notice under Section 80(1) of CPC inasmuch grant of leave under Section 80(2) of the CPC is not applicable in the given facts of the suit. The further stand was that the approved School Managing Committee of Nagaon V.L.P. School did not institute the suit and the suit was instituted by the plaintiff No. 2 with the name of a fake School Managing Committee. It was also contended that the original Nagaon V.L.P. School is still running in the original land donated by Sri Kuranamoy Das, the defendant No. 6 and he has neither resigned nor asked for return of the donated land. It was also contended that there was no necessity to run the School in the residential house since school has its own land with kutcha house where the defendant No. 6 running the school as reported by the School Managing Committee.
6. The defendant No. 6 also filed a written statement and took a stand that suit is bad for non joinder of parties as the actual Nagaon venture L.P. School headed by Sri Arunodoy Swami as its President had not been made a party and that the Managing Committee of the plaintiffs School is fake one and wrongly named as Nagaon L.P. School. It was also contended that late Kumud Ch. Das, first President of the School Management Committee

vide registered deed of gift transferred the land in favour the State of Assam represented by Deputy Inspector of School, Karimganj and the plaintiffs has got no authority to shift the school somewhere else from the original place.

7. As per judgment of the learned trial Court, the plaintiffs laid one witness i.e. plaintiff No. 1 and exhibited as many as 22 nos. of documents which will be dealt with at the later part of this judgment. However, on perusal of the record, it is seen that another persons was examined as PW-1 namely Gajendra Kumar Das who claims to be the Vice President of the plaintiffs School. The defendant No. 6 examined three witnesses and exhibited 5 nos. of documents. Though the official respondents i.e. respondent Nos. 1, 2, 3, 4 and 5 had filed their written statement, however, they have not laid any evidence in support of their pleadings.
8. The learned trial Court formulated the following issues for the determination:-
 - “I. Whether there is any cause of action for the suit?
 - II. Whether the suit is barred by the law of limitation?
 - III. Whether the suit is maintainable in its present form?
 - IV. Whether the suit is bad for defect of parties?
 - V. To what relief/relief(s) the parties are entitled?
 - VI. Whether the school run by the plaintiff No. 2 and 3

is the original school or the school run by the defendant No. 6 is the original one?"

9. The vital issue is the issue No. VI, whether the school run by the plaintiff No. 2 and 3 is the original school or the school run by the defendant No. 6 is the original one.
10. The learned Trial Court while dealing with the issue No. 6, came to a conclusion that the defendant Nos. 4 and 5 are the concerned authority who maintains all the record of the school and the school is under their jurisdiction. It was the finding of the learned trial Court below that whatever the plaintiffs or defendant No. 6 submitted in the pleading and took initiatives to prove their pleadings that must be corroborated by the records kept under the custody of the defendant Nos. 4 and 5 and accordingly the learned trial Court below came to a conclusion that for determining the issue in hand, the Court is to scrutinize the documents submitted by the parties and its verification with the Government records.
11. On the basis of such pleadings, the learned Trial Court is of the view that defendant No. 6 had adduced evidence to prove his case in favour of the defendants and the prime defendant Nos. 1, 2, 3, 4 and 5 did not adduce any evidence and validity will be determined on the basis of the report of defendant Nos. 1, 2, 3, 4 and 5 inasmuch as the documents relied on by the defendant No. 6 are required to be treated as individual evidence. In the aforesaid pretext, the learned trial Court below relied on all the documents exhibited by the plaintiffs, author of which is defendant Nos. 1, 2, 3, 4 and 5 and hold that the plaintiffs are entitled for the decree as prayed for. The learned trial court basically relied on Exhibit-15 i.e. Report

of the Block Development Officer issued to the District Elementary Education Officer. Relying on the said document, the learned trial court came to a finding that the plaintiffs school is the real school and the recorded school. Thus, though the plaintiffs had exhibited Xerox copies of documents authorized by State authorities in Education Department, the learned Trial Court decreed the suit on the basis of such document, for the reason that the officials i.e. the author of the documents i.e. defendant Nos. 1 to 5 had not laid any evidence.

12. The learned appellate Court while dealing with the issue No. 6, examined firstly Exhibit-2. Exhibit-2 is the communication from the competent authority of the Education Department, which lays down the criteria for grant of financial assistance. The learned appellate Court after perusal of the same, came to a conclusion that the Exhibit-2 provides for grant of financial assistance to those schools which will submit proceeding book, teachers attendance register, students attendance register and original sale deed registered before the concerned Sub Registrar in respect of land, where school is situated and such particulars was supposed to be sent to the District Elementary Education Officer, i.e. defendant No. 4, within seven days from the issuance of the Exhibit-2. It is the finding of the learned trial court after perusal of the said document that there is a specific clause that if the school doesnot submit the necessary documents sought for in time, the financial assistance will not be released and such last date was fixed on 27.06.2011. Having held thus, the learned appellate Court examined all the other exhibited documents to see whether the plaintiffs satisfied the conditions for grant of financial assistance in terms of the Exhibit-2. The learned appellate Court came to the following

conditions:-

I. The Exhibit-1, 3 to 22 shows that the plaintiffs did not file any documents pertaining to teacher attendance register, student attendance register and original sale deed of the land prior to 27.06.2011 i.e. the deadline given in Exhibit-2.

II. The Exhibit-14 which according to the plaintiffs had submitted in connection with Exhibit-2 also shows that though Exhibit-2 was issued on 26.02.2011, the plaintiffs submitted exhibit on 16.05.2011 i.e. month prior to the issuance of Exhibit-2 and accordingly, the learned appellate Court disbelieved such documents.

III. The details given in column 11 of the Exhibited-14 itself creates cloud of suspicion over the plaintiffs claim as the land which was shown to be belong to the school was registered in the name of the school on 04.08.2011 and the gift deed which was executed on the strength of aforesaid registered sale deed was registered on 31.10.2011 i.e. 2 (two) months prior to the sale deed. Accordingly, the learned appellate Court below came to a conclusion that the plaintiffs school did not possess the required qualification as sought by Exhibit-2 and also in terms of mandate of Section 10 of Non Government Educational Institute (Regulation and Management) Act, 2006 under which the aforesaid Exhibit-2 was issued.

IV. It is further finding of the learned appellate Court that the plaintiffs failed to adduce any oral or documentary evidence to show that the defendant Nos. 4 and 5, for their personal gain, did not release the financial assistance to the school and therefore, the learned appellate

Court came to a conclusion that the defendant Nos. 4 and 5 had rightly refused to give financial assistance to the school.

13. In the aforesaid backdrop, now let us examined the substantial questions of law.
14. Coming to the first substantial question of law i.e. this Court is of the view that the learned appellate court decision as regard to Exhibit-2 and Exhibit-4 are not perverse.
15. A finding of fact recorded by a trial Court or an appellant court can be said to be perverse when such finding of fact is arrived at ignoring or without considering materials evidence, the same can also be said to be perverse when such finding is based on no evidence or the learned Courts had misread the evidence or same is grossly erroneous and that if such finding of fact is allowed to stand it would result in miscarriage of justice.
16. The learned appellate Court in the case in hand, after perusal of the Exhibit-2 came to a finding that Exhibit-2 lays down the detail criteria which are to be fulfilled and submitted before the defendant No. 4 on or before 27.06.2011. This Court has also perused the Exhibit-2 and after perusal of the same, is of the view that Exhibit-2 lays down the detail criteria which are to be fulfilled and submitted before the defendant No. 4 on or before 27.06.2011 and the discussions of the learned first appellate Court below regarding Exhibit-14, after perusal of the same is also cannot termed as perverse inasmuch as the learned appellate court below has properly explained such Exhibit-14.
17. In the aforesaid backdrop, the determination of the issue No. 6 is

dependent upon appreciation of evidence and the materials laid by the plaintiffs and the defendant No. 6. Such determination is based on the facts and without any application of any principle of law. Thus, the issue No. 6, raises a question of fact only. It is by now well settled that a question of fact become a question of law, if the finding is either without any evidence or material or if the findings is contrary of evidence or is perverse or there is no direct nexus between the conclusion of fact and the primary fact upon which the conclusion is based. As discussed hereinabove, the learned appellate Court after appreciation of exhibits, more particularly Exhibit-12 and Exhibit-14 came to a conclusion that the appellant failed to fulfill the criteria laid down under Exhibit-2. Therefore, in view of the facts of the present case and settled proposition of law, in the considered of this Court that the first question framed did not involve any substantial question of law rather same is question of fact.

18. Coming to the judgment of the learned trial Court, this Court is of the considered opinion that the learned Court has shifted the responsibility of corroboration of exhibited documents upon the official defendants i.e. defendant Nos. 1, 2, 3, 4 and 5 and accepted the documents produced by the plaintiffs as genuine and relied on those documents and only for the reason of failure of the defendant Nos. 1, 2, 3, 4 and 5 to corroborate those documents as they were the authors of those documents.
19. Law is well settled that the initial onus is always on the plaintiff to prove his case and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances if any which would disentitle the plaintiff to the same. In

the case in hand, the whole case of the plaintiffs is that they had wrongly been denied financial assistance though they are entitled for such financial assistance. To prove that they are having the requisite credential and / essential in terms of Exhibit-2, they have exhibited many documents; however, those documents are Xerox copies of the documents. A party of a suit may not have control and possession over the original certain documents which are under the authority of the State, however, same will not dispense with the prove of such documents and certain provisions are provided including leading secondary evidence by following due process of law. Therefore, the findings of the learned appellate Court rather is perverse by relying on all the Xerox copies of the exhibited documents exhibited by the plaintiffs that too in a case even the author were not brought to the witness box to prove such documents and the plaintiffs had the said option even to confront the authors with those documents regarding genuineness. Ignoring the settled proposition of law, the learned trial court presumed that those documents are proved and corroborated by the defendant Nos. 1, 2, 3 and 4 as they have not come forward and laid evidence. Such finding is absolutely perverse inasmuch as failure of the defendant to adduce evidence more particularly when the plaintiff has not discharged its initial burden to prove his own case, a decree cannot be in favour of the plaintiff on the basis of the failure of the defendant. Therefore, the learned appellate court has rightly come to a conclusion that plaintiffs has failed to prove their entitlement of financial benefit under Exhibit-2. Accordingly, this Court also holds that the learned appellate Court has not committed any error in quashing the judgment of the learned trial Court below. Accordingly, it is held no substantial question

of law also involved as framed under substantial question No. 2.

20. In view of the aforesaid, this Second Appeal stands dismissed. No order as to cost.

JUDGE

Comparing Assistant