

GAHC010146612008



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

Case No. : RSA/26/2008

MD. FAIZUL HAQUE CHOUDHURY
S/O LATE ABDUL JABBAR CHOUDHURY, R/O HAILAKANDI TOWN, WARD
NO.1, P.S. HAILAKANDI, DIST. HAILAKANDI, ASSAM.

VERSUS

ON THE DEATH OF ABDUL RAUF BORBHUIYAN HIS LEGAL HEIRS
MONIRA KHATUN BARBHUIYA WIFE and ORS,
W/O LATE MD. ABDUL ROUF BARBHUIYA,
R/O VILLAGE BOWARGHAT PART-I, P.O AND P.S.- HAILAKANDI, DISTRICT
ASSAM

1.1:JAMAL UDDIN BARBHUIYA
S/O LATE MD. ABDUL ROUF BARBHUIYA

R/O VILLAGE BOWARGHAT PART-I
P.O AND P.S.- HAILAKANDI
DISTRICT ASSAM

1.2:KOMRUL ISLAM BARBHUIYA
S/O LATE MD. ABDUL ROUF BARBHUIYA

R/O VILLAGE BOWARGHAT PART-I
P.O AND P.S.- HAILAKANDI
DISTRICT ASSAM

1.3:MOIZ UDDIN BARBHUIYA
S/O LATE MD. ABDUL ROUF BARBHUIYA

R/O VILLAGE BOWARGHAT PART-I
P.O AND P.S.- HAILAKANDI
DISTRICT ASSAM

1.4:ALMAS UDDIN BARBHUIYA
S/O LATE MD. ABDUL ROUF BARBHUIYA

R/O VILLAGE BOWARGHAT PART-I
P.O AND P.S.- HAILAKANDI
DISTRICT ASSAM

1.5:ABDUL MALIK BARBHUIYA
S/O LATE MD. ABDUL ROUF BARBHUIYA

R/O VILLAGE BOWARGHAT PART-I
P.O AND P.S.- HAILAKANDI
DISTRICT ASSAM

1.6:AYESHA BEGUM BARBHUIYA
D/O LATE MD. ABDUL ROUF BARBHUIYA

R/O VILLAGE BOWARGHAT PART-I
P.O AND P.S.- HAILAKANDI
DISTRICT ASSA

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. I.H. Laskar,
Advocate.

For the Respondents : Mr. N. Dhar,
Advocate.

Date of Hearing : 04.12.2023.

Date of Judgment : 11.12.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. I.H. Laskar, learned counsel representing the appellant as well as Mr. N. Dhar, 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 29.09.2007

passed by the court of learned District Judge, Hailakandi in Money Appeal No.34/2006, setting aside the judgment dated 04.02.2005 and the decree dated 05.02.2005 passed by the court of learned Civil Judge, (Sr. Divn.), Hailakandi in Money Suit No.26/2001, is under challenge.

3. Md. Faizul Haque Choudhury filed the Money Suit against the respondent Abdul Rauf Borbhuiyan for recovery of ₹90,000/-. The case of the appellant is that on 13.09.2000, the respondent had executed a hand note and thereby borrowed ₹90,000/- from him. The appellant claimed that after repeated demands, the money was not returned to him.

4. The respondent's case is that on 16.09.2001, he was kidnapped by the appellant and after that he was taken to the house of Samsuddin Mazumdar. There, he was forced to put his signature upon revenue stamps, which were pasted on a blank paper.

5. According to the respondent, on 17.09.2001, he filed a complaint case being Case No.900/01 in the court of the learned CJM, Hailakandi alleging the aforesaid facts. The learned CJM handed over the matter to police who registered the Hailakandi P.S. case No.238/2001. The respondent claimed that police failed to recover the aforesaid blank paper containing his signature over revenue stamps and therefore, filed a Final Report. The respondent disclosed that he filed a Narazi Petition before the Judicial Magistrate 1st Class, Hailakandi and the said petition was still pending. The respondent claimed that he never borrowed ₹90,000/- from Md. Faizul Haque Choudhury.

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

- I. Is there any cause of action for the suit?

- II. Whether the h and note in question is false, fabricated, collusively prepared?
- III. Is the suit maintainable?
- IV. Whether the claim of the plaintiff is true at all?
- V. To what relief, if any, the parties are entitled?

7. Md. Faizul Haque Choudhury, being the plaintiff of the Money Suit, examined four witnesses including himself. The respondent Abdul Rauf Borbhuiyan examined seven witnesses including himself.

8. On the basis of the evidence on record, the trial court decreed the suit of Md. Faizul Haque Choudhury.

9. The learned first appellate court allowed the appeal and set aside the judgment passed by the trial court.

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

11. Reverting to the case in hand

12. At this stage, Order 41 Rule 31 of the Code of Civil Procedure is relevant. It 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.”

13. 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.

14. 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.

15. I find that the learned appellate court did not frame any point for consideration nor the issues are discussed. Therefore, the first appellate court judgment is not sustainable in law.

16. Accordingly, the judgment and decree dated 29.09.2007 passed by the court of learned District Judge, Hailakandi in Money Appeal No.34/2006, setting aside the judgment dated 04.02.2005 and the decree dated 05.02.2005 passed by the court of learned Civil Judge, (Sr. Divn.), Hailakandi in Money Suit No.26/2001, is set aside.

17. The appeal is allowed. The case is remanded to the learned first appellate court, Hailakandi for passing a fresh judgment after compliance of the provisions of law as laid down under Order 41 Rule 31 of the Code of Civil Procedure.

18. This is an old pending case and therefore, the first appellate court shall endeavour to dispose of this appeal within 3(three) months of receiving the LCR. The appellate court is at liberty to give one opportunity to both sides for submitting oral arguments.

The appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant