

GAHC010174652006



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

Case No. : CRP/121/2006

ON THE DEATH OF SMTI CHARU BALA SARKER
W/O LATE GANDHI SARKER ALIAS LATE RAMENDRA SARKER BOTH
RESIDENTS OF MAIN ROAD BONGAIGAON TOWN PO and PS--
BONGAIGAON DIST-- BONGAIGAON , ASSAM

1.1: SRI ABHIJIT SARKAR
S/O- LT. GANDHI SARKAR @ LT. RAMENDRA SARKAR
R/O- MAIN ROAD
BONGAIGAON TOWN
P.O.
P.S. AND DIST.- BONGAIGAON
ASSAM

VERSUS

ON THE DEATH OF SHRI HARI SAHA HIS LEGAL HEIRS
S/O LATE SHYAMLAL SAHA RESIDENT OF M G ROAD NEAR GANDHI
MAIDAN BONGAIGAON TOWN PO and PS-- BONGAIGAON DIAT--
BONGAIGAON , ASSAM

1.1:SMTI. GAURI SAHA
W/O- LT. HARI SAHA

1.2:SRI RAJESH SAHA
S/O- LT. HARI SAHA

1.3:SRI KALU SAHA
S/O- LT. HARI SAHA
ALL ARE R/O- MG ROAD (NEAR GANDHI MAIDAN) (OPPOSITE OF HARI
MANDIR)
BONGAIGAON TOWN
DIST.- BONGAIGAON
ASSAM

Advocate for the Petitioner : D C NATH

Advocate for the Respondent : B SARKAR

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. M.H. Ahmed,
Advocate.

For the Respondents : Ms. B. Sarkar,
Advocate.

Date of Hearing : 07.11.2023.

Date of Judgment : 11.12.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. M.H. Ahmed, learned counsel appearing for the petitioners. Also heard Ms. B. Sarkar, the learned counsel representing the respondents.

2. This is an application under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution of India challenging the judgment and decree dated 27.02.2006 passed by the learned Civil Judge (Sr. Divn.), Bongaigaon in T.A. 02/2005.

3. Lt. Charu Bala Sarkar filed the Title Suit No.01/2004 in the court of Civil Judge (Jr. Divn.), Bongaigaon against Lt. Hari Saha for recovery of arrear rent in respect of a house and for his eviction therefrom.

4. Lt. Hari Saha contested the case by filing a written statement.

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

- I. Is there any cause of action for this suit?
 - II. Is the suit is maintainable?
 - III. Is this suit is barred by the law of limitation?
 - IV. Whether the defendant is a defaulter in payment of rent?
 - V. Is this suit is hit by the principles of estoppel, waiver and acquiescence?
 - VI. Whether the existing rent is Rs.400/- p.m.?
 - VII. Whether the plaintiff requires the tenanted premises for her own use and occupation?
 - VIII. Whether the arrear house rent is due to the plaintiff from the defendant?
 - IX. Whether the plaintiff is entitled to the decree as prayed for?
 - X. To what relief, if any, the plaintiff may be entitled to in this suit?
- 6.** Both sides examined witnesses and on the basis of evidence on record, the trial court dismissed the suit.
- 7.** Lt. Charu Bala Sarkar filed an appeal. The learned first appellate court dismissed the appeal.
- 8.** According to the provisions of the *Assam Urban Areas Rent Control Act, 1972*, a second appeal is not maintainable. Therefore, the present revision petition has been filed by Lt. Charu Bala Sarkar.
- 9.** I have considered the submissions made by the learned counsels of both sides.
- 10.** I have gone through the judgment of the first appellate court.

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.”

11. 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.

12. 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.

13. Reverting to the case in hand, I find that for non-compliance of the provisions of law as laid down in Order 41 Rule 31 of the Civil Procedure Code, the first appellate court's judgment is not sustainable. This is a fit case for exercising the power under Article 227 of the Constitution of India. The impugned first appellate court's judgment is set aside.

14. The case is remanded to the learned first appellate court at Bongaigaon for passing a fresh judgment in compliance with the procedure of law as laid down in Order 41 Rule 31 of the Code of Civil

Procedure.

15. This is an old pending case, therefore, the learned first appellate court is directed to dispose of this appeal within 3(three) months of receiving the case record(s).

The Civil Revision Petition is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant