

GAHC010176132009



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

Case No. : RSA/85/2009

SRI RAMESH DAS
S/O LT. BENGARAM DAS R/O KAMARKUCHI MOUZA- UPAR BARBHAG
P.O. and DIST. NALBARI, ASSAM.

VERSUS

SRI KISHORE SHARMA and ORS.

2: SRIK PRADIP SARMA

3: SRI MADHAB SARMA

4: SMTI GIRIBALA DEVI
- ALL THE RESPONDENTS 1
2 and 3 ARE THE SONS AND THE RESPONDENT NO.4 IS THE WIDOW OF LT.
SATISH SARMA. - ALL ARE THE RESIDENTS OF KAMARKUCHI
MOUZA- UPAR BARBHAG
P.O. and DIST. NALBARI
ASSAM

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. R. Sarma,
Advocate.

For the Respondents : Mr. I. Alam,
Advocate.

Date of Hearing : 16.11.2023

Date of Judgment : 11.12.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. R. Sarma, learned counsel representing the appellant as well as Mr. I. Alam, 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 23.12.2008 passed by the court of learned Civil Judge, Nalbari in Title Appeal No.10/2008, reversing the judgment and decree dated 03.09.2008 passed by the court of learned Civil Judge, (Jr. Divn.), Nalbari in Title Suit No.27/2007, is under challenge.

3. Late Satish Sarma was the owner of a plot of land measuring 2 Kathas 6 Lechas covered by K.P. Patta No.25, Dag No.15 of village Kamar Kuchi, in the Mouza of Upar Barbhag in the district of Nalbari. During his lifetime, on 28.01.1969, he sold the said land to late Bengaram Das on execution of the registered sale deed no.789/69. The possession of the land was also handed over to late Bengaram Das.

4. Subsequently, it was discovered that the aforesaid sale deed showed incorrect boundaries of the land. Therefore, late Satish Sarma executed a rectification deed no.2666/85 dated 17.05.1985 in favour of late Bengaram Das.

5. After the death of late Bengaram Das, his legal heir, the present appellant continued to possess the said land.

6. But the respondent Kishore Sarma, the son of late Satish Sarma filed an application before the Executive Magistrate under Section 145 CrPC. The learned Executive Magistrate declared possession of the aforesaid land in favour of Kishore Sarma. The appellant filed a revision petition before the learned Sessions Judge, who ultimately dismissed the revision petition on 17.08.2006.

7. Under the aforesaid circumstances, the present appellant being the legal heirs of late Bengaram Das, filed the Title Suit praying for a decree declaring his right, title and interest over the said land as well as for recovery of vacant possession of the said land.

8. The legal heirs of late Satish Sarma contested the case by filing a written statement. They denied the fact that their predecessor late Satish Sarma had ever sold the land to late Bengaram Das. They also denied the fact that late Satish Sarma had ever executed a rectification deed.

9. On the basis of the pleadings of both sides, the learned trial framed the following issues.

- I. Whether the suit is maintainable in law and facts?
- II. Whether there is cause of action for the suit?
- III. Whether the suit is barred by limitation?
- IV. Whether the plaintiff were in possession of the suit land?
- V. Whether the plaintiff had right, title and interest over the suit land?
- VI. Whether the plaintiff were entitled to the reliefs as claimed for?

10. During the trial of the case, the legal heir of late Bengaram Das examined three witnesses. On the other hand, the legal heirs of late Satish Sarma examined three witnesses also.

11. On the basis of the evidence on record, the trial court decreed the suit.

12. On appeal, the learned first appellate court set aside the judgment of the learned trial court and allowed the appeal.

13. I have gone through the appellate court judgment.

14. I find that the learned appellate court has failed to draw up a point for determination.

15. 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.”

16. 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.

17. 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.

18. Coming back the case in hand, I am constrained to hold that writing an essay and writing a first appellate court judgment by a court of law are two different things. The appellate court has not discussed all the issues framed by the trial court.

19. For the aforesaid reasons, I am of the considered opinion that the first appellate court judgment is bad in law and therefore, stands set aside.

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

21. This is an old pending case. Therefore, the learned appellate court shall endeavor to dispose of the matter within 3(three) months of receiving of this order. The appellate court shall be at liberty to give an opportunity the parties to submit their oral arguments.

22. The appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant