

GAHC010007132024



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

Case No. : CRP(IO)/26/2024

CHITRANGADA CHARKRAVERTI
WIFE OF SATYAJIT CHAKRAVERTI RESIDENT OF F/401 SHARANAM-4,
NEAR SEEMA PARTY PLOT, B/H, DEVAPRIYA BUNGLOWS, AHMEDABAD,
GUJRAT, PIN- 380015 THROUGH HER CONSTITUTED ATTORNEY SHRI
SUVRAJYOTI SENGUPTA, AGE 59 YEARS, SON OF LATE SAMBHU NATH
SENGUPTA, RESIDENCE OF DANISH ROAD, PANBAZAR, GUWAHATI,
KAMRUP (METRO), ASSAM, PIN- 781001

VERSUS

ASHOK JURIA
SON OF LATE GOBARDHAN JURIA, RESIDENT OF- GARIMA PALACE,
KAMARPATTY, H.B.ROAD, GUWAHATI- 781001 IN THE KAMRUP
(METROPOLITAN) DISTRICT, ASSAM

Advocate for the Petitioner : Mr. AC Sarma
Senior Advocate
Mr. G Bharadwaj

Advocate for the Respondent : Mr. PK Kalita
Senior Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 29.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 22.12.2023 passed in Title Appeal No.5/2016 whereby the Court of the learned Additional District Judge No.1 Kamrup(M) Guwahati had passed an order for evidence of respondent No.1/plaintiff to be taken in terms with Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short, the Code).

2. Mr. AC Sarma, the learned senior counsel appearing on behalf of the petitioner submits that the learned First Appellate Court's order is bereft of any reasons and as such, the said order requires to be interfered with *inasmuch as*, there is no mention as to why there is a necessity of the respondent No.1/plaintiff's evidence and as to what evidence is required.

3. On the other hand, Mr. PK Kalita, the learned senior counsel appearing on behalf of the respondent herein, who is the appellant before the learned Appellate Court submitted that the partition suit was filed through a power of attorney agent and the entire proceedings in the trial court was conducted through the power of attorney agent and the plaintiff never appeared. The counsel further submitted that during the appellate stage, this aspect of the matter was duly agitated and it is under such circumstances, the learned Appellate Court in its wisdom passed the order for evidence of the respondent No.1/plaintiff.

4. Having heard the learned senior counsels for the parties, it is the opinion of this Court that general principle is that the Appellate Court should not travel outside the records of the lower court and cannot take any evidence in appeal. However, the exception is the provisions of Order XLI Rule 27 of the Code, which enable the Appellate Court to take additional evidence in exceptional circumstances. The circumstances have been duly enumerated in sub-clauses (a), (aa) and (b) of Sub-Clause 1 of Order XLI Rule 27 of the Code. For exercising the said power in exceptional circumstances, it is also the requirement of law that the learned First Appellate Court has to assign reasons and merely stating that the evidence of respondent No.1/plaintiff would be necessary would not suffice. The said impugned order does not mention as to under what circumstances, the learned First Appellate Court exercised the powers under Order XLI Rule 27 of the Code, that too, when there is no application being filed either by the parties. Accordingly, this Court interferes with the order dated 22.12.2023.

5. However, this Court makes it clear that the order passed herein shall not preclude the learned First Appellate Court to exercise the powers under Order XLI Rule 27 of the Code in accordance with the prescription contained in the said provisions. The order dated 07.02.2024 passed by this Court, whereby the Title Appeal No.5/2016 was stayed is hereby vacated and the parties are directed to appear before the learned First Appellate Court i.e. the Court of the learned Additional District Judge No.1 Kamrup(M) Guwahati on 18.06.2024.

6. With the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant