

GAHC010021652020



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

Case No. : RSA/38/2020

ON THE DEATH OF APPELLANT (MALOTI OJAH) HER LEGAL HEIRS
Represented By-

1.1: SRI SHARANGAPANI OJAH
S/O LATE CHIDANANDA OJAH
R/O BARPETA ROAD
BARPETA
PIN 781315
ASSAM

1.2: SRI JADOMONI OJAH
S/O LATE CHIDANANDA OJAH
R/O BADARARTUP
BARPETA
PIN 781301
ASSA

VERSUS

SRI HARMOHAN OJAH AND 7 ORS
S/O LATE CHIDANANDA OJAH, R/O BADARARTUP, MOUZA, PS AND DIST.
BARPETA, PIN 781301

2:SRI DEBODISH DAS
S/O LATE PROMOD DAS
R/O MAJORHATI
MOUZA
AND DIST. BARPETA
PIN 781301

3:SRI MAINALJYOTI DAS
S/O LATE DIMOBANDA DAS
R/O MAJORHATI
MOUZA

AND DIST. BARPETA
PIN 781301

4:TRANSPOSED
AS APPELLANT

5:TRANSPOSED
AS APPELLANT

6:STRUCK OFF
STRUCK OFF

7:KABITA OJAH
W/O DR. MANORANJAN DAS
R/O BARPETA ROAD
DIST. BARPETA
PIN 781315.

8:STRUCK OFF
STRUCK OF

Advocate for the Petitioner : MR. A C SARMA

Advocate for the Respondent : MR. R SARMA

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

30.07.2024

Heard Mr. A.C. Sarma, the learned senior counsel assisted by Mr. G. Bharadwaj, the learned counsel appearing for the appellant. Also heard Mr. R. Sarma, learned counsel representing the respondents.

2. The appellant Maloti Ojha (now deceased) filed the suit against the respondents praying for declaration of her right, title and interest and for confirmation of possession in respect of a plot of land. The suit was valued at ₹3,000/- and the necessary court fee was also paid.

3. The respondents contested the case by filing written statement.
4. The learned trial court dismissed the suit.
5. Thereafter, an appeal was filed before the court of learned Civil Judge, Barpeta challenging the judgment of the learned trial court. The learned first appellate court drew up the point for determination as to whether the appeal was maintainable in view of the provision of law as laid down in Section 96(4) of the Code of Civil Procedure. Thereafter, the first appellate court held that the appeal was not maintainable in view of the aforesaid provision of law and accordingly dismissed the appeal.
6. The Small Causes court is established under THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882 and the Provincial Small Causes Court's Act, 1887. These Acts are not applicable in the State of Assam. The civil courts of Assam are established by THE BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887. The first appeal under the Code of Civil Procedure lies under Section 96 of the Code of Civil Procedure.
7. The learned counsels of both sides have agreed to this proposition of law.
8. Therefore, this Court hereby opines that the learned first appellate court had erroneously oriented itself and passed the impugned judgment. The appeal is allowed.
9. The impugned judgment dated 30.11.2019 passed by the learned Civil Judge, Barpeta in Title Appeal No.13/2012 is set aside.
10. The case is remanded to the first appellate court for disposal in accordance with the procedure as laid down by law. The court below is directed to draw up a point for determination and thereafter shall answer all the issues framed by the trial court.
11. Both the parties are directed to appear before the first appellate court on 02.09.2024 for receiving further orders.

The appeal is disposed of. Send back the LCR immediately.

JUDGE

Comparing Assistant