

GAHC010046972017



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

Case No. : SAO/8/2017

RAMANI BARMAN
S/O LATE PRAFULLA CH. BARMAN, RESIDING AT PRESENT IN GAUHATI
UNIVERSITY CAMPUS, P.O. and P.S. JALUKBARI, GUWAHATI-14, DIST.
KAMRUP

VERSUS

ON THE DEATH OF NAGENDRA NATH SARMA HIS LEGAL HEIRS 1(a)
HEMALAT DEVI
W/O LATE NAGENDRA NATH SARMA GOTANAGAR, P.O. and P.S.
JALUKBARI, GUWAHATI-14, DIST. KAMRUP

1:(d) MS PINKI DEVI
D/O LATE NAGENDRA NATH SARMA GOTANAGAR
P.O. and P.S. JALUKBARI
GUWAHATI-14
DIST. KAMRUP

1:(c) MRS RINKI DEVI
D/O LATE NAGENDRA NATH SARMA GOTANAGAR
P.O. and P.S. JALUKBARI
GUWAHATI-14
DIST. KAMRUP

1:(b) MRS INKI DEVI
D/O LATE NAGENDRA NATH SARMA GOTANAGAR
P.O. and P.S. JALUKBARI
GUWAHATI-14
DIST. KAMRU

For the appellant (s) : Mr. B. K. Bhagawati, Advocate

For the respondent (s) : Mr. G. C. Borah, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

20.06.2024

The instant appeal has been filed under Order XLIII Rule 1 (u) of the Code of the Civil Procedure, 1908 (for short, 'the Code') challenging the order dated 12.06.2017 passed in Title Appeal No.33/2008 whereby the learned First Appellate Court has remanded the suit being Title Suit No.446/2006 back to the Court of the learned Munsiff No.1, Kamrup (M) at Guwahati for deciding afresh thereby also allowing the appellant who is the plaintiff to produce the original of the rectification deed and the family settlement/partition deed by calling its original for determination of the correct location/boundaries of the suit land of the appellant.

2. This Court has duly heard the learned counsels appearing on behalf of the parties and given anxious consideration to the same. It is seen that the learned First Appellate Court has allowed the application under Order XLI Rule 27 of the Code thereby permitting the appellant to produce the original of the rectification deed and the family settlement/partition deed by calling its original one for determination of the correct location/boundaries of the suit land of the appellant. If that be so, this Court fails to understand why the learned First Appellate Court did not decide the said appeal rather than remanding the appeal back to the learned Trial Court in as much as the learned First Appellate Court could have very well decided the said appeal on the basis of the other evidence including the evidence which has been permitted in terms with Order XLI Rule 27 of the Code.

3. Accordingly, this Court interferes with the order dated 12.06.2017 passed in Title Appeal No.33/2008 and directs the learned First Appellate Court to decide the appeal being Title Appeal No.33/2008 on its merits on the basis of the evidence available including the evidence so permitted in terms with Order XLI Rule 27 of the Code. In that regard, opportunity may be given in view of the order dated 12.06.2014 to the appellant to call for the original of the rectification deed and the family settlement/partition deed in the manner so permissible under law.

4. The appeal therefore stands allowed.

5. Taking into account that both the parties are duly represented before this Court, they are directed to appear before the learned First Appellate Court, i.e. the Court of the learned Additional District Judge No.1, Kamrup (M) at Guwahati on 29.07.2024. The Court of the learned Additional District Judge No.1, Kamrup (M) at Guwahati shall duly proceed with the appeal in accordance with law.

6. The Registry shall forthwith return the LCR to the learned First Appellate Court, i.e. the Court of the learned Additional District Judge No.1, Kamrup (M) at Guwahati so that on the next date so fixed by this Court, the said records are available before the Court below. In that regard, the Registry shall also employ the service of a Special Messenger.

7. In view of the above, the instant appeal stands disposed of.

JUDGE