

GAHC010069522021



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

Case No. : SAO/3/2021

PARTHA JYOTI BORAH AND ANR.
S/O- SHRI BOLORAM BORAH, R/O- CLUB ROAD BLOCK NO. 14, P.O., P.S.
AND DIST.- JORHAT, ASSAM.

2: SMTI. NIRMITA BORAH
W/O- SHRI PARTHA JYOTI BORAH
R/O- CLUB ROAD BLOCK NO. 14
P.O.
P.S. AND DIST.- JORHAT
ASSAM

VERSUS

NAMITA TARAFDAR
W/O- LATE ARUN TARAFDAR, R/O- LICHUBARI COLONY, P.O., P.S. AND
DIST.- JORHAT, ASSAM.

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

For the Respondent(s) : Mr. C. Chakravarty, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 20.06.2024

The instant appeal is directed against the order dated 05.01.2021 passed in Title Appeal No.10/2018 whereby the learned First Appellate

Court remanded the suit being Title Suit No.60/2014 to the learned Trial Court i.e. the Court of the learned Civil Judge, Jorhat to decide the suit afresh limited to the issue as to whether the Respondents/Defendants were in illegal occupation of the Schedule-B property and in that regard directed the learned Trial Court to appoint a Commissioner for the purpose of demarcation as well as measurement of the suit land through an Advocate Commissioner or an Officer of the Revenue Department. It was also mentioned that all other issues would not be open for determination.

2. This Court has duly heard the learned counsels for the parties and has given anxious consideration to their respective submissions. This Court fails to understand as to why the learned First Appellate Court having decided all other issues did not decide the said issue inasmuch as if the learned First Appellate Court was of the opinion that for the purpose of deciding as to whether the Respondents/Defendants were in illegal occupation of the Schedule-B land, the learned First Appellate Court would have decided the same on the basis of the evidence on record. It was also open to the learned First Appellate Court to employ the provisions of Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short "the Code") if it deem fit that there was a necessity of an appointment of a Commissioner by appointing an Advocate Commissioner or an Officer of the Revenue Department. The same having not been done in the opinion of this Court infringes upon the provision of Order XLI Rule 24 of the Code for which this Court interferes with the order dated 05.01.2021 passed by the learned Court of the Additional District Judge, Jorhat in Title Appeal No.10/2018. This Court allows the instant

appeal which only challenges the order of remand and directs the learned First Appellate Court to decide the said appeal on its merit and if necessary would be within its power to exercise the powers under Order XXVI Rule 9 of the Code, if so deem fit.

3. With above observations and directions, the instant appeal stands disposed of.

4. As both the parties are duly represented, they are directed to appear before the learned First Appellate Court on 01.08.2024.

5. The Registry shall forthwith return the LCR to the learned Court below so that on the next date so fixed by this Court, the said records are available before the learned Court below. In that regard, the Registry may also employ the service of a special messenger.

JUDGE

Comparing Assistant