

GAHC010075152017



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

Case No. : SAO/7/2017

SIRAJ UDDIN TALUKDAR
S/O LATE AMRAJ ALI TALUKDAR, R/O VILL. BASHBARI PART-II, P.S.
ALGAPUR, DIST. HAILAKANDI, ASSAM.

VERSUS

FOYZUL HAQUE KAZI
S/O LATE KOLOMDHAR ALI KAZI, R/O VILL. BASHBARI PART-II, P.O.
CHANDIPUR IV-788150, P.S. ALGAPUR, DIST. HAILAKANDI, ASSAM.

For the appellant (s) : Mr. M. H. Rajbarbhuiyan, Advocate

For the respondent (s) : Mr. N. H. Barbhuiya, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

20.06.2024

This is an appeal under Order XLIII Rule 1 (u) of the Code of Civil Procedure, 1908 (for short, 'the Code') whereby the order dated 31.03.2017 passed by the learned District Judge, Hailakandi in Money Appeal No.01/2015 has been put to challenge. Vide the impugned order,

the learned First Appellate Court had remanded the Money Suit No.05/2010 to the Court of the learned Civil Judge, Hailakandi, i.e. the learned Trial Court for deciding the suit afresh.

2. This Court has perused the impugned order and from a perusal of the impugned order, it is seen that the learned First Appellate Court had remanded the said suit solely on the ground that the learned Trial Court did not take into account the expert opinion.

3. At this stage, this Court finds it very relevant to take note of the provision of Order XXVI Rule 10 of the Code which categorically mentions that the report of the expert along with the evidence would be evidence in the suit. If the expert opinion is the evidence, this Court finds no reasons why the learned First Appellate Court could not have exercised its jurisdiction to appreciate the expert opinion by itself rather than remanding the suit back to the learned Trial Court. This in the opinion of this Court is contrary to the provision of Order XLI Rule 24 of the Code.

4. Accordingly, the instant appeal is allowed by setting aside the order dated 31.03.2017 and thereby directing the learned District Judge, Hailakandi, i.e. the learned First Appellate Court to decide the appeal being Money Appeal No.01/2015 in accordance with law on merits.

5. Taking into account that both the parties are duly represented before this Court, they are directed to appear before the Court of the learned District Judge, Hailakandi on 24.07.2024. The Court of the learned District Judge, Hailakandi shall duly proceed with the appeal in accordance with law.

6. The Registry shall forthwith return the LCR to the learned Court

below, i.e. the Court of the learned District Judge, Hailakandi 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

Comparing Assistant