

GAHC010088212024



undefined

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

**Case No. : RSA/188/2024**

SHENAZ BEGUM LASKAR  
D/O LATE RAJAB ALI LASKAR,  
RESIDENT OF PASCHIM KITTARBAND PART I, PO MONACHARA, PS LALA,  
DIST HAILAKANDI, ASSAM

VERSUS

ANAMUL ISLAM MAZUMDAR AND ANR  
S/O HAJI SAFIQR RAHMAN MAZUMDAR,  
RESIDENT OF PASCHIM KITTARBAND PART I, PO MONACHARA, PS LALA,  
DIST HAILAKANDI, ASSAM

2:MD. SAYAR ALI LASKAR

S/O LATE SIKADAR ALI LASKAR  
RESIDENT OF PASCHIM KITTARBAND PART I  
PO MONACHARA  
PS LALA  
DIST HAILAKANDI  
ASSA

**Advocate for the Petitioner** : MR. R ALI, MS. J GAYAN, J TALUKDAR, MR M BORO

**Advocate for the Respondent** : MS. R CHOUDHURY (R1), MD. M AHMED (R1), MR. A H M R CHOUDHURY (R1)

**BEFORE  
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 09.12.2024**

Heard Mr. R. Ali, learned counsel for the appellant and Ms. R. Choudhury, learned counsel for the respondents.

**2.** This appeal, under Section 100 of the C.P.C., is directed against the Judgment and Decree dated 08.01.2024, passed by the learned Civil Judge (Senior Division), Hailakandi, in Title Appeal No. 08/2023.

**3.** It is to be noted here that vide impugned Judgment and Decree dated 08.01.2024, the learned Civil Judge (Senior Division), Hailakandi had affirmed the Judgment and Decree dated 31.03.2023, passed by the learned Civil Judge (Junior Division), Hailakandi, in Title Suit No. 157/2020.

**4.** The background facts leading to filing of the present appeal is adumbrated here in below :-

“The respondent No. 1 herein, as plaintiff, instituted a title suit for specific performance of contract, delivery of khas possession and declaration of Sale Deed No. 2447, dated 16.06.2012, as void and illegal.

The case of the plaintiff No. 1 is that Late Rajab Ali Laskar was the father of the defendant No. 1 and was the original owner of the suit land and he sold the land to defendant No. 1, vide registered Sale Deed No. 265, dated 10.02.2006. Prior to that, the father of the defendant No. 1 executed a '*smaranlipi*' in favour of the plaintiff No. 1 on 16.03.2003, and he was enjoying the said land. Thereafter, at the time of purchase of the suit land, defendant No. 1 took loan of Rs. 25,000/- from the plaintiff by executing a 'hand-note' and executed

another 'smaranlipi' in favour of the plaintiff No. 1 and he was in possession of the suit land.

Thereafter, the defendant No. 1 intended to sell the suit land to the plaintiff and he being agreed to the same, a consideration of Rs. 3,30,000/- was fixed and defendant No. 1 executed a 'bininama' on 28.02.2012, and took Rs. 35,000/- on the condition that the defendant No. 1 would execute the sale deed after receipt of the remaining amount within two months, by deducting the amount of Rs. 25,000/- which she took as loan. But, after expiry of the stipulated period, the defendant No. 1 did not execute the 'sale deed' and delayed it on the pretext of one or other. Thereafter, the plaintiff had sent a legal notice to the defendant No. 1. But then also she failed to execute the sale deed.

Thereafter, the plaintiff had instituted a suit, wherein defendant No. 1 filed her written statement and then the plaintiff came to know that the suit land has been sold to the defendant No. 2 by registered Sale Deed No. 2447, dated 16.06.2012, and the defendant No. 2 was delivered with khas possession of the same. Then the plaintiff amended his plaint and inserted the fact of sale to the defendant No. 2 and he was impleaded as defendant No. 2.

In the said suit both the defendants had entered appearance and submitted their separate written statements and it is stated that there was no cause of action for the suit and non-joinder of necessary parties and the suit is not maintainable in its present form and they have also denied all the averments made in the plaint. The defendant No. 1 had stated that he purchased the suit land from her father by

registered Sale Deed No. 265, dated 10.02.2006, and he has been in possession of the same.

They have stated that the defendant No. 1 is the niece of defendant No. 2 and sold the suit land to him upon consideration of Rs. 10,50,000/- and executed a registered Sale Deed No. 2447, dated 16.06.2012, which was registered on 22.08.2012, in favour of defendant No. 2 and handed over the possession to the defendant No. 2 and since 23.03.2012, the defendant No. 2 is in possession of the suit land.

They have also stated that the plaintiff with the help of others prepared the "binanama" on 28.02.2012, after taking her signatures on some blank papers, when she visited her lawyer for some other purposes. Therefore, it is contended to dismiss the petition."

**4.1.** Upon the said pleadings, the following issues are framed by the learned trial court:-

- "1. Whether there is any cause of action for the suit?
2. Whether the suit is maintainable in its present form and manner?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the defendant took advance money amounting to Rs. 35,000/- out of Rs. 3,30,000/- by executing a 'binanama' in favour of the plaintiff on 28.02.2012, with a promise to execute and register a deed, within two months, after receiving rest amount of Rs. 2,95,000/-?
5. Whether the defendants are liable to execute and register the sale deed, on the strength of 'binanama', in favour of the plaintiff, after

receiving the rest amount?

6. To what relief(s) the parties are entitle to get?

7. Whether the Sale Deed No. 2447, dated 16.06.2012, is illegal and liable to be cancelled?”

**4.1.** Thereafter, hearing learned counsel for both the parties and also considering the evidence adduced by both the parties and also considering all the documents exhibited by the parties, vide Judgment and Decree dated 31.03.2023, the learned trial court had decreed the suit and decided all the issues in favour of the plaintiff and held that the plaintiff has the right over the suit land and the defendant No. 2 is failed to prove him being a bona-fide purchaser and also held that the Sale Deed No. 2447, dated 16.06.2012, is illegal and liable to be cancelled.

**4.2.** Thereafter, being aggrieved, the defendants approached the learned first appellate court, by filing a title appeal, being Title Appeal No. 08/2023 and upon the said title appeal, the learned first appellate court has framed the following points for determination :-

- “(i) Whether the learned trial court wrongly decided the issue No. 2, as to maintainability of the suit and erroneously ignoring the fact that the plaint did not contain any schedule of the suit land?
- (ii) Whether the learned trial court erroneously decided the issue No. 3, as to non-joinder of necessary parties without proper discussion of the materials on record?
- (iii) Whether the learned trial court wrongly interpreted the provisions of law and decided the issue Nos. 4, 5, 6 & 7, erroneously in affirmative, without considering the materials on record in it's proper perspective and as such, the decisions of the learned trial Court in respect of those issues

deserve to be set aside and reversed?

- (iv) Whether the impugned judgment & decree is otherwise bad in law and deserves to be set aside and reversed?”

**4.3.** Thereafter, the learned first appellate court had decided the issue Nos. 1 – 3 in negative against the appellant therein (respondent No. 1) and issue No. 4 partly affirmed with modification and thereafter, decreed the suit with the following reliefs :-

- “(i) The plaintiff is entitled to get a decree of specific performance of the agreement dated 28.02.2012.
- (ii) The Sale Deed No. 2447, dated 22.08.2012, stands cancelled being void and illegal. A precept in that respect be issued to the Sub-Registrar, Hailakandi to endorse the cancellation in the relevant register and volume book.
- (iii) The plaintiff shall pay the balance sale consideration of Rs. 2,70,000/- (Rupees Two Lakh Seventy Thousand) only to the defendant No. 1 within one month from the date of decree and the defendant No. 1 shall execute a registered sale deed in favour of the plaintiff in accordance with the agreement for sale dated 28.02.2012 and the defendant No. 2 shall deliver the khas possession of the suit land to the plaintiff.
- (iv) The defendant No. 1 fails to execute the registered sale deed despite payment of the balance of sale consideration being offered by the plaintiff and the defendant No. 2 does not deliver the khas possession of the suit land to the plaintiff, then the plaintiff shall deposit the same before the court and get the sale deed executed and registered

through court and also would get the khas possession of the suit land delivered through the court.

- (v) The defendants are restrained from alienating the suit land to any other person and also from changing the nature and feature of the suit land and also from disturbing the possession of the suit land after being duly delivered to him.
- (vi) The defendant No. 2 is entitled to refund of the sale consideration of Rs. 3,00,000/- from the defendant No. 1, in view of cancellation of his sale deed.
- (vii) The defendant No. 2 would have a charge over the balance sale consideration of Rs. 2,70,000/- (Rupees Two Lakh Seventy Thousand), if the defendant No. 1 does not refund the sale consideration, as awarded above, to him.”

**5.** Mr. Ali, learned counsel for the appellant submits that the learned trial court as well as the learned first appellate court, without any materials, had held that Sale Deed No. 2447, dated 16.06.2012, is illegal as required under Order 6 Rule 4 of the C.P.C. Mr. Ali further submits that without any counter claim, the learned trial court as well as the learned first appellate court had decreed the suit in favour of the defendant No. 2 (proforma respondent No. 2). Mr. Ali further submits that there was no subject matter in the suit as well as no description of the property of the plot as required under Order 7 Rule 3 of the C.P.C. and that the learned first appellate court has affirmed the judgment of the learned trial court in contravention of Order 41 Rule 31 of the C.P.C., by not framing point for determination and answering those points in the impugned judgment. Therefore, Mr. Ali has contended that the appeal may be admitted and the matter may be hearing by framing substantial questions of law as suggested in the memo of

appeal.

**5.1.** In support of his submission Mr. Ali has referred following decisions:-

(i) **Second Appeal No. 103/1998**, dated 11.08.2004;

(ii) **State Bank of India through General Manager vs. National Housing Bank and Others**, reported in (2013) 16 SCC 538;

(iii) **Kaushik Premkumar Mishra & Another vs. Kanji Ravaria @ Kanji & Another**, reported in 2024 0 INSC 540; and

(iv) **Rohit Singh and Others vs. State of Bihar & Others**, reported in 2006 12 SCC 734.

**6.** On the other hand, Ms. Choudhury, learned counsel for the respondents has supported the impugned judgment and order so passed by the learned trial court as well as the learned first appellate court. Ms. Choudhury further submits that there is concurrent finding of fact by the learned trial court as well as by the learned first appellate court. Ms. Choudhury also submits that no substantial question of law is involved in this appeal and no perversity is shown to have committed by the learned trial court as well as the learned first appellate court and therefore, it is contended to dismiss the appeal.

**7.** Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also perused the Judgment and Decree dated 08.01.2024, passed by the learned Civil Judge (Senior Division), Hailakandi, in Title Appeal No. 08/2023 and also perused the Judgment and Decree dated 31.03.2023, passed by the

learned Civil Judge (Junior Division), Hailakandi, in Title Suit No. 157/2020.

**8.** A perusal of the memo of appeal reveals suggesting of following substantial questions of law :-

- (i) Whether the learned trial court and the learned first appellate court are justified in passing the impugned judgment and decree in favour of the defendant No. 2 without any counter-claim?
- (ii) Whether the learned trial court and the learned first appellate court are justified in holding Sale Deed No. 2447, dated 16.06.2012, as illegal, without any materials of fraud as required under Order 6 Rule 4 of the C.P.C.?
- (iii) Whether the learned trial court and the learned first appellate court are justified in passing impugned judgment and decree without existence of any subject-matter as well as necessary description of any property in the plaint as required under Order 7 Rule 3 of the C.P.C.?
- (iv) Whether the findings and conclusion of the learned trial court and the learned first appellate court are vitiated by perversity?
- (v) Whether the impugned judgment and decree contravenes the mandate of Order 41 Rule 31 of the C.P.C.?

**9.** Though it is submitted that the learned first appellate court has granted benefit to the defendant No. 2 without any counter claim and that the same is not sustainable in law and in support of his submission he has referred a decision of a co-ordinate bench of this court in **Second Appeal No. 103/1998**, wherein it has been held that in absence of a counter-claim by the defendant, it is incomprehensible as to how any declaration could have been made in favour of the

defendant No. 1 in the suit and consequently, the declaration of right, title and interest of the defendant as a co-owner as made by the learned first appellate court is set aside, yet, Section 33 of the Specific Relief Act provides that power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable. Sub-Section 1 of Section 33 of the Specific Relief Act also provides that on adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require. The learned first appellate court having been empowered to granted relief and on such count, the relief was granted in favour of the defendant No. 2, after cancellation of the Sale Deed No. 2447, dated 16.06.2012.

**9.1.** That being so, the decision referred by Mr. Ali would not come into his aid and thus, no substantial questions of law, as suggested in Sl. No. I, is involved here in this case.

**10.** The learned first appellate court also arrived at a finding that the defendant No. 1 had executed an agreement for sale and took advance a sum of Rs. 35,000/- from the plaintiff and the Sale Deed No. 2447, dated 16.06.2012, is admittedly executed and registered after the agreement of sale with the plaintiff and as such, the same is illegal and liable to be cancelled.

**10.1.** The learned first appellate court also endorsed the view, so taken by the learned trial court and arrived at a finding that the Sale Deed No. 2447, dated 16.06.2012, was executed on the basis of one unregistered 'binanama' and the said 'binanama' was executed subsequently to the 'binanama' executed in favour of the plaintiff and further held that the learned trial court has rightly applied the provision of Section 48 of the Transfer of Property act. While discussing the

doctrine of priority, it has rightly given priority to the earlier document executed and held that the sale deed was executed with malafide intention on the part of the defendant.

**10.2.** Thus, the suggested 2<sup>nd</sup> substantial question of law is found to be not involved in this appeal and that there was no counter claim in the title suit filed by the defendant. Yet, in view of the provision of Section 33 of the Specific Relief Act, the court can grant such relief to a party which justice may require.

**11.** Notably, Order 7 Rule 3 of the C.P.C., which reads as under :-

**"Where the subject-matter of the suit is immoveable property: -**

Where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of) settlement or survey, the plaint shall specify such boundaries or numbers."

**12.** Here in this case, it appears that the learned first appellate court had thoroughly discussed the 'subject matter' of the suit and based on several decisions of Hon'ble Supreme Court, in **Sashit Kumar Sen vs. State of Bihar**, reported in (1975) 1 SCC 774; **State of Punjab vs. Shyamlal Murari**, reported in (1976) 1 SCC 719; and **Ghanashyam Dass and Others vs. Dominion of India and Others**, reported in (1984) 3 SCC 46; wherein it is provided that procedural defects would not come in the way of justice, the learned first appellate court had arrived at a finding that absence of description of the property with boundaries and survey number, being procedural defect, the merit of the suit cannot hit by the same.

**12.1.** This being the position, no fault can be found with the finding of

the learned first appellate court and as such, this court is of the view that the suggested 3<sup>rd</sup> substantial question of law is not involved here in this case.

**13.** As regard the 4<sup>th</sup> suggested substantial question of law is concerned, the learned counsel for the appellant failed to demonstrate from the impugned judgment and decree as to what perversity is committed by the learned trial court as well as by the learned first appellate court. Mere assertion without there being any supporting materials is not sufficient to establish perversity.

**14.** It is to be noted here that in the case of **Mrugendra Indravadan Mehta and Others vs. Ahmedabad Municipal Corporation**, reported in **2024 SCC Online SC 849**, Hon'ble Supreme Court has held that an omission to frame point for determination by the first appellate court as required under Order 41 Rule 31 of the C.P.C. would not prove fatal as long as the first appellate court dealt with all the issues that arises for deliberation in the said appeal.

**15.** In the instant case, perusal of the impugned judgment and decree so passed by the learned first appellate court indicates that the learned first appellate court formulated as many as 4 points for determination and thereafter, discussed the same in details with reference to the evidence available on the record and thereafter, arrived at a finding. As such, it cannot be said that the learned first appellate court had violated the mandate of Order 41 Rule 31 of the C.P.C. and as such, no substantial question of law, as suggested in Sl. No. V, exist here in this case.

**16.** Thus, from the aforementioned discussion and finding, it appears that no substantial question of law is involved here in this appeal as suggested by Mr. Ali, learned counsel for the appellant.

**17.** It is to be noted here that in the case of **Narayanan Rajendran & Another**

**vs. Lekshmy Sarojini & Others**, reported in (2009) 5 SCC 264, Hon'ble Supreme Court in the Paragraph Nos. 66 & 69 held as under :-

“66. When Section 100 C.P.C. is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial questions of law.

\* \* \* \* \*

69. The scope of interference by the High Court in second appeal under section 100 CPC after 1976 Amendment is strictly confined to cases involving substantial questions of law.”

**18.** It is also to be noted here that in the case of **Thiagarajan vs. Sri Venugopalaswamy B. Koil**, reported in (2004) 5 SCC 762, Hon'ble Supreme Court has held as under :-

“The High Court in its jurisdiction under Section 100 C.P.C. was not justified in interfering with the findings of fact. The court observed that to say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same. This court in a catena of decisions held that where findings of fact by the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own findings on re-appreciation of evidence merely on the ground that another view was possible.”

**19.** Similar observation was made by Hon'ble Supreme Court, in the case of **State of Kerala vs. Mohd. Kunhi**, reported in (2005) 10 SCC 139, has held as under :-

“The High Court is not justified in interfering with the concurrent findings of fact. This court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.”

**20.** In the case in hand, the learned first appellate court had discussed the evidence in details and arrived at a reasoned finding and thereafter, affirmed the judgment and order so passed by the learned trial court and no perversity in arriving at such a finding is shown to have committed by the learned trial court as well as the learned first appellate court. In that view of the matter and also in view of the concurrent finding of facts by the learned trial court as well as the learned first appellate court, this court is unable to interfere with the same.

**21.** In view of above, this appeal stands **dismissed** at this motion stage itself.

**JUDGE**

**Comparing Assistant**