

GAHC010102032024



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

Case No. : CRP/57/2024

MD. HABIBUR RAHMAN
S/O- LT. SUKUR ALI,
VILL- KHARUAPARA,
MOUZA- NAGAON, P.O.- NAGAON,
P.S. AND DIST.- BARPETA,
PIN- 781309.

VERSUS

ON THE DEATH OF MD. GAZANFAR ALI
HIS LEGAL HEIRS NAMELY

1.1:RINA BEGUM
W/O- LT. GAZANFAR ALI

RESIDENT OF VILL- BHELLA
DURGAPUR

MOUZA- BARPETA
P.S.- BARPETA

ASSAM
PIN- 781314.

1.2:GAJIUL ALOM
S/O- LT. GAZANFAR ALI

RESIDENT OF VILL- BHELLA
DURGAPUR

MOUZA- BARPETA
P.S.- BARPETA

ASSAM
PIN- 781314.

1.3:NUR ALOM
/O- LT. GAZANFAR ALI

RESIDENT OF VILL- BHELLA
DURGAPUR

MOUZA- BARPETA
P.S.- BARPETA

ASSAM
PIN- 781314

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.06.2024.

Heard Shri MU Mahmud, learned counsel for the petitioner.

- 2.** Considering the subject matter involved and the provisions of law, the instant petition is taken up for final disposal at the motion stage itself.
- 3.** The projected facts are that in Title Suit No. 322/2010 instituted before the Court of learned Munsiff No.1 at Barpeta, the present petitioner was arrayed as the defendant no. 3. The said suit was instituted by the predecessors of the present respondents.
- 4.** It is contended that while the suit was instituted at Barpeta, the petitioner

was residing at Guwahati. It is further contended that there was recourse to some fraudulent activity so far as the report on service is concerned and according to the petitioner, he never received any notice. It is submitted that the petitioner being illiterate, though a thumb impression was appearing in the report, there was some fraud involved and the petitioner was actually not having any knowledge of the said suit.

5. The suit was ultimately decreed vide judgment and decree dated 13.12.2013 which was *ex parte* against the present petitioner.

6. The petitioner had accordingly filed an application under Order 9 Rule 13 of the CPC which was registered as Misc.(J) Case No. 13/2015. The said application was, however, rejected vide order dated 04.12.2017.

7. The aforesaid order of rejection was, however, the subject matter of Misc. Appeal No. 4/2018 instituted before the learned Civil Judge, Barpeta. The said appeal was, however, dismissed vide order dated 20.10.2022.

8. Being aggrieved, the petitioner had, however, preferred a first appeal in this Court, being FAO/1/2023.

9. Without going into the aspect of the maintainability of such appeal, this Court has noted that vide an order dated 06.01.2023 while issuing notice, an interim order was passed regarding the operation of the *ex parte* judgment and decree dated 13.12.2013. It, however, transpires that when the said FAO/1/2023 had come up for consideration on a subsequent date, this Court

vide order dated 13.05.2024 had dismissed the said appeal on withdrawal. This Court had noticed that wrong provision of law was taken into recourse. This Court had also made certain observations regarding the limitation period.

10. Pursuant to the said order, the instant application has been filed under Section 115 of the CPC.

11. The aforesaid Section 115 was amended in the year 1999 which came into effect from 01.07.2002 whereby a proviso was added. For ready reference, the proviso is extracted hereinbelow:

“High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.”

12. This Court has also noticed that the original judgment and decree dated 13.12.2013 passed in Title Suit No.322/2010 has not been put to challenge as yet.

13. Therefore, while this present application is rejected on the issue of jurisdiction, the petitioner is given liberty to challenge the original judgment and decree passed in the title suit in the appropriate Court of jurisdiction. If such appeal is preferred, the petitioner would be at liberty to take recourse to the

observations made by this Court in the order dated 13.05.2024 with regard to the issue of limitation. Further, the time consumed after the order dated 13.05.2024 till the stage, may also be taken into consideration.

JUDGE

Comparing Assistant