

GAHC010114622015



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

**Case No. : RSA/50/2015**

SRI TANU RAM GOGOI  
S/O SRI GIRISH GOGOI, R/ONIZ NAKHANGIA GAON, P.O. and P.S.  
TENGA KHAT, DIST. DIBRUGARH, ASSAM.

VERSUS

SRI JITU AHMED @ JITU RAHMAN and 2 ORS  
S/O LATE SWEET AHMED @ RAHMAN, R/O TENGA KHAT, P.O. and P.S.  
TENGA KHAT, DIST. DIBRUGARH, ASSAM.

2:MANIK GOGOI @ MANIK CHAMUA

S/O LATE VEDAI GOGOI @ MAHESWAR CHAMUA  
R/O CHAKALIA BHARIA GAON  
P.O. and P.S. TENGA KHAT  
DIST. DIBRUGARH  
ASSAM.

3:JALIL AHMED

S/O LATE MANURUDDIN AHMED  
R/O HALAKANI MAJULI  
P.O. and P.S. TENGA KHAT  
DIST. DIBRUGARH  
ASSAM

**Advocate for the Petitioner : MR.G N SAHEWALLA**

**Advocate for the Respondent : MR H K SARMA (r-3)**

**BEFORE  
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

**ORDER**

**Date : 13.02.2024**

Heard Mr. G.N.Sahewalla, learned Senior Counsel assisted by Ms. S.Todi, learned counsel for the appellant. None appears for the respondent in spite of service of notice.

This is a regular second appeal under Section 100 of the CPC challenging the Judgment and Order, dated 07.11.2014 passed by the learned Civil Judge, Dibrugarh in Title Appeal No.45/2012 affirming the Judgment dated 16.12.2011 passed by the learned Munsiff No.1, Dibrugarh in Title Suit No. 148/2010.

The petitioner being the plaintiff filed the suit seeking certain reliefs in respect of the schedule property. The defendant No. 3 filed written statement. Notice issued to other defendants returned unserved. Thereafter, the LCR is silent about the fate of other defendants. However, on 22.09.2011, the petitioner being the plaintiff filed his evidence on affidavit, no issues were framed.

On 16.12.2011, the learned trial court held that the petitioner being the plaintiff filed his evidence on affidavit only without the support of any documentary evidence and on that ground the suit was dismissed. The learned appellate court thereafter dismissed the appeal being devoid of any merit.

Mr. Sahewalla has pointed out that when the appellant filed his evidence on affidavit, he filed eight Nos. of documents which were properly exhibited as Exhibit-1 to Exhibit- 8.

After going through the LCR, I find that the submission of Mr. Sahewalla is factually correct. It appears that the learned trial court did not properly go through the evidence of the plaintiff/appellant. I also find that the learned trial court has failed to endorse those documents.

Mr. Sahewalla has relied upon two judgments in the case of *Babu Ram –vs- Sadhu Singh & Ors* delivered by the Punjab and Haryana High Court reported in (1975) PLJ 476 and *Shiv Ram –vs- Thakar Dutt* delivered by Himachal Pradesh High Court reported in (1973) AIR (HP) 62.

After considering the submission of Mr. Sahewala, I agree that the learned trial court without exercising due diligence and judicial mind passed the judgment dismissing the case of the

plaintiff/appellant. I have no doubt that the learned first appellate court also failed to properly appreciate the matter.

The appeal is allowed.

Both the judgments passed by the learned Civil Judge, Dibrugarh in Title Appeal No.45/2012 affirming the Judgment dated 16.12.2011 passed by the learned Munsiff No.1, Dibrugarh in Title Suit No. 148/2010 are hereby set aside.

Case is remanded back to the court of learned Munsiff No.1, Dibrugarh for fresh trial in accordance with the procedure as per law.

The plaintiff shall be allowed to examine more witnesses if he desires and thereafter, the learned trial court shall dispose of the matter, according to the procedure as laid down by law.

The learned trial court shall make endeavor to dispose of the case within 3 (three) months from the date of receipt of LCR.

Send back the LCRs.

The second appeal stands disposed.

**JUDGE**

**Comparing Assistant**