

GAHC010125852009



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

Case No. : SAO/10/2009

SMTI. MONIKA BHARALI
D/O SRI UPENDRA KALITA, R/O VILL. BARAJOL, MOUZA-PUB-BANBHAG,
P.S. GHAGRAPAR, DIST. NALBARI, ASSAM.

VERSUS

SRI NIRANJAN BHARALI
S/O LATE DHANESWAR BHARALI, R/O VILL. VITHA, MOUZAS-PUB-
BANBHAG, P.S. GHAGRAPAR, DIST. NALBARI, ASSAM.

For the Appellant(s) : Mr. R. Sarma, Advocate

For the Respondent(s) : Mr. N. N. Jha, Advocate

Date of Hearing : **20.06.2024**

Date of Judgment : **20.06.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

This is an appeal under Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908 (for short "the Code") challenging the order dated 31.03.2009 passed in Title Appeal No.1/2009 whereby the learned First Appellate Court i.e. the Court of the learned Civil Judge (Senior Division), Nalbari had remanded the

suit back to the learned Trial Court with a direction to the learned Trial Court to direct for scientific investigation of the DNA as prayed for under Order XXVI Rule 10A of the Code at the cost of the plaintiff without delay.

2. This Court had duly taken note of that the Respondent herein who was the Appellant did not file any application under Order XLI Rule 27 of the Code for adducing additional evidence. In addition to that, this Court finds no reason why the Appellate Court which is the last Court of facts could not have directed that the scientific evidence to be taken subject to fulfillment of the conditions in terms with Order XXVI Rule 9 read with Order XXVI Rule 10A of the Code. Under such circumstances, it is the opinion of this Court that the impugned order dated 31.03.2009 is in contrary to the provisions of Order XLI Rule 24 of the Code and accordingly, the impugned order dated 31.03.2009 is set aside and quashed.

3. This Court directs the learned First Appellate Court i.e. the Court of the learned Civil Judge (Senior Division), Nalbari to decide the said appeal on its merit. It is made clear that if any application is filed under Order XLI Rule 27 read with Order XXVI Rule 10A of the Code by the Appellant, the learned First Appellate Court shall duly consider within the scope and ambit in terms with the judgment of the Supreme Court in the case of ***Union of India Vs. Ibrahim Uddin and Another*** reported in ***(2012) 8 SCC 148***.

4. Taking into account that the parties are duly represented, they are directed to appear before the learned First Appellate Court i.e. the Court of the learned Civil Judge (Senior Division), Nalbari on 22.07.2024. The learned First Appellate Court shall duly proceed with the appeal in accordance with law.

5. The Registry shall forthwith return the LCR to the learned First Appellate

Court i.e. the Court of the learned Civil Judge (Senior Division), Nalbari 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.

JUDGE

Comparing Assistant