

GAHC010127662008



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

**Case No. : RSA/163/2008**

HIRA DAS

VERSUS

ON THE DEATH OF LAKHI CH. DAS REPRESENTED BY LABANYA DAS and  
ORS

**Advocate for the Petitioner : MR.J ROY**

**Advocate for the Respondent : MR.K U AHMED**

**BEFORE**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the Appellant : Shri J Roy, Senior Advocate &  
Shri BP Sarma, Advocate.

For the Respondents : Shri MA Sheikh, Advocate.

Date of Hearing : 11.06.2024.

Date of Judgment : 11.06.2024.

**JUDGMENT & ORDER**

The present appeal is preferred under Section 100 of the Code of Civil Procedure challenging a judgment and decree dated 19.05.2008 passed by the learned Addl. District Judge, Nagaon in Title Appeal No. 10/2006 whereby the said appeal was dismissed.

**2.** By the aforesaid impugned judgment and decree dated 19.05.2008, the 1<sup>st</sup> Appellate Court had affirmed the judgment and decree dated 27.03.2006 passed by the learned Civil Judge (Sr. Division) in Title Suit No. 46/1993. The appellant herein was the defendant no. 1 in the aforesaid title suit. The said suit was instituted for declaration of right, title and interest and recovery of khas possession.

**3.** The projected case in the plaint was that on 10.03.1980, a Power of Attorney was executed by the plaintiff in favour of the defendant no. 1 to look after the suit land as the plaintiff was a government servant. On 09.08.1991, the said Power of Attorney was cancelled and the land in question which was in the possession of the defendant no. 1 was demanded back. Initially, the plaintiff had also instituted a proceeding under Section 145 of the Cr.PC in which, however, a direction was given for approaching the appropriate forum of law. Consequently, the Title Suit No. 46/1993 was instituted as mentioned above. The learned Trial Court had decreed the aforesaid title suit in favour of the plaintiff and the said judgment and decree has also been upheld by the 1<sup>st</sup> Appellate Court by the impugned judgment and decree dated 19.05.2008.

**4.** This Court vide order dated 28.11.2008 had framed the following

substantial question of law:

“Whether the Issue No. 5 could be decided in favour of the plaintiff by resorting to the provisions of Sections 207 of the Indian Contract Act, 1872?”

**5.** I have heard Shri J Roy, learned Senior Counsel assisted by Shri BP Sarma, learned counsel for the appellant. I have also heard Shri MA Shekh, learned counsel for the respondents.

**6.** Shri Roy, learned Senior Counsel, at the outset, has informed this Court that during the pendency of the case, the original plaintiff-Lakhi Ch. Das has passed away and he has accordingly substituted by ten numbers of legal heirs. However, two of the legal heirs, namely, no. 1 and 3 have also passed away. The principal defence taken in the written statement by the present defendant was that he did not have any knowledge regarding the cancellation of the Power of Attorney.

**7.** By drawing the attention of this Court to the written statement filed by the appellant in the suit, the averments made in paragraph 11 have been relied upon. It is contended that upon consideration of the rival pleadings, the issues were framed and the relevant issue is Issue No. 5 which reads as follows:

“5) Whether the power of attorney was cancelled with the knowledge of the defendant no. 1?”

**8.** The learned Senior counsel for the appellant has submitted that the recourse to Section 207 of the Indian Contract Act, 1872 was not justified in the facts and circumstances of the case. It is further submitted that the materials on record, including the evidence would not be enough to establish that there was any notice issued for revocation of the concerned Power of Attorney dated 10.03.1980. The learned Senior Counsel, accordingly submits that the substantial question of law is to be decided in favour of the appellant and accordingly, this Court should intervene with the impugned judgment and decree and the suit should be dismissed.

**9.** *Per contra*, Shri Sheikh, learned counsel for the respondents has submitted that the materials on record would show that the concerned Power of Attorney dated 10.03.1980 was cancelled on 09.08.1991 and therefore, upon such cancellation, whatever right had accrued to the defendant had extinguished. He submits that in any case, the said Power of Attorney was only restricted to look after the land and on such cancellation, the land was supposed to be handed over back.

**10.** On the aspect of notice before such revocation, Shri Sheikh, learned counsel submits that there are materials on record that the defendant was informed about such revocation as the original plaintiff, who was a government servant, was on the verge of his retirement and after such retirement, he had expressed his desire to reside over the said plot of land by himself.

**11.** The learned counsel for the respondents has also submitted that recourse to Section 207 of the Indian Contract Act, 1872 by the learned Court below was

justified on the facts and circumstances of the case as the suit was intuited only after the initial attempt by the plaintiff by instituting a proceeding under Section 145 Cr.PC had failed to get the desired result. The learned counsel has also informed that the original plaintiff, who was the executor of the Power of Attorney, had passed away and therefore, for all practical purposes, the power of attorney has become otiose.

**12.** The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been carefully examined.

**13.** The learned Court below has invoked the provisions of Section 207 of the Indian Contract Act, 1872 which lays down that revocation and renunciation can be expressed or implied. However, in the considered opinion of this Court, the issue was not connected with the act of revocation of the instrument but the requirement of notice prior to such revocation. The defence taken in the written statement is lack of knowledge of such cancellation. The perusal of the written statement would, however, show that the defence was not pertaining to non-receipt of notice before such revocation. The materials on record would show that the action of cancellation was informed to the defendant by registered post with A/D. However, the said action is not related to a prior notice for such revocation which is a requirement of law. However, this Court has also noticed that there are materials on record to show that the original plaintiff had informed the defendant no. 1 regarding the intention to possess the land on his own as he was on the verge of retirement.

**14.** This Court has also taken note of the fact that the executor of the Power of Attorney i.e. the original plaintiff has passed way in the meantime and therefore, the Power of Attorney has become otiose for all practical purposes.

**15.** Considering all the facts and circumstances, this Court is of the opinion that the impugned judgment and decree passed by the learned 1<sup>st</sup> Appellate Court dated 19.05.2008 in Title Appeal No.10/2006 affirming the judgment and decree dated 27.03.2006 passed by the learned Civil Judge (Sr. Division) in Title Suit No.46/1993 does not require any interference. The substantial question of law is accordingly answered against the appellant and in favour of the respondent.

**16.** The appeal accordingly stands dismissed.

**17.** Send back the record.

**JUDGE**

**Comparing Assistant**