

GAHC010142932019



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

Case No. : RFA/14/2021

THE SECRETARY TO THE GOVT. OF ASSAM AND 3 ORS
WATER RESOURCES DEPARTMENT, ASSAM SECRETARIAT, DISPUR,
GUWAHATI-1

2: THE CHIEF ENGINEER
WATER RESOURCES DEPTT.

CHANDMARI
GUWAHATI-3
KAMRUP(M).

3: THE SUPERINTENDENT OF ENGINEER

SOUTHERN ASSAM WATER RESOURCES CIRCLE
CHANDMARI
GUWAHATI-3
KAMRUP(M).

4: THE EXECUTIVE ENGINEER

MANGALDAI WATER RESOURCES DIVISION
MANGALDAI
DARRANG
ASSAM

VERSUS

MD. MUHIBUR RAHMAN
S/O- LATE TALMIZUR RAHMAN, C/O- TANYIR MANSION, R/O- WARD NO.
2, MANGALDAI TOWN, P.O. AND P.S. MANGALDAI, DIST.- DARRANG,
ASSAM

2: THE SUPERINTENDENT OF ENGINEER

SOUTHERN ASSAM WATER RESOURCES CIRCLE
CHANDMARI
GUWAHATI-3
KAMRUP(M)

Advocate for the Petitioner : MR B GOSWAMI

Advocate for the Respondent : MR M AHMED

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. B. Goswami,
Addl. Advocate
General, Assam.

For the Respondent : Mr. B.K. Kataki,
Advocate.

Date of Hearing : 29.02.2024.

Date of Judgment : 01.03.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Goswami the learned Addl. Advocate General, Assam appearing for the appellants. Also heard Mr. B.K. Kataki, learned counsel representing the sole respondent.

2. This is a Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC) whereby the impugned judgment and decree dated 28.11.2018 passed by the court of learned Civil Judge, Darrang, Mangaldai in Money Suit No.12/2017, is under challenge.

3. The respondent is a Class-I (A) contractor working in the Department

of Water Resources, Assam. He executed some works after he was awarded the contract. But he was not paid the money. Therefore, the respondent filed the suit praying for recovery of ₹28,31,782/-.

4. The defendants/the present appellants contested the case by filing a written statement. They stated that the respondent was entitled to receive an amount of ₹21,60,000/- only and the same was already paid to him. The defendants categorically denied that the respondent is entitled to recover ₹28,31,782/-.

5. On the basis of the pleadings, the trial court framed the following issues:

- I. Whether there is any cause of action for the suit?
- II. Whether the suit is maintainable in its present form?
- III. Whether the suit is barred by law of limitation and stopped (sic)?
- IV. Whether the suit is bad for non joinder and mis joinder of necessary parties?
- V. Whether the plaintiff's claim was denied by the defendants?
- VI. Whether the defendant is liable to pay the contractual amount along with interest to the plaintiff?
- VII. To what relief the plaintiff is entitled to?

6. During the trial of the case, the plaintiff/respondent examined three witnesses and the present appellants/defendants did not examine any witnesses.

7. On the basis of the evidence on record, the trial court decreed the suit of the respondent. Hence, the present appeal has been filed by the

defendants before the trial court.

8. I have gone through the evidence and the materials available with the record.

9. This Court is of the opinion that in the instant appeal, the point for determination is– “whether the respondent is entitled to recover ₹28,31,782/- from the appellants”.

10. The trial court has framed the issue no.6 to decide this question and held that the present appellants are liable to pay the said amount of money to the respondent.

11. Therefore, I shall take up the issue no.6 first for discussion before taking up the other issues.

ISSUE NO.6

12. The respondent relied upon a work completion certificate (Exhibit-3) issued to him by the Executive Engineer, Water Resources Division, Mangaldai to show that the respondent has already completed the work. The document contains the signature of the Executive Engineer.

13. Section 67 of the Indian Evidence Act states that whenever there is a signature of a person or his handwriting in a document and if that document is relied upon to prove a particular fact, the said signature or the handwriting must be proved to be the signature or handwriting of that person.

14. In the case in hand, the Executive Engineer, Water Resources Division, Mangaldai who issued Exhibit-3 was not examined as a witness. Therefore, the fact that the respondent had completed the work

entrusted to him remained not proved and therefore, he is not entitled to receive any money for doing that work.

15. The learned trial court erroneously oriented itself and arrived at an erroneous finding. For the aforesaid reasons, this issue is decided in negative.

ISSUE NO.1

16. The respondent's case is that he was awarded a contract and after completion of the work, he was not paid the money. While deciding the issue no.6, this Court has held that the respondent failed to prove the fact that he completed the work entrusted to him. Therefore, there is no cause of action for the suit. After recording my disagreement with the trial court, this issue is answered in negative.

ISSUE NO.2

17. Considering the findings arrived at in issue no.6, I have decided that the present suit is not maintainable in law. This issue is, therefore, answered in negative.

ISSUE NO.3

18. There is no controversy on the point that this suit is not barred by law of limitation. I agree with the decision of the trial court and answered the issue in negative.

ISSUE NO.4

19. This issue was raised by the present appellants in their written statement. But they did not press this issue at the trial. Therefore, this issue is answered in negative.

ISSUE NO.5

20. This issue should not have been framed. There is no denial that the present appellants had denied the claim of the respondent/plaintiff. Therefore, this issue is answered in affirmative.

ISSUE NO.7

21. In view of the decisions arrived at in Issue No.6, and the other issues, I hereby hold that the respondent/plaintiff is not liable to a decree as prayed for. This issue is answered in negative.

O R D E R

22. For the decisions arrived at in the foregoing issues, this Court is of the opinion that the learned trial court had erroneously interpreted the evidence on record and arrived at an erroneous finding.

23. The appeal is allowed.

24. The impugned judgment and decree dated 28.11.2018 passed by the court of learned Civil Judge, Darrang, Mangaldai in Money Suit No.12/2017, is set aside.

Return the LCR.

JUDGE

Comparing Assistant