

GAHC010156212019



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

Case No. : SAO/6/2019

SMTI. RATNA RANI NATH AND 4 ORS
D/O- LATE JOUGEWAR NATH, R/O- VILL.- KESHORKAPAN, P.O.
DHARAKUNA- 788712, DIST.- KARIMGABJ, ASSAM

2: SRI BIDHAN CHANDRA NATH
S/O- LATE BIPUL CHANDRA NATH
R/O- VILL.- PATHU
PORGONA BORPARA
P.O. PATHU- 788781
DIST.- KARIMGANJ
ASSAM.

3: SRI BISWAJIT NATH
S/O- LATE BIPUL CHANDRA NATH
R/O- VILL.- PATHU
PORGONA BORPARA
P.O. PATHU- 788781
DIST.- KARIMGANJ
ASSAM.

4: SMTI. ARCHANA NATH
W/O- SRI DIPAK NATH
R/O- VILL.- SUPNARGOOL
P.O. MAIZGRAM- 788711
DIST.- KARIMGANJ
ASSAM.

5: SMTI. SUMA NATH
D/O- LATE SULALIT NATH
R/O- VILL. AND P.O.- DHARAKUNA- 788712
DIST.- KARIMGANJ
ASSAM

VERSUS

SMTI. KHONA NATH AND 6 ORS
D/O- LATE JOUGEWAR NATH, R/O- VILL.- KESHORKAPAN, P.O.-
DHARAKUNA- 788712, DIST.- KARIMGANJ, ASSAM

2:SRI RAMA NATH
S/O- LATE MOYNA NATH
R/O- VILL.- KESHORKAPAN
P.O.- DHARAKUNA- 788712
DIST.- KARIMGANJ
ASSAM.

3:SRI PALTU NATH
S/O- LATE MOYNA NATH
R/O- VILL.- KESHORKAPAN
P.O.- DHARAKUNA- 788712
DIST.- KARIMGANJ
ASSAM.

4:SMTI. KRISHNA NATH
D/O- LATE RATHINDRA NATH
R/O- VILL.- KESHORKAPAN
P.O.- DHARAKUNA- 788712
DIST.- KARIMGANJ
ASSAM.

5:SMTI. TRISHSNA NATH
D/O- LATE RATHINDRA NATH
R/O- VILL.- KESHORKAPAN
P.O. DHARAKUNA- 788712
DIST.- KARIMGANJ
ASSAM.

6:THE SUB- REGISTRAR

KARIMGANJ
P.O. KARIMGANJ- 788710
DIST.- KARIMGANJ
ASSAM.

7:SRI RITU RAJ BISWAS

DEED WRITER
OFFICE OF THE SUB-REGISTRAR
KARIMGANJ
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PIN- 788710
ASSAM

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the appellants : Mr. N Dhar
Mr. TU Laskar

Advocate for the respondents : Ms. R Choudhury
Ms. SS Zia

JUDGMENT & ORDER (ORAL)

02.05.2024

This is an appeal under Section 104 read with Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908, (for short, the Code) challenging the order dated 19.12.2018 passed by the learned Civil Judge Karimganj in Title Appeal No.11/2018 whereby the learned First Appellate Court i.e. the Court of the learned Civil Judge, Karimganj had remanded the suit back to the learned Trial Court for a fresh disposal after framing an independent issue in respect to the claim of preferential right of the plaintiff.

2. This Court finds it relevant to mention that the learned First Appellate Court also observed that there should be a decree prepared. But, however, the question of preparation of a decree does not arise *inasmuch as*, when a suit is being remanded for a fresh disposal, it would be an order of remand in terms with Order XLI Rule 23-A of the Code. Under such circumstances, the said

direction for preparation of a decree is completely unwarranted.

3. Be that as it may, this Court has duly taken note of the order of the plaint, the written statement as well as the evidence on record. This Court has also taken note of the judgment passed by the learned Trial Court wherein, more particularly, at paragraphs 55, 56, and 57, the learned Trial Court while discussing the issue No.6 had duly dealt with the preferential right of the plaintiff and held that the plaintiff did not have the preferential right. The learned First Appellate Court though framed the point for determination as to whether the claim of preferential right of the plaintiff to purchase the share of the co-sharers of the suit land was justified, but surprisingly, remanded the suit back to the learned Trial Court to frame an additional issue as regards the preferential right of the plaintiff. The materials on record clearly show that the learned First Appellate Court could have very well decided the same in terms with the evidence which was already available on record.

4. The grounds of objection which were taken by the plaintiff as an appellant before the learned First Appellate Court included a ground of objection at Serial No. 14 of the Memo of Parties wherein it was mentioned that the learned Trial Court ought to have considered that the plaintiff had first preference of the schedule of the Class II heirs of their deceased father and as such, the plaintiff was entitled to get the share of her sister principal defendant No.1/respondent No.1 being preferential right under Section 22 of the Hindu Succession Act, 1956, which the learned Trial Court committed error in deciding the issue No.6. This Court having taken note of that there was evidence on the basis of which the learned First Appellate Court could have decided the said aspect, but,

however, the learned First Appellate Court contrary to the provisions of Order XLI Rule 24 had remanded the suit back to the learned Trial Court, which in the opinion of this Court was not justified.

5. Accordingly, this Court sets aside the impugned order dated 19.12.2018 passed in Title Appeal No.11/2018 and directs the learned First Appellate Court i.e. the Court of the learned Civil Judge Karimganj to decide the said Title Appeal No.11/2018 afresh on the basis of the materials which are already there on record.

6. Taking into account that the parties are duly represented, this Court directs the parties to appear before the learned First Appellate Court i.e. the Court of the learned Civil Judge, Karimganj on 01.07.2024 for further proceedings of the appeal.

7. The Registry is directed to forthwith transmit the records to the learned First Appellate Court i.e. the Court of the learned Civil Judge, Karimganj and if necessary to take recourse to a *Special Messenger* so that prior to the next date so fixed, the records are received by the learned First Appellate Court.

8. With the above, the Appeal stands disposed of.

JUDGE

Comparing Assistant