

GAHC010163952010



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

Case No. : RSA/12/2010

ARATI MEDHI and 11 ORS
W/O LATE ANIL KR. MEDHI.

2: RANJIT MEDHI

S/O LATE ANIL KR. MEDHI.

3: ANIMESH MEDHI

S/O LATE ANIL KR. MEDHI.

4: SRMT. PRATIBHA MEDHI

D/O LATE ANIL KR. MEDHI.

5: SRMT. CHANDANA MEDHI

D/O LATE ANIL KR. MEDHI.

6: CHAMPAK MEDHI

S/O LATE ANIL KR. MEDHI. ALL ARE RESIDENTS OF KOLITAPARA
BHATIPARA
P.S. and DIST. GOALPARA.

7: SMT. REBATI BALA DAS

D/O LATE RAJANI KANTA DAS
R/O KALITAPARA
BHATIPARA
GOALPARA
TOWN
P.S. and DIST. GOALPARA
ASSAM.

8: SMT. NIRUPOMA DAS

D/O LATE RAJANI KANTA DAS
R/O SASTRINAGOR
P.S. and DIST. GOALPARA
ASSAM.

9: PRONITA DAS

D/O SMTI PRAVABATI DAS.

10: SMT. MANASI DAS

D/O SMTI PRAVABATI DAS

11: SMT. KAKALI DAS

D/O SMTI PRAVABATI DAS.

12: ARUP DAS

S/O SMTI PRAVABATI DAS
ALL ARE R/O VILL. PUB PAHARTALI
P.S. and DIST. GOALPARA
ASSAM

VERSUS

TAPON CHANDRA MEDHI and 9 ORS
S/O LATE MADHAB CHANDRA MEDHI.

2:JYOTISH MEDHI

S/O LATE MADHAB CHANDRA MEDHI
BOTH ARE R/O VILL. KALITAPARA
GOALPARA TOWN
P.S. and DIST. GOALPARA
ASSAM.

3:SMT. MINATI HAJORIKA

W/O SHRI JITEN HAJORIKA
D/O LATE MADHAB CHANDRA MEDHI
R/O BALADMARI
NEAR AGRICULTURE OFFICE
P.S. and DIST. GOALPARA

ASSAM.

4:SMT. GOPO DAS

W/O SUDHIR MOHAN DAS
D/O LATE MADHAB CHANDRA MEDHI
R/O KALITAPARA
BHATIPARA
GOALPARA TOWN
P.S. and DIST. GOALPARA
ASSAM.

5:HITU MEDHI

S/O NILKANTA MEDHI.

6:SMT. SAYA LAKSHMI DAS

W/O SHRI NIROD DAS
D/O LATE NILKANTA MEDHI BOTH ARE R/O KALITAPARA
BHATIPARA
GOALPARA TOWN
P.S. and DIST. GOALPARA
ASSAM.

7:DHANTI MEDHI

S/O LATE HAREN CHANDRA MEDHI.

8:AJOY MEDHI

S/O LATE HAREN CHANDRA MEDHI.

9:DHON MEDHI

S/O LATE HAREN CHANDRA MEDHI.

10:JHON MEDHI

S/O LATE HAREN CHANDRA MEDHI
ALL ARE R/O KALITAPARA
BHATIPARA
GOALPARA TOWN
P.S. and DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR.S C KEYAL

Advocate for the Respondent : MD.M Z SHAH

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. S.K. Ghosh,
Advocate.

For the Respondents : Mr. R. Ali,
Advocate.

Date of Hearing : 23.02.2024.

Date of Judgment : 01.03.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S.K. Ghosh, learned counsel appearing for the appellants as well as Mr. R. Ali, learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) where the judgment dated 23.12.2008 passed by the learned District Judge, Goalpara in Title Appeal No.01/2007, is under challenge.

3. Late Nehal Ram Medhi had two sons and two daughters, namely- Rajani Kanta Medhi, Madhab Ch. Medhi, Ravani Das and Suchila Das. During the lifetime of Nehal Ram Medhi, Rajani Kanta Medhi died leaving behind two sons and three daughters.

4. Now, the question arises as to whether the children of Rajani Kanta Medhi are entitled to inherit their respective shares in the property left behind by their grandfather late Nehal Ram Medhi.

5. The learned Munsiff held that the children of Rajani Kanta Medhi are entitled to inherit their respective shares in the property left behind by their grandfather late Nehal Ram Medhi.

6. But the court of the District Judge, Goalpara held that the children of Rajani Kanta Medhi are not entitled to inherit their respective shares in the property left behind by late Nehal Ram Medhi.

7. The present Second Appeal was admitted for hearing upon the following two substantial questions of law:

1. Whether the learned lower appellate court erred in law in not taking note of the doctrine of representation under pre-1956 Dayabhaga law of Succession?
2. Whether the learned lower appellate court erred in holding the suit to be barred by limitation?

8. I have considered the submissions made by the learned counsels of both sides.

9. According to Mulla's principles of Hindu Law, Sapindas are those who is bound to offer *pinda* and in this group are included his three immediate paternal ancestors, being his father, grandfather and great grandfather.

10. Thereafter, Hindu Succession Act, 1956 came into being. Section 4 of this Act has an overriding effect. Therefore, provisions of 1956 Act shall prevail over any text of any Hindu Law or other provisions of 1856 Act.

11. The schedule annexed with the Act of 1956, states that son, daughter, widow, mother, son of pre-deceased son, daughter of a pre-

deceased son, Son of a pre-deceased daughter, daughter of a pre-deceased daughter, widow of a pre-deceased son, son of a pre-deceased son of a pre-deceased son, daughter of a pre-deceased son of a pre-deceased son, widow of pre-deceased son of a pre-deceased son, etc. are Class-I heirs.

12. Therefore, children of late Rajani Kanta Medhi are Class-I heirs of Nehal Ram Medhi and therefore, they are entitled to inherit their shares in the property left behind by Nehal Ram Medhi.

13. The learned appellate court erroneously interpreted the law and also erroneously held that the suit of the appellant was barred by limitation.

14. The substantial questions of law are answered accordingly. The judgment passed by the learned first appellate court is not sustainable in law.

15. Therefore, the judgment dated 23.12.2008 passed by the learned District Judge, Goalpara in Title Appeal No.01/2007, is set aside.

16. The appeal is allowed and disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant