

GAHC010171342009



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

Case No. : RSA/67/2009

ON THE DEATH OF SOLE APPELLANT NAMELY BISWANATA DAS, HIS
LEGAL HEIRS

Represented By-

1.1: SMTI ALPANA DAS
W/O LATE BISWANATH DAS R/O VILL. NAKHULAGRANT
PO AND P.S. JAGOROAD
MOUZA- GOVA
DIST. MORIGAON
ASSAM. PIN-782410

1.2: SRI PALASH DAS
S/O LATE BISWANATH DAS R/O VILL. NAKHULAGRANT
PO AND P.S. JAGOROAD
MOUZA- GOVA
DIST. MORIGAON
ASSAM. PIN-78241

VERSUS

GITA RANI SAHA
D/O LT. GIRINDA SAHA R/O VILL. NAKHULA GRANT, MOUZA- GOVA, P.S.
and P.O. JAGIROAD, DIST. MORIGAON.

2:SRI HARI DAS

S/O LT. KANTA KR. NATH R/O VILL. SIBHANGA
MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM.

3:SRI KHAGENDRA KR. DEY

S/O LT. JASODA DEY R/O VILL. JAGOROAD TOWN MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM.

4:SMTI. MAYARANI SAHA

D/O LT. GIRINRA SAHA R/O VILL. NAKHULAGRANT
MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST.MORIGAON
ASSAM.

5:SMTI CHAYARANI SAHA

D/O LT. GIRINDRA SAHA
V/O VILL. NAKHULAGRANT
MOUZA-GOVA
P.O and P.S. JAGIROAD
DIST. MORIGAON
DIST. ORIGAON
ASSAM.

6:SMTI SITARANI SAHA

D/O LT. GIRINDRA SAHA
R/O VILL. NAKHULAGRANT
MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM.

7:SMTI. SABITARANI PAUL

8:SMTI. KANANBALA PAUL

BOTH ARE W/O NAKUR PAUL R/O VILL. NAKHULAGRANT
MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST. MORIAON
ASSAM.

9:SRI NANTU DEY

S/O UNKNOWN
R/O VILL. NAKHULAGRANT

MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM.

10:SRI JURAN BISWAS

S/O LT. BRINDABAN BISWAS R/O VILL. DUNGERPAR
MOUZA-BOKANI
P.O. and P.S LAHORIGHAT
DIST. MORIGAON
ASSAM.

11:SMTI BRINDARANI SARKAR

W/O LT. DHIREN SARKAR R/O VILL. NAKHULAGRANT
MOUZA-GOVA
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR D K DAS

Advocate for the Respondent : MD.M H CHOUDHURY

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. D.K. Das,
Advocate.

For the Respondents : Md. M.H. Choudhury,
Advocate.

Date of Hearing : 20.02.2024.

Date of Judgment : 01.03.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. D.K. Das, learned counsel representing the appellants as well as Md. M.H. Choudhury, learned counsel appearing for the

respondents.

2. This is a Regular Second Appeal under Section 100 of the Code of Civil Procedure (CPC) whereby the judgment dated 16.01.2009 passed by the court of learned Civil Judge, Morigaon in Title Appeal No.13/2008, affirming the judgment and decree dated 08.08.2008 passed by the court of learned Munsiff No.1, Morigaon in Title Suit No.06/06, is under challenge.

3. Late Girindra Saha was the owner of 3 plots of lands, each measuring 2 Bigha 2 Kathas 12 Lechas covered by Dag No.571; 4 Bighas 1 Katha 8 Lechas covered by Dag No.687 and 1 Bigha 2 Kathas 8 Lechas covered by Dag No.570.

4. During his lifetime, late Girindra Saha sold the entire 4 Bighas 1 Katha 8 Lechas covered by Dag No.687 to two persons namely, Haridas Routh and Khagendra Kumar Dey.

5. In the year 1995, Girindra Saha expired leaving behind his four daughters, namely- Gita Rani Saha, Maya Rani Saha, Chaya Rani Saha and Bina Rani Saha. Girindra Saha did not have any son.

6. After the death of Girindra Saha, his daughters Gita Rani Saha, Maya Rani Saha, Chaya Rani Saha and Bina Rani Saha acquired the lands. Girindra Saha had mutated their names in respect of the lands covered by Dag Nos.570 and 571.

7. It may be mentioned that the Dag Nos.570 and 571 are situated adjacent to each other. The daughters of Girindra Saha also divided the lands between themselves. Each got equal shares in the land.

8. In the meantime, Gita Rani Saha sold 1 Katha 1 lecha of land out of her share in Dag No.571 to one Smti. Sabita Rani Paul. Gita Rani Saha again

sold 1 Katha of land out of her share in Dag No.571 to Smti. Kanan Bala Paul. Thereafter, Gita Rani Saha sold 1 Katha 2 Lecha of land out of her share in Dag No.571 to Nantu Dey. In this way, Gita Rani Saha sold a total of 3 Kathas 3 Lechas of land out of her share in Dag No.571. Now, she has no lands in her possession in Dag No.571.

9. In Dag No.570, Gita Rani Saha's share was 1 Katha 17 Lechas of land. Out of this share, she gave up 5 Lechas of land for construction of a road. So, she was in actual possession of 1 Katha 12 Lechas of land in Dag No.570.

10. Upon that land, Gita Rani Saha used to reside. She used only one room of that house and remaining 2 rooms of the said house, were given on rent. At the time of filing of the suit, one of those rooms was not occupied by any tenants and it was lying vacant.

11. Shri Basudev Saha is the husband of Gita Rani Saha. He used to stay at Lumding, which is situated at a distance at about 150 kms. from the place where Gita Rani Saha resided. Shri Basudev Saha was doing business at Lumding and at the house at Jagiroad Gita Rani Saha used to stay with her daughter.

12. In the month of December, 2004, Gita Rani Saha had gone to Lumding for medical treatment of her daughter. On 30.12.2004, while Gita Rani Saha was at Lumding, she was informed by his sisters Chaya Rani Saha and Bina Rani Saha that the defendant (appellant in this case) Biswanath Das had occupied 1 Katha of her land and have gathered materials for construction of a house over that land. Immediately, Gita Rani Saha and her family set out for Jagiroad and reached Jagiroad on 31.12.2004.

13. They confronted Biswanath Das on that day. It is alleged that Biswanath Das had heated altercations with them and also tried to attack

Gita Rani Saha and her family.

14. Therefore, Gita Rani Saha immediately filed the applications under Sections 107 and 144 of the Code of Criminal Procedure before the learned Executive Magistrate's court. The learned Magistrate restrained Biswanath Das and his family from entering into the aforesaid portion of land. But Biswanath Das allegedly violated the said order and continued to occupy the land.

15. Ultimately, Gita Rani Saha filed the suit in the court of learned Civil Judge (Sr. Div.), Morigaon praying for decrees declaring her right, title and interest over the said plot of land and for recovery of vacant possession.

16. Biswanath Das contested the case by filing a written statement and the counter claim.

17. Biswanath Das has claimed that in the month of June, 2004, the daughter of Gita Rani Saha was seriously ill and therefore, she was taken to Vellore for medical treatment. He further submits that to meet financial expenditures, Gita Rani Saha offered to sale 1 Katha of her land situated in Dag No.571 for a consideration of ₹1,20,000/-. Biswanath Das agreed to purchase the land and paid a sum of ₹1,10,000/-, as advance. According to Biswanath Das, Gita Rani Saha had executed an agreement for sale on 10.06.2004 and since then, Biswanath Das has been in possession of the suit land. He also constructed temporary dwelling house there. According to Biswanath Das, Gita Rani Saha was to execute the registered Sale Deed on receipt of the remaining amount of ₹10,000/-.

18. The advance amount of ₹1,10,000/- was not sufficient for treatment of the daughter of Gita Rani Saha. Therefore, she along with her husband Basudev Saha had borrowed another sum of ₹95,000/- from Biswanath Das

by executing a hand note on 26.07.2004. It is said that Gita Rani Saha and her husband Basudev Saha both jointly executed the hand note upon a ₹10/- stamp paper.

19. After Gita Rani Saha had returned from Vellore, Biswanath Das asked her to execute the Sale Deed by accepting the balance of ₹10,000/-. He also asked Gita Rani Saha and her husband to return the aforesaid amount of ₹95,000/- in installments.

20. According to Biswanath Das, his request was not complied with rather they with *mala fide* intentions, filed the suit against him.

21. Biswanath Das, prayed for passing a decree in his favour for Specific Performance of Contract dated 10.06.2004.

22. Gita Rani Saha filed a written statement against the counter-claim. She denied all the averments of the counter claim. She claimed that the signatures in the aforementioned hand notes were forged. She also specifically denied execution of the agreement for sale dated 10.06.2004. She claimed that the aforesaid document is also a forged one.

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

(For the original suit-)

1. Whether there is any cause of action for the suit?
2. Whether the suit is maintainable in its present form?
3. Whether the defendant has dispossessed the plaintiff from "C" scheduled land as allege in the plaint? (Sic)
4. Whether the plaintiff is entitled to a decree as prayed for?

(For the counter-claim)

5. Whether the counter-claim is maintainable in its present form?
6. Whether there is any cause of action for filing the counter claim?
7. Whether the plaintiff executed any valid sale agreement in respect to the "C" scheduled land and took Rs.1,10,000/- as alleged by the defendant?
8. Whether the defendant is entitled to a decree as prayed for in the counter claim?
9. To what relief/reliefs the parties are entitled to?

24. During the trial of the case, Gita Rani Saha examined herself and another witness named Bina Rani Saha. The defendant Biswanath Das also examined himself and two other witnesses.

25. On the basis of the evidence on record, the trial court decreed the suit of Gita Rani Saha.

26. Biswanath Das preferred an appeal and the appellate court dismissed the appeal by upholding the judgment of the trial court.

27. The present Regular Second Appeal was admitted upon the following substantial questions of law:

1. Whether the finding of the lower appellate court that the exhibit Kha, an agreement to sale land, being unregistered, it has no value in the eye of law, is erroneous and palpably illegal in view of the provisions of Section 17 of the Registration Act, 1908 and

as such the impugned judgment and decree is vitiated in law?

2. Whether the judgment and decree of the lower appellate court is vitiated in law because of the wrong reading and misinterpretation of the provisions of Section 17 of the Registration Act, 1908?

28. I have gone through the judgment of the first appellate court.

29. I found that the learned first appellate court failed to draw up a point for determination and also failed to answer all issues except the Issue Nos.3 and 7.

30. The Supreme court in *Malluru Mallappa v. Kuruvathappa*, (2020) 4 SCC 313 has held as under--

“16. In *Vinod Kumar v. Gangadhar* [*Vinod Kumar v. Gangadhar*, (2015) 1 SCC 391 : (2015) 1 SCC (Civ) 521] this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under : (SCC p. 395, para 15)

“15. Again in *B.V. Nagesh v. H.V. Sreenivasa Murthy* [*B.V. Nagesh v. H.V. Sreenivasa Murthy*, (2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words : (SCC pp. 530-31, paras 3-4)

‘3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [*H.V. Sreenivasa*

Murthy v. B.V. Nagesha, 2008 SCC OnLine Kar 837] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari v. Purushottam Tiwari* [*Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179] , SCC p. 188, para 15 and *Madhukar v. Sangram* [*Madhukar v. Sangram*, (2001) 4 SCC 756] , SCC p. 758, para 5.)'''

17. In *Shasidhar v. Ashwini Uma Mathad* [*Shasidhar v. Ashwini Uma Mathad*, (2015) 11 SCC 269] , it was held as under : (SCC p. 277, para 21)

“21. Being the first appellate court, it was, therefore, the duty of the High Court [*Shasidhar v. Ashwini Uma Mathad*, 2012 SCC OnLine Kar 8774] to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”

31. In *Manjula v. Shyamsundar*, (2022) 3 SCC 90, the Apex Court has held as under—

“8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment."

32. The framing of points for determination by the first Appellate Court is only to enable it to concentrate and rivet its attention on the controversy between the parties and to facilitate the weighing and balancing of the evidence, facts and considerations appearing on both sides and to arrive at a conclusion on the merits of the controversy.

33. The provisions of Order 41, Rule 31 of the Code of Civil Procedure are mandatory and If the judgment of the Appellate Court does not follow the provisions of Order 41, Rule 31, the judgment is vitiated.

34. Now, this Court is of the opinion that the first appellate court judgment is vitiated for failure to draw up a point of determination and for failure to answer all issues. Therefore, the first appellate court judgment is set aside.

35. The appeal is allowed. The case is remanded to the first appellate court to pass a fresh judgment on all issues in compliance with the provision of law as laid down in Order 41 Rule 31 of the Code of Civil Procedure.

Send back the LCR.

JUDGE

Comparing Assistant