

GAHC010176292009



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

Case No. : RSA/139/2009

ON THE DEATH OF MAKRAM ALI BORBHUIYA HIS LEGAL HERIS TAMIZA
BEGUM BARBHUIYA and ORS
KUDEZA BEGUM BARBHUIYA MOIROAM BEGUM BARBHUIYA

2: MD KAMRUL ISLAM BARBHUIYA

S/O MAKRAM ALI BORBHUIYA.

3: MD NAZRUL ISLAM BARBHUIA
S/O MAKRAM ALI BARBHUIYA
ALL ARE RESIDENT OF VILL. BORJOPUR PART-I
P.O. BORJOPUR
P.S. and DIST. HAILAKANDI
ASSAM

VERSUS

MD ABDUL MATIN MAZARBHUYIA,
S/O LATE TAZAMUL ALI MAZARBHUIA, VILL. ADARKONA, P.O. BORTHOL,
P.S. and DIST. HAILAKANDI.

For the Petitioner(s)	: Mr. K. A. Mazumder, Advocate : Mr. A. U. Choudhury, Advocate
For the Respondent(s)	: Mr. P. K. Roy, Sr. Advocate : Mr. S. K. Chakraborty, Advocate

Date of Hearing : **09.05.2024**

Date of Judgment : **09.05.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

This is an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short "the Code") challenging the judgment and decree dated 24.03.2009 passed in Title Appeal No.22/2007 by the learned Civil Judge Hailakandi (for short "First Appellate Court") whereby the judgment and decree dated 29.09.2007 in Title Suit No.102/06 passed by the Court of the learned Civil Judge (Junior Division) Hailakandi (for short "the Trial Court") was affirmed.

2. It appears from the records that this Court vide an order dated 04.10.2010 had admitted the instant appeal by formulating a substantial question of law. The said substantial question of law is reproduced herein under:

"1. Whether the learned first appellate Court is justified in upholding the judgment and decree passed by the learned trial court without recording any finding relating to ready and willingness of the plaintiff to execute his part of the contract?"

3. In addition to that, on 07.12.2023, this Court had framed an additional substantial question of law which is also reproduced herein under:

"Whether the judgment of the appellate court is bad in law for non-compliance of the provisions of Order 41 Rule 31 of the Code of Civil Procedure?"

4. The question arises in the instant Appeal is as to whether the said

substantial questions of law so formulated by this Court are involved in the instant appeal. For the said purpose, this Court finds it relevant to take note of the brief facts leading to the filing of the instant appeal.

5. The Respondent herein as Plaintiff had instituted a suit which was registered and numbered as Title Suit No.27/2004 before the Court of the learned Civil Judge (Senior Division), Hailakandi seeking specific performance of an agreement dated 07.02.2003 and other consequential reliefs as mandated under law. It was the case of the plaintiff that the defendants had entered into the agreement dated 07.02.2003 for sale of the suit land at a total consideration of Rs.1,20,000/- out of which an amount of Rs.1,00,000/- was paid at the time of entering into the agreement and the remaining amount of Rs.20,000/- was to be paid at the time of execution of the registered Deed of Sale. It was further mentioned that it was agreed that the Deed of Sale was required to be executed within 06.08.2004. The plaintiff thereupon insisted the defendants to obtain the necessary No Objection Certificate and noticing that the defendants were not taking appropriate steps, a legal notice was issued on 28.04.2004 asking the defendants to obtain the No Objection Certificate within 10.05.2004 and thereupon appear before the Office of the Sub-Registrar, Hailakandi along with the No Objection Certificate on 11.05.2004 at 10 A.M. and also to appear before one Shri Babul Ghosh, a deed writer in the Sub-Registrar Office and to receive the remaining Rs.20,000/- and register the deed of sale and also to hand over the possession of the suit land on the next date. The defendants did not obtain the No Objection Certificate but on the other hand, through their counsel, one Mr. Nurul Haque Majumder sent a reply dated 10.05.2004 stating that they did not execute the agreement and the same was

fraudulent. It is under such circumstances, the suit was filed seeking specific performance of the agreement dated 07.02.2003 and for other consequential reliefs.

6. The Defendants thereupon filed their written statement denying that any agreement dated 07.02.2003 was executed by and between the plaintiff and the Defendants. It was alleged that the agreement dated 07.02.2003 was prepared fraudulently for which the question of granting specific performance did not arise.

7. On the basis of the above, the learned Trial Court framed as many as 4 (four) issues initially and thereupon on 19.11.2005 framed another additional issue as to whether the Bainanama dated 07.02.2003 was binding upon the Defendant Nos. 4 to 6. However, the name of the Defendants Nos. 4 to 6 were struck off and accordingly, the additional issue so framed on 19.11.2005 lost its force. The Issue No.2 and 3 are very pertinent for the purpose of the instant appeal inasmuch as the Issue No.2 relates as to whether the Defendants executed the Bainanama dated 07.02.2003 in favour of the plaintiffs to sell the suit land on receiving the advance of Rs.1,00,000/- and the Issue No.3 related to as to whether the plaintiff was ready to perform his part of the contract. The learned Trial Court decreed the suit in favour of the plaintiff vide a judgment and decree dated 29.09.2007. In doing so, the Issue No.2 was decided thereby opining that the agreement dated 07.02.2003 was duly executed by the defendants. As regards the Issue No.3, the learned Trial Court also came to a finding that the plaintiff was ready and willing to perform his part of the contract. Being aggrieved, an appeal was filed by the defendants before the learned First

Appellate Court which was registered and numbered as Title Appeal No.22/2007. The said appeal was dismissed vide a judgment and decree dated 24.03.2009 and it is against the dismissal of the said appeal, the instant Regular Second Appeal has been filed.

8. I have heard Mr. A. U. Choudhury, the learned counsel appearing on behalf of the Appellants and Mr. P. K. Roy, the learned Senior counsel assisted by Mr. S. K. Chakraborty, the learned counsel appearing on behalf of the Respondent.

9. The substantial question of law which was formulated on 04.10.2010 as to whether the learned First Appellate Court was justified in upholding the judgment and decree passed by the learned Trial Court without recording any finding relating to readiness and willingness of the plaintiff to execute his part of the contract, in the opinion of this Court is not involved in the instant appeal taking into account that the learned First Appellate Court in paragraph Nos. 7 and 9 has duly taken note of the readiness and willingness of the plaintiff to perform his part of the contract. In addition to that, the learned Trial Court had on the basis of the evidence on record opined that the plaintiff was ready and willing to perform his part of the contract. In that view of the matter, the substantial question of law so formulated on 04.10.2010 is not involved in the instant appeal.

10. The additional substantial question of law so formulated on 07.12.2023 as to whether the judgment of the Appellate Court is bad in law for non-compliance with the provisions of Order XLI Rule 31 of the Code, this Court finds it relevant to observe that the learned First Appellate Court had duly taken note of the grounds of objection and has assigned reasons for which

this Court is of the opinion that same is in accordance with the provisions of Order XLI Rule 31 of the Code. Further to that, the learned First Appellate Court while confirming the judgment of the learned Trial Court have duly applied its mind and assigned reasons. Consequently, the said additional substantial question of law so formulated on 07.12.2023 is also not involved in the instant appeal.

11. In that view of the matter, the instant appeal being devoid of any substantial question of law stands dismissed with costs quantified at Rs.11,000/- for the instant proceedings and further the plaintiff shall be entitled to costs throughout the proceedings.

12. The Registry is directed to forthwith return the LCR to the Court below.

JUDGE

Comparing Assistant