

GAHC010177622019



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

Case No. : RSA/147/2023

SMTI. SHEHNAJ ARA ULLAH
W/O IMRAN ULLAH,
R/O BABUPATTY, WARD NO. 4, SIVASAGAR TOWN, P.O. SIVASAGAR, P.S.-
SIVASAGAR, DIST- SIVASAGAR, ASSAM, PIN 785640

VERSUS

ZAHIRUDDIN AHMED @ BIPUL AND 3 ORS
S/O LATE ZALALUDDIN AHMED,
RO OLD CHOWK BAZAR SIVASAGAR TOWN, P.O. SIVASAGAR, P.S.
SIVASAGAR, DIST SIVASAGAR, ASSAM , PIN 785640

2:NAZIMUDDIN AHMED
S/O LATE ZALALUDDIN AHMED

RO OLD CHOWK BAZAR SIVASAGAR TOWN
P.O. SIVASAGAR
P.S. SIVASAGAR
DIST SIVASAGAR
ASSAM
PIN 785640

3:SMTI FARIDA BEGUM
D/O LATE ZALALUDDIN AHMED

RO OLD CHOWK BAZAR SIVASAGAR TOWN
P.O. SIVASAGAR
P.S. SIVASAGAR
DIST SIVASAGAR
ASSAM
PIN 785640

4:SMTI NASIMA BEGUM
D/O LATE ZALALUDDIN AHMED

RO OLD CHOWK BAZAR SIVASAGAR TOWN
P.O. SIVASAGAR
P.S. SIVASAGAR
DIST SIVASAGAR
ASSAM
PIN 78564

Advocate for the Petitioner : MR. A R SHOME

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the appellant : Shri AR Shome

Advocate for the respondents :

Date of hearing : **10.06.2024**

Date of Judgment : **10.06.2024**

JUDGMENT & ORDER

Heard Shri AR Shome, learned counsel for the appellant, who by means of this second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 has assailed the impugned judgment and decree dated 07.03.2019 passed by the learned Civil Judge, Sivasagar dismissing the Title Appeal No. 7/2018 and affirming the judgment and decree dated 21.03.2018 passed in T.S. No. 51/2011 by the learned Munsiff No. 1, Sivasagar. The appellant was the plaintiff in the aforesaid suit which was filed for declaration, eviction and for permanent injunction.

2. The case projected in the suit is that the appellant had got the title of the suit property by means of an Oral Gift from one Jushna Begum, who, on the other hand, had got the title transferred upon her by a registered Gift Deed by the Sivasagar Municipal Board. It is submitted that the plaintiff being Mohammadan, Oral Gift is permissible and the said transaction was duly proved in the Court. The suit however has been dismissed and was affirmed by the First Appellate Court on the ground that the donee of the appellant plaintiff was transferred with the title of the aforesaid suit land by a registered Gift Deed by the Municipal Board which was without any authority or jurisdiction as the land in question was Government land.

3. The learned counsel for the appellant has submitted that though the Lat Mandal had adduced evidence as DW-7 and had deposed that the land in question was protected Government land, in his cross examination he had however admitted that he did not get the relevant document in that regard. He accordingly submits that the findings in this regard by both the learned Court below is not based on the materials on record and therefore the appeal is required to be considered on merits.

4. This Court has however, on perusal of the issues has found that the issue no. 3 was particularly on the aforesaid aspect which is extracted hereinbelow-

“iii) Whether the plaintiff has acquired any right, title and interest over the suit property by virtue of oral gift made by late Jushna Begum in her favour on 22.04.2011?”

5. The said issue along with the issue no. 4 regarding entitlement to a decree has been discussed in elaborate details by both the learned Courts below. In fact, the learned Appellate Court, after discussing of the evidence of the 4 nos.

of plaintiff witness and 7 nos. of defendant witness while coming to a conclusion that though the gift to the plaintiff by the said Jushna Begum was not found fault with, the transfer of title by the Municipal Board to the donee of the plaintiff namely, Jushna Begum was held to be without any authority and jurisdiction. Though reference has been made by the learned counsel by producing the evidence of DW-7 the Lat Mandal on lack of any evidence there is a clear finding regarding the concerned document being Exhibit-Ka that the land covered by Dag No. 166 is a Government land. It also appears that the said Government land was allotted to the Municipality to run its operation and by no stretch of imagination, the Municipality would have the authority to gift any immovable property.

6. It is a settled principle of law that the exercise of jurisdiction under Section 100 of the CPC is only on the existence of substantial question of law. Such question of law is required to be substantial to the issues between the parties. Such powers are not to be exercised for adjudication of any questions that may be raised as this Court under Section 100 of the CPC is not a Court on facts.

7. The Hon'ble Supreme Court in the case of ***Panchugopal Barua v. Umesh Chandra Goswami*** reported in ***(1997) 4 SCC 713*** has been held as follows:

“7. A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing shall be deemed to take away or abridge the power of the court to hear, for reasons to be

recorded, the appeal on any other substantial question of law, not formulated by it, if the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a "substantial question of law" is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC."

8. The Hon'ble Supreme Court in the case of ***Santosh Hazari v. Purushottam Tiwari*** reported in ***(2001) 3 SCC 179*** has laid down as follows:

"9. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty cast on Court. The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code."

9. This Court is of the considered opinion that not to talk about any substantial question of law, no apparent fault can be attributed to either of the judgments of the learned Courts below.

10. The appeal accordingly stands dismissed.

JUDGE

Comparing Assistant