

GAHC010189902010



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

Case No. : RSA/277/2010

MD. MAKADDAS ALI MAZUMDAR,
S/O LATE JONAB ALI MAZUMDAR, R/O VILL. BISHNUGAR, P.O. BOALIPAR,
DIST. HAILAKANDI, ASSAM.

VERSUS

MD. AFTAB UDDIN BOBHUIYA and ORS,
S/O MD. MASADDAR ALI BORBHUIYA, R/O VILL. BOALIPAR, PART-III,
DIST. HAILAKANDI, ASSAM.

2:MD. SARAFAT ALI

S/O LATE MOSRAB ALI
VILL. SANDIPORE
PART-III
DIST. HAILAKANDI.

3:MUSTT. RAHILA BIBI

W/O LATE SAKAT ALI
R/O VILL. BISHNUGAR
DIST. HAILAKANDI

4:MUSTT. NAZMA BEGUM

D/O LATE SAKAT ALI
W/O NURUL HAQUE
R/O BISHNUGAR
DIST. HAILAKANDI

5:MUSTT. ASMA BEGUM

D/O LATE SAKAT ALI

W/O MOINUL LASKAR
R/O VILL. BOALIPAR
PART-III
DIST. HAILAKANDI.

6:MUSSTT. RAINA BEGUM

D/O LATE SAKAT ALI
W/O NURUL HAQUE MAZUMDAR
VILL. BISHNUGAR
DIST. HAILAKANDI

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri S. Ali, Advocate.

Advocate for the respondents : Shri N. Haque, Advocate.

Date of hearing : 11.06.2024

Date of judgment : 11.06.2024

Heard Shri S. Ali, learned counsel for the appellant. Also heard Shri N. Haque, learned counsel for the respondents.

2. The present appeal has been preferred against a Judgment and decree dated 13.07.2010 passed by the learned District Judge, Hailakandi in Title

Appeal No. 06/2007 whereby the Judgment and Decree dated 18.11.2005 passed by the learned Civil Judge, Hailakandi in Title Suit No. 28/2002 has been affirmed and the appeal has been dismissed. The appellant was the plaintiff in the suit.

3. The suit was instituted for declaration of right, title and interest, confirmation of possession and for permanent injunction. It is the projected case of the plaintiff that the land was purchased by the plaintiff from the mother of the defendant by a registered Deed No. 2480 dated 23.06.1986. The plaintiff had purchased further portions of land by registered Deed No. 1006 dated 12.04.2001 from the father of the defendant and on the strength of the aforesaid Sale Deed, the suit was instituted.

4. The present respondent, as defendant however while defending the case has also raised an issue towards questioning the authenticity of the Deeds. It was contended that the mother of the defendant have passed away in the year 1978 and therefore, the Deed No. 2480 could not have been executed in the year 1986. The defendant had also made a counter claim raising the aforesaid challenge.

5. The learned Trial Court vide the Judgment and Decree dated 18.11.2005 had however dismissed the Title Suit No. 28/2002 and the counter claim of the defendant was decreed. As mentioned above, the First Appellate Court had also rejected the Appeal and thereafter the present appeal has been preferred.

6. This Court vide order dated 23.12.2010 had framed the following substantial questions of law.

“(i) Whether the findings of the appellate court was perverse in disbelieving the " Exhibit-27", which is the death certificate of Golapjan Bibi wherefrom it transpires that she died on 12.08.1986,

giving preference to "Exhibit-Cha" without calling for the original "Register of Birth & Death" maintained by the Registrar of Birth & Death, Algapur Primary Health Center, District – Hailakandi?

(ii) Whether the judgment and decree of the first appellate court is perverse and liable to be set aside and reversed for non-consideration of the documents exhibited on behalf of the plaintiff particularly the document marked as "Exhibit-X" which has thrown light upon the entire case?

iii. Whether the first appellate court wrongly interpreted documents "Exhibit-2" (Sale Deed) and "Exhibit-3" (Sale Deed) to arrive at perverse findings with regard to the title of the plaintiff in respect of the suit land?"

7. Shri Ali, the learned counsel for the appellant has submitted that the controversy was revolving on Exhibit 27 which is the Death Certificate dated 12.08.1986 exhibited by the plaintiff and Exhibit-Cha which is also a Death Certificate wherein the date of death was stated to be 04.05.1978 and was exhibited by the defendant. It is submitted that since both the aforesaid exhibits were certified copies, those were to be treated as secondary evidence and without calling for the original register, a conclusive finding could not have been arrived at whereby Exhibit-Cha was given preference over Exhibit-27.

8. The learned counsel for the appellant has also raised an issue that though vide Exhibit-'Cha' the date of death of the mother of the defendant has been stated to be 04.05.1978, the certificate was issued only in the year 2002, i.e., after 24 years which itself raises serious doubts on the authenticity of the said document. It is strenuously contended that such Certificate having been applied for and issued after the institution of the suit, the same should not have been taken into cognizance by the learned Courts below. It is submitted that both the Sale Deeds No. 2480 dated 23.06.1986 and 1006 dated 12.04.2001 were duly

registered which itself raises a presumption in favour of the plaintiff that the title was duly transferred to the plaintiff.

9. It is also submitted that there was no explanation, whatsoever with regard to the delay in registering the death of the mother in the year 2002, when the death was stated to be in 1978.

10. *Per contra*, Shri N. Haque, learned counsel for the respondents has submitted that while the appellant is trying to find fault with the manner of proof of the Death Certificate, the same would also be applicable for the Exhibits 2 & 3 which were also not proved in accordance with law. It is submitted that both the documents were only certified copies of the Sale Deeds and except a bald statement that the original records were destroyed, there is no other material to justify the stand of the defendant. It is highlighted that no official witnesses were produced to prove the said Deeds and neither any attesting witness nor any other person conversant with the said transaction was produced as witness.

11. The learned counsel for the defendant has also raised an issue that so far as the Exhibit No. 2 is concerned, while the property is of the district of Hailakandi, the registration was done in the Cachar District which itself is in contravention of Section 24 of the Registration Act.

12. It is also submitted by Shri Haque that as per the evidence of the plaintiff, the registration while being done at Cachar, the vendor i.e., the mother of the defendant was not accompanied by any other persons and she being an old lady, such version is apparently doubtful.

13. Shri Ali, the learned counsel for the appellant has however submitted that in absence of any materials as to whether in the year 1986 there was bifurcation

of the districts, the aforesaid submission made on behalf of the respondent is not liable to be considered.

14. The rival submissions have been duly considered. The LCRs which have been obtained have also been perused.

15. The discussions made by the learned Courts below on the first substantial question of law would reveal that while Exhibit- 'Cha' was a Certificate, Exhibit- 27 was not a Certificate and was only an administrative order to issue such certificate. For ready reference, the discussion on the aforesaid issue made by the First Appellate Court is extracted herein below:

“13. Now, on perusal of Ext. Cha and Ext. 27 it appears that Ext. 27 appears to be an administrative order to issue the death certificate after realization of charge fee as per rule. However, date of death mentioned in the same is 12.08.86, on the other hand the Ext. Cha is the certificate of death whereby the date of death of one Gulapjan Bibi was mentioned as 04.05.1978. Ext. 27 does not bear the certificate whereas Ext. Cha bears the certificate as required under the provision of law laid down as indicated above. Further, Ext. 27 cannot be deemed to be the certified extract of the registrar of birth and death as required under the provision of law of the land and thus it neither can be deemed to be a public document, nor admissible in evidence. On the other hand Ext. Cha on the very fact of it has fulfilled the aforesaid requirements of law of the land. In the result, from the preponderance of the evidence, Ext. Cha has established a clear edge over Ext. 27. Thus, it is evidence that Gulapjan Bibi expired not on 12.08.86 but on 04.05.1978. The aforesaid fact has been also indirectly revealed during trial.”

16. This Court has also noticed that while coming to the finding regarding the acceptance of the Exhibit-'Cha' over Exhibit- 27, the learned Court has also taken into consideration the provision of Section 12 and Section 17 of the Registration of Births and Deaths Act, 1969.

17. As regards the question framed on the interpretation of the documents Exhibits 2 & 3, this Court is of the opinion that except a statement made by the plaintiff that the original were destroyed, there are no other materials as to why no attempt was made to examine any competent witness who were conversant with the execution and registration of the two Deeds.

18. It is submitted that since the executors of both the Deeds had passed away, it was incumbent upon the party trying to get any benefit of those Deeds to get the same duly proved in accordance with law. This Court is of the opinion that the discussion and findings that no attesting witness, scribe or other persons conversant were produced to prove the Deed are relevant. There is a specific discussion by the learned Court on the aforesaid aspect which is extracted herein below:

“10. That main crux of the suit is that whether origin of Ext. 2 created by means of fraud? Apparently, the origin of Ext. 2 is also issued by a competent authority, so, genuineness of a registered document is supposed to be duly executed and registered. So, the burden lies upon the defendant / counter claimant to prove the fact of fraud. Under Section 65 (c) of the Evidence Act a certified copy of sale deed may be proved where the original was destroyed or lost. Here, in the instant suit, except on oral statement of the plaintiff there is no proof that the origin Ext. 2 was destroyed. Therefore, even if we presume that the origin Ext. 2 is stated by PW1 was lost, it only proves execution but contents of the document shall not go in evidence except it was duly proved by scribe or attesting witnesses as per Section 67 of the Evidence Act. Here in the instant suit plaintiff did not make any attempt to examined the scribe, attesting witnesses or identifier to prove the contents of the document. As such, mere making of document as Exhibit does not dispense with its proof and in this aspect aspect plaintiff utterly failed. (Relied upon AIR 1971 SCp-1865).”

19. The scope and ambit of this Court in exercising powers under Section 100

of the Code of Civil Procedure is a limited one and such examination is restricted to only substantial question of law.

20. 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.”

21. 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.”

22. After considering the facts and circumstances noted above and by following the principles laid down by the Hon'ble Supreme Court on the aspect of exercise of jurisdiction, this Court is of the considered opinion that the judgments of the

Trial Court as well as the First Appellate Court do not suffer from any legal infirmity.

23. Accordingly the substantial questions of law are answered against the appellant and in favour of the defendant.

24. The appeal stands dismissed.

25. Send back the record.

JUDGE

Comparing Assistant