

GAHC010195782017



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

Case No. : SAO/2/2017

MRS. TOKTEL LANGKAM,
W/O LATE PABITRA KONWAR, VILL. SIKA TODE, P.O. SILLE OYANG, P.S.
RUKSIN, DIST. EAST SIANG ARUNACHAL PRADESH

VERSUS

BHUPEN PEGU and 4 ORS,
S/O LATE HARISH PEGU, VILL. ROTKEY, P.O. and P.S. JONAI, DIST.
DHEMAJI, ASSAM, PIN 787060

2:THE CIRCLE OFFICER

JONAI REVENUE CIRCLE
P.O. and P.S. JONAI DIST. DHEMAJI

3:S.D.O. CIVIL JONAI
P.O. and P.S. JONAI DIST. DHEMAJI

4:SHRI GANA KUMBANG

DEALING ASSTT. OFFICE OF THE S.D.O. CIVIL JONAI P.O. and P.S. JONAI
DIST. DHEMAJI

5:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE DEPTT. DISPUR
GUWAHATI-6

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : MR J PAYENG (R4)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

02-05-2024

JUDGMENT & ORDER (ORAL)

The instant appeal is an appeal under Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908, (for short, the Code) challenging the order dated 21.02.2017 passed by the learned District Judge Dhemaji in Title Appeal No.04/2015 whereby the learned District Judge had remanded the suit back to the learned Trial Court by framing the additional issue as to whether the suit was bad for non-joinder of necessary parties.

2. It is relevant to take note of that the plaintiff had filed the suit seeking right, title and interest over the suit land as well as also declaration in respect to certain orders and entries being made by the respondent authorities in respect to the suit land in favour of the defendant No.1 and for permanent injunction.

3. The entire cause of action of the suit was primarily against the defendant No.1 on the ground that the defendant No.1 by executing fraud had claimed title over the suit land and thereupon had tried to take over possession of the suit land from the plaintiff. The defendant No.1 had filed the written statement without alleging that the suit was bad for non-joinder of necessary parties or for proper parties. Only a statement was made in paragraph 5 that one Rupali

Konwar was the step daughter of the plaintiff who had filed an application against the defendant No.1 before the SDO.

4. The learned Trial Court vide judgment and decree dated 04.09.2015 in Title Suit No.4/2012 decreed the suit in favour of the plaintiff to the extent of declaring the right, title and interest of the plaintiff over the suit land as well as also granting a permanent injunction. However, the declaration so sought for, in so far as the entries so made by the respondent authorities were not specifically decreed in favour of the plaintiff. Be that as it may, the defendant No.1 who is the respondent No.1 herein had filed an appeal before the Court of the learned District Judge Dhemaji, which was registered and numbered as Title Appeal No.4/2015. The learned First Appellate Court remanded the said suit back to the learned Trial Court for deciding afresh by framing an additional issue as to whether the suit was bad for non-joinder of necessary and proper parties and it is the against the said, the instant appeal has been preferred.

5. This Court vide order dated 25.04.2017 had admitted the appeal by formulating two substantial questions of law and had also directed the appeal to be registered in terms with Order XLIII Rule 1(u) of the Code. At this stage, with due respect to the Coordinate Bench of this Court, the question of formulating a substantial question of law in an Appeal filed under Section 104 read with Order XLIII of the Code is totally foreign. Be that as it may, this Court constricts the order dated 25.04.2017 as an admission of the instant appeal.

6. I have heard Ms. R Choudhury, the learned counsel appearing on behalf of

the appellant and Mr. S Deka and Mr. D Choudhury, the learned counsels appearing on behalf of the respondent No.1 and Mr. TK Bhuyan, the learned Government Advocate appearing on behalf of the respondent Nos.2, 3 and 4 and have duly given anxious consideration of the respective submissions.

7. This Court upon perusal of the impugned order passed by the learned First Appellate Court finds it relevant to observe that when there was no objection taken in the written statement that the suit was bad for non-joinder of necessary parties or for that matter the suit cannot proceed without Ms. Rupali Konwar being arrayed as a party in the suit, how did the learned First Appellate Court arrived at the finding in paragraph 11 of the impugned order that there are specific averments that there was other legal heirs of Late Pabitra Konwar. Besides that it is also relevant to take note of that the cause of action in the instant suit pertains to a fraud being committed by the defendant No.1, who had claimed the right over the suit property and sought for a permanent injunction against the defendant No.1. Even, a co-owner can maintain a suit in that regard. This Court had also perused the materials on record and finds that there was evidence duly available before the learned First Appellate Court to decide the appeal in accordance with the mandates of Section 96 of the Code. However, the learned First Appellate Court acted contrary to the provisions of Order XLIII Rule 24 of the Code and remanded the suit back to the learned Trial Court that too on a issue which was not at all necessary for the purpose of deciding the said suit. Accordingly, this Court sets aside the impugned order dated 21.02.2017 passed by the learned District Judge Dhemaaji in Title Appeal No.04/2015 and direct the learned First Appellate Court i.e. the Court of the learned District Judge Dhemaaji to decide the said appeal on the basis of the

materials which are already available on record.

8. This Court also finds it very relevant to take note of that the suit was filed in the year 2012, and almost 12 years have passed by and as such, this Court requests the learned District Judge, Dhemaji, which is the learned First Appellate Court to decide the said appeal within a time frame and preferably within 6(six) months from the date of appearance of the parties. Taking into account that both the parties are duly represented before this Court, the parties are directed to appear before the learned First Appellate Court on 01.07.2024 for further proceedings of the appeal.

9. Registry is directed to forthwith transmit the records to the learned First Appellate Court i.e. the Court of the learned District Judge, Dhemaji and if need be to take the help of a *Special Messenger* so that prior to the date so fixed, the records are received by the learned First Appellate Court.

10. With the above, the Appeal stands disposed of.

JUDGE

Comparing Assistant