

GAHC010198772023



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

Case No. : RSA/161/2023

ABUL KALAM
S/O LATE ABDUL KHALIQUE,
VILL.- JALALPUR, P.O.- MALUA, P.S.- BADARPUR, DIST.- KARIMGANJ,
ASSAM.

VERSUS

KHADIJA BEGUM AND 3 ORS.
D/O ABDUR RAHIM,
VILL.- USHNABAJ, P.O.- ANGLARBAZAR, P.S.- BADARPUR, DIST.-
KARIMGANJ, ASSAM, PIN- 788806.

2:ABDUL LATIF
S/O SURUJ ALI

VILL.- BOSLA
P.O.- MORJATKANDI
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788701.

3:ABDUL SATTAR
S/O LATE AKADDAS ALI

VILL.- USHNABAJ
P.O.- ANGLARBAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806.

4:ABDUL KHALIQUE
S/O LATE AKADDAS ALI

VILL.- USHNABAJ
P.O.- ANGLARBAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806

For the Appellant(s) : Mr. F. U. Barbhuiya, Advocate

For the Respondent(s) : Mr. A. K. Talukdar, Advocate

Date of Hearing : **31.05.2024**

Date of Judgment : **31.05.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. F. U. Barbhuiya, the learned counsel appearing on behalf of the Appellant and Mr. A. K. Talukdar, the learned counsel appearing on behalf of the Respondent No.1.

2. This is an appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for short "the Code") challenging the judgment and decree 27.06.2023 passed in Title Appeal No.13/2021 by the learned Civil Judge, Karimganj whereby the judgment and decree passed by the learned Trial Court dated 04.10.2021 in Title Suit No.147/2016 was affirmed by dismissing the appeal.

3. This Court has taken up the instant appeal at the stage of Order XLI

Rule 11 of the Code to consider as to whether the questions of law so proposed are substantially involved in the instant appeal so that the same can be formulated in terms with Section 100(4) of the Code.

4. For appreciating the submissions made by the learned counsel for the Appellant insofar as the questions of law so proposed, this Court finds it pertinent to take note of the brief facts which led to the filing of the instant appeal.

5. The Appellant as plaintiff had filed a suit against the Respondents herein. It was the specific case of the Plaintiff that the Defendant No.1 was married to the Defendant No.2 and during the pendency of the said marriage, the Defendant No.1 married the plaintiff and in terms with Section 256 of the Mohammedan Law, the said marriage was void. It is under such circumstances, the suit was filed seeking declaration that the marriage between the Plaintiff and the Defendant No.1 was illegal, void and inoperative and accordingly, the Defendant No.1 was not entitled to claim any right against the Plaintiff; a declaration that the marriage between the Defendant Nos.1 and 2 is still subsisting and the defendant No.1 continues to be the legally married wife of the defendant No.2 and for temporary and permanent injunction.

6. It is seen from the records that the Defendant No.1 had filed a written statement denying to the contents of the said plaint and it was the specific case of the Defendant No.1 that four years prior to the marriage of the Defendant No.1 with the plaintiff, the Defendant No.2 had divorced the Defendant No.1 by execution of Talaknama.

7. At this stage, this Court finds it very pertinent to take note of that the said Talaknama which has been executed by the Defendant No.2 has not been put to challenge. On the basis of the pleadings between the parties, as many as 5 (five) issues were framed. The Issue No.III is very pertinent for the purpose of the instant proceedings as it pertained to as to whether the marriage between the defendant Nos. 1 and 2 was still subsisting. This issue has relevance taking into account that in view of Section 256 of the Mohammedan Law, a Muslim woman during the existence of a marriage, cannot re-marry and such re-marriage would be void. Both sides adduced evidence. The learned Trial Court dismissed the suit filed by the plaintiff vide the judgment and decree dated 04.10.2021. In doing so, the learned Trial Court came to a categorical finding in the Issue No.III that the plaintiff had failed to prove that there was no divorce between the Defendant No.1 and Defendant No.2.

8. Being aggrieved, an appeal was preferred which was registered and numbered as Title Appeal No.13/2021 before the Court of the learned Civil Judge, Karimganj. The learned First Appellate Court vide a judgment and decree dated 27.06.2023 had dismissed the said appeal and it is under such circumstances, the present appeal has been filed. In that perspective, let this Court now take into account the questions of law which have been proposed to be substantially involved in the instant appeal by the learned counsel for the Appellant.

9. The first question of law so proposed is as to whether the judgment and decree passed by the learned Courts below were legally sustainable

when the Defendant No.1 obtained divorce from her former husband when he was insane and subsequently got married with the plaintiff which was contrary to the provisions of Sections 256 and 308 of the Mohammedan Law.

10. This Court has duly taken note of the judgment passed by both the learned Trial Court and the learned First Appellate Court. The only evidence on the basis of which the plaintiff claimed that the divorce between the Defendant No.1 and 2 did not happen was on the basis of Exhibit-3. This Court finds it very pertinent to take note of that the learned First Appellate Court categorically held as regards the contents of Exhibit-3 in paragraph No.34 of the impugned judgment holding inter alia that the deposition of the Defendant No.1 in Exhibit-3 only stated that after recovery from mental illness, the Defendant No.2 pronounced Talaq on her. Under such circumstances, there being no perversity shown as regards the appreciation of the said evidence more particularly Exhibit-3, therefore the question of law so proposed is not a substantial question of law that can be formulated.

11. The second substantial question of law which have also been urged as substantially involved in the instant appeal is as to whether the Courts below have passed the decision ignoring and overlooking the evidence and documents placed on record for which the same is not perverse. The said question of law in the opinion of this Court cannot be regarded as substantial question of law inasmuch as the said question of law is vague and lacks material particulars.

12. It is pertinent to observe that to claim perversity in respect to a finding, the question of law has to be specific as to what evidence was not

looked into. Merely stating that certain evidence have not been looked into would not constitute a substantial question of law.

13. The third question of law so proposed is as to whether the Courts below have failed to frame any issue on the point of forgery of Talaknama in presence of the clear denial by the plaintiff in respect to the execution of the same. The said question of law in the opinion of this Court does not arise at all inasmuch as the plaintiff did not challenge the Talaknama. Under such circumstances, the said question of law cannot also be formulated as a substantial question of law.

14. Accordingly, this Court finds that the questions of law which have been proposed are not substantial question of law which can be formulated for which the instant appeal stands dismissed.

15. Taking into account that the instant appeal is being taken up at the stage of Order XLI Rule 11 of the Code, this Court is not inclined to impose any costs.

JUDGE

Comparing Assistant