

GAHC010199382017



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

Case No. : SAO/3/2017

SHRI BADRI PRASAD SHARMA
S/O LATE RAJURAM SHARMA, R/O WARD NO. 10, NORTH LAKHIMPUR,
DIST. LAKHIMPUR, ASSAM.

VERSUS

SMTI LAKHMI DEVI CHANDAK @ LAKSHMI CHANDAK and 2 ORS
W/O MOHADEOLAL CHANDAK

2:MD. BITIKA CHANDAK @ BICHITRA CHANDAK

3:MS. JYOTIKA CHANDAK @ JYOTI CHANDAK
BOTH ARE D/O LATE MAHADEOLAL CHANDAK
ALL ARE R/O THAKURBARI ROAD
WARD NO. 9
NORTH LAKHIMPUR
ASSAM PRESENTLY RESIDING AT 66 GANESH CHANDRA AVENUE
3RD FLOOR
KOLKATA-

For the appellant (s) : Mr. M. Sarma, Advocate

For the respondent (s) : Mr. P. Mahanta, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

20.06.2024

This is an application under Order XLIII Rule 1 (u) of the Code of Civil Procedure, 1908 challenging the order dated 06.04.2017 passed by the learned District Judge, Lakhimpur at North Lakhimpur in Title Appeal No.2/2015 and Title Appeal No.1/2016 whereby the judgment and decree dated 17.11.2015 passed in Title Suit No.15/2013 was set aside and the learned Trial Court, i.e. the Court of the Civil Judge, Lakhimpur at North Lakhimpur was directed to decide afresh the suit, and more particularly, the Issue No.3 and Issue No.5.

2. This Court duly takes note of the records of Title Suit No.15/2013 wherein it is seen that the suit was fixed on 13.02.2015 for argument. Thereupon, after taking four adjournments, an application was filed for the purpose of substituting the Issue No.5, and accordingly, the Issue No.5 was substituted on 29.05.2015 thereby fixing 24.06.2015 for argument. Subsequent thereto, after hearing the argument, the judgment and decree was passed on 17.11.2015.

3. At this stage, this Court finds it relevant to take note of that initially, the Issue No.5 was as to whether the defendant being the purchaser of the suit premises became the owner of the same. The substituted Issue No.5 is as to whether the defendant being the occupant of the suit premises be protected under the law of part performance. Under such circumstances, the learned First Appellate Court was of the opinion that

there would be a necessity for giving an opportunity to the parties to adduce evidence in as much as the newly substituted Issue No.5 relates to the protection under Section 53A of the Transfer of Property Act, 1882.

4. Mr. M. Sarma, the learned counsel for the appellant submits that the learned First Appellate Court ought not to have remanded the suit in toto but ought to have only remanded by exercising the powers under Order XLI Rule 25 of the Code of Civil Procedure. The learned counsel for the appellant submits that only the Issue No.5 ought to have been remanded not the Issue No.3.

5. This Court takes note of Issue No.3 which relates to as to whether the defendant was the tenant of Mahadeolal Chandak, the husband of the plaintiff No.1 and the father of the plaintiff Nos.2 & 3 in respect to the suit premises. It is the opinion of this Court that if the Issue No.3 was decided by the learned First Appellate Court, there would have been no necessity for deciding the Issue No.5.

6. Under such circumstances, this Court finds no infirmity in the order passed by the learned First Appellate Court dated 06.04.2017 for which the Appeal stands dismissed.

7. Taking into account that both the parties are duly represented before this Court, they are directed to appear before the Court of the learned Civil Judge, Lakhimpur at North Lakhimpur on 24.07.2024. The Court of the learned Civil Judge, Lakhimpur at North Lakhimpur shall duly proceed with the adjudication of the suit in accordance with the directions passed in the impugned order dated 06.04.2017 in Title Appeal No.2/2015 and Title Appeal No.1/2016.

8. The Registry shall forthwith return the LCR to the learned Trial Court, i.e. the Court of the Civil Judge, Lakhimpur at North Lakhimpur so that on the next date so fixed by this Court, the said records are available before the Court below. In that regard, the Registry shall also employ the service of a Special Messenger.

9. In view of the above, the instant appeal stands disposed of.

JUDGE

Comparing Assistant