

GAHC010204162017



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

Case No. : RSA/347/2017

KEDAR MONDAL and 3. ORS
S/O LATE BAISTULLAH MONDAL

2: MD. SAHER KHA
S/O LATE BOCHA KHA

3: FONOR KHA
S/O SAHER KHA

4: KASEM MONDAL
S/O KADER MONDAL
ALL ARE R/O VILL. NO. 3
GORAIMARI
P.O. MONOKSHA
P.S. PANBARI
DIST. CHIRANG BTAD
ASSAM

VERSUS

MUSSTT MISIRAN BEWA and 2 ORS
S/O LATE MOSOR KHA, ALL ARE R/O VILL. NO. 3, GORAIMARI, P.O.
MONOKSHA, P.S. PANBARI, DIST. CHIRANG, BTAD, ASSAM, PIN 78385

2:MUSSTT HAJERA BEWA
BOTH ARE D/O LATE MOSOR KHA

3:MD. KADER ALI

S/O LATE MOSOR KHA
ALL ARE R/O VILL. NO. 3
GORAIMARI
P.O. MONOKSHA
P.S. PANBARI

DIST. CHIRANG
BTAD
ASSAM
PIN 7838

Advocate for the Appellants : Mr. P. Mahanta, Advocate

Advocate for the Respondents : Mr. A. K. Hussain, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 27.05.2024

Date of Judgment : 27.05.2024

JUDGMENT AND ORDER (ORAL)

This is an Appeal under Section 100 of the Code of Civil Procedure, 1908 challenging the order dated 21.07.2017 passed in Misc.(J) Case No.28/2016 by the learned District Judge, Chirang at Kajalgaon whereby the application under Section 5 of the Limitation Act, 1963 was rejected, and consequently, the Appeal which was filed being Title Appeal No.6/2016 was dismissed being barred by limitation. The same therefore amounts to confirmation of the judgment and decree passed by the learned Trial Court for which the instant Appeal has been filed.

2. This Court vide an order dated 13.12.2017 admitted the instant Appeal by formulating two substantial questions of law which reads as under:-

(i) Whether the learned first Appellate Court was correct in rejecting the delay condonation petition without considering the requisite grounds in holding the same to be not sufficient for condonation of delay?

(ii) Whether the findings of the learned Trial Court that the mortgage was created by the plaintiff in favour of the defendant appellants and if so whether without the process of redemption the Court could declare the right title interest of the plaintiff respondent over the suit land?

3. I have heard Mr. P. Mahanta, the learned counsel for the appellants and Mr. A. K. Hussain, the learned counsel appearing on behalf of the respondents.

4. In the instant Appeal, taking into account the above two substantial questions of law, which have been formulated, the question arises as to whether the said questions of law are involved in the instant Appeal.

5. At this stage, this Court also finds it very pertinent to take note of that if the first substantial question of law which relates to as to whether the learned First Appellate Court was correct in rejecting the delay condonation application is held to be involved in the instant Appeal, it would not be necessary for this Court to decide the second substantial question of law taking into account that the decision in respect to the second substantial question of law would then have to be decided by the learned First Appellate Court depending on the decision on the first substantial question of law.

6. This Court has duly taken note of the order dated 21.07.2017 by which the learned First Appellate Court, i.e. the Court of the learned District Judge, Chirang at Kajalgaon had rejected the application for condoning the delay. The sole basis on which the said application has been rejected is that the appellants herein have asserted that the delay was 1 day whereas as per the learned First Appellate Court, the delay was 21 days. The question however is as to whether the learned First

Appellate Court could have rejected the said application on the ground that the Appellant conceived that the delay was one day whereas it was 21 days but the Appellant had duly explained the grounds for which the appellants could not file the Appeal within the period of limitation.

7. This Court has also perused the application under Section 5 of the Limitation Act, 1963 wherein the applicants have given sufficient grounds for condoning the delay. Merely, taking a hyper technical view on the basis that the appellants have only stated that the delay was 1 day and not 21 days, the learned First Appellate Court was not justified in rejecting the application for condonation of delay. It is well settled that how much is the delay is not relevant. What is relevant is whether the delay had been properly explained.

8. Accordingly, this Court holds that the first substantial question of law is duly involved in the instant Appeal. The consequential effect is that the order dated 21.07.2017 by which Misc.(J) Case No.28/2016 was rejected is interfered with and set aside. The effect thereof is that the order dated 21.07.2017 passed in Title Appeal No.6/2016 is also interfered with.

9. In view of the interference with the order dated 21.07.2017 passed in both the Misc.(J) Case No.28/2016 as well as the Title Appeal No.6/2016, the Title Appeal No.6/2016 has to be heard on merit by the learned First Appellate Court.

10. Under such circumstances, the question of deciding the second substantial question of law, in the opinion of this Court, would not be in the interest of justice in as much as the learned First Appellate Court now has to decide those aspects of the matter.

11. Accordingly, this Court therefore upon setting aside the order dated 21.07.2017 passed both in Misc.(J) Case No.28/2016 as well as the Title Appeal No.6/2016 directs the learned First Appellate Court, i.e. the learned District Judge, Chirang at Kajalgaon to decide the Appeal being Title Appeal No.6/2016 in accordance with law on merits.

12. Taking into account that both the parties are duly represented they are directed to appear before the learned First Appellate Court on 15.07.2017 for further proceedings in Title Appeal No.6/2016.

13. The Registry shall return the LCR forthwith to the learned First Appellate Court, i.e. the Court of the learned District Judge, Chirang at Kajalgaon, and if necessary, employ the services of a Special Messenger so that on the next date as fixed herein above, the learned First Appellate Court is in a position to take up the Appeal for disposal.

14. In view of the above, the instant Appeal stands disposed of.

JUDGE

Comparing Assistant