

GAHC010209332016



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

Case No. : SAO/13/2016

SRI DULAL DAS
S/O LATE MANIK DAS, R/O VILL. KOCHPARA, MOUZA-CHAYANI, P.O. and
P.S.MIRZA, DIST. KAMRUP, ASSAM.

VERSUS

ON THE DEATH OF AMULYA CHANDRA GOSWAMI HIS LEGAL HEIRS SMTI
SABITA GOSWAMI WIFE and 7 ORS
ANGSHUMAN GOSWAMI SON KIRTIMAN GOSWAMI SON

2:DILIP CHANDRA GOSWAI
S/O LATE JOGESH CH. GOSWAMI

3:SMTI HIRANMOYEE GOSWAMI
W/O LATE BIREN CH. GOSWAMI

4:MISS SUSMITA GOSWAMI
D/O LATE BIREN CH. GOSWAMI

5:CHINMOY GOSWAMI
S/O LATE BIREN CH. GOSWAMI
NO. 5 and 6 BEING MINORS ARE REPRESENTED BY THEIR MOTHER AND
NATURAL GUARDIAN NAMELY SMTI. HIRANMOYEE GOSWAMI
RESPONDENT NO. 4
ALL ARE R/O S.C. GOSWAMI ROAD
PANBAZAR
GUWAHATI 781001

6:SMTI CHAMPA DEVI

W/O SRI JITEN SHARMA
R/O HENGRABARI

P.O. and P.S. DISPUR
GUWAHATI.

7:PRADIP DAS

S/O LATE MANIK DAS

8:RAMA DAS

S/O LATE MANIK DAS
R/O VILL. KOCHPARA
MOUZA CHAYANI
P.O. and P.S. MIZRA
DIST. KAMRUP
ASSAM

Advocate for the appellants : Mr. G Imtiaz

Advocate for the respondents : Mr. A Dhar

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

20.06.2024

This is an appeal filed under Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908 (for short, the Code) challenging the judgment and order dated 26.08.2016 passed in Title Appeal No.22/2014 whereby the learned First Appellate Court i.e. the Court of the learned Civil Judge, Kamrup, Amingaon had remanded the suit back to the learned Trial Court by framing an additional issue

as to whether the suit land is identifiable or not.

2. This Court has duly perused the copy of the plaint enclosed to the instant Memo of Appeal, wherein it is seen that the plaintiffs have filed the suit claiming right, title and interest over the Schedule land described in the Schedule with specific boundaries. This Court has taken note of the written statement so filed by the defendants, wherein there is nothing mentioned as regards the misdescription of the boundary of the Schedule land.

3. Under such circumstances, taking into account the provisions of Order XIV Rule 1 of the Code, the question of framing an additional issue as to whether the suit land was identifiable or not was not necessary. It may be a fact that the learned Trial Court may have dismissed the suit stating that no decree can be granted as the suit land was not identifiable. However, it was the duty of the learned First Appellate Court to decide as to whether without there being any dispute to that aspect, whether the learned Trial Court was justified in doing so.

4. It has also been brought to the attention of this Court by Mr. A Dhar, the learned counsel for the respondents, who are the plaintiffs in the suit that an application was duly filed under Order XLI Rule 27 of the Code for the purpose of adducing additional evidence so that an Amin Commission could have been appointed by the learned First Appellate Court, if so necessary to identify the land. It has been further submitted that the said application was duly pending. Under such circumstances, this Court finds no justification in the order passed by the learned First Appellate Court on 26.08.2016 thereby remanding the suit back to the learned Trial Court. In the opinion of this Court, the learned First

Appellate Court being the last Court of facts would have the jurisdiction to exercise the powers under Order XLI Rule 27 read with Order XXVI Rule 9 of the Code, if so necessary for the purpose of delivering the judgment. Under such circumstances, this Court finds that the impugned order dated 26.08.2016 passed in Title Appeal No.22/2014 is contrary to the provisions of Order XLI Rule 24 of the Code and accordingly stands set aside and quashed.

5. The learned First Appellate Court i.e. the Court of the learned Civil Judge, Kamrup, Amingaon is directed to decide the said appeal in accordance with law and in doing so shall also duly consider the application which is presently pending being an application under Order XLI Rule 27 of the Code, so filed by the appellants in the said appeal being Title Appeal No.22/2014.

6. 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, Kamrup, Amingaon on 24.07.2024.

7. The Registry shall forthwith return the LCR to the learned First Appellate Court i.e. the Court of the learned Civil Judge, Kamrup, Amingaon, so that on the next date fixed by this Court, the records are made available before the Court below. In that regard, the Registry may also employ the services of a *special messenger*.

8. With the above, the instant appeal stands disposed of.

JUDGE

Comparing Assistant