



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Principal Seat at Guwahati

RSA No. 241/2014.

Smti. Gita Roy,
D/o Late Brojendra Chandra Roy,
W/o Shri Gohindra Chandra Roy,
Vill – Betukandi,
P.S. – Silchar,
Dist. – Cachar.

..... Appellant/Plaintiff No. 2.

-Versus-

1. Shri Harendra Chandra Roy @ Kulendra Roy,
S/o Shri Jintendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.
2. Shri Nipendra Chandra Roy,
S/o Shri Jintendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.
3. Shri Birendra Chandra Roy,
S/o Shri Jitendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.

4. Shri Ravindra Chandra Roy,
S/o Shri Jitendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.
5. Shri Jintendra Chandra Roy,
S/o Late Borat Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.
6. Shri Amulya Chandra Roy,
S/o Late Brojendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.

..... Principal Respondents/Defendants.

7. Smti Birojabala Roy,
W/o Late Brojendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.
8. Smti Sita Roy,
D/o Late Brojendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.

..... Proforma Respondents/Defendants.

9. Shri Ananda Kumar Roy,
S/o Late Brojendra Chandra Roy,
R/o Kalinagar Part - III,
P.S. - Algapur,
Dist. – Hailakandi.

..... Proforma Respondent/Plaintiff No. 1.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Advocate for the appellant	:-	Mr. P.K. Deka.
Advocate for the respondent No. 1	:-	Mr. S.K. Ghosh.
 Date of Hearing	:-	 06.08.2024.
Date of Judgment & Order	:-	28.10.2024.

JUDGEMENT & ORDER (CAV)

Heard Mr. P.K. Deka, learned counsel for the appellant and Mr. S.K. Ghosh, learned counsel for the respondents.

2. In this appeal, under Section 100 of the C.P.C., the appellant, Smti. Gita Roy has put to challenge the correctness or otherwise of the Judgment and Decree dated 05.03.2014, passed by the learned Civil Judge, Hailakandi, in Title Appeal No. 12/2009.

3. It is to be noted here that vide impugned Judgment and Decree dated 05.03.2014, the learned Civil Judge, Hailakandi had reversed the Judgment and Decree dated 19.11.2008, passed by the learned Munsiff No. 1, Hailakandi, in Title Suit No. 21/2008.

4. For the sake of convenience and clarity, the parties will be referred in the rank assigned to them in the Title Suit No. 21/2008.

Background Facts:-

5. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

"The principal defendants No.1 to 5, as plaintiffs, instituted a title suit, being Title Suit No.03/1996, against one Brojendra Chandra Roy and others for recovery of khas possession of a plot of land as mentioned in the schedule of the said title suit. Then on receipt of summon, Brojendra Chandra Roy appeared and submitted written statement denying the averments made in the plaint. He had taken a stand that he had purchased the suit property from the heirs of Narendra Chandra Namasudra, vide purchase deed No.6979, dated 29.11.1969 and since then he is in exclusive possession of the said land. During the course of trial, Brojendra Chandra Roy died in the year 2001 leaving behind his wife, namely, Smti. Brajabala Roy, (pro-forma defendant No.7) and two sons, namely, Ananta Kumar Roy (plaintiff No.1), Amulya Chandra Roy (defendant No.6), two daughters namely, Smti. Geeta Roy (plaintiff No.2) and Smti. Sita Roy (pro-forma defendant No. 8) as his legal heirs.

It is alleged in the plaint that the plaintiff No. 1 was working at Golaghat and he did not receive any summon from the court in the aforesaid suit and whenever he visited his house at Kalinagar, his brother, the respondent No. 6 denied the fact of receiving any summon. When the plaintiff No.1 visited his residence in the month of February, 2004, he came to know from

the local people that they will be evicted as a decree was passed against them in Title Suit No.03/1996.

Then he enquired about the matter and collected the certified copy of the judgment and decree and found that the summons were received by the defendant No. 6, where his and his sister Geeta Roy's signatures were forged and they had never subscribed any vakalatnama, which was filed along with the petition seeking time to file written statement in the Title Suit No. 03/1996 and that they had never engaged Mr. K.M. Singha as their Advocate. The defendant No. 6, in collusion with other principal defendants forged the signature of the plaintiffs in vakalatnama and in the petition. The learned Munsiff, Hailakandi after hearing learned counsel for both the parties decreed the Title Suit No. 03/1996, vide judgment and decree dated 20.08.2002.

Thereafter, the plaintiffs had instituted Title Suit No. 21/2008, before the court of learned Munsiff No.1 Hilakandi seeking a declaration of the judgment and decree dated 20.08.2002 in T.S. No.03/1996, a nullity being obtained by the defendants No.1 to 5 in collusion with defendants No.6 by playing fraud upon the plaintiffs. In the said suit, the defendants entered appearance and contested the suit. Thereafter, the learned Munsiff, after hearing learned Advocates of both the parties, had decreed the suit vide judgment and decree dated 19.11.2008, by holding that the defendant Nos. 1 – 5, in collusion with defendant

No. 6, had obtained the decree by playing fraud upon the court and as such, declared the same as nullity.

Against the said judgment and decree, dated 19.11.2008, passed by the learned Munsiff, the defendants had preferred an appeal, being Title Appeal No.12/2009, before the learned Civil Judge, Hailakandi and the learned Civil Judge, Hailakandi, vide judgment and decree dated 05.03.2014, after hearing learned counsel for both the parties, set aside the impugned judgment and decree passed by the learned Munsiff, Hailakandi."

6. Being highly aggrieved and dissatisfied, the plaintiff No.2, as appellant, has preferred this second appeal, under Section 100 of the C.P.C. for quashing and setting aside the impugned judgment and decree dated 05.03.2014, so passed by the learned Civil Judge, Hailakandi, in Title Appeal No. 12/2009, suggesting following substantial questions of law :-

- (i) Whether the learned first appellate court was correct in reversing the findings of the learned trial court without proper examination of the signatures of the appellant and proforma respondent No. 9 through expert evidence? and
- (ii) Whether the learned first appellate court was correct in reversing the finding of the learned trial court by shifting the burden on the appellant to disprove their signatures in Exhibit Nos. 1 & 2, whereas the respondents side ought to have the burden to establish the fact that such signatures

were actually belonging to the appellant and proforma respondent No. 9?

Substantial Questions of Law:-

7. Thereafter, this court, after hearing learned Advocate for the appellant and also considering the materials placed on record, was pleased to admit the second appeal on the following substantial question of law :-

“Whether the learned lower appellate court below was correct in reversing the findings of the learned Trial Court below without proper examination of the signatures of the plaintiffs through expert evidence?”

Submissions:-

8. Mr. Deka, learned counsel appearing for the appellant submits that the impugned judgment and decree dated 05.03.2014, passed by the learned Civil Judge, Hailakandi, in Title Appeal No. 12/2009 suffers from manifest illegality in as much as the learned first appellant court had shifted the burden of establishing that the signatures appearing in the vakalatnama and the petition are not their signatures, to the present appellant and pro-forma respondent No. 9 herein. Mr. Deka further submits that in fact the burden is on the respondents to establish that the signatures appearing in the vakalatnama and the petition were of the appellant and pro-forma respondent No. 9. Mr. Deka also submits that the learned first appellate court, before reversing the judgment and decree ought to have examined the signature of the plaintiff through expert or by himself in view of

section 73 of the Evidence Act, and instead of doing the same it had reversed the judgment and decree of the trial court which is not at all sustainable and therefore, Mr. Deka also submits that the learned first appellate court had erred in law committed illegality and therefore, it is contended to allow this second appeal by setting aside the impugned judgment and decree.

8.1. Mr. Deka has referred following case laws in support of his submission :-

- (i) **Kumaran Nair vs. Bhargavi and Another**, reported in **1998 CRI. L. J. 1000**;
- (ii) **Ajit Savant Majagavi vs. State of Karnataka**, reported in **AIR 1997 SC 3255**; and
- (iii) **Gowri Shankar vs. J. L. Babu and Another**, reported in **AIR 2012 Andhra Pradesh 118**.

9. On the other hand, Mr. Ghosh, learned counsel for the respondents submits that the impugned judgment and decree dated 05.03.2014, passed by the learned Civil Judge, Hailakandi, in Title Appeal No. 12/2009 suffers from no infirmity or illegality. Mr. Ghosh submits that it was the duty of the appellant/plaintiff No.2 and pro-forma respondent No.9 herein, to establish that the signatures appearing in the vakalatnama and the petition are not of them. The burden cannot be shifted to the respondents and on such count, no substantial question of law involved in this appeal and therefore, Mr. Ghosh has contended to dismiss this appeal.

9.1. Mr. Ghosh has referred following case laws in support of his submission :-

- (i) **Anil Rishi vs. Gurbaksh Singh**, reported in 2006 0 Supreme (SC) 438 and
- (ii) **Gian Chand & Brothers and Another vs. Rattan Lal @ Rattan Singh**, reported in 2013 0 Supreme (SC) 31.

Discussion and Finding:-

10. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and also perused the impugned judgment and decree dated 05.03.2014, passed by the learned Civil Judge, Hailakandi, in Title Appeal No. 12/2009 and also perused the judgment and decree dated 19.11.2008, passed by the learned Munsiff No. 1, Hailakandi, in Title Suit No. 21/2008.

11. It appears that the learned Munsiff, while deciding the suit, had framed the following three issues:-

- “(i) Is there any cause of action?
- (ii) Whether the suit is maintainable? and
- (iii) Whether the principal defendant No. 1 to 5 obtained the decree in Title Suit No. 03/1996 in collusion by suppressing the material of facts?”

11.1 Thereafter, having heard both the parties and considering the evidence on record, the learned Munsiff had decided all the issues in affirmative and consequently decreed the suit.

12. While deciding the issue No. 3, the learned Munsiff had discussed the evidence of P.W.1 (plaintiff No.2), who stated that during the pendency of Title Suit No. 03/1996 her father expired. Her brother, (plaintiff No.1) was serving at Golaghat and she was at her husband's homestead. P.W.1 further stated that she and her brother had not received any summon in Title Suit No. 03/1996, as both stayed outside and when they came to their homestead and inquired from the respondents about the suit, they denied having received any summon. They have also not informed them about the dates of the case. P.W.1 further stated that her brother (plaintiff No.1) and she came to know from court that some signatures had been forged in Title Suit No. 03/1996, where vakalatnama dated 06.04.2002, is subscribed and the petition dated 29.08.2002, has been filed. But, she had never put any signature in the said vakalatnama and in the petition of court. P.W.1 also stated that pro-forma defendant No. 6 in collusion with other mislead and concealed the facts before Court and obtained the decree in Title Suit No. 03/1996. In her cross-examination P.W.1 stated that she resides at Betukandi, Silchar and she does not put her signature in Exhibit -1. But, her name had appeared in the same and she does not know who wrote her name.

13. The learned Munsiff also discussed the evidence of P.W. 2 (plaintiff No.1), who stated that during the pendency of Title Suit No. 03/1996, before evidence stage, his father expired and he was at his service place at Golaghat and his sister (plaintiff No.2), was at her husband's house. P.W.2 further stated that they had never been served any summons nor they had been informed about the date of the case and while they came to home, the defendants neither

informed them about date of the case nor informed them about receipt of any summons. P.W.2 further stated that he came to know from the court that one vakalatnama dated 26.04.2001 and a petition dated 29.08.2002, has been submitted with his and his sister's signatures. But, he and his sister had neither filed any vakalatnama nor filed any petition in Title Suit No. 03/1996. P.W.2 further stated that main respondent, in collusion with pro-forma respondents, forged their signatures in order to oust them legally from the property and submitted a petition before the court and by misleading the court obtained the decree in Title Suit No. 03/1996. P.W.2 further stated that he and Amullya are living in separate house for last 5/6 years and up to 2001, he was a member of the same mess and got separated in the year 2001. P.W.2 also stated that in Exhibit - 1 the name of Geeta, Sita, Amullya appears, but he cannot say who put those names.

14. Thereafter, examining the Exhibit -1, i.e. the vakalatnama, the learned trial court found that signature of P.W.2 did not appear in the same, but the signature of P.W.1 seems to have appeared and the same was denied by the P.W.s, which the defendants failed to disprove their contrary. Again, in Exhibit- 2, i.e. the petition No. 635/2009, the signatures of the plaintiffs are denied by P.W.s and the same had been corroborated by P.W.s. Even the summon, Exhibit- 4, was also denied by P.W.2, who allegedly put signature in the same. Thereafter, the learned Munsiff arrived at the finding that in Exhibit – 1, where the signature of the plaintiff No. 1 did not appear and though the signature of the plaintiff No. 2 appeared in the same, yet, the same has been denied. And in Exhibit- 2, P.W.'s signatures were forged and the defendants had failed to disprove the same. The

evidence of P.W.2 lead to one thing that pro-forma respondents in collusion with other respondents, in Title Suit No. 03/1996, suppressed the material fact and thereafter, decided the issue in favour of the plaintiffs and decreed the suit being T.S. No.21/2009.

15. It also appears that the learned first appellate court, while disposing of the appeal had not framed any points for determination. Instead it had discussed the evidence of PW-1 and PW-2 and thereafter, Exhibit-1, the vakalatnama, the petition No. 635/2009, in relation to the issues so framed by the learned trial court. Thereafter, in connection with issue No.3, it had arrived at a finding that on close scrutiny of Exhibit -1, the vakalatnama, dated 21-04-2001, in Title Suit No. 03/1996, reveals that signature of P.W.2, Ananta had not appeared and only the signature of the Gita Roy (P.W.1), seems to have appeared. But, the same was denied by the P.W.s. But, the P.W.1 had failed to prove or challenge the said signature that it is not her signature, rather someone has forged the same. In this respect, it was the duty of the appellant to send the said signature to an Expert for examining the same. But, the appellant side was absolutely silent in this regard.

16. The learned First Appellate Court also held that similarly, in Exhibit - 2, the petition No. 635/2009, dated 29-08-2002, in Title Suit No. 03/1996, the signatures of the P.W.1 and P.W.2 had appeared and both of them have denied those signatures, and someone had forged the same. But, the P.W.1 and 2 had failed to take a step to prove or challenge that those signatures were not their signatures, rather someone had forged the same. It had also been held that in this

respect, it was the bounden duty of the P.W.1 and 2 to send the signatures to an expert for examination. But, they absolutely remained silent in this regard.

17. Thereafter, the learned first appellate court, from the analysis of the evidence on the record, held that in the vakalatnama, i.e. Exhibit - 1 and the petition dated 29-08-2002, i.e. Exhibit – 2, the signatures of the P.W.1 and 2 are admitted fact, as both the P.W.s, in their respective evidences as well as in cross-examinations admitted that the signatures appeared in the Exhibit Nos. 1 & 2 are their signatures. However, they had no knowledge as to who put those signatures. But, it is the bounden duty of the appellant to prove or challenge the same by sending the same to an Expert. But, they did nothing in this regard. Therefore, the learned first appellate court decided the issue in negative, i.e. against the plaintiffs.

18. Thus, it appears that the learned first appellate court had held that since the plaintiffs had contended that their signatures appearing in the vakalatnama, Exhibit-1, and also in the petition, Exhibit-2, so filed in the T.S. No.3/1996, were not of them, the burden of proving the same lies upon them.

19. The finding, so arrived at by the learned first appellate court, while examined in the light of the given facts and circumstances on the record, cannot be said to be illegal or perverse. The pristine rule that burden of proof as to any particular fact always lies upon the person who wishes the Court to believe in its existence. Here in this case, it is asserted by the plaintiffs that their signatures appearing in the

vakalatnama and the petition are not of them. So, it was their duty to establish the same.

20. Though Mr. Deka, learned counsel for the appellant herein, submits that the burden lies upon the defendants to establish that the signatures of plaintiffs appearing in Exhibit-1 and 2 were of the plaintiff's, yet, the said submission of Mr. Deka left this court unimpressed, inasmuch as it is the plaintiff's burden to prove that the signatures appearing in the vakalatnama, i.e. the Exhibit -1 and in the petition, i.e. the Exhibit - 2 were not put by them. It is the cardinal principle that the party, who has asserted existence of a fact, has to establish the same. It cannot be shifted to the defendants.

21. On the other hand, I find sufficient force in the submission of Mr. Ghosh, learned counsel for the respondents, who vehemently submitted that burden of proof lies upon the plaintiffs (appellant). And the decision referred by him also strengthened his submission. Hon'ble Supreme Court, in the case of **Anil Rishi (Supra)** and **Gian Chand (Supra)** has held that the burden of proving a fact rests upon the party who substantially asserts the affirmative issues, not upon the party who denies the same. It is also held that when fraud, misrepresentation or undue influence is alleged by a party in a suit, normally the burden lies on that party to prove such fraud, undue influence or misrepresentation. Here in this case, forging of signatures is alleged by the appellant. That being so, and in view of the ratio laid down in the case of **Anil Rishi (Supra)** and **Gian Chand (Supra)**, it was the duty of the plaintiffs to establish the same by adducing

evidence. Thus, it cannot be said that they have discharged their burden.

22. I have also considered the submission of Mr. Deka that the learned first appellate court could have compare the signatures appearing in the vakalatnama and in the petition that the admitted signatures are of the plaintiffs or not and could have arrived at the finding in view of section 73 of the Evidence Act. There is no quarrel at the Bar that the court may compare the signatures of the plaintiffs with those signatures appearing in the vakalatnama as well as in the petition. The case laws referred by Mr. Deka, learned counsel for the appellant also supported the same. But, in the case of **Ajit Savant Majagavai** (supra), Hon'ble Supreme Court, while re-affirming the power of the court to compare the disputed signature with admitted signature under section 73 of the Evidence Act, has held as under:-

“38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature of handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts.....”

23. This being the legal position, I find that the learned first appellate court has committed any illegality in not venturing into comparing the admitted signature of the plaintiffs with their disputed signatures and leaving the matter to the wisdom of expert.

24. In the result, I find and hold that the learned first appellate court has rightly decided the issues and reversed the finding of the learned trial court. The substantial question of law, so formulated herein in this second appeal, accordingly, stands answered against the appellant.

25. In terms of above, this second appeal stands disposed of. Send down the record of the learned courts below with a copy of this judgment and order. The parties have to bear their own costs.

JUDGE

Comparing Assistant