GAHC010006332012

2026:GAU-AS:12772

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

Case No. : RSA/105/2012

MAHENDRA BORDOLOI @ NATH BORDOLOI
S/O LATE GUNAKANTA BORDOLOI, VILL. BANGTHAI, MOUZA-KASOMARI, DIST. NAGAON, ASSAM, PIN-782001

VERSUS

BIMAL CHANDRA BORA and 10 ORS
S/O LATE RANJIT BORA, BY CASTE HINDU, BY OCCUPATION CULTIVATOR, R/O VILL. NO. 2 GADARBORI, MOUZA-HATISUNG, DIST. NAGAON, ASSAM, PIN-782142

2:BANGTHAI NAMGHAR SAMITEE

PRESIDENT SRI JOGAL RAJBANGSI
S/O LATE BHOGSINGH RAJBANGSHI

3:JOGAL RAJBANGSHI

S/O LATE BHOGSINGH RAJBANSHI
PRESIDENT BANGTHAI NAMGHAR SAMITEE

4:LAMBODHAR RAJANGSHI
S/O LATE BHAKOT SINGH RAJBONSHI
SECRETARY
BANGTHAI NAMGHAR SAMITY ALL ARE RESIDENT OF VILL. BANGTHAI
MOUZA-KASOMARI
DIST. NAGAON
ASSAM
PIN-782001

5:SMTI NAMAI BHUYAN

D/O LATE ADIRAM PATIA
VILL. NO. 2 GEDARBARI
MOUZA-HATISUNG
DIST. NAGAON
ASSAM
PIN-782142

6:SMTI. GIRIBALA SAIKIA

W/O MAHESWAR SAIKIA
VILL. CHAMUA KOCHAR GAON
MOUZA-HATISUNG
DIST. NAGAON
ASSAM
PIN-782002

7:SMTI BINA BORDOLOI
W/O LATE BIRAN BORDOLOI
VILL. BANGTHAI
MOUZA-HATISUNG
PIN-782001

8:DEBEN BORDOLOI

S/O KHARGESWAR BORDOLOI

9:MENESWAR BORDOLOI

10:GANESH BORDOLOI

11:MOHIT BORDOLOI

ALL ARE S/O LATE MONIRAM BORDOLOI
ALL ARE R/O BANGTHAI
MOUZA-KASOMARI
DIST. NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MS.K D SARMAH, MRS.G M D BAISHYA,MR.R SARMA

Advocate for the Respondent : MR.A R SHOME, MR.S CHOUHAN,MR.S CHAUHAN

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellant : Mr. R. Sarma.

Advocate(s) for the Respondents : Mr. S. Chauhan.

Date on which judgment is reserved : 20.08.2026.

Date of pronouncement of judgment : 03.09.2026.

Whether the pronouncement is of the operative part of the judgment? : YES.

Whether the full judgment has been pronounced? : YES.

JUDGMENT AND ORDER (CAV)

Heard Mr. R. Sarma, learned counsel appearing for the appellant. Also heard Mr. S. Chauhan, the learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) challenging the judgment dated 31.03.2012 passed by the court of learned District Judge, Nagaon in Title Appeal No.19/2006 affirming the judgment dated 21st January, 2006 passed by the learned Civil Judge (Sr. Divn.), Nagaon in T.S. 27/1997.

3. The respondent Bimal Ch. Bora filed the suit before the trial court. His grandfather was late Adiram Patia who owned 7 Bighas 14 Lechas of land covered by P.P. No.6 Dag No.32/353/334 of 1968-69 settlement. In the year 1969, Late Adiram Patia during his lifetime gifted 3 Bighas 2 Kathas 17 Lechas of land out of his total land to the respondent Bimal Ch. Bora, the grandson. It was a registered Gift Deed No.1987.

4. At that time, the respondent Bimal Ch. Bora was a minor. Therefore, his father Ranjit Bora was looking after the land on behalf of his minor son. The father of Bimal Ch. Bora expired on 05.05.1989.

5. After the death of aforementioned Ranjit Bora, the father of Bimal Ch. Bora, some persons who were arraigned as defendant nos.2, 3 and 4, who are not parties in the instant second appeal, had dispossessed Bimal Ch. Bora of 3 Kathas of his land and constructed a Namghar there.

6. Thereafter, the present appellant had dispossessed Bimal Ch. Bora from 2 Bighas 4 Kathas 17 Lechas of land and used it for cultivation.

7. Bimal Ch. Bora has claimed that these people do not have right, title and interest over his land.

8. The present Mahendra Bordoloi and the aforementioned defendant nos.2, 3 and 4 had contested

the suit by filing a joint written statement. They have claimed that original owner Adiram Patia had exchanged the suit land with a plot of land belonging to Purnakanta Lalung, the predecessor of the appellant. After the said exchange, the predecessor of the present appellant had been in possession of the suit land. According to the appellant, due to mistake by the Revenue Department, land records were not corrected accordingly.

9. The appellant claims that in the year 1960, Guno Lalung, the successor of the aforementioned Purnakanta Lalung, had donated 3 Kathas of land to the Namghar and for the last so many years, the Namghar still exists there.

10. On 10.03.1991, late Ranjit Bora, the father of Bimal Ch. Bora had sold the remaining land to Giribala Saikia on execution of a registered sale deed.

11. The trial court framed the following issues:

I. Whether there is cause of action for the suit?

II. Whether the suit is maintainable in present form?

III. Whether the suit is bad for non-joinder of necessary party?

IV. Whether the suit is barred by law of limitation and adverse possession?

V. Whether the plaintiff had right, title and interest over the suit land?

VI. Whether the plaintiff is entitled to decree, as prayed for?

VII. To what relief, if any, parties are entitled?

12. During the trial, both sides examined witnesses. Finally, the trial court dismissed the suit against the present appellant Mahendra Bordoloi. The trial court declared the right, title and interest of Bimal Ch. Bora over 3 Bighas 2 Kathas 17 Lechas of land. The trial court also directed eviction of the present appellant Mahendra Bordoloi from the suit land.

13. The present appellant Mahendra Bordoloi filed the appeal. The appeal was dismissed.

14. The present Regular Second Appeal was admitted for hearing upon the following substantial questions of law:

I. Whether courts below were justified in decreeing the suit of the plaintiff declaring right, title and interest based on Ext.3, Gift Deed, in other words, whether Ext.3 Gift Deed has been correctly interpreted?

15. I have considered the submissions made by the learned counsels of both sides.

16. In *Santosh Hazari v. Purushottam Tiwari*, *(2001) 3 SCC 179* , the Hon'ble Supreme Court has held as under:

> "**14.** A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point

raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

17. The first appellate court continues to be a final court of facts. Pure findings of fact remain immune from challenge before the High Court in second appeal. The first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of first appellate court even on question of law unless such question of law be a substantial one.

18. In the case in hand, Ext.3 Gift Deed has been proved. Therefore, this Court being the second appellate court, would not go into the merit of the factual issues. In fact, in this appeal, there is no substantial question of law. The so-called substantial question of law framed in this case, involves factual issues and the High Court cannot reappreciate the evidence to decide its correctness.

19. Under the aforesaid circumstances, this court is of the opinion that this appeal has no merit at all and the same is dismissed accordingly.

Send back the TCR.

JUDGE

Comparing Assistant