GAHC010210942015

2026:GAU-AS:17198

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

Case No. : RSA/76/2015

ON THE DEATH OF SOLE APPELANT (SRI RAMDAYAL THAKUR) , HIS LEGAL HEIRS
Represented By-

1.1: SRI BABAN THAKUR
S/O LATE RAMDAYAL THAKUR
R/O EAST MILAN NAGAR
C.R. BUILDING
P.O.DIBRUGARH
PS DIBRUGARH DIST. DIBRUGARH
ASSAM- 78600

VERSUS

SRI RAMESWAR THAKUR and 2 ORS

2:PANNALAL THAKUR

BOTH S/O RAM IQBAL THAKUR

3:SMTI DIWANTI THAKUR

W/O SRI PANNA LAL THAKUR
ALL ARE R/O HOUSING COLONY
EAST MILAN NAGAR
P.O. C.R. BUILDING
DIBRUGARH
DIST. DIBRUGARH
ASSAM

Advocate for the Petitioner : MR.H RAHMAN, MS.S SULTANA,MS.J HUDA,MD.ASLAM,MS.B SARMA,MR.G N SAHEWALLA,MR.A CHETIA,MR.P DEKA,MS.P BURAGOHAIN

Advocate for the Respondent : , MSN KALITA(R-1 to 3),MR.A BHATTACHARJEE(R-1 to 3),,MR.M NATH(R-1 to 3),,,MR.S S DEY(R-1 to 3),

Linked Case : I.A.(Civil)/4314/2017

SRI RAMDAYAL THAKUR

VERSUS

SRI RAMESWAR THAKUR and 2 ORS

Advocate for : MD.ASLAM
Advocate for : MR.S S DEY appearing for SRI RAMESWAR THAKUR and 2 ORS

Linked Case : I.A./794/2015

SRI RAMDAYAL THAKUR

VERSUS

SRI RAMESWAR THAKUR and 2 ORS

Advocate for : MS.J HUDA
Advocate for : appearing for SRI RAMESWAR THAKUR and 2 ORS

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Senior Advocate(s) for the Appellants : Mr. G.N. Sahewalla.

Advocate(s) for the Appellants : Ms. K. Bhattacharyya.

Senior Advocate(s) for the Respondents: Mr. M. Nath.

Advocate(s) for the Respondents : Mr. Mausam Nth.

Date on which judgment is reserved: 10.11.2026.

Date of pronouncement of judgment: 20.11.2026.

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. G.N. Sahewalla, learned senior counsel assisted by Ms. K. Bhattacharyya, the learned counsel appearing for the appellants. Also heard Mr. M. Nath, learned senior counsel assisted by Mr. Mausam Nath, the learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) whereby the judgment dated 12.09.2014 passed by the learned Civil Judge, Dibrugarh in Title Appeal No.47/2011 affirming the judgment and decree dated 29.09.2011 passed by the learned Munsiff No.1, Dibrugarh in Title Suit No.45/2006 is under challenge.

3. Late Ramdayal Thakur was the owner and occupier of a plot of land measuring 1 Katha – 296/144 under Dag No.154(Old) and 286(New) covered by T.P.P. No.1(Old) and 2(New) situated at Mancotta Khanikar, Dibrugarh. He had purchased the land on execution of Sale Deed No.1000 and Sl. No.146 of 1978.

4. After taking over possession of the land, late Ramdayal Thakur had constructed a *kutcha* house over the land and started to live there with his family.

5. The respondents Rameswar Thakur and Pannalal Thakur are the sons of a brother of late

Ramdayal Thakur. Similarly, respondents Smti. Diwanti Thakur is the wife of Pannalal Thakur.

6. Originally, the respondents used to stay outside the State of Assam and in search of livelihood, they came to Dibrugarh. They did not have any place to stay at Dibrugarh. Late Ramdayal Thakur allowed them to live in his houses.

7. The house where the respondents started to live had three *kutcha* rooms. The house was given to the respondents on a condition that whenever they will arrange a suitable accommodation for themselves, they will have to vacate the house.

8. When late Ramdayal Thakur had filed the suit, the respondents had already spent four years in the house given to them.

9. Late Ramdayal Thakur had alleged that the respondents had tried to alter the structure of the house without his consent.

10. Narrating the aforesaid facts, late Ramdayal Thakur had filed the suit praying for declaration of his right, title and interest over the said land and for evicting the respondents therefrom.

11. The respondents contested the case by filing the written statement and counter claim. They have claimed that late Ramdayal Thakur and their father Ram Ekbal Thakur came to Dibrugarh from Bihar at the same time. They have claimed that the house they reside was constructed by their father.

12. The respondents further claimed that taking advantage of the Sale Deed No.1000, late Ramdayal Thakur wanted to sale the entire plot of land and at that time, Pannalal Thakur agreed to purchase the land and paid a sum of ₹1,80,000/- to late Ramdayal Thakur. Late Ramdayal Thakur also agreed to execute the sale deed in favour of Pannalal Thakur. But he did not.

13. The respondents prayed for a decree of specific performance of contract and for execution of a sale deed in favour of Pannalal Thakur. They also prayed for decree evicting late Ramdayal Thakur from the said land.

14. Late Ramdayal Thakur filed his written statement against the counter-claim. He denied all the claims of the respondents.

15. On the basis of the pleadings, the trial court framed the following issues:

i. Whether there is any cause of action in the suit?

ii. Whether the plaintiff and the father of the defendants belong to Hindu Joint Family?

iii. Whether the suit premises was/is a part of the joint family property in between the plaintiff and the father of the defendants?

iv. Whether the plaintiff has any right, title and interest over the suit premise?

v. Whether the defendants were/are tenants under the plaintiff?

vi. Whether the plaintiff and the defendant no.2 entered into any agreement to sell and to purchase the suit land mentioned in the counter claim?

vii. Whether the defendant no.2 is entitled to get a decree for specific performance of contract in respect of the suit land mentioned in the counter-claim?

viii. Whether the parties are entitled to any other relief/s as prayed for?

16. During the hearing, late Ramdayal Thakur examined three witnesses and the respondents also examined three witnesses.

17. On the basis of the evidence on record, the trial court decreed the suit of late Ramdayal Thakur. The trial court held that late Ramdayal Thakur had right, title and interest over the suit land and till he executes a registered sale deed in favour of respondent Pannalal Thakur. The trial court further held that after registration of the said sale deed, late Ramdayal Thakur shall have to be evicted from the said land. Late Ramdayal Thakur was directed by the trial court to execute the sale deed in favour of respondent Pannalal Thakur.

18. The respondents preferred an appeal and the appellate court, after hearing both sides, dismissed the appeal.

19. Aggrieved by the aforesaid judgment, the present regular second has been filed by the legal heirs of late Ramdayal Thakur for hearing the substantial question of law– whether the findings and conclusions recorded by the learned court below as regards Issue Nos.1 and 6 as perverse in the eye of law?

20. I have given my anxious considerations made by the learned counsels of both sides.

21. Whether there is a cause of action in the suit and whether the plaintiff and the defendant no.2 entered into any agreement to sale and purchase the suit land mentioned in the counter claim, are both issues of facts.

22. So far as concurrent findings are concerned, inn *G. Mahalingappa v. G.M. Savitha*, (2005) 6 SCC 441, the Supreme Court has held as under:

> "25. Let us now consider whether the concurrent findings of fact could be set aside by the High Court in the second appeal. It is well settled by diverse decisions of this Court that the High Court in the second appeal is entitled to interfere with the concurrent findings of fact if the said concurrent findings of fact are based on non-consideration of an important piece of evidence in the nature of admission of one of the party to the suit, which is overlooked by the two courts below. (See *Deva* v. *Sajjan Kumar* [(2003) 7 SCC 481] .) It is equally well settled that under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the concurrent findings of facts of the courts below without insufficient and just reasons. (See *Sayeda Akhtar* v. *Abdul Ahad* [(2003) 7 SCC 52] .) In the second appeal, the High Court is also not entitled to set aside the concurrent findings of fact by giving its own findings contrary to the evidence on record. (See *Saraswathi* v. *S. Ganapathy* [(2001) 4 SCC 694] .)."

23. It is a settled position of law that the High Court in the second appeal is entitled to interfere with the concurrent findings of fact if the said concurrent findings of fact are based on non-consideration of an important piece of evidence in the nature of admission of one of the party to the suit, which is overlooked by the two courts below. The High Court is also not entitled to set aside the concurrent findings of fact by giving its own findings contrary to the evidence on record.

24. This Court is of the opinion that the so-called substantial question of law is a question of fact only. Being a second appellate court, this court is not entitled to reappreciate the evidence on record.

25. Under the aforesaid circumstances, this Court is of the opinion that this appeal is devoid of merit and is accordingly dismissed. The connected Interlocutory Applications are also disposed of.

The trial court records shall be returned.

JUDGE

Comparing Assistant