

GAHC010003082011



2024:GAU-AS:10532

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

Case No. : RSA/15/2011

BASANTA DAS and ANR
S/O LATE JAGANATH DAS, R/O BARPETA TOWN, P.O. BARPETA, MOUZA-BARPETA, DIST. BARPETA, ASSAM.

2: MADHAB NATH
S/O LATE GIRISH NATH
R/O BARPETA TOWN
MOUZA BARPETA
DIST. BARPETA
ASSAM

VERSUS

GIRISH CH.DAS
S/O LATE HARICHRAN DAS, R/O MILAN NAGAR, BARPETA ROAD, WARD NO. 6, MOUZA-GOBARDHANA, P.O. BARPETA ROAD, DIST. BARPETA, ASSAM.

Advocate for the appellants : Mr. P.K. Roychoudhury.

Advocate for the respondent : Mr. H. Buragohain.

Date of hearing : **10.09.2024**

Date of judgment : **28.10.2024**

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT & ORDER (CAV)

Heard Mr. P.K. Roychoudhury, learned counsel for the appellants and Mr. H. Buragohain, learned counsel for the respondent.

2. This second appeal, under Section 100 of the CPC, is directed against the judgment dated 26.04.2010 and decree dated 29.04.2010, passed by the learned Addl. District Judge (FTC), Barpeta, in Title Appeal No. 13/2006.

3. It is to be noted here that vide impugned judgment, dated 26.04.2010, and decree dated 29.04.2010, the learned Addl. District Judge (FTC), Barpeta had allowed the appeal preferred by the defendant/respondent and reversed the judgment and decree dated 06.06.2006, passed by the learned Civil Judge, Barpeta, in Title Suit No. 26/2004.

4. The background facts, leading to filing of this appeal, are briefly stated as under:

“The respondent herein approached the appellants to sell a plot of land described in the schedule with a standing house thereon and the appellants herein also agreed to purchase the said land and after negotiation between the parties, the price of the land was fixed at Rs.1,90,000/- and an agreement for sale was signed between the parties. And a sum of Rs.50,000/- was paid to the respondent herein by the appellants herein on 30.07.2002. It was agreed between the parties that within a period of 4(four) months, the appellants herein will pay the balance consideration and the respondent by accepting the said amount and taking the departmental permission for sale will execute the registered sale deed. The appellants herein were always ready with the remaining consideration to purchase the suit land, but the respondent with one

or other pretext delayed execution of the registered sale deed as per terms of the agreement and finally the appellants herein were ready with money on 27.11.2002 requesting the defendant to execute the registered sale deed, but the respondent did not turn up and thereafter, the appellants approached the respondent to execute the registered sale deed, but the respondent denied the same.

Being aggrieved, the appellants herein, as plaintiffs, had instituted a suit, being Title Suit No.26/2004, against the respondent/defendant for specific performance of contract. The said title suit was decreed, vide judgment and decree dated 06.06.2006, passed by the learned Civil Judge, Barpeta ('trial Court', for short). Against the said judgment and decree dated 06.06.2006, the respondent/defendant had preferred an appeal, being Title Appeal No. 13/2006, before the Court of learned Addl. District Judge (FTC), Barpeta ('first appellate Court', for short). Thereafter, hearing both the parties and also considering the record, the learned first appellate Court had allowed the appeal, vide judgment, dated 26.04.2010, and decree dated 29.04.2010, and thereby had set aside the judgment and decree dated 06.06.2006, passed by the learned trial Court."

5. Being aggrieved, the appellants have approached this Court by filing the present appeal on the following grounds:

- (i) That, the learned first appellate Court erred in law as well as in fact in allowing the appeal preferred by the defendant/respondent.
- (ii) That, the learned first appellate Court ought to have considered the instant suit for specific performance of contract which was within time and as such, coming to the Court and filing of the suit on 18.06.2004, i.e. 1½ years of the execution of the agreement cannot be a ground for rejection of the execution of sale deed through Court.
- (iii) That, the learned first appellate Court ought to have considered the

statement of PW-3, who in his evidence stated that he never met the defendant No. 1 after execution of the agreement for sale and the same was made when a suggestion was put to him.

- (iv) That, the learned first appellate Court ought to have considered that the evidence of P.W.3 cannot be brushed aside as his evidence as a whole proved the relevant facts in issue and his evidence indicates that the plaintiffs were ready and willing to execute the sale deed, so it is not correct to hold by the learned first appellate Court that the P.W.s could not say anything whether the plaintiffs/appellants were ready and willing to prepare their part of contract.
- (v) That, the learned first appellate Court ought to have discussed and appreciated the evidence of both the parties as a whole, instead the learned first appellate Court had appreciated those part of evidence which goes against the plaintiffs/appellants.
- (vi) That, it is not the case of the plaintiffs/appellants that they were ready with money at the Sub-Registrar's Office, Barpeta on 27.11.2002. The case of the plaintiffs/appellants is that they were ready with money on 27.11.2002, at Barpeta to execute the sale deed, but the defendant No. 1/respondent was not present at Barpeta to execute the sale deed and under such circumstances, P.W.2 and P.W.3 would not say in their evidence that the plaintiffs/appellants were ready with money at Sub-Registrar's Office, Barpeta on 27.11.2002 and on such count, the finding of the learned first appellate Court that the said witnesses also did not say anything that the plaintiffs/appellants were ready with money in the Sub-Registrar's Office, Barpeta, but the appellants did not turn up, and P.W.2 Sri Paritosh Mondal also did not state anything in his evidence that the plaintiffs went to the Sub-Registrar's Office along with money on 27.11.2002, but the

defendant/respondent did not turn up, is perverse.

- (vii) That, the learned first appellate Court is not correct in holding that the plaintiffs/appellants were not ready and willing to prepare their part of contract.
- (viii) That, the learned first appellate Court ought to have considered that the defendant No. 1/respondent was not interested to perform his part of contract executing the sale deed in favour of the plaintiffs. The defendant No. 1/respondent, even did not refund the earnest money of Rs. 50,000/- of the plaintiffs and failed to send any notice to the plaintiffs to take back the said earnest money which indicates that the defendant No. 1/respondent intentionally refused to execute the sale deed in this or that pretext with a view to grab the earnest money.

6. Thereafter, hearing the learned Advocates of both sides, this Court, vide order dated 31.01.2011, was pleased to admit the appeal on the following substantial questions of law:

- (i) Whether the judgment passed by the learned first appellate Court is perverse in as much as it has not considered the evidence of P.W.1 and P.W.2 relating to the ready and willingness of the plaintiffs to perform their part of the contract?
- (ii) Whether the Court can refuse to pass a decree for specific performance of the said contract for approaching the Court promptly?

7. Mr. Roychoudhury, learned counsel for the appellants has reiterated the grounds mentioned herein above and also submits that as per the '*Baina Nama*' (Ext.2), the stipulated period for executing the registered sale deed was four months. Mr. Roychoudhury also submits that in view of Section 55 of the Contract Act, time is not essence of the contract and that the appellants were ever ready to perform their part of the contract. But, the respondent had avoided executing the registered sale deed

and that the defendant/respondent agreed to obtain the sale permission from the revenue authority, but he failed to obtain the same and as such, delay in registering the sale deed had occurred and the defendant/respondent is solely responsible for the same and therefore, Mr. Roychoudhury has contended to allow the appeal. Mr. Roychoudhury has also referred to the following case laws in support of his submission:

- (i) **A. Abdul Rashid Khan (dead) and Ors. vs. P.A.K.A. Shahul Hamid and Ors.**, reported in (2000) 10 SCC 636.
- (ii) **McDermott International Inc. vs. Burn Standard Co. Ltd. and Ors.**, reported in (2006) 11 SCC 181.
- (iii) **Gomathinayagam Pillai and Ors. vs. Palaniswami Nadar**, reported in AIR 1967 SC 868.
- (iv) **Swarnam Ramachandran (Smt) and Anr. vs. Aravacode Chakungal Jayapalan**, reported in (2004) 8 SCC 689.

8. Per contra, Mr. Buragohain, learned counsel for the respondent submits that in view of the terms of the '*Baina Nama*'(Ext.2), the appellants herein had to obtain the sale permission and the registered sale deed ought to have been executed within a period of four months from the date of execution of the '*Baina Nama*' on payment of the balance sale consideration. But, the appellants did not take any step to execute the registered sale deed within the stipulated period; rather they slept over the matter for 1½ years and thereafter, instituted the title suit for specific performance of the contract. Referring to a decision of Hon'ble Supreme Court in **His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar**, reported in (1996) 4 SCC 526, Mr. Buragohain submits that there is a distinction between readiness to perform contract and willingness to perform contract and for determining willingness to perform contract has to be properly scrutinised. The appellant has to prove their willingness to perform contract which the appellant failed to do so. Referring to another decision of Hon'ble Supreme Court in **P. Ravindranath and Anr. vs. Sasikala and Ors.**

arising out of SLP(C) No. 2246 of 2017, Mr. Buragohain further submits that Section 16(C) of the 1963 Act requires that readiness and willingness are to be pleaded and proved by the plaintiff in a suit for specific performance of contract, and the said provision is mandatory and a suit based on bald and vague pleadings must be rejected. Mr. Buragohain further submits that in the contract for sale herein this case, time is the essence of the contract in view of the language adopted in writing the Ext. 2. Referring to Section 55 of the Contract Act, Mr. Buragohain submits that when a party to a contract promises to do a certain thing at or before specified times and fails to do any such things at or before the specified time, the contract becomes voidable at the option of the promise, if the intention of the parties was that time should be the essence of the contract. In support of his submission, Mr. Buragohain has referred to a decision in **Desh Raj and Ors. vs. Rohtash Singh**, reported in **2023 (3) SCC 714**. Under the aforesaid facts and circumstances, Mr. Buragohain submits that the impugned judgment and decree suffers from no infirmity or illegality and no substantial question of law is involved herein and therefore, it is contended to dismiss the appeal.

9. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the impugned judgment dated 26.04.2010 and decree dated 29.04.2010, passed by the learned Addl. District Judge (FTC), Barpeta, in Title Appeal No. 13/2006 and the judgment and decree dated 06.06.2006, passed by the learned Civil Judge, Barpeta, in Title Suit No. 26/2004.

10. It appears that the learned trial Court in its judgment and order dated 06.06.2006, had framed as many as six issues, which are read as under:

- “1. Whether there is cause of action for the suit?**
- 2. Whether the suit is barred under Section 16(b) of the Specific Relief Act, 1963?**

3. Whether the suit is maintainable in its present form?
4. Whether the defendant is bound to execute the registered sale deed as stipulated in the deed of agreement dated 30-7-02 transferring the suit and in favour of the plaintiff?
5. Whether the plaintiff is entitled for a decree as prayed for?
6. What relief or reliefs the parties are entitled to?"

11. Thereafter, the learned trial Court had decided the issue No. 1 in negative; the issue No. 2 in affirmative in favour of the plaintiffs and the issue Nos. 3, 4, 5 and 6 in favour of the plaintiffs. While deciding the issue No. 2, the learned trial Court had held as under:-

"This issue was framed from the plea taken by the defendants in his written statement. This issue refers that the suit is barred U/S 16(b) of the Specific Relief Act, 1963. I have gone through Section 16(b) of the Specific Relief Act, 1963 which reads as follows:

Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person.

b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract.

Section 16(b) of the Specific Relief Act clearly states that the bar of the suit under the above section will be effective when either party becomes incapable of performing or violates any essential term of contract executed between the parties. From the plaint and from the oral evidence of the plaintiffs, it is seen that the plaintiffs are always ready with the balance amount to perform their contract. But due to the negligence of the defendants the contact cannot be performed in due time. It is also seen from the case record that the defendant showed the avoiding attitude in performing the contract of sale."

11.1 Thereafter, the learned trial Court had decided the issue by holding that the suit is barred under Section 16(b) of the Specific Relief Act.

12. The learned Trial Court had decided the issue No.4 in favour of the plaintiff/appellant and held as under:

“The defendant agreed the acceptance of Rs. 50,000/- as earnest money to sell the suit land described in schedule B of the plaint. The defendant as D.W. 1 stated in his cross examination that he will not execute the registered sale deed if the plaintiffs paid the remaining amount to him. According to the defendant he will not execute the registered sale deed as because the stipulated period has already been over. The defendant also admitted about the execution of Ext. 2 the *bainama*. It is also found from the evidence of the plaintiffs that they were ever ready to pay the balance amount to the defendant No. 1 and the defendant No.1 one after another pretext avoided to execute the registered sale deed in favour of the plaintiffs. Moreover the terms and condition of Ext. 2 is binding upon the parties. But the defendant No. 1 has not abide by the terms and condition of Ext. 2. After careful reading of the evidence on record and the other materials available thereon, I found that the defendant is bound to execute the registered sale deed in favour of the plaintiffs by transferring the suit land to them by accepting the remaining amount.”

13. On the other hand, the impugned judgment dated 26.04.2010 and decree dated 29.04.2010, passed by the learned first appellate Court reveals that while deciding the appeal, the learned first appellate Court, for the purpose of convenience, had discussed the issue Nos. 4 and 5 together and thereafter, discussed the evidence of P.W.1, P.W.2 and P.W.3 in detail, and also discussed the evidence of D.W.1, and thereafter, arrived at a finding as under:

“Here in this case, plaintiff/respondents in their evidence had mentioned that within the stipulated period of agreement they had approached the defendant to execute the sale deed but

defendant failed to execute the sale deed and lastly on 6-12-2002, defendant/appellant flatly denied to execute the sale deed. Perused the Ext. 2 document minutely. The said document was executed on 30-7-2002 and within four months plaintiffs' respondents is to pay the balance money and defendant/appellant will execute the sale deed in favour of the respondent. As defendant/appellant had failed to execute the sale deed, he came to the court and filed this suit on 18-6-2004 i.e. one and half year after refused by the defendant/appellant to execute the sale deed. So, plaintiffs/respondents did not take prompt steps for Specific Performance of the contract. Moreover, other witness i.e. PW. 3 in his cross examination has categorically stated that he never met defendant No. 1 after execution of the agreement of sale. So, he could not say anything whether plaintiffs were ready and willing to perform their part of the contract. The said witness also did not said anything that plaintiffs/respondents were ready with money in the Sub-Registrar office, but appellant did not turn up P.W. 2 Sri Paritosh Mandal also did not state anything in his evidence that plaintiff went to the Sub-Registry Office along with money on 27-11-2002, but defendant/appellant did not turn up. So, after considering entire aspects and evidence on record and in view of several citations cited above, I am of the opinion that plaintiff/respondents have failed to prove any satisfactory evidence that they were ready and willing to perform their part of the contract within the period mentioned in the agreement and defendant/appellant has failed to perform his part of the contract. So, accordingly, I decided this issue in favour of the appellant by holding that appellant is not bound to execute the registered sale deed as per the agreement dated 30-7-2002 in favour of plaintiff and plaintiff are not entitled to get decree as prayed for.”

13.1 Thereafter, the learned first appellate Court had set aside the judgment and decree so passed by the learned trial Court in Title Suit No. 26/2004.

Time is the essence of the contract:-

14. While dealing with the issue of determination as to whether time is the essence of the contract is dealt with by Hon'ble Supreme Court in the case of **Welspun Speciality Solutions Limited vs. Oil and Natural Gas Corporation Limited**, reported in (2022) 2 SCC 382. In para No. 35 it has been held as under:-

“35. It is now settled that “whether time is of the essence in a contract”, has to be culled out from the reading of the entire contract as well as the surrounding circumstances. Merely having an explicit clause may not be sufficient to make time the essence of the contract.”

15. Again, in the case of **Swarnam Ramachandran (Smt) and Anr. (supra)**, Hon'ble Supreme Court has held that:-

11. According to Pollock & Mulla: *Indian Contract & Specific Relief Acts* [(2001), 12th Edn., p. 1086], the intention can be ascertained from:-

- “(i) the express words used in the contract;
- “(ii) the nature of the property which forms the subject-matter of the contract;
- “(iii) the nature of the contract itself; and
- “(iv) the surrounding circumstances.”

12. That time is presumed not to be of the essence of the contract relating to immovable property, but it is of the essence in contracts of reconveyance or renewal of lease. The onus to plead and prove that time was the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of essence. That when the plaintiff pleads that time was not of essence and the defendant does not deny it by evidence, the court is bound to accept the plea of the plaintiff. In cases where notice is given making time of the essence, it is duty of the court to examine the real intention

of the party giving such notice by looking at the facts and circumstances of each case. That a vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract."

16. In the case of **Gomathinayagam Pillai and Ors.(supra)** Hon'ble Supreme Court, in para No.4, has held that:-

"The facts which have a material bearing on the first question have already been set out. **Section 55** of the Contract Act which deals with the consequences of failure to perform an executory contract at or before the stipulated time provides by the first paragraph:

"When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promise if the intention of the parties was that time should be of the essence of the contract."

It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable : it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of

the ,essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence.

17. In the case of **McDermott International Inc.(supra)**, Hon'ble Supreme Court has quoted with approval the following decision:-

88. This Court in *Hind Construction v. State of Maharashtra* [(1979) 2 SCC 70]

“7. ... that question whether or not time was of the essence of the contract would essentially be a question of the intention of the parties to be gathered from the terms of the contract. ... (See *Halsbury's Laws of England*, 4th Edn., Vol. 4, para 1179).

8. ... even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; ... (See *Lamprell v. Billericay Union* [(1849) 3 Exch 283 : 18 LJ Ex 282] Exch at p. 308; *Webb v. Hughes* [(1870) LR 10 Eq 281 : 39 LJ Ch 606 : 18 WR 749] ; *Charles Rickards Ltd. v. Oppenheim* [(1950) 1 KB 616 : (1950) 1 All ER 420 (CA)] .”

18.Having understood the proposition of law, presently holding the field in respect of the issue of determination as to whether time is the essence of the contract or not, I have carefully perused the '*Baina Nama*' (Ext.2) herein this case. It appears that nowhere in the Ext.2, it is stated that time is the essence of the contract. However, the time stipulated in the said contract for execution of registered sale deed by paying the rest of the sale consideration is four months. And the language employed is that in the event of failing to pay the remaining amount of sale consideration and to execute the registered sale deed the appellants had to forfeit the advance amount of the sum.

The intention of the parties that time is the essence of the contract can be determined from this language and the terms. Thus, it appears from the condition precedent in the Ext.2 and the language employed therein and the surrounding circumstances indicates that time is the essence of the contract.

19. It appears that the appellants herein, after execution of the '*Baina Nama*' (Ext.2), had failed to obtain permission from the revenue officials and to execute the registered sale deed paying the remaining amount of the sale consideration. Though, Mr. Roychoudhury, learned counsel for the appellants submits that time is not essence of the contract herein, yet the same has left this Court unimpressed in view of the finding recorded herein above.

The readiness and willingness on the part of the plaintiffs to execute the document:-

20. It is well settled that in a suit for specific performance of contract the readiness and willingness on the part of the plaintiffs to execute the document is to be pleaded and proved. In the case of **Hari Steel & General Industries Ltd. v. Daljit Singh**, reported in (2019) 20 SCC 425, Hon'ble Supreme Court has held that in a suit for specific performance of contract the readiness and willingness on the part of the plaintiffs to execute the document is to be pleaded and proved. The relevant paragraph is quoted herein below:-

“34. Further, it is also to be noted that the suit is for specific performance of the agreement of sale. The relief sought is equitable and discretionary relief. The readiness and willingness on the part of the plaintiffs to execute the document is to be pleaded and proved. At first instance in the plaint filed on 1-11-2006 there was no such averment at all. Subsequent to the filing of the written statement, Interlocutory Application No. 3370 of 2007 was filed on 20-3-2007 to incorporate the plea of readiness and willingness on the part of the respondent-plaintiffs in the plaint, which was allowed subsequently. The readiness and willingness on the

part of the respondent-plaintiffs cannot be inferred merely on the ground that they have deposited the balance amount after the impugned order is passed. Even in absence of refusal of the application for amendment of written statement, it is obligatory on the part of the plaintiffs to prove that they were willing and ready to perform the contract, to claim the equitable relief of specific performance. In the judgment relied on by Shri P.S. Narasimha, learned Senior Counsel in *Aniglas Yohannan vs. Ramlatha* reported in (2005) 7 SCC 534], this Court has held that the basic principle behind Section 16(c) read with Explanation (ii) of the Specific Relief Act, is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. In the aforesaid judgment this Court has further held that the court is to grant relief on the basis of the conduct of the person seeking relief. Paras 12 and 13 of the judgment read as under:-

“12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

13. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost an identical fact situation it was held by this Court in *Surya Narain Upadhyaya v. Ram Roop Pandey* 1995 Supp (4) SCC 542] that the plaintiff had substantiated his plea.”

The said judgment of this Court also supports the plea of the

appellants herein.”

21. Now, adverting to the facts herein this case, I find that within the stipulated period of four months, the appellants herein had failed to make payment of the remaining amount to the respondent. Also, from the language, so employed in the sale deed, Ext.2, it appears that execution of sale deed rests upon the appellants herein. Though they have stated that the respondent had agreed to obtain sale permission from the revenue authority, yet, the Ext.2 does not say so, and the D.W.1, Dr. Girish Das also in his evidence categorically denied the same.

22. Further the evidence of P.W.1, plaintiff Madhab Nath reveals that he along with Paritosh Mandal P.W.2, and Paresh Biswas, P.W.3 met the respondent and exerted pressure upon him and that they were ever ready for payment of money, yet P.W.3 in his cross-examination admitted that after execution of the Ext.2, he never ever met the defendant No. 1 i.e. the respondent herein. This admission on the part of P.W.3 belied the evidence of P.W.1 and P.W.2, who stated that they had tried to meet the respondent, but, could not succeed as he was found absent; instead it fortified the stand taken by the respondent herein, who also categorically stated in his evidence that the plaintiffs never met him for execution of the sale deed after execution of Ext.1. He also categorically stated that all along, he was in Barpeta.

23. This being the position, no fault can be found with the findings so recorded by the learned first appellate Court. In that view of the matter, I find no substantial question of law involved in this appeal. I have also carefully gone through the case laws referred by both Mr. Roychoudhury and Mr. Buragohain. There is no quarrel at the bar on the propositions of law laid down in the aforesaid cases. The decisions referred by them have strengthened their respective submissions. Some of them have already been discussed herein above. But, to decide the present appeal, reference to all the decisions so referred at the bar is found to be not necessary and therefore, detailed discussion of the same is avoided.

- 24.** In the result, I find that there is no substantial question of law involve in this second appeal and even if arose, the same has to be answered against the appellants. And accordingly, the appeal stands dismissed.
- 25.** Send down the records to the learned Courts below along with a copy of this judgment and order.

JUDGE

Comparing Assistant