

GAHC010017782009



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

Case No. : SAO/4/2009

UMARUDDIN AHMED and ORS

2: SRI NASORUDDIN AHMED.

BOTH SONS OF LATE DUKHON MIAH RESIDENT OF DIBRUGARH TOWN
DIST-DIBRUGARH
ASSAM

VERSUS

ON THE DEATH OF KAMARUDDIN AHMED, HIS LEGAL HEIRS, SEHNAJ
BEGUM AND ORS.

S/O-LATE DUKHAN MIAH R/O-GABHURUPATHAR DIBRUGARH TOWN,
P.O./DIST-DIBRUGARH, ASSAM.

1.1:SEHNAJ BEGUM
GRAHAM BAZAR
GABHARUPATHAR
CHIKWA PATTY
KALI MANDIR ROAD
PO-DIBRUGARH

1.2:SAKIRA BEGUM
SOOTEA CENTRE
PO AND DIST. BISWANATH

1.3:JAYNAL ABEDIN AHMED
GRAHAM BAZAR
GABHARUPATHAR
CHIKWA PATTY
KALI MANDIR ROAD
PO-DIBRUGAR

For the Appellant(s) : Mr. Shisir Dutta, Sr. Advocate
: Mr. S. Dutta, Advocate

For the Respondent(s) : Mrs. B. Dutta, Sr. Advocate
: Mr. A. M. Dutta, Advocate

Date of Hearing : **27.06.2024**
Date of Judgment : **27.06.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. Shishir Dutta, the learned Senior counsel assisted by Mr. S. Dutta, the learned counsel appearing on behalf of the Appellants and Mrs. B. Dutta, the learned Senior counsel assisted by Mr. A. M. Dutta, the learned counsel appearing on behalf of the Respondents.

2. This is an appeal under Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908 (for short "the Code") challenging the order dated 08.08.2008 passed in Title Appeal No.04/1998 whereby the learned First Appellate Court i.e. the Court of the learned Civil Judge, Dibrugarh had remanded the suit back to the learned Trial Court for deciding afresh and also framed an additional issue.

3. From a perusal of the materials on record, it reveals that the Appellants herein as Plaintiffs had filed a suit seeking declaration of right, title and interest to the three rooms of the house from the northern side with kitchen

behind standing on the land under Municipal Holding No.4290 of Dibrugarh Municipality; for khas possession of the northern three rooms of the house with kitchen behind which was in illegal possession of the defendant as described in Schedule-B to the plaint; for costs etc.

4. The Defendant filed his written statement denying the case of the plaintiff. On the basis of the pleadings, the learned Trial Court framed as many as 9 (nine) issues. Subsequent thereto, a judgment and decree was passed on 30.01.1989 in Title Suit No. 93/1984 whereby the suit of the plaintiff was decreed on contest with costs and the Defendant was allowed one month time to vacate the three rooms described in Schedule-B to the plaint. Being aggrieved, an appeal was preferred by the Defendant which was registered and numbered as Title Appeal No.06/1993. The said appeal was disposed of vide an order dated 23.02.1995 whereby the judgment and decree passed by the learned Trial Court dated 30.01.1989 passed in Title Suit No. 93/1984 was set aside and the suit was remanded back to the learned Trial Court by framing three additional issues. The learned Trial Court thereupon post remand, again passed another judgment and decree on 19.11.1997 whereby the plaintiff's suit was again decreed on contest with cost and the defendant was allowed two months' time to vacate the premises described in the Schedule-B of the plaint. However, most surprisingly, the learned Trial Court did not decide the other issues and confined its adjudication into the three additional issues framed by the learned First Appellate Court. Being aggrieved, an appeal was preferred which was registered and numbered as Title Appeal No.4/1998 and the said appeal was disposed of vide an order dated 08.08.2008 whereby the suit

was again remanded back to the learned Trial Court in view of not deciding the other 9 (nine) issues and further framing an additional issue. Being aggrieved, the instant appeal has been preferred against the order dated 08.08.2008 passed in Title Appeal No.04/1998.

5. This Court had duly taken note of that the suit has been filed in the year 1984 and 40 years have already passed by. It is unfortunate that this is the second time that the suit has been remanded back to the learned Trial Court. In fact, in a recent judgment of the Constitution Bench of the Supreme Court in the case of ***High Court Bar Association, Allahabad Vs. State of U.P and Others reported in (2024) SCC OnLine SC 207***, the Supreme Court has deprecated the practice by observing that in our legal system which is facing a docket explosion, an order of remand should be made only as a last resort. The order of remand not only results in more delays but also increase the cost of litigation.

6. This Court is mindful of the said observations but what is seen from the manner in which the proceedings of the suit is that pursuant to a suit being decreed, the learned First Appellate Court interfered with the said judgment and decree passed by the learned Trial Court and remanded the suit by framing three additional issues. The learned Trial Court seemed to be unaware of the provisions of Order XIV of the Code which stipulates that the Court has to decide all the issues. The learned Trial Court confined its adjudication only to the additional issues framed by the learned First Appellate Court. This has resulted in another appeal being filed in the year 1998 wherein the impugned order has been passed. Taking into account that

the learned Trial Court did not decide the other issues which is otherwise the mandate of law, the learned First Appellate Court had no other option but to remand it back vide the impugned order. This Court expresses remorse to the plight of both the parties who have been fighting this litigation for the last 40 years.

7. Under such circumstances, this Court is not interfering with the impugned order dated 08.08.2008 taking into account that the learned First Appellate Court had no other option but to remand the suit back to the learned Trial Court. However, taking into account that both the parties are duly represented, this Court directs them to appear before the Court of the learned Civil Judge (Junior Division) No.1, Dibrugarh i.e. the Trial Court on 19.08.2024. The learned Trial Court shall take appropriate steps for disposal of the said suit as per the directions passed in the impugned order dated 08.08.2008 in Title Appeal No.4/1998 within a time frame.

8. The Registry shall forthwith return the LCR to the learned Civil Judge (Junior Division) No.1, Dibrugarh i.e. the Trial Court so that on the next date so fixed by this Court, the said records are available before the Court below. In that regard, the Registry shall also employ the service of a special messenger

9. Before parting with the records, this Court duly takes note of that the Appellant No.1 had expired but taking into account that both the Appellants were co-owners of the land, the instant appeal had not abated. The Appellants herein who are the Plaintiffs are given the liberty to file substitution application before the learned Trial Court insofar as the Plaintiff

No.1, if so advised.

10. With above observations and directions, the instant appeal stands disposed of.

JUDGE

Comparing Assistant