

GAHC010005372009



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

**Case No. : RSA/112/2009**

MD. ALAUDDIN and ORS

2: MD. ABDUL LATIF

BOTH ARE SONS OF LATE IDRIS ALI  
VILL and DIST. KARIMGANJ  
ASSAM

VERSUS

BIDYUT BHUSAN DAS  
S/O LATE BINOD BEHARI DAS OF VILL- NARIKOLI, P.O. LASKHIBAZAR,  
P.O. and DIST. KARIMGANJ ASSAM

**Advocate for the Petitioner : MR.H R A CHOUDHURY**

**Advocate for the Respondent : MS.J PAUL**

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the appellants : Mr. R. Choudhury

Advocate for the respondent : Ms. J. Paul

Date of hearing : **04.06.2024**  
Date of Judgment : **20.06.2024**

**JUDGMENT & ORDER**

The instant appeal has been preferred under Section 100 of the Code of Civil Procedure, 1908 challenging a judgment and decree dated 17.07.2008 passed in Title Appeal No. 20/2006 by the learned District Judge, Karimganj as the First Appellate Court. Vide the impugned judgment, the judgment of the learned Civil Judge (Senior Division) dated 17.11.2003 passed in Title Suit No. 37/2001 by which the suit instituted by the present appellants was decreed, has been interfered with and reversed.

2. The appellants, who are 2 in numbers, were the plaintiffs in the suit registered as Title Suit No.37/2001 which was instituted for declaration of right, title and interest, confirmation of possession and permanent injunction. The defendant, apart from filing his written statement had also filed a counter claim in which he had prayed for a declaration of title and had also challenged two nos. of Sale Deeds. As mentioned above, the Court of the learned Civil Judge (Senior Division), vide the judgment and decree dated 17.11.2003 had decreed the suit in favor of the appellant plaintiffs which was reversed by the First Appellate Court and it is this decision which is the subject matter of this appeal.

3. This Court vide order dated 10.08.2009 had formulated the following substantial questions of law:

*“1. Whether the impugned judgment and decree can be termed as correct and legal for non-consideration of the provisions of Section 110. Evidence Act in respect of the ownership and possession of the appellants over the suit land?*

*2. Whether the learned Lower Appellate Court is right and correct in not*

*holding that the admissibility of documents. Exts. 1 to 5 etc., cannot be challenged/taken into consideration if the same have been exhibited without any objection?”*

4. Subsequently, vide order dated 26.02.2024 another question of law was formulated which is as follows:

*“Whether impugned First Appellate Court judgment has complied with the provision of law has laid down in Order XLI Rule 31 of the CPC?”*

5. I have heard Ms. R. Choudhury, learned counsel for the appellants. I have also heard Ms. J. Paul, learned counsel for the respondent.

6. Ms. Choudhury, the learned counsel has submitted that the interference by the First Appellate Court against the decree passed by the Trial Court is not in accordance with law. She submits that the suit land was originally belonging to one Birendra Kumar Das and his two sisters who are all sons and daughters of Bipin Chandra Das. In the year 1999, Birendra Kumar Das had purchased the shares from his sisters and as per the plaintiffs / appellants, the suit land was purchased by them from the said Birendra Kumar Das vide two nos. of registered Sale Deeds dated 01.02.2000. Though there was a third purchaser namely Abdul Sabur who was the brother of the appellant's father, on his death the two appellants / plaintiffs had become the owners of the entire suit land. However the defendant had threatened and lodged a false case against the plaintiffs regarding forceful dispossession of the suit land. The same was followed by filing of the present suit. On the other hand, as per the projection made by the respondent / defendant, the suit land had originally belonged to one Bipin Behari Das who had however bequeathed the entire property in favour of an idol of Kali Mata and the predecessor-in-interest of the present defendant Binod Behari Das was entrusted to manage the *Debutter* vide a

Deed. As per the said Deed, Birendra Kumar Das did not have any alienable interest over the suit land. It is also projected that though a specific plea of adverse possession was taken by the defendant, there was no issue framed on the said aspect.

7. The learned Trial Court had formulated seven nos. of issues and the issue no. 3 would be relevant for the purpose of this present adjudication and accordingly the same is extracted herein below:

*“3) Whether the plaintiffs have right, title, interest and possession over the suit land by virtue of their purchase?”*

8. The learned Trial Court, as mentioned above, had decided the aforesaid issue in favour of the plaintiffs. However, the First Appellate Court vide the impugned judgment had held the said issue in favor of the defendant / respondent. The First Appellate Court had held that the two Sale Deeds being certified copies were not duly proved and therefore it could not be held that the title had devolved upon the appellant / plaintiff.

9. Ms. Choudhury, the learned counsel for the appellants, by referring to Section 110 of the Evidence Act has submitted that the appellants, as plaintiff had duly discharged their burden as to the ownership of the land in question on the strength of the two nos. of Sale Deeds. It is submitted that there was no objection at any point of time on presentation of the certified copies of the Sale Deeds and therefore the First Appellate Court could not have held that the said instruments were not sufficient to come to a conclusion of transfer of title. It is submitted that by the conduct of the defendant in not objecting the presenting and proving the certified copies of the two Sale Deeds, the defendant was precluded from raising any such objections later and therefore the First Appellate Court could not have gone into the legality and validity of the said two

nos. of Sale Deeds.

10. In support of her submissions, Ms. Choudhury, the learned counsel for the appellants has relied upon the following case laws:

***i. R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Anr. [(2003) 8 SCC 752]***

***ii. Shyamal Kumar Roy Vs. Sushil Kumar Agarwal [(2006) 11 SCC 331]***

***iii. Prem Singh and Ors. Vs. Birbal and Ors. [(2006) 5 SCC 353]***

***iv. Union of India Vs. Ibrahim Uddin and Anr. [(2012) 8 SCC 148]***

***v. Krishna Lal Ghosh & Ors. Vs. Rabindra Kr. Ghose & Ors. [2016 (4) GLT 700]***

11. In the case of ***Venkatachala Gounder*** (supra), the Hon'ble Supreme Court had observed that though the certified copy of an order of the Charity Commissioner was produced, that could be taken into consideration.

12. In the case of ***Shyamal Kumar Roy*** (supra) a document which was lacking in the stamp duty was held to be sufficient on the aspect of proving of the title of the party.

13. The case of ***Prem Singh*** (supra) has been cited on the aspect of presumption of the authenticity of registered documents.

14. The case of ***Ibrahim Uddin*** (supra) has been cited on the aspect of the power of an Appellate Court to adduce additional evidence under Order XLI Rule 27 of the Code of Civil Procedure. The case of ***Krishna Lal Ghosh*** (supra) is also on the said aspect.

15. Ms. Choudhury, the learned counsel has accordingly submitted that since the documents in question were never objected to, the decision of the Trial Court to accept the same should not have been reversed by the First Appellate

Court.

16. *Per contra*, Ms. J. Paul, learned counsel for the respondent defendant has submitted that the issue involved in this appeal is with regard to the two nos. of Sale Deeds by which the plaintiffs had claimed that the title had transferred to them. She has submitted that it was only the certified copies of the two nos. of Sale Deeds which were produced and there was no attempt to call for the original Sale Deeds or the concerned register. It is also submitted that no official witness was called to prove the said Sale Deeds. It is submitted that the two nos. of Sale Deeds being the basis of the claim, it was incumbent upon the appellants / plaintiffs to prove the same in accordance with law and therefore the interference by the First Appellate Court is not liable for any further scrutiny by this Court in exercise of powers under Section 100 of the Code of Civil Procedure.

17. The rival contentions advanced by the learned counsel for the parties have been duly considered and the LCRs have been carefully perused.

18. It transpires that the principal issue which has arisen for determination is with regard to the two nos. of Sale Deeds dated 01.02.2000. Admittedly it was the certified copies of the said Sale Deeds which were produced before the Trial Court. The materials on record however do not show any attempt or endeavor on the part of the appellants / plaintiffs to call for the original Sale Deeds or the concerned register of the Office of the Sub-Registrar in which the Deeds were registered. No official witness from the Office of the Sub-Registrar was called. This Court has also noticed that there was no explanation as to why no such attempt was made. The basis of the claim of the plaintiffs being the two Sale Deeds dated 01.02.2000, it was incumbent upon the plaintiffs / appellants to prove the same in accordance with law. The learned Trial Court vide the

judgment dated 17.11.2003 accepted that the certified copies of the Sale Deeds in question were sufficient for declaring the title in favour of the appellants. However, the said view was reversed by the First Appellate Court.

19. This Court is of the considered opinion that the aspect of proof cannot be dispensed with in the aforesaid manner, more particularly, when there is a tussle of title over the land in question. This Court has also noticed that there was no explanation at all, either in the pleadings or in the evidence adduced by the appellant plaintiffs as to why the original Sale Deeds were not called for or why any official witness of the Office of the Sub-Register were not called. Much stress has been given by the learned counsel for the appellants on the issue that there was no objection to the certified copies of the Sale Deeds and therefore there was no occasion on the part of the First Appellate Court to find fault in the manner of proof. This Court is however of the considered view that the requirement of proof has to be discharged fully by the plaintiffs as it is the plaintiffs who had asserted that the right has devolved upon them on the basis of the said two nos. of Sale Deeds. Further, there is nothing on record that the Sale Deeds along with the contents were specifically admitted by the defendants.

20. This Court is of the opinion that the burden of proof cast upon the plaintiffs under Section 110 of the Indian Evidence Act was not discharged in accordance with law *qua* the aforesaid two Sale Deeds dated 01.02.2000.

21. In the case of ***Venkatachala Gounder*** (supra) though a photocopy of an order of the Charity Commissioner was accepted as proof by the Hon'ble Supreme Court, it is recorded in paragraph 16 of the said judgment that the party had given proper explanation as to why only the photocopy was tendered. This Court has also observed that the concerned order of the Charity

Commissioner was not *per se* a document of title.

22. In the case of ***Shyamal Kumar Roy*** (supra), the issue was on the sufficiency of the stamp duty paid on a particular instrument and under that situation, the instrument was held to be a sufficient proof.

23. The case of ***Krishna Lal Ghosh*** (supra) of this Court and ***Ibrahim Uddin*** (supra) of the Hon'ble Supreme Court are on the aspect of application of Order XLI Rule 27 of the Code of Civil Procedure. However, the present appeal is a second appeal where only substantial questions of law are to be decided. This Court has also noticed that the present issue which has been raised in this second appeal was not even the issue before the learned Trial Court or the First Appellate Court. The ratio laid down in the aforesaid case of ***Ibrahim Uddin*** (supra) is that such application under Order XLI Rule 27 is not to be rejected at the outset but may be considered at the time of hearing and therefore the said ratio may not be applicable in the facts and circumstances of this case.

24. The case of ***Prem Singh*** (supra) is on the aspect of presumption of registered documents. However, in the instant case that is not the issue and it was not the registered document which was produced but only certified copy which was produced. The law is clear that a certified copy can be treated only as a secondary evidence for which the requirement under the Indian Evidence Act are to be fulfilled which has not been done in the instant case. This Court is also unable to accept the submission that since the documents were not objected to therefore the same should have been accepted. This Court had made elaborate consideration and discussion on the aforesaid aspect.

25. In view of the aforesaid facts and circumstances, this Court is of the considered view that the powers conferred upon this Court by Section 100 of the Code of Civil Procedure which is otherwise restrictive in nature are not to be

exercised in the facts and circumstances of the case in hand.

26. The Hon'ble Supreme Court in the case of ***Panchugopal Barua v. Umesh Chandra Goswami*** reported in ***(1997) 4 SCC 713*** has been held as follows:

*“7. A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a 'substantial question of law' is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC.”*

27. The appeal is accordingly dismissed. The substantial questions of law framed by this Court vide orders dated 10.08.2009 and 26.02.2024 are accordingly answered against the appellants and in favour of the respondent.

28. Send back the records immediately.

**JUDGE**

**Comparing Assistant**