

GAHC010008042010



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

Case No. : RSA/246/2010

JAHANARA BEGUM and 2 ORS
D/O AYTON NESSA

2: ANOWARA KHATUN

D/O AYTON NESSA.

3: ROWSHANARA BEGUM

D/O AYTON NESSA
ALL ARE R/O VILL. KHANGRA
MOUZA-CHENGA
P.S. DIST. BARPETA
ASSAM

VERSUS

MATIUR RAHMAN and 5 ORS
S/O LATE SULTAN

2:AZIZUR RAHMAN

S/O LATE SULTAN
ALL ARE R/O VILL. KHANGRA
MOUZA
CHENGA
P.S. DIST. BARPETA
ASSAM.

3:MUST. AYTON NESSA

W/O LATE SULTAN.

4:DILUWARA KHTUN

D/O AYTON NESSA
ALL ARE R/O VILL. KHAGRA
MOUZA-CHENGA
P.S. DIST. BARPETA
ASSAM.

5:ANTAZ ALI
S/O LATE ABDUL GANI
R/O KHAGRAGAON
MOUZA-CHENGA
P.S.
DIST. BARPETA
ASSAM.

6:TOMEJ ALI
S/O LATE RAMEZ MADBAR
R/O VILL. KHANGRA
MOUZA-CHENGA
P.S.
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR.B SINHA, MR.M GOGOI,MR.T DEWAN

Advocate for the Respondent : MR.A R SIKDAR, MR.M AHMED,MR.N AHMED,MR.M H TALUKDAR,MD.A HUSSAIN,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 07.08.2024

1. Heard Mr. B. Sinha, learned counsel for the petitioner. Also heard Mr. A. R. Sikdar, learned counsel for the respondent.
2. This Regular Second Appeal has been filed by the appellants impugning the judgment and decree dated 08.09.2009 and 15.09.2009 respectively in Title Appeal No. 27/2008 by the Court of learned Civil Judge, Barpeta wherein the judgment and decree dated 05.06.2008 passed by the learned Munsiff No. 1, Barpeta in connection with Title Suit No. 18/2007 which was filed by the present appellants was dismissed.

3. This second appeal has been filed against the concurrent filing of both the Courts, namely, the Trial Court as well as the First Appellate Court dismissing the suit of the present appellants.

4. The brief facts of the case is that the present appellants are the daughter of one Ayoton Nessa who claimed shares of suit land which is the land measuring 19 Bighas, 8 Lechas which is more fully described in the scheduled to the plaint filed by the appellant before the Trial Court. The respondent Nos. 1 and 2, Motiyar Rahman and Azizur Rahman, who were the brothers of the present appellants contested the suit by claiming that the suit land gifted to them by their mother Ayoton Nessa. The Trial Court after considering the pleadings, framed 5 issues, namely,

“1. Whether there is cause of action of the suit?

2. Whether the suit is barred by law of limitation and section 34 of the Specific Relief Act?

3. Whether the plaintiffs have right, title, interest and possession over the suit land?

4. Whether the deed No. 893/03 dated 17/6/06, deed No.1240/06 dated 4.8.06, deed No.492/06 dated 5.3.04 and deed No. 493/04 dated 5.3.04 are forged and fraudulent?

5. Whether the chitha mutation dated 9.6.90, 9.5.90 and 20.12.92 are liable to be declared as null and void?”

5. The Court of learned Munsiff No. 1, Barpeta decided the issues in favour of the present respondents and decided the issue No. 3 against the present appellant holding that the appellants have no right, title and interest or possession over the suit land.

6. Being aggrieved by the judgment of the Trial Court, the appellants filed the first appeal before the court of learned Civil Judge, Barpeta which was registered as Title Appeal No. 27/2008. However, the Appellate Court after hearing both the parties refused to interfere in the judgment of the Trial Court and affirmed the judgment of the Trial Court dismissing the suit of the present appellants.

7. Being aggrieved by the judgment of the Trial Court as well as the Appellate Court, the appellants have filed the instant regular second appeal.

8. Before discussing anything else in this appeal, it is pertinent to mention herein that in the memo of appeal filed by the present appellants, the substantial question of law has not been formulated by the appellants. Though, some grounds of the appeal were taken by the appellants in their memo of appeal as if the appeal is a regular first appeal and not second appeal under Section 100 of the Code of Civil Procedure.

9. It is pertinent to mention herein that the Section 100(3) of the Code of Civil Procedure provides that in an appeal preferred under Section 100, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. By not complying with the mandate of Section 100(3) of the Code of Civil Procedure in this case, the present second appeal is not maintainable on that count only.

10. However, as this is a very old appeal pending since 2010, it appears that this case was listed on several occasion, however, no substantial question was formulated by this Court.

11. It appears from order dated 29.05.2024, passed by this Court that on that day, the appellants proposed a set of substantial question of law to be

formulated in this appeal. However, on perusal of the said draft substantial question of law proposed by the appellants, it was ordered that this Court was *prima facie* of the opinion that same cannot be formulated as substantial question of law. The appellants were granted some more time for the ends of justice.

12. Today, also the learned counsel for the appellants has produced the sheet of paper containing draft substantial question of law. However, he fairly admits that these questions are same set of substantial question of law which were proposed before the Court on 29.05.2024.

13. As there is already a finding of this Court on 29.05.2024 that the substantial question of law proposed by the appellants cannot be formulated as substantial question of law. Hence, this Court is not inclined to entertain the same set of substantial question of law.

14. In view of the above, this Court is of considered opinion that the appellants has not complied with the mandate of Section 100(3) of the Code of Civil Procedure as well as on perusal of the materials available on record, this court is also of considered opinion that no substantial question of law is involved in this second appeal and accordingly the second appeal is dismissed at the admission stage itself.

JUDGE