

GAHC010006032009



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

Case No. : RSA/142/2009

BIJOY KR. PATOA and 2ORS

2: AJAY KR. PATOA

BOTH ARE SONS OF LATE DEORAJ PATOA
ITKHOLA
SILCHAR-2
DIST. CACHAR
ASSAM

VERSUS

SUMITRA PATOA and 4ORS
W/O LATE BHIMRAJ PATOA.

2:MANJU KUMAR PATOA

3:CHANDRA KR. PATOA.

4:JAYANTA KUMAR PATOA

5:SMT. CHANDRA KANTA PATOA LAL

RESPONDENTS/PLAINTIFF NO-2 TO 4 ARE SONS AND
RESPONDENT/PLAINTIFF NO-5 IS DAUGHTER OF LATE BHIMRAJ PATOA
WHO IS ALSO WIFE OF JAGADISH PRASAD LAL. ALL ARE RESIDENT OF
ITKHOLA
SILCHAR TOWN
PARGANA BORAKPUR

P.S. SILCHAR TOWN
P.O. SILCHAR-2
DIST. CACHAR
ASSAM

Advocate for the Petitioner : A WAHAB

Advocate for the Respondent : MS.J GOGOIR-3,4and5

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. P. Upadhyay,
Advocate.

For the Respondents : Mr. D.C.C. Phukan,
Advocate.

Date of Hearing : 19.02.2024.

Date of Judgment : 22.02.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. P. Upadhyay, learned counsel appearing for the appellants as well as Mr. D.C.C. Phukan, learned counsel representing the respondents.

2. This is a Regular Second Appeal under Section 100 of the Civil Procedure Code (CPC) where the judgment dated 20.12.2008 and the decree dated 23.12.2008 passed by the court of learned Civil Judge No.1, Cachar, Silchar in Title Appeal No.10/2007 affirming the judgment and decree dated 20.11.2006 passed by the Munsiff No.1, Cachar, Silchar in Title Suit No.79/2006, is under challenge.

3. Late Bhimraj Patoa was the exclusive owner of 4 Kathas 13 Chataks of land covered by Dag Nos.2034 and 2035 of 2nd R.S. Patta No.146 of Mouza Silchar Town (Itakhola) Pargana. Bhimraj Patoa had his residential house over that land and lived there till his death.

4. In the month of November, 1971, Bhimraj Patoa expired leaving behind his wife Sumitra Patoa and their children. They continued to occupy the aforementioned property.

5. In the meantime, another legal heir named Ranju Patoa also died in the year 1991.

6. Now, Smti Shimla Patoa appeared in the scenario. She is a relative of Sumitra Patoa. Shimla Patoa and her children did not have any place to stay. Thereafter, late Bhimraj Patoa allowed Shimla Patoa and her children to construct a temporary house over a part of his aforesaid land. They were allowed to stay in their house on a condition that they will vacate the said place when they will be asked to do so.

7. In the month of April, 2001, Sumitra Patoa and her children came to know that Shimla Patoa and her children were trying to mutate their names in the land records in respect of the said land.

8. Sumitra Patoa and her children also came to know that Shimla Patoa and her children also managed to get permission from Silchar Development Authority for construction of an Assam Type house there.

9. Therefore, Sumitra Patoa and her children filed a suit for recovery of vacant possession of the land by evicting the legal heirs of Shimla Patoa, as Shimla Patoa had already expired.

10. The legal heirs of Shimla Patoa (the defendants before the trial court) contested the suit by filing a written statement. They admitted that Bhimraj Patoa died in the month of November, 1971 and Ranju Patoa died in the year 1991.

11. They have pleaded that the entire land originally belonged to one Karamchand Patoa and his younger brother Sukhlal Patoa. Karamchand Patoa did not have any children. Therefore, on his demise, his properties were inherited by Sukhlal Patoa. He has four sons namely, Meghraj Patoa, Demraj Patoa, Sibraj Patoa and Bhimraj Patoa. All of them resided together.

12. It is further pleaded that as claimed by Sumitra Patoa, Bhimraj Patoa was not the exclusive owner of the aforesaid plot of land.

13. It is alleged that after the demise of Karamchand Patoa, Bhimraj Patoa tried to deprive his brothers of the said land. The brothers of Bhimraj Patoa were staying over the said land by building separate houses.

14. The defendants claim that they are the legal heirs of late Demraj Patoa who during his lifetime, had procured the permission from Silchar Development Authority to construct a house over the land, which he was occupying.

15. The defendants pleaded that there was an amicable settlement with the plaintiffs i.e. Sumitra Patoa and her children, on the basis of which, they are still residing over the said plot of land.

16. On the basis of the pleadings, the trial court framed six issues as

under:

1. Whether the averments made in the plaint are true and correct?
 2. Whether the defendants constructed building on the suit land mentioned in the Schedule-II after obtaining permission from Silchar Development Authority?
 3. Whether the plaintiffs have right and title over Schedule-I land within which Schedule-II land is situated?
 4. Whether the land described in Schedule-II within Schedule-I became share of defendants 1, 2, and 3 as per amicable settlement amongst the plaintiff and the defendants?
 5. Whether the plaintiff is entitled to recovery of khas possession of Schedule-II land by evicting the defendants, their men, agent etc.
 6. To what other relief/reliefs the parties are entitled to?
- 17.** During the trial of the case, plaintiffs examined two witnesses and the defendants examined only one witness. On the basis of evidence on record, the trial court decreed the suit of the plaintiffs.
- 18.** The defendants filed the appeal before the court of the Civil Judge No.1 Cachar, Silchar and the said appeal was also dismissed.
- 19.** Therefore, they filed the present appeal in this Court.
- 20.** The present appeal was admitted for hearing upon the following three substantial questions of law –

1. Whether the court below erred in law in declaring right, title and interest of the suit land in favour of the plaintiff without considering the probative value of the admitted documents, but merely on the ground that documents were admitted without any objection.

2. Whether on the basis of the unprobated will the suit of the plaintiff could be decreed on the face of admitted fact that the defendant appellants also inherited the suit property?

3. Whether the judgment of the appellate court is bad in law for non-compliance of the provisions of law as laid down in Order XLI Rule 31 of the Code of Civil Procedure?

21. I have considered the submissions made by the learned counsels of both sides.

22. The Supreme court in *Malluru Mallappa v. Kuruvathappa*, (2020) 4 SCC 313 has held as under--

“16. In *Vinod Kumar v. Gangadhar* [Vinod Kumar v. Gangadhar, (2015) 1 SCC 391 : (2015) 1 SCC (Civ) 521] this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under : (SCC p. 395, para 15)

“15. Again in *B.V. Nagesh v. H.V. Sreenivasa Murthy* [B.V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words : (SCC pp. 530-31, paras 3-4)

‘3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court [*H.V. Sreenivasa Murthy v. B.V. Nagesha*, 2008 SCC OnLine Kar 837] to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (*Vide Santosh Hazari v. Purushottam Tiwari* [*Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179], SCC p. 188, para 15 and *Madhukar v. Sangram* [*Madhukar v. Sangram*, (2001) 4 SCC 756], SCC p. 758, para 5.)”

17. In *Shasidhar v. Ashwini Uma Mathad* [*Shasidhar v. Ashwini Uma Mathad*, (2015) 11 SCC 269], it was held as under : (SCC p. 277, para 21)

“21. Being the first appellate court, it was, therefore, the duty of the High Court [*Shasidhar v. Ashwini Uma Mathad*, 2012 SCC OnLine Kar 8774] to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

23. In *Manjula v. Shyamsundar*, (2022) 3 SCC 90, the Apex Court has held as under—

“8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for

filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment."

24. The framing of points for determination by the Appellate Court is only to enable it to concentrate and rivet its attention on the controversy between the parties and to facilitate the weighing and balancing of the evidence, facts and considerations appearing on both sides and to arrive at a conclusion on the merits of the controversy.

25. The provisions of Order 41, Rule 31 of the Code of Civil Procedure are mandatory and if the judgment of the Appellate Court does not follow the provisions of Order 41, Rule 31, the judgment is vitiated.

26. For the aforesaid reasons, I find that for non-compliance of the provisions of law as laid down in Order 41, Rule 31 of the Code of Civil Procedure, the appellate court judgment is bad in law.

27. The first appellate court judgment dated 20.12.2008 and the decree dated 23.12.2008 passed by the court of learned Civil Judge No.1,

Cachar, Silchar in Title Appeal No.10/2007 affirming the judgment and decree dated 20.11.2006 passed by the Munsiff No.1, Cachar Silchar in Title Suit No.79/2006, is set aside.

28. The case is remanded to the first appellate court of the learned Civil Judge No.1, Cachar, Silchar for writing a fresh judgment in compliance with the aforesaid law. The learned first appellate court shall give opportunity to both sides to submit oral arguments before passing the judgment.

Send back the LCR.

JUDGE

Comparing Assistant