

GAHC010021432010



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

Case No. : SAO/3/2010

SMTI. ILLA DEVI CHAKRABORTY and 9 ORS,
ON THE DEATH OF BISHNU PRASAD CHAKRABORTY HIS LEGAL HEIRS-

2: TRIDIB KR. CHAKRABORTY SON

3: SANJIB KUMAR CHAKRABORTY SON
ALL ARE R/O PURNANANDA ROAD
P.O.
P.S. and DIST. DIBRUGARH, ASSAM.

4: SMTI. MALABIKA SARMA DAUGHTER
W/O SRI MUKUL SARMA
R/O SECTOR-3
LANR-5, BORDOLOI NAGAR
DEVELOPMENT AREA
DIST. TINSUKIA, ASSAM.

5: SMTI SAGARIKA DEVI
W/O DR. BIJOY BHAGWATI
CHOLADHARA
P.O. and DIST. JORHAT.

6: SMTI. BASANTI DEVI WIFE
ON THE DEATH OF UMA PRASAD CHAKRABORTY HIS LEGAL HEIRS-

7: CHITTRANJAN CHAKRAVORTY SON

8: SMTI JYOTI CHAKRABORTY
W/O LATE RANJAN CHAKRABORTY

9: SMTI. MANOCHITA CHAKRABORTY D

10: SMTI. MANJU CHAKRABORTY D
SL NO. 2 A ARE R/O PURNANANDA ROAD

P.O.
P.S. and DIST. DIBRUGARH, ASSAM

VERSUS

ON THE DEATH OF RAJAT BARUAH, HIS LEGAL HEIRS AND ANR
NAMELY-

1.1:SULOCHANA DEVI
W/O LATE RAJAT BARUA
R/O PURNANANDA ROAD
P.O.
P.S. and DIST. DIBRUGARH
ASSAM.

1.2:MALA SINGH
D/O LATE RAJAT BARUA
R/O PURNANANDA ROAD
P.O.
P.S. and DIST. DIBRUGARH
ASSAM

Advocate for the Petitioner : MR.S C KEYAL, MR.S P CHOUDHURY,MR.S K GHOSH

Advocate for the Respondent : MS.M CHOUDHURY, MR.D CHAKRABORTY,MR.M
CHOUDHURY,MR.S DUTTA

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

24.10.2024

Heard Mr. S.P. Choudhury, learned counsel for the appellants and also heard Mr. S. Dutta, learned Senior counsel assisted by Mr. S. Dutta, learned counsel for the respondents.

2. This appeal under Order XLI Rule 1(u) of the Code of Civil Procedure is directed against the judgment and decree dated 24.09.2009 passed by the learned Civil Judge, Dibrugarh, in Title Appeal No.11/2001. It is to be noted here that vide impugned

judgment and decree dated 24.09.2009, the learned Civil Judge, Dibrugarh, in Title Appeal No.11/2001 has allowed the appeal by setting aside the judgment and decree dated 08.05.2001 and 09.05.2001, respectively, passed by the learned Civil Judge (Junior Division) No.2, Dibrugarh, in Title Suit No.15/2000 and remanded the matter to the learned Trial Court for a fresh decision.

3. Mr. Choudhury, learned counsel for the appellants submits that the learned First Appellate Court has set aside the impugned judgment and decree dated 08.05.2001 and 09.05.2001, respectively, passed by the learned Civil Judge (Junior Division) No.2, Dibrugarh in Title Suit No.15/2000, on the ground that the learned Trial Court has not framed any issues on the point of maintainability of the suit despite a specific plea to that effect being taken in the written statement by the respondent. Mr. Choudhury further submits that the impugned judgment and decree so passed by the learned Civil Judge, Dibrugarh, is contrary to Order XLI Rule 24 of the Code of Civil Procedure and that though no issue has been framed by the learned Trial Court on the point of maintainability of the suit, yet the said issue has been dealt with in other issues so framed and all the materials having been available before the learned Appellate Court, it has failed to follow the mandate under Order XLI Rule 24 of the Code of Civil Procedure and therefore, Mr. Choudhury, learned counsel for the appellants has contended to set aside the impugned judgment and decree so passed by the learned Civil Judge and to remand the matter back to the learned Civil Judge (Senior Division), Dibrugarh, with a direction to decide the matter afresh on the basis of materials available on the record.

4. Mr. Dutta, learned Senior counsel for the respondents also fairly submits that the matter may be remanded back to the learned Civil Judge (Senior Division), Dibrugarh, so as to decide the matter afresh on the basis of materials available on the record. However, Mr. Dutta suggests that instead of the learned Civil Judge (Senior Division), Dibrugarh, the matter may be remanded to the Trial Court to decide the matter afresh on the issue so framed by the learned Civil Judge (Senior Division), Dibrugarh.

5. However, Mr. Choudhury, learned counsel for the appellants has opposed the said

submission of Mr. Dutta and insisted upon remanding the matter to the learned First Appellate Court.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the memo of appeal and the grounds mentioned therein and also carefully gone through the impugned judgment and decree dated 24.09.2009 passed by the learned Civil Judge (Senior Division), Dibrugarh and I find substance in the submission of Mr. Choudhury, learned counsel for the appellants.

7. In view of the mandate, under Order XLI Rule 24 of the Code of Civil Procedure, the learned Civil Judge (Senior Division), Dibrugarh, being the First Appellate Court instead of remanding the matter back to the learned Trial Court, ought to have decide the matter on the basis of materials available on the record, including the issue of maintainability so framed by it.

8. In that view of the matter, this Court is inclined to dispose of this appeal by setting aside the impugned judgment and decree dated 24.09.2009, so passed by the learned Civil Judge (Senior Division), Dibrugarh, in Title Appeal No.11/2001 and remand the matter back to it, with a direction to hear and decide the matter afresh after affording opportunity of being heard to both the parties, in view of the mandate under Order XLI Rule 24 of the Code of Civil Procedure.

9. The Registry shall send down the records of the learned Courts below with a copy of this order forthwith. The parties have to appear before the learned Civil Judge (Senior Division), Dibrugarh, within a period of 2(two) weeks from today.

Sd/- Robin Phukan
JUDGE

Comparing Assistant