

GAHC010001282023



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

Case No. : CRP/133/2023

SIRAJUL ISLAM
S/O LATE SADAR ALI
R/O BIDYA NAGAR, GARIGAON, P.S. JALUKBARI, GUWAHATI-12, DIST-
KAMRUP (M), ASSAM.

VERSUS

FIROZA BEGUM AND 4 ORS.
D/O LATE LAGIMA BEGUM, W/O MD. OSMAN ALI, R/O GARIGAON,
RANGAMATI, NEAR BILLAL MAZID, P.S.- JALUKBARI, GUWAHATI-12,
DISTRICT- KAMRUP (M), ASSAM

2:KHUDEJA BEGUM
D/O LATE LAGIMA BEGUM
W/O MD. SUKUR ALI
R/O GARIGAON
RANGAMATI
NEAR BILLAL MAZID
P.S.- JALUKBARI
GUWAHATI-12
DISTRICT- KAMRUP (M)
ASSAM

3:MRS. KHURSEDA BEGUM
D/O LATE LAGIMA BEGUM
W/O MD. HABIBUR ALI
R/O DWARANDHA
SIX MILE
HOUSE NO. 128
GUWAHATI-23
P.S.- DISPUR
DISTRICT- KAMRUP (M)

ASSAM

4:JEHIRUL ISLAM
S/O LATE LAGIMA BEGUM
R/O GARIGAON
MEDHIPARA
NEAR BILLAL MAZID
P.S.- JALUKBARI
GUWAHATI-781112
DISTRICT- KAMRUP (M)
ASSAM

5:IMRAN KHAN
S/O LATE LAGIMA BEGUM
R/O GARIGAON
MEDHIPARA
NEAR BILLAL MAZID
P.S.- JALUKBARI
GUWAHATI-781112
DISTRICT- KAMRUP (M)
ASSA

For the Petitioner(s) : Mr. S. J. Sharma, Advocate
For the Respondent(s) : Mr. R. K. Bhuyan, Advocate
Date of Hearing : **08.05.2024**
Date of Judgment : **08.05.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. J. Sharma, the learned counsel appearing on behalf of the Petitioner and Mr. R. K. Bhuyan, the learned counsel appearing on behalf of the Opposite Parties.

2. This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short "the Code") challenging the judgment and decree dated

28.04.2022 passed in Title Appeal No.73/2016 by the Court of the learned Civil Judge (Senior Division) No.3, Kamrup (M) at Guwahati whereby the appeal was allowed thereby decreeing the suit in favour of the plaintiffs.

3. For the purpose of adjudicating as to whether there was any jurisdictional error or the learned First Appellate Court had exercised jurisdiction illegally as well as with material irregularity, this Court finds it relevant to take note of the brief facts leading to the filing of the instant application.

4. The predecessor-in-interest of the Respondent herein one Lajima Begum (since deceased) vide a registered Sale Deed No.9414/07 dated 24.07.2007 purchased a plot of land measuring 2 Kathas 10 Lechas covered by Dag No.1192 of K.P. Patta No.187 of Village Dehan Garigaon under Mouza Jalukbari in the District of Kamrup along with an Assam Type house consisting of 4 (four) rooms, kitchen and latrine and bathroom and another Assam Type house consisting of two rooms standing over the said land from the defendant through his Power of Attorney holder one Mr. Osman Ali. On the date of sale, it was alleged by the plaintiff that the possession of the land and the houses were duly delivered. The defendant requested the plaintiff to allow him to stay in the Assam Type house consisting of 4 (four) rooms for 3/4 months wherein the defendant was residing as a permissive occupier till an alternative arrangement was made and with an undertaking that he would vacate the said house at any cost by making alternative arrangements. The plaintiff allowed the defendant to reside in the said house for 3/4 months from 24.07.2007 i.e. since the date of purchase of the said land and the house. It was alleged in the plaint that for the said 3/4

months, the plaintiff did not make any demand for the house rent from the defendant. However, after the period 3/4 months, the defendant failed to vacate the schedule premises. Upon demand, the defendant requested that he may be permitted to stay in the schedule premises for the month of January, 2008 and in that regard, a tenancy agreement was entered into between the plaintiff and the defendant on 03.01.2008. It was further alleged that the defendant thereupon failed to pay the rent as stipulated in the written agreement dated 03.01.2008 for which the defendant was a defaulter in payment of rent and further the plaintiff had bona fide requirement of the schedule premises. It is under such circumstances, the suit was filed by the plaintiff seeking a decree for ejectment of the defendant, his men, agents by removing their materials, articles belonging from the schedule premises as described in the plaint; a decree for arrear rent and for permanent injunction. The said suit was registered and numbered as Title Suit No.200/2008.

5. The defendant thereupon filed a written statement challenging the title of the plaintiff and it was the categorical stand that the Attorney holder one Mr. Osman Ali was not authorized to sale the suit land as well as the houses to the plaintiff. It was denied that the possession of the suit land and the house standing thereon were handed over to the plaintiff at any point of time as well as also denied about entering into the written agreement dated 03.01.2008 with the plaintiff. In view of the said categorical denial to the title of the plaintiff by the defendant, the suit was amended thereby incorporating the relief amongst others of declaration of right, title and interest over the suit land.

6. Pursuant to the amendment of the plaint, the defendant filed an amended written statement. On the basis of pleadings, as many as 6 (six) issues were framed of which Issue No.6 related to whether the plaintiff had right, title and interest over the suit land and Issue No.2 related to whether there was a landlord tenant relationship between the parties. In addition to that, Issue No.3 pertained to as to whether the Defendant was a defaulter in payment of rent and Issue No.4 related to as to whether the suit premises was bona fide required by the plaintiff. The learned Trial Court vide its judgment and decree dated 24.05.2016 dismissed the suit by holding the Issue No.6 against the plaintiff to the effect that the plaintiff failed to establish right, title and interest over the suit land on the basis that the Sale Deed No.9414/07 was not proved. The other issues were accordingly decided taking into account that as the learned Trial Court came to an opinion that the plaintiff did not have right, title and interest over the suit land, the question of going into the questions of landlord tenant relationship or for that matter, bona fide requirement or defaulter in payment of rent lost significance.

7. Being aggrieved, the Opposite Parties herein who were the legal representatives of the original plaintiff preferred an Appeal. The said appeal was registered and numbered as Title Appeal No.73/2016. The learned First Appellate Court vide the impugned judgment and decree dated 28.04.2022 allowed the Appeal by reversing the finding in respect to Issue No.6 and observing that the original plaintiff had right, title and interest over the suit land. Consequent to the decision in respect to Issue No.6, the other issues of landlord tenant was held in favour of the plaintiff holding that there was a landlord tenant relationship and the Issue Nos. 3 and 4 as regards defaulter

in payment of rent and bona fide requirement were also held in favour of the plaintiff. It is against the said judgment and decree passed by the learned First Appellate Court dated 28.04.2022, the present application has been filed under Section 115 of the Code.

8. I have heard Mr. S. J. Sharma, the learned counsel appearing on behalf of the Petitioner who submitted that the Deed of Sale bearing No.9414 dated 24.07.2007 was honest taking into that the said Deed of Sale was executed by a person who had no authority to do so. He submitted that the learned Trial Court taking into account the evidence on record had decided the Issue No.6 in favour of the Defendant on the ground that the plaintiff had failed to prove the said Deed of Sale. The learned counsel therefore submitted that the said Deed of Sale having not been proved, the Issue No.6 ought not to have been decided in favour of the plaintiff by the learned First Appellate Court and the reason so assigned are not consonance with law. The learned counsel further submitted that as the Issue No.6 was wrongly decided by the learned First Appellate Court, the further findings of the learned First Appellate Court in respect to the issue Nos. 2, 3 and 4 are also liable to be interfered with. In short, the submission of the learned counsel is that the learned First Appellate Court had exercised its jurisdiction not in conformity with law. The learned counsel for the Petitioner further submitted that the power of attorney which was executed by the defendant in favour of Mr. Osman Ali did not contain the schedule boundary and as such the Deed of Sale could not have been executed by the Power of Attorney agent in favour of the plaintiff.

9. On the other hand, Mr. R. K. Bhuyan, the learned counsel appearing on

behalf of the Opposite Parties submitted that the Deed of Sale dated 24.07.2007 or even the Power of Attorney dated 07.03.2007 have not been put to challenge by the defendant by filing a counter claim in the suit or by filing an independent suit. Referring to Exhibit-8 by which the Power of Attorney dated 07.03.2007 was cancelled by the Defendant, the learned counsel submitted that in the said Power of Attorney, the Defendant duly admitted the Power of Attorney dated 07.03.2007 was duly executed by him. The learned counsel further submitted that Power of Attorney was cancelled much after the execution of the Deed of Sale and as such, the cancellation of the Power of Attorney had no relevance to the execution of the Deed of Sale which was executed much prior thereto. The learned counsel further submitted that the learned First Appellate Court had duly taken note of the Deed of Sale which was duly executed as well as the said Deed of Sale was also proved by the executant i.e. the Power of Attorney holder PW-5. Under such circumstances, it is therefore submitted that there was no illegality or material irregularity in exercise of the jurisdiction by the learned First Appellate Court in passing the impugned judgment and decree dated 28.04.2022.

10. This Court has heard the learned counsels for the parties and had given due consideration to their respective submissions.

11. At the outset, this Court had put a specific question upon Mr. S. J. Sharma, the learned counsel appearing on behalf of the Petitioner as to whether the Deed of Sale dated 24.07.2007 or even the Power of Attorney dated 07.03.2007 had been put to challenge by the defendant in the suit by way of a counter claim or by way of any independent suit. The learned

counsel appearing on behalf of the Petitioner fairly submitted that there is no challenge to the registered Deed of Sale bearing Deed No.9414/07 dated 24.07.2007 as well as the registered Power of Attorney bearing Deed No.1400/07 dated 07.03.2007. This Court has duly taken note of that the Deed of Sale bearing No.9414/07 dated 24.07.2007 was proved not only by the Plaintiff Witness No.1 but also by the executant i.e. the Plaintiff Witness No.5. Under such circumstances, this Court is in conformity with the observations made by the learned First Appellate Court that the Deed of Sale bearing Deed No.9414/07 dated 24.07.2007 was duly proved.

12. This Court further finds it relevant to take note of the submission of Mr. S. J. Sharma, the learned counsel to the effect that the Power of Attorney did not contain any boundaries and as such, the Deed of Sale could not have been executed by the Power of Attorney holder in favour of the plaintiff. In the opinion of this Court, the said submission is totally misconceived taking into account that there is no challenge to the Deed of Sale. Without a challenge to the Deed of Sale, the title over the suit land and the houses standing thereon have duly passed over to the plaintiff. Under such circumstances, in the opinion of this Court, the Issue No.6 was rightfully decided by the learned First Appellate Court.

13. This Court further takes note of that the defendant denies the title of the plaintiff and categorically also stated that he is not a tenant. Under such circumstances, the plaintiff on the basis of her title and the defendant having failed to show any better right to remain in possession, the learned First Appellate Court was justified in decreeing the suit in favour of the plaintiff.

14. Accordingly, this Court finds no merit in the instant application for

which this Court dismisses the instant application. However, in the facts of the instant case, this Court is not inclined to impose any costs. Be that as it may, the Opposite Parties herein shall be otherwise entitled to the costs throughout the proceedings.

JUDGE

Comparing Assistant