

GAHC010029682017



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

Case No. : FAO/43/2017

SMT SHEFALI RANI DEB
W/O SRI AJIT KUMAR DEB, R/O ARUNACHAL ROAD, SILCHAR TOWN, P.O.
and P.S. SILCHAR, DIST. CACHAR, ASSAM.

VERSUS

STATE OF ASSAM and ANR
REPRESENTED BY THE COLLECTOR, CACHAR AT SILCHAR.

2:SUB DEPUTY COLLECTOR

CACHAR CIRCLE
SILCHAR CACHAR

Advocate for the Appellant : Mr. S. P. Choudhury, Advocate

Advocate for the Respondents : Mr. K. K. Bhattacharyya,
Govt. Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 02.05.2024

Date of Judgment : 02.05.2024

JUDGMENT AND ORDER (ORAL)

This is an Appeal under Order XLIII Rule 1 (t) read with Section 104 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the order dated 17.01.2017 passed by the learned Additional District Judge, Cachar at Silchar in Misc. Case No.8/2015 arising out of Title Appeal No.09/1996 wherein the application filed by the appellant herein was rejected.

2. It appears from the records that a suit was filed by the Appellant herein before the Court of the Assistant District Judge No.1 at Silchar being Title Suit No.68/1991 seeking declaration of her right, title and interest in respect to the land described in Schedule-I to the plaint and confirmation of possession. In additional to that, the Appellant had also sought for declaration that the order in Land Ceiling Case No.2/1971-72 of the Court of the Collector, Cachar (Land Ceiling Branch) was not binding upon the plaintiff/Appellant herein in respect to the land described in Schedule-I and Schedule-II to the plaint and for permanent injunction restraining the defendants from taking over the possession of the land described in the Schedules and from disturbing the peaceful possession of the plaintiff/Appellant herein or allotting the same to any other person. The suit was duly contested by the defendants by filing written statement.

3. The learned Trial Court vide the judgment and decree dated 29.02.1996, decreed the suit in favour of the plaintiff, i.e. the appellant herein thereby declaring the plaintiff's right, title and interest in respect to the suit land and also confirming the possession of the suit land in favour of the plaintiff. Further to that, the defendants were permanently restrained from taking over the possession of the suit land from the

plaintiff with the force of any orders passed in the Land Ceiling Proceedings.

4. Being aggrieved, the defendants filed an Appeal against the said judgment and decree dated 29.02.1996 which was registered and numbered as Title Appeal No.9/1996.

5. From the records of Appeal proceedings, it reveals that on 15.09.1998, the learned First Appellate Court taking into account that the notice to the last residence of the plaintiff had been returned after service fixed 31.10.1998 for necessary order. On 31.10.1998, as the plaintiff who was arrayed as respondent in the Appeal was absent, the Appeal was directed to proceed ex-parte. Subsequent thereto, the Appeal was allowed by the judgment and decree dated 15.03.1999 thereby setting aside the judgment and decree passed by the learned Trial Court.

6. After 16 years thereafter, the Appellant claims she visited the precinct of the learned Trial Court to get back the original documents which were submitted during the trial of the said suit being Title Suit No.68/1991 and came to learn on 08.05.2015 that an Appeal was filed against the judgment and decree dated 29.02.1996 passed in Title Suit No.68/1991 and the said Appeal which was registered and numbered as Title Appeal No.9/1996 which was decreed in favour of the appellant/defendant in the suit.

7. It is under such circumstances, an application was filed under Order XLI Rule 21 of the Code for rehearing of the Appeal on the ground that the Appeal was heard without effecting due notice upon the appellant herein. The appellant herein though filed the Application under Order XLI

Rule 21 of the Code, but no application was filed under Section 5 of the Limitation Act, 1996 seeking condonation of delay. The application filed under Order XLI Rule 21 of the Code was registered and numbered as Misc. Case No.8/2015.

8. The learned First Appellate Court vide the order dated 17.01.2017, dismissed the said application holding inter-alia that merely by approaching the Court and stating that the petitioner has knowledge about the matter on a particular date, i.e. on 08.05.2015 which is after an abnormally long period without proper explanation and without supporting document cannot be sufficient in order to render the contention of the Appellant herein acceptable, and as such, the said application was held to be devoid of sufficient merit for which the same was dismissed. It is against the said order dated 17.01.2017 passed in Misc. Case No.8/2015, the present Appeal has been filed.

9. I have heard Mr. S. P. Choudhury, the learned counsel for the Appellant and Mr. K. K. Bhattacharyya, the learned counsel appearing on behalf of the respondents and have given due consideration to the respective submissions of the learned counsel for the parties. This Court has also perused the application under Order XLI Rule 21 of the Code filed by the Appellant before the learned First Appellate Court. This Court had also perused the records of Misc. Case No.8/2015 and therefrom it would be seen that no application was filed under Section 5 of the Limitation Act, 1963 for condoning the delay in preferring the application under Order XLI Rule 21 of the Code. Section 3 of the Limitation Act, 1963 stipulates that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. The Supreme Court in the case of

Pathapati Subba Reddy (Died) by LRs and others Vs. Special Deputy Collector (LA), reported in **2024 SCC OnLine SC 513** had the occasion of dealing with Section 3 as well as Section 5 of the Limitation Act, 1963. The Supreme Court made it very clear that the provision of Section 3 of the Limitation Act, 1963 is required to be construed strictly though Section 5 of the Limitation Act, 1963 has to be liberally construed. The Supreme Court further in the said judgment opined that rights accrue on the basis of Section 3 of the Limitation Act, 1963 and sans any sufficient cause being shown by filing due application, the question of condoning the delay does not arise. Paragraph No.26 of the said judgment is reproduced below:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- i) *Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind, but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) *Courts are empowered to exercise discretion to condone the delay if*

sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

10. In the backdrop of the above, if this Court takes note of Article 123 of the Schedule to the Limitation Act, 1963, it transpires that for filing an application under Order XLI Rule 21 of the Code, the period of limitation is 30 days from the date of passing of the order. Under such circumstances, by virtue of Section 3 of the Limitation Act, 1963, the application under Order XLI Rule 21 of the Code was barred by limitation and could not at all have been taken into account by the learned First Appellate Court.

11. This Court also finds it very pertinent to observe that in the application so filed under Order XLI Rule 21 of the Code which has been registered as Misc.(J) Case No.8/2015 and the contents of which this Court has duly perused, there is no explanation why after 16 years from the date of the judgment passed by the learned Trial Court on 29.02.1996, the appellant went to the precinct of the learned Trial Court to get the documents which were exhibited and not any time prior thereto. This

categorically shows that the explanation so given even if construed liberally does not appear to be bonafide. The learned First Appellate Court has duly taken note of the said aspects of the matter in the impugned order dated 17.01.2017, and as such, this Court finds no reason to interfere with the same.

12. Accordingly, the instant Appeal stands dismissed.

13. The Registry shall forthwith return the LCR to the Court below.

JUDGE

Comparing Assistant