



GAHC010007652012

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

Case No. : RSA/151/2012

SAMAD ALI

S/O LATE ABDUL BASER, R/O VILL. CHAKIRBHITHA, UNDER BETBARI
MOUZA IN THE DIST. OF BARPETA , WITHIN THE STATE OF ASSAM

VERSUS

HEIRS OF LATE AJGAR ALI MAINUDDIN SON and ORS,,

2:AMIR ALI SON

BOTH ARE RESIDENTS OF VILL. CHAKIRBHITHA
UNDER BETBARI MOUZA
P.O. KHABLAR BHITHA
PIN-781352
IN THE DIST. OF BARPETA
WITHIN THE STATE OF ASSAM.

3:IMAN ALI

S/O LATE SANGSHER ALI

4:NABAB ALI

S/O LATE WAHAB ALI

5:RAFIQUL ISLAM

S/O LATE KHABIRUDDIN
ALL ARE RESIDENTS OF VILL. CHAKIRBHITHA
UNDER BETBARI MOUZA
P.O. KHABLAR BHITHA
PIN-781352
IN THE DIST. OF BARPETA



WITHIN THE STATE OF ASSAM

Advocate for the Petitioner : MR.K SARMA

Advocate for the Respondent : MRK UDDIN

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. K. Sarma,
Advocate.

For the Respondents: Mr. N. Haque,
Advocate.

Date of Hearing : 12.09.2023.

Date of Judgment : 21.09.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. K. Sarma, learned counsel representing the appellant as well as Mr. N. Haque, learned counsel appearing for the respondents.

2. This is a Regular Second Appeal under Section 100 of the Code of Civil Procedure (CPC) whereby the judgment and decree dated 29.03.2012 passed by the court of learned Civil Judge, Barpeta in Title Appeal No.46/2011 is under challenge.

3. The respondents filed the suit before the trial court praying for a declaration that they along with the present appellant are joint owners of a plot of land measuring 6 Bighas 2 Kathas 14 Lechas covered by Dag Nos.213 (2 Bigha 1 Katha 15 Lechas), 215 (1 Bigha 3 Katha 17 Lechas) and 214 (1 Bigha 2 Katha 2 Lechas) under the Periodic Patta No.45 of village

Chakirbhitha, Mouza- Betbari, District- Barpeta, Assam.

4. The respondents further prayed for a declaration of their right, title and interest and for partition of a plot of land measuring 2 Bighas 18 Lechas out of the aforementioned plot of land.

5. Both the plots of land are described as under:

“Schedule-A

A plot of land measuring 6 B- 2 K- 14 Ls covered by dag Nos.213 (2 B- 1 K- 15 Ls), 215 (1 B- 3 K- 17 Ls) & 214 (1 B- 2 K- 2 Ls) under the periodic patta No.45 of village Chakirbhitha, Mouza- Betbari, District- Barpeta, Assam.

Schedule-B

A plot of land measuring 2B-0K-18Ls out of A Schedule land.”

6. The appellant contested the case by filing written statement and after the trial, the trial court dismissed the suit primarily on the ground that the suit land was not properly described in the schedule of the plaint and the decree will never be executed in such a case.

7. The first appellate court disagreed with the trial court and decreed the suit of the respondents.

8. The present second appeal was admitted for hearing upon the following two substantial questions:

1. Whether the description of the suit property given in schedule B of the Plaint is in accordance with Order 7 Rule 3 of the Code of Civil Procedure, 1908?

2. Whether the decree passed by the First Appellate Court is executable for non-compliance of the aforesaid provision of



law?

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

10. Order 7 Rule 3 of the Code of Civil Procedure Reads as under:

“Rule 3 – **Where the subject-matter of the suit is immovable property.**- Where the subject-matter of the suit is immovable property, the plaint shall contain description of the property sufficient to indentify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”

11. There is no doubt that Schedule-B plot of land is a part of Schedule-A plot of land. But it is not clear where the Schedule-B plot of land stands over Schedule-A land. So, the Schedule-B land cannot be identified because no boundaries are given. If a decree is passed, such a decree will remain unexecutable because of lack of identification of the suit property. The learned first appellate court erroneously decreed the suit. Such a decree can never be executed in respect of an unidentifiable land.

12. The substantial questions of law are answered accordingly. The Schedule-B land has not been described according to the law laid down under Order 7 Rule 3 of the Code of Civil Procedure. The decree passed by the first appellate court is not executable for non-compliance of the said Rule.

13. Under the aforesaid premised reasons, I find sufficient merit in the appeal. Accordingly, the appeal is allowed.

14. The impugned judgment and decree dated 29.03.2012 passed by



the court of learned Civil Judge, Barpeta in Title Appeal No.46/2011 is set aside.

The appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant