



GAHC010073062021

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

**Case No. : RSA/15/2022**

MD HAZI RAIS ALI CHOUDHURY AND ANR.  
S/O LATE HAZI ABDUL RASHID CHOUDHURY,  
RESIDENT OF VILLAGE TARINIPUR PT I, PS KATIGORAH, DIST CACHAR,  
ASSAM, 788802

2: MD. SIRAJUL HOQUE CHOUDHURY  
S/O LATE ISRAB ALI CHOUDHURY  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM  
78880

VERSUS

TYRUN BIBI AND ORS.  
W/O LATE ABDUL LATIF LASKAR,

2: ON THE DEATH OF MD. SAHID AHMED LASKARI  
HIS LEGAL HEIRS

2.1: RESHMA BEGUM  
W/O LATE MD. SAHID AHMED LASKAR  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM

2.2: BADAR UDDIN LASKAR  
S/O LATE MD. SAHID AHMED LASKAR  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM. TO BE REPRESENTED BY THEIR MOTHER RESHMA BEGUM



2.3:AMIR UDDIN LASKAR  
S/O LATE MD. SAHID AHMED LASKAR  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM. TO BE REPRESENTED BY THEIR MOTHER RESHMA BEGUM

2.4:JOHIR UDDIN LASKAR  
S/O LATE MD. SAHID AHMED LASKAR  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM. TO BE REPRESENTED BY THEIR MOTHER RESHMA BEGUM

2.5:KASHIM UDDIN LASKAR  
S/O LATE MD. SAHID AHMED LASKAR  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM. TO BE REPRESENTED BY THEIR MOTHER RESHMA BEGUM

3:MD. MANIR UDDIN LASKAR  
S/O LATE ABDUL LATIF CHOUDHURY  
RESIDENT OF VILLAGE TARINIPUR PART I  
PS KATIGORAH  
DIST CACHAR  
ASSAM788802

4:MUSSTT. MOURI BIBI  
W/O LATE HUSSAIN ALI LASKAR  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

5:MD. ATASAR ALI  
S/O LATE HUSSAIN ALI LASKAR  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

6:MD. MAKHAN UDDIN  
S/O LATE HUSSAIN ALI LASKAR  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM



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7:MD. KABIR HUSSAIN  
S/O LATE HUSSAIN ALI LASKAR  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

8:MD. ABDUL KALAM  
S/O LATE HUSSAIN ALI LASKAR  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

9:MUSSTT  
KALAI BIBI  
W/O SAMIJ ALI  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

10:MUSSTT. AYARUN NESSA  
W/O ABDUS SADUR  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

11:MUSSTT. FATARUN NESSA  
W/O MD. MOINUL HOQUE  
RESIDENT OF VILLAGE NAG KAPAN  
PS KARIMGANJ  
ASSAM  
788722

12:MUSSTT. MANIRUN NESSA  
D/O LATE ABDUL LATIF LASKAR  
RESIDENT OF VILLAGE TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM  
788802

13:MUSSTT. RAJIA BEGUM  
W/O BILAL AHMED



D/O LATE ABDUL LATIF LASKAR  
RESIDENT OF VILLAGE DASGRAM  
PS AND DIST KARIMGANJ  
ASSAM  
788722

14:MD. SALIM UDDIN LASKAR  
D/O LATE ABDUL LATIF LASKAR  
RESIDENT OF TARINIPUR PT I  
PS KATIGORAH  
DIST CACHAR  
ASSAM  
78880

Advocate for the Appellants : Mr. T. Sheikh, Advocate.

Advocate for the Respondent :

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 15.06.2022

Date of Judgment : 22.06.2022

**JUDGMENT AND ORDER (CAV)**

Heard Mr. T. Sheikh, the learned counsel appearing on behalf of the appellants.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, “the Code”) challenging the judgment and decree dated 20.01.2021 passed in T.A. No.4/2017 whereby the said appeal was dismissed thereby affirming the judgment and decree dated 22.02.2017 passed in Title Suit No.54/2010 by the Court of the Munsiff No. 1, Cachar whereby the suit of the plaintiffs was partly decreed.

3. The instant appeal has been taken up for consideration at the stage of Order XLI Rule 11 of the Code as to whether there arises any substantial question of law for admission of instant appeal to be formulated in terms with Section 100 (4) of the Code.

4. For the purpose of deciding the said aspect of the matter it would be relevant to take note of the brief facts of the case. For the sake of convenience, the parties herein are referred to in the same status as they stood before the trial court.

5. The suit land in question relates to 2<sup>nd</sup> RS Patta No.29 of Mouza-Taripur Part-I, Ph-Fulbari in Katigorah P.S. The said Patta comprised of Dag No.64 measuring 9 bighas 13 kathas 9 chattaks and Dag No.157 which originally comprised of 7 kathas 6 chattaks and now 6 kathas 11 chattaks in view of the acquisition of land by the Government. Therefore, the total area in the Patta No.29 comprises of 10 bighas 5 kathas. The said land originally belonged to one Akram Ali (since deceased) who had two sons and one daughter, namely, Anjir Ali, Pochan Mia and Akluja Bibi respectively.

6. It is the case of the plaintiffs that after the death of Akram Ali, the two brothers as per their law of inheritance, got one share each and their sister Akluja Bibi got ½ share. The said Akluja Bibi expired leaving behind only one son, i.e., Abdul Latif Laskar (husband of the plaintiff No. 1 and the father of the plaintiff Nos. 2 & 3, proforma Defendant No. 8 to 13 and one Hussain Ali Laskar). It has been mentioned in the plaint that during the lifetime of Akluja Bibi, she resided in the suit land which has been described in the schedule to the plaint and after her death, Abdul Latif Laskar and thereafter the plaintiffs and the proforma defendants continued to possess the suit land.

7. It is the specific case in the plaint that the principal defendants had their land in other Dag of the suit Patta, i.e., Dag No.64 which the principal defendants had purchased from the legal heirs of Anjir Ali and Pochan Mia and the principal defendants did not have any semblance of right, title and interest over any portion of the suit Dag in any manner. It has been alleged that initially in the year 2007, the principal defendants illegally raised their claim over the land in Dag No.157 which is the suit land and filed a false complaint against the plaintiffs which was registered and numbered as Case No.67<sup>M</sup>/2007 under Section 144 of the Cr.P.C. which was subsequently converted into a proceeding under Section 145 Cr.P.C. The said proceedings was decided against the

plaintiffs vide the judgment and order dated 01.06.2009. The plaintiffs thereafter preferred a Criminal Revision No.74/2009 in the Court of the Sessions Judge, Cachar against the order dated 01.06.2009 which was dismissed by the Additional District Judge (FTC), Cachar, Silchar by the judgment and order dated 20.02.2010.

8. In view of the judgment passed in the 145 Cr.P.C. proceedings against the plaintiffs, the present suit was filed seeking a decree for declaration of ownership, right, title and interest of the plaintiffs and proforma defendants over the suit land; a decree declaring confirmation of possession thereof in favour of the plaintiffs; permanent injunction against the principal defendants restraining them from dispossessing the plaintiffs from the suit land; costs of the suit etc. The said suit was registered and numbers as T.S. No.54/2010.

9. The principal defendant No. 1 & 2 filed their written statements wherein various preliminary objections were taken as regards the maintainability of the suit. On merit, it was stated that the 2<sup>nd</sup> RS Patta No.29, Dag No. 157 comprises of 6 kathas 11 chattaks which originally belonged to one Akram Ali which was inherited by the two sons, namely, Anjir Ali and Pochan Mia; and the daughter, namely, Akluja Bibi. It was further mentioned that in terms with the principles of Mohammadan Law, each of said Anjir Ali and Pochan Mia got 2/5<sup>th</sup> share, i.e., an area measuring 2 kathas 10 chattaks 16 gondas each and the said Akluja Bibi got 1/5<sup>th</sup> share, i.e. an area measuring 1 katha 5 chattaks 8 gondas in the suit land. It was mentioned that there was no partition between the said Anjir Ali, Pochan Mia and Akluja Bibi. The said Akluja Bibi died leaving behind one son Abdul Latif Laskar who inherited the said 1/5<sup>th</sup> share in the suit Patta and Dag. The said Abdul Latif Laskar for valuable consideration sold away his entire land in the suit Dag No. 157 along with other land in dag No.64 of the suit Patta No. 29 to the said Pochan Mia vide registered deed of sale No. 1460 dated 12.04.1979 and delivered possession of the conveyed land to vendee Pochan Mia. In the said sale deed, the said

Abdul Latif Laskar clearly stated his sale of his entire land in suit Dag No.157 and categorically mentioned that the name of vendee Pochan Mia would be mutated in his place by deleting his name in the Jamabandi. In view of such sale, Abdul Latif Laskar Laskar (predecessor of plaintiffs) lost his entire right, title, interest and possession over the land of Dag No.157 included in 2<sup>nd</sup> RS Patta No.29 and the said Pochan Mia acquired right, title, interest in respect of said 1/5<sup>th</sup> share of Abdul Latif Laskar. It was further mentioned that the said Pochan Mia died leaving behind five sons, namely, Aftar Ali, Taimur Mia, Khakai Mia, Md. Manik and Samsul Haque and four daughters, namely, Newarun Nessa, Asia Bibi, Piyarun Nessa and Mayarun Nessa and they inherited the land in suit Dag No.157 of Patta No. 29 along with other lands. The said legal heirs of Pochan Mia for valuable consideration sold 3 kathas in Dag No. 157 of Patta No. 29 along with 3 kathas 1 chattaks in Dag No.156 of Patta No.75 within specific boundaries vide sale deed No.1436 dated 10.10.1994 to the defendant Nos.1 & 2 and delivered khas possession of the said 6 kathas 1 chattak of land with specific boundaries in suit Dag No. 157 and Dag No.156. On the basis of the said it was stated that the case of the plaintiffs is completely false and fabricated for which the suit ought to be dismissed inasmuch as Abdul Latif Laskar had no right, title and interest over the suit Dag No. 157 of 2<sup>nd</sup> RS Patta No.29.

10. On the basis of the said pleadings, as many as seven issues were framed which are as under:

1. *Is there any cause of action for this suit?*
2. *Whether this suit is barred by limitation?*
3. *Whether the suit is bad for non-joinder of necessary parties?*
4. *Whether the suit is maintainable in its present form and manner?*
5. *Whether the plaintiff and proforma defendant are having right, title, possession and interest over the suit land?*
6. *Whether the plaintiff is entitled to a decree as prayed for?*

*7. To what relief/relieves, if any, is the plaintiff entitled to?*

11. The plaintiffs adduced evidence of two witnesses and also exhibited various documents marked as Ext.1 to Ext.4. The defendant did not adduce any evidence.

12. The trial court first took up the Issue No. 5 for consideration as to whether the plaintiff and proforma defendant were having right, title, possession and interest over the suit land. After taking into consideration, the entire evidence on record and the admitted facts corroborated by the Jamabandi of 2<sup>nd</sup> RS Patta No.29 of suit Dag No. 157 to the effect that the suit land measured 6 kathas 11 chattaks, the trial court came to a finding that Akluja Bibi's entitlement was only 1 katha 5 chattaks and 8 gondas and that of her brothers, i.e., Anjir Ali and Pochan Mia were 2 kathas 10 chattaks 16 gondas each in Dag No.157 of 2<sup>nd</sup> RS Patta No.29 respectively and consequently, held that the plaintiffs and the proforma defendants through their predecessor-in-interest late Abdul Latif Laskar inherited only 1 katha 5 chattaks 8 gondas of land in suit Dag No. 157 and as such the said issue was decided partly in the affirmative in favour of the plaintiffs limiting their right, title, interest and possession of the plaintiffs along with the proforma defendants to the extent of 1 katha 5 chattaks 8 gondas of land in suit Dag No.157. The other issues were also decided in favour of the plaintiffs, and consequently, while deciding the Issue No. 7, the trial court passed the decree in favour of the plaintiffs vide the judgment and decree dated 22.02.2017 thereby holding that the plaintiffs are entitled to a decree declaring their right, title, interest and ownership along with proforma defendants over 1 katha 5 chattaks and 8 gondas of land within the suit land along with possession in respect of said area of land within the suit land was confirmed and a permanent injunction was also issued against the defendants restraining them from dispossessing the plaintiff from the property to the extent of 1 katha 5 chattaks 8 gonda of land within the suit land.

13. Being aggrieved and dissatisfied, the principal defendant Nos. 1 & 2 filed an appeal before the Court of the Civil Judge No. 1 at Cachar, Silchar. The said appeal was



registered and numbered as T.A. No.4/2017. The First Appellate Court framed a point of determination which was whether the learned trial court was justified in partly decreeing the suit and whether the judgment and decree passed by the learned trial court needs interference in the appeal.

14. The learned First Appellate Court took up each of the issues based upon the contentions so raised by the learned counsels for the appellants and the respondents before the Appellate Court and came to a finding that the learned trial court was justified in partly decreeing the suit for which no interference was required to the said impugned judgment and decree passed by the trial court. It may be relevant herein to take into account that while deciding the Issue No. 5 which is the most contentious issue, the First Appellate Court came to a finding that the plea taken by the defendants in their written statement that they had purchased 3 kathas 1 chattak of land out of the suit land of Dag No. 157 from the legal heirs of late Pochan Mia has not been proved by any oral or documentary evidence and as such the stand taken by the defendants could not be established. The First Appellate Court also took into account that it was an admitted fact that the suit Patta land measuring 6 kathas 11 chattaks was divided into three parts after the death of late Akram Ali of which the two sons and daughter owned and possessed the suit land in the ratio of 2:1, i.e., the two sons got  $\frac{2}{5}$ <sup>th</sup> share each, i.e. 2 kathas 10 chattaks 16 gondas and while the daughter got  $\frac{1}{5}$ <sup>th</sup> share, i.e. 1 katha 5 chattaks 8 gondas.

15. The First Appellate Court took into consideration the effect of the order dated 01.06.2009 in Case No.67<sup>M</sup>/2007 which was affirmed by the judgment dated 20.02.2010 in Criminal Revision No.74/2009 and came to a finding that the enquiry under Section 145 Cr.P.C. is limited to the question as to who was in actual possession on the date of preliminary order irrespective of the rights of the parties. On the basis of the above, the First Appellate Court affirmed the judgment and decree passed by the trial court thereby dismissing the appeal. Feeling aggrieved, the defendant Nos. 1 & 2 as appellants have

preferred the instant appeal under Section 100 of the Code.

16. Before examining as to whether a substantial question of law is involved in the case and can be formulated, this Court deems it proper to briefly refer to the scope of the Second Appeal as also the procedure for entertaining them as laid down under Section 100 of the Code. It is clear from Sub-Section (5) of Section 100 that an appeal shall be heard only on questions formulated by the High Court under Sub-Section (4) thereof. The expression “appeal” has not been defined in the Code. Black’s Law Dictionary (7<sup>th</sup> Edition) defines an appeal as “a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority”. An appeal is thus, a judicial examination by a Higher Court of a decision of a Sub-Ordinate Court to rectify any possible error(s) in the order under appeal. The law provides the remedy of appeal because of the recognition that those manning the judicial Tiers commit error(s).

17. Order XLII of the Code provides for the procedure to be followed while deciding appeals from the Appellate decrees. It states that the Rules of Order XLI shall apply, so far as may be, to appeals from Appellate decrees. The words such as “so far as may be” or “in so far as” mean “as such” or “to the extent” or “to such extent”. By virtue of Order XLII Rule 1, the provisions of Order XLI are applicable to Second Appeal as well, though not in their entirety, but to certain extent, having regard to the mandate contained in Order XLII, this Court while hearing a Second Appeal, has to follow the procedure contained in Order XLI to the extent possible.

18. Section 100 of the Code provides for a right of Second Appeal by approaching a High Court and invoking its aid and interposition to redress error(s) of the Sub-Ordinate Court, subject to the limitations provided therein. An appeal under Section 100 of the Code could be filed both against “concurrent findings” or “divergent findings” of the Courts below. Sub-Section (1) of Section 100 of the CPC states that a Second Appeal would be entertained by the High Court only when the High Court is satisfied that the case “involves a substantial question of law”. Therefore for entertaining an Appeal under

Section 100 of the CPC, it is immaterial as to whether it is against “concurrent findings” or “divergent findings” of the Courts below. It is needless to state that when any concurrent finding of fact is appealed, the appellant is entitled to point out that it is bad in law because it was recorded dehors the pleadings, or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against the provisions of law or the decision is one which no Judge acting judicially can reasonably have reached. Once the High Court is satisfied, after hearing the appeal, that the appeal involves a substantial question of law, it has to formulate that question and direct issuance of notice to the Respondent.

19. In case the appeal does not involve any substantial question of law, the High Court has no option but to dismiss the appeal in limine. It is well settled that when a Second Appeal is dismissed in limine, the High Court has to record reasons. This Court is presently at that stage to find out as to whether a substantial question of law involved in the case that can be formulated in terms with Section 100(4) of the CPC.

20. As to what is a substantial question of law came up for consideration before the Supreme Court in the case of *Santosh Hazari Vs. Purushottam Tiwari reported in (2001) 3 SCC 179*. The Supreme Court in Paragraph Nos. 12, 13 and 14 dealt with the aspect as to what is a substantial question of law and when a substantial question of law can be said to have arisen in the appeal. Paragraph Nos. 12, 13, 14 are quoted hereinbelow.

*“12. The phrase “substantial question of law”, as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying “question of law”, means — of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with — technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not*



*necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta<sup>4</sup>, the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju:*

*"[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."*

*and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:*

*"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."*

**13.** *In Dy. Commr., Hardoi v. Rama Krishna Narain also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 110 of the Code.*

**14.** *A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involved in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."*

21. From the above quoted paragraphs of the judgment of the Supreme Court, it would be seen that to be a substantial question of law "involved in any case", there must be first a foundation for it laid in the pleadings and the questions should emerge from the substantial findings of fact arrived at by the Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It is in these circumstances that the Supreme Court had further observed that as to whether a substantial question of law is involved in

the case or not would depend upon the facts and circumstances of each case; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. In the backdrop of the above, this Court therefore, would take into consideration the contentions raised by both the parties.

22. The counsel for the appellants proposes two substantial questions of law which, he submits can be formulated as substantial question of law involved in the instant appeal which for the sake of convenience are quoted herein below:-

*1. For the substantial question of law arises as to whether both the courts below was justified in declaring the title and possession of the plaintiff/respondent without setting aside the Registered Sale Deed No. 1436 dated 10.10.1994 which is still in operation in favour of the defendant/appellant and they are still in the possession of suit land?*

*2. For that the substantial question of law arises as to whether both the courts below arrived at a perverse finding while deciding the Issue No. 5 when the PW1 (Shaid Ahmed Laskar) admitted that there is no deed of partition and there was no legal partition amongst the co-sharers of the Suit Patta as such in the joint property the appellant/defendants are in possession on the strength of Registered Sale Deed No.1436 dated 10.10.1994?*

23. Let this Court take into consideration as to whether the two questions of law proposed are substantial questions of law involved in the instant appeal so that the same can be formulated in terms of Section 100 (4) of the Code.

24. The first question of law so proposed is as to whether the courts below were justified in declaring the title and possession of the plaintiffs without setting aside the registered sale deed No. 1436 dated 10.10.1994 which is still in operation in favour of the defendants/appellants and they are still in the possession of suit land. In the opinion of this Court, the said cannot be a substantial question of law involved in the instant



appeal inasmuch as it is only in the pleadings that the defendant Nos. 1 & 2 have mentioned about the registered sale deed No.1436 dated 10.10.1994. There has been no evidence laid to substantiate that there is existence of any registered deed of sale bearing No.1436 dated 10.10.1994. There is also no evidence on record to show that the plaintiffs duly admitted that there exists any registered deed of sale bearing deed No.1436 dated 10.10.1994. Under such circumstances, without the said purported sale deed No.1436 dated 10.10.1994 being produced and proved, the said question of law proposed cannot be a substantial question of law in the instant appeal. Further to that, without even knowing as to whether the said purported deed of sale has any relation in respect to the suit land, the said cannot be a question of law, involved in the instant appeal which can be formulated in terms of the Section 100 (4) of the Code.

25. The second substantial question of law which has been proposed as to whether the findings of the courts below were perverse while deciding the Issue No. 5 when the plaintiffs' witness No. 1 admitted that there was no deed of partition and there was no legal partition amongst the co-sharers of the suit Patta and as such in the joint property, the appellants/defendants are in possession on the strength of the registered sale deed No.1436 dated 10.10.1994. In the opinion of this Court the said cannot be a substantial question of law involved in the instant appeal inasmuch as admission of PW1 that there was no deed of partition was the result for which the suit was partly decreed in favour of the plaintiffs thereby only a part of the suit land, i.e., 1 katha 5 chattaks 8 gondas of land was only decreed in favour of the plaintiffs and the proforma defendants. Further to that, the question as to whether the principal defendants were in possession over the suit land on the basis of registered sale deed No.1436 dated 10.10.1994 cannot also be taken into account inasmuch as the said purported registered sale deed bearing No.1436 dated 10.10.1994 was proved by evidence in any manner by the appellants before the Court. Under such circumstances, the said cannot also be a substantial question of law that can be formulated in terms of Section 100 (4) of the Cr.P.C.



26. Consequently, this Court, therefore, dismisses the instant appeal as no substantial question of law is involved in the instant appeal. However, in the facts of the instant case, no cost is being imposed.

**JUDGE**

**Comparing Assistant**