GAHC010169282019

2026:GAU-AS:6052

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

Case No. : CRP/97/2019

M/S. ASSAM (TRADE) AGENCIES
REP. BY SRI YASHPAL CHACHRA (PARTER) (AGE ABOUT 59 YEARS),
S/O LT. SATYA PAL CHACHRA,
SRCB ROAD, FANCY BAZAR,
GUWAHATI-781001,
PH. NO. 9435014693(M)

VERSUS

SUJAUDDIN AHMED
S/O LT. SAADUDDIN AHMED,
R/O S.S. ROAD, LAKHTOKIA,
GUWAHATI-781001

For the Petitioner : Mr. A. Sattar, Advocate

For the Respondent : Mr. A. Tiwari, Advocate

Date of Hearing : **22.01.2026**

Date of Judgment : **04.05.2026**

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

1. Heard Mr. A. Sattar, the learned counsel for the petitioner. Also heard Mr. A. Tiwari, the learned counsel for the respondent.

2. This application, under Section 115 of the Code of Civil Procedure, 1908, has been filed by the petitioner, namely, M/s Assam (Trade) Agency, represented by its partner Shri Yashpal Chachra, impugning the judgment and decree dated 28.06.2019, passed by the Court of the learned Civil Judge No. 3, Kamrup (M), in Title Appeal No. 120/2016, whereby the judgment and decree dated 25.11.2016, passed by the Court of the learned Munsiff No. 2, Kamrup (M) at Guwahati in Title Suit No. 185/2013 was upheld.

3. The facts relevant for consideration of the instant revision petition, in brief, are that the present respondent and his brother are the absolute owners of an RCC building situated on a plot of land covered by Dag No. 433 under K.P. Patta No. 268 of Village Seher, Guwahati Part-III, under Guwahati Metropolitan District Kamrup(M). In Pursuant to a partition between the brothers, the present respondent received, in his share, the entire second floor of the building as well as the RCC hall in the ground floor of the same building.

4. The respondent let out the said RCC hall on rent to the present petitioner at an initial rent of Rs.3,500/- (Rupees Three Thousand Five Hundred only) per month, payable within the first week of every month. The tenancy period was from 12.08.2002 till the end of August 2007, i.e., for a period of five years and a written tenancy agreement to that effect was executed between the parties on 12.08.2002.

5. As per the terms of the tenancy agreement, the present petitioner paid an amount of Rs.1,25,000/- (Rupees One Lakh Twenty-Five Thousand) as advance rent to the respondent. The said advance amount has to be adjusted towards the monthly rent of the tenanted premises at the rate of Rs.1,000/- per month.

6. At the end of the tenancy period, i.e., in August 2007, the present petitioner requested the respondent to renew the tenancy agreement for a further period of five years. The respondent was initially reluctant to extend the tenancy agreement as he required the suit premises for starting a business being an unemployed youth at that time. However, upon the request of the present petitioner, the respondent agreed to extend the tenancy for another period of five years with effect from 01.09.2007 till the end of August 2012. A written agreement to that effect was executed on 01.10.2007 at a rent of Rs. 5,000/- (Rupees Five Thousand) per month.

7. Thereafter, on expiry of the second extension of tenancy agreement on 31.08.2012, the respondent asked the present petitioner to vacate the tenanted premises as he *bona fide* required the said premises for starting a business there. When the petitioner did not vacate the suit premises, the respondent filed a title suit for eviction of the present petitioner from the suit premises. The said suit was registered as Title Suit No. 185/2013, before the Court of Munsiff No. 2, Kamrup (M) at Guwahati.

8. The present petitioner contested the suit by filing a written statement, wherein the plea of *bona fide* requirement raised by the present respondent was denied. It was further stated that the respondent had attempted to forcibly evict the petitioner from the suit premises by disconnecting the water supply and blocking the sewage pipes. Consequently, the present petitioner instituted a

separate suit, being Title Suit No. 462/2012, seeking a declaration that he is a lawful tenant of the said premises. It was also pleaded that upon refusal by the respondent to accept the rent, the present petitioner deposited the rent in court as per the provisions of law.

9. Upon pleadings of both the parties, the trial court framed following issues in the Title Suit No. 185/2013:

(i) Whether there is any cause of action for the suit?

(ii) Whether the suit is bad for non-joinder of necessary parties?

(iii) Whether the plaintiff has any bonafide requirement of the suit premises?

(iv) Whether the plaintiff is entitled to the decree?

(v) What other relief, if any, the parties are entitled to?

10. In support of his case, the respondent, as plaintiff, examined himself as PW-1. Whereas, the present petitioner adduced evidence of two witnesses as DW-1 & DW-2. Ultimately, after considering the evidence on record and after hearing both the sides, the Court of learned Munsiff No. 2, Kamrup (M), by the Judgment dated 25.11.2016, decided all the issues in favour of the respondent and decreed the suit by holding that the suit premises is required *bona fide* by the respondent. However, the respondent was also directed to return Rs.5000/- (Rupees Five Thousand) out of the advance rent paid by the present petitioner to it.

11. Being aggrieved by the judgment and decree of the trial court, the present petitioner preferred an appeal under Section 96 read with Order 41 of the Code of Civil Procedure, 1908, before the Court of learned Civil Judge

(Senior Division) No. 3, Kamrup (M), Guwahati. In the said appeal, the appellate court formulated following point for determination – "*Whether the plaintiff had bona fide requirement of the tenanted premises?".* However, after considering the submissions made by the learned counsel for both sides and after going through the records, the Appellate Court, by its judgment and decree dated 28th June, 2019, upheld the judgment and decree passed by the trial court and dismissed the appeal.

12. Mr. A. Sattar, the learned counsel for the petitioner has submitted that the First Appellate Court had committed illegality and irregularity in passing the impugned order without considering the fact that the trial court did not consider the evidence on record in its true perspective. He submits that the materials on records clearly indicate that the suit premises was not required *bona fide* by the respondent, however, in spite of that both the Trial Court as well as the First Appellate Court decreed the suit merely on the ground of *bona fide* requirement of the respondent.

13. The learned counsel for the petitioner further submits that in the Title Suit No. 462/2012, which was filed by the present petitioner and wherein the respondent also filed his written statement, he never took the plea of *bona fide* requirement in the said suit. He submits that the respondent had filed the Title Suit No. 185/2013 only out of grudge and jealousy against the present petitioner. He submits that as the petitioner has been regularly paying the rent for the tenanted premises, the respondent had falsely instituted the aforesaid title suit on the ground of *bona fide* requirement. He submits that the respondent never required the suit premises during the period in between year 2002 to 2007, when the rent for tenanted premises was Rs. 3500/- (Rupees Three Thousand Five Hundred Only), out of which after adjustment of Rs.

1000/- against the advance amount paid by the present petitioner, the respondent was getting only Rs. 2500/- as rent. He submits that, under such circumstances, after 2012 when the rent was enhanced to Rs.5000/-, there could not be any *bona fide* requirement of the suit premises, by the respondent, as he was till that time was sustaining at a much lower rental income only.

14. The learned counsel for the petitioner has also submitted that the appellate court has erred in holding that the burden of proving that the plaintiff also possesses other property in the building where the suit go-down is situated, is on the petitioner under Sections 101/103 of Indian Evidence Act. He submits that the plaintiff is the co-sharer, of the building in which suit go-down is situated, with his brother, however, he has not produced any partition deed or any such document in the trial before the trial court or the appellate court from which the present petitioner could have known the exact extent of his share in the said building, as such the petitioner could not have proved the said fact.

15. The learned counsel for the petitioner has also submitted that the First Appellate Court also erred in not taking into consideration the fact that the respondent, apart from merely stating that he requires the suit premises for starting a business, failed to produce any material before the trial court or the appellate court, to show that he is seriously contemplating of starting a business. He submits that there is neither any pleading nor any proof to show that the respondent has done anything in preparation in order to start a business in the tenanted premises, such as obtaining of trade license, etc. He submits thatthe plea of *bona fide* requirement is only a desire and there is no *bona fide* in it. He submits that though there was a stipulation in the first tenancy agreement that the rent of the tenanted premises may be enhanced @ 15%, however, same was enhanced in the second tenancy agreement at a

much higher rate. He submits that it shows that if there is enhancement of the rent at a rate acceptable to the respondent, the tenanted premises may not be required by him, as such, same cannot be regarded as *bona fide* requirement of the tenanted premises, but only a desire, which was overlooked by both the trial court and the appellate court.

16. The learned counsel for the petitioner submits that while decreeing the Title Suit No. 185/2013, in favour of the present respondent, the Trial Court also directed the present petitioner to pay the cost of the suit to the respondent without there being any reason for doing so either under Section 35 or under Order 20 of the Code of Civil Procedure, 1908. He submits that a tenant may be evicted from tenanted premises only by following the due process of law and accordingly the respondent has filed the Title Suit No. 185/2013. He submits that since the respondent had filed the aforesaid suit as it was lawful for him to do so to seek a relief of eviction of the present petitioner from the tenanted premises, hence, this was not a case for imposition of cost while decreeing the suit.The learned counsel for the petitioner, accordingly, prays for setting aside the judgment of the appellate court as well as the trial court.

17. On the other hand, Mr. A. Tiwari, the learned counsel for the respondent has submitted that there is no illegality or irregularity in the impugned judgment of the appellate court justifying any interference by this court in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908. He submits that the petitioner has failed to justify any valid reason for invoking the revisional jurisdiction of this court for unsettling the concurrent decision of two courts, i.e., the trial court as well as the appellate court.

18. The learned counsel for the respondent has submitted that in the Title

Suit filed by the present petitioner in respect of the said property, i.e., Title Suit No.462/2012, the judgment passed therein, in paragraph no. 6, unambiguously indicates that the present respondent has taken the plea of *bona fide* requirement in the said suitalso and same has been acknowledged in the judgment passed in the said suit. He also submits that the fact that the respondent did not file any counter claim in the suit filed by the present petitioner, cannot debar the respondent in filing a fresh suit for eviction of the petitioner from the suit premises.

19. The learned counsel for the respondent has submitted that the respondent is an unemployed person having a family including wife and child. He submits that the respondent was not having any other source of income apart from rent receive form the tenanted premises. He submits that the rent of Rs. 5000/- per month is so paltry amount in these hard times when every item of day-to-day need has become so costly that the respondent is not in a position to sustain his family out of the said amount. He further submits, on the other hand, the petitioner apart from the tenanted premises has two shops at the prime location of Guwahati city, as such, the comparative hardship would be more for the respondent, if the tenanted premises is not vacated.

20. The learned counsel for the respondent has submitted that as the present petitioner has failed to counter the plea of *bona fide* requirement by adducing any evidence to show that the respondent has alternative means of income, or that he could start his business elsewhere also. He submits that under such circumstances the law would lean in favour ofthe respondent only. In support of the submission, he has cited the ruling of the Apex Court in the case of "***Mehmooda Gulshan Vs. Javaid Hussain Mungloo***" reported in "***(2017) 5 SCC 683***"***.***

21. The learned counsel for the respondent has also submitted that there is no perversity in the impugned judgment passed by the appellate court or in the judgment of the trial court, as both the courts have arrived at concurrent finding on the basis of evidence available on record.

22. He submits that the revisional jurisdiction of the High Court under Section 115 of the Code of Civil Procedure, 1908 cannot be equated with the power of a first appellate court. He submits that in exercise of revisional jurisdiction, this court cannot reappreciate the evidence microscopically to unsettle the concurrent finding of the trial court and the appellate court, to arrive at a different conclusion, unless there is a perversity in the impugned judgment. In support of his submission, the learned counsel for the respondent has cited following rulings –

(i) "***Rajani Manohar Kuntha & Ors. Vs. Parshuram Chunilal Kanojia & Ors***". *reported in* "***(2025) Live Law(SC) 1253"***.

(ii) "***Gandhe Vijay Kumar Vs. Mulji @ Mulchand"*** reported in "***(2018) 12 SCC 576***".

(iii) "***Binod Kumar Murarka Vs. On the death of Late Khemraj Lohia His Legal Heirs Sanjiv Lohia and Ors."*** reported in "***(2019) 1 GLT 221***".

23. I have gone through the materials available on records. I have also considered the submissions made by the learned counsel for both sides. I have also gone through the rulings cited by learned counsel for both sides in support of their respective submission.

24. In this case, the petitioner has prayed for invoking the revisional powers of this court under Section 115 of Code of Civil Procedure, 1908. A bare perusal of the statutory provisions contained in the above-mentioned section would reveal that the High Court can exercise its jurisdiction under the aforesaid

provision only under following three circumstances –

(a) If the subordinate court appears to have exercise a jurisdiction not vested in it by law; or

(b) If the subordinate court appears to have failed to exercise a jurisdiction so vested; or

(c) If the subordinate court appears to have acted in exercise of its jurisdiction illegally or with material irregularity.

25. Thus, the scope of revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 is restricted and different from that of appellate jurisdiction. The High Court may exercise its revisional jurisdiction only when there is a jurisdictional error, illegality or material irregularity in exercise of jurisdiction by the subordinate court. In exercise of the revisional jurisdiction, it is not open for the High Court to rectify even erroneous conclusion arrived at by the subordinate court on the basis of the evidence on record. As held by the Apex Court in the case of "***Rajani Manohar Kuntha & Ors. Vs. Parshuram Chunilal Kanojia & Ors."*** (supra) the microscopic scrutiny of the evidence on record is unwarranted in exercise of revisional jurisdiction until the jurisdiction exercise by the subordinate court is *ex-facie* without authority. The High Court may also interfere in the decision of the court below, if the same is perverse.

26. The Apex Court, in the case of "***Associate Builders Vs. Delhi Development Authority",*** reported in "***(2015) 3 SCC 49"***, has observed as follows –

> "***32.*** *A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)*

> "*7. … It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.*"
>
> *In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)*
>
> "*10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.*"

27. From the above observation of the Apex Court, it appears that if a decision is arrived at on the basis of no evidence or evidence which is thoroughly unreliable and no reasonable person would have acted upon it, the order would be perverse. However, if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be, the conclusion would not be treated as perverse and the finding would not be interfered.

28. In the instant case, in the impugned judgment, the first appellate court has arrived at a concurrent finding with that of the trial court regarding *bona fide* requirement of the suit premises by the present respondent/plaintiff. The First Appellate Court has considered the evidence on record adduced by the PW-1 regarding necessity of suit premises by the respondent/plaintiff for doing business for his self-employment as due to increase of the day-to-day expenditure for maintenance of his family, sustenance only on rental income of

Rs. 5000/- has become difficult. The first appellate court, concurring with the trial court has held that the necessity of the suit premises for running a business, so as to increase his income in order to maintain his family may be regarded as a *bona fide* requirement. The said reasoning and the finding, in the considered opinion of this court, do not suffer from the vice of irrationality, neither same was based on thoroughly unreliable evidence so as to treat it as perverse.

29. Moreover, the impugned judgment also cannot be faulted in the First Appellate Court holding that the burden of showing that the respondent/plaintiff possesses separate property within the RCC building in which he can start a business without disturbing the present petitioner/defendant is on the defendant, as said assertion was made by the defendant. The principle that whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist, is a well settled legal principle with statutory recognition in Section 101 of the Indian Evidence Act. The First Appellate Court was not wrong in reiterating that principle in the impugned judgment and same cannot be a ground for interfering with the impugned judgment.

30. The First Appellate Court in addition to concurring with the finding of the trial court that the suit premises is required *bona fide* by the present respondent/plaintiff had also taken into consideration the aspect that the comparative hardship would be more for the respondent/plaintiff, if the tenanted premises is not vacated.

31. Though, under Assam Urban Areas Rent Control Act, 1972, the question of comparative hardship is not required to be considered while considering the existence of any of the grounds mentioned in Section 5 of the said Act, however,

the impugned judgment cannot be faulted with only on the ground that the said aspect was additionally considered by the First Appellate Court after finding existence of the ground of *bona fide* requirement of the suit premises by the landlord/plaintiff.

32. As regards the submission of the learned counsel for the petitioner that the present respondent/plaintiff had not mentioned about *bona fide* requirement of the suit premises in the Title Suit No. 462/2012 filed by the present petitioner is concerned. It appears that in the paragraph No. 6 of the judgment dated 29.08.2015, passed in Title Suit No. 462/2012, the Court of learned Munsiff No. 2, Kamrup (M), has categorically mentioned about the contention of the defendant/present respondent that he, being an educated unemployed youth is preparing to start his own business in the suit premises for self-employment and as such he *bona fide* requires the suit premises. As such, the contention raised by the learned counsel for the petitioner holds no water.

33. The submission of the learned counsel for the petitioner that since a tenant may be evicted from the tenanted premises only by following the due process of law, hence, in a suit for eviction under Assam Urban Areas Rent Control Act, 1972, on decreeing of the suit, no cost may be imposed under Section 35 or Order 20 of the Code of Civil Procedure, 1908, is also a fallacious submission. It is a settled principle of law, which is statutorily recognized in Section 35 of the Code of Civil Procedure, 1908, that the cost shall follow the event and if not, reason thereof shall be stated. It implies that the cost which are reasonably incurred by a successful party, except in those cases where the court in its discretion may otherwise direct by recording reasons, have to be paid by the unsuccessful party.

34. The principle that the tenant may be evicted from the tenanted premises

only by following the due process of law only means that a tenant may be evicted from the rented premises only if the grounds mentioned in Section 5 of the Assam Urban Areas Rent Control Act, 1972, exists. If any of the ground mentioned in Section 5 of the said Act exists the landlord may ask for vacating of the tenanted premises by the tenant. If on asking by landlord, on satisfaction of the conditions mentioned in Section 5 of the said Act, the tenant vacates the tenanted premises, the question of filing an eviction suit does not arise. However, if the landlord is compelled to file an eviction suit, he may not be denied the cost under Section 35 of the Code of Civil Procedure, 1908, in the event of getting a decree in the said suit. As such, the principle that the costs shall follow the event is alsoapplicable to an eviction suit, under the Assam Urban Areas Rent Control Act, 1972.

35. As already discussed herein above, the impugned judgment of the first appellate court cannot be regarded as perverse and the said court also does not appear to have committed any jurisdictional error, invoking of powers under Section 115 of the Code of Civil Procedure, 1908 is not warranted in this case.

36. In view of the discussion made and reasons stated in the foregoing paragraphs, this court is of the considered opinion that there is no merit in the instant revision petition and same is liable to be dismissed.

37. Accordingly, this revision petition is dismissed with cost.

Amit Das

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Amit Das
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JUDGE

Comparing Assistant