

GAHC010203942018



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

Case No. : CRP/142/2018

1. DHANANJAY ROY AND 6 ORS.

S/O- LATE DHANESWAR ROY SARKAR (BABU), R/O- WARD NO. 15, R K
MISSION ROAD (SANKARDEV BYE LANE)DHUBRI, P.O- BIDYAPARA, P.S
AND DIST- DHUBRI, ASSAM, PIN- 783324

2: NILAKHI ROY

D/O- DHANESWAR ROY SARKAR (BABU)
R/O- WARD NO. 15
R K MISSION ROAD (SANKARDEV BYE LANE)DHUBRI
P.O- BIDYAPARA
P.S AND DIST- DHUBRI
ASSAM
PIN- 783324

3: BIMALA SARKAR

W/O- LATE DHARMA NARYANSARKAR
R/O- VILL CHITALA
P.O- CHITALA
DIST- KOKRAJHAR
BTAD

4: PROMILA ROY SARKAR

W/O- SRI KHOGEN ROY (MONDAL)
R/O- CHITILA
P.O- CHITILA
DIST- KOKRAJHAR
BTAD

5: MONESWAR ROY SARKA

S/O- LATE DHARMA NARAYANSARKAR
R/O- WARD NO. 15
R K MISSION ROAD (SANKARDEV BYE LANE)DHUBRI
P.O- BIDYAPARA
P.S AND DIST- DHUBRI

ASSAM
PIN- 783324

6: MAMONI ROY
D/O- LATE DHARMA NARAYAN SARKAR
R/O- WARD NO. 15
R K MISSION ROAD (SANKARDEV BYE LANE)DHUBRI
P.O- BIDYAPARA
P.S AND DIST- DHUBRI
ASSAM
PIN- 783324

7: MONJULA ROY
D/O- LATE DHARMA NARAYAN SARKAR
R/O- WARD NO. 15
R K MISSION ROAD (SANKARDEV BYE LANE)DHUBRI
P.O- BIDYAPARA
P.S AND DIST- DHUBRI
ASSAM
PIN- 78332

VERSUS

1. PRITIKONA GHOSH (SARKAR) AND 2 ORS
W/O- LATE HIRU VENGSARKAR, R/O- WARD NO. 15, R K MISSION ROAD
(SANKARDEV BYE LANE)DHUBRI, P.O- BIDYAPARA, P.S AND DIST-
DHUBRI, ASSAM, PIN- 783324

2:KUMAR BIRJYA ARAJUN VENGSARKAR
D/O- LATE HIRU VENGSARKAR
R/O- WARD NO. 15
R K MISSION ROAD (SANKARDEV BYE LANE)DHUBRI
P.O- BIDYAPARA
P.S AND DIST- DHUBRI
ASSAM
PIN- 783324

3:KUMARI GARRGGI VENGSARKAR
D/O- LATE HIRU VENGSARKAR
R/O- WARD NO. 15
R K MISSION ROAD (SANKARDEV BYE LANE)DHUBRI
P.O- BIDYAPARA
P.S AND DIST- DHUBRI
ASSAM
PIN- 78332

Advocate for the Petitioner : MR. S K GHOSH, MS F AHMED

Advocate for the Respondent : MR. K BHATTACHARJEE (R1-R3), MS. P BHATTACHARYA (R1-R3),MS B TALUKDAR (R1-R3)

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Advocate for the petitioners : Mr. S.K. Ghosh.
Advocate for the respondents : Mr. K.Bhattacharjee.

Date on which judgment is reserved : **05.03.2026.**

Date of pronouncement of judgment : **20.03.2026.**

Whether the pronouncement is of the : No.
operative part of the judgment ?

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

Heard Mr. S.K. Ghosh, learned counsel for the petitioners. Also heard Mr. K. Bhattacharjee, the learned counsel for the respondents.

2. This revision is directed against the Judgment and Decree dated 12.07.2018 in Title Appeal No. 20/2017 passed by the learned Civil Judge, Dhubri, decreeing the suit of the plaintiffs, which was earlier dismissed by the learned Munsiff, Dhubri, by its Judgment and Decree dated 26.05.2017 passed in Title Suit No. 82/2012.

3. Upon admission of the appeal, the defendants/respondents entered appearance and contested the appeal by filing a cross-objection.

4. The brief facts of the case may be stated at this point. The plaintiffs instituted a suit for confirmation of possession and for specific performance of contract. One Dharma Narayan Sarkar was the original owner, possessor and title holder of a plot of land measuring 1 katha 10 $\frac{3}{4}$ Lessa under patta No. 142(N) Dag No. 599(O), 875(N) at Bidyapara Pt-I within Ward No. 15, Dhubri Town. After his death, his legal the defendant and proforma defendants had been possessing the said land and standing houses on it making amicable partition amongst themselves. The schedule A is a part of the land measuring 1K-10 $\frac{3}{4}$ L. The suit land described in schedule A is land measuring 7 $\frac{1}{2}$ L which is the share of the defendant and he had been possessing the same till 07/01/2008, the date of execution of the agreement of sale in favour of late Hiru Vengsarkar. On 07.01.2008 the defendant entered into a registered agreement with late Hiru Vengsarkar who was the husband of plaintiff No. 1 and the father of the Plaintiff No. 2 and 3 to sell the schedule A land along with houses, apartments, trees, latrine, tube well etc. standing on consideration of Rs. 90,000/-(Rupees Ninety thousand) only; out of which 10,000/-(Rupees Ten thousand) only was paid as an advance at the time of execution of registered deed of agreement for sale No. 30/2008. Plaintiff also pleaded that on the day of execution of the agreement for sale the defendant delivered the possession of the land and houses etc. of schedule A land to the husband of the plaintiff No. 1 and had been possessing the said land and houses with his family members till his death on 06.05.2011. After the death of Hiru Vengsarkar his legal heirs i.e the plaintiffs have been possessing the land and houses of schedule A land. It was agreed that the defendant will execute a sale deed after obtaining permission from the appropriate authority as early as possible in favour of late Hiru Vengsarkar, predecessor of the plaintiffs receiving the remaining amount of consideration of Rs. 80,000/-(Rupees Eighty thousands) only. The rest amount was

received on 15.12.2008 by the defendant showing the cause of his urgent necessity executing a written receipt and there after the permission for sale was obtained from the Deputy Commissioner, Dhubri as long back as on 21.12.2010.

5. Plaintiffs also stated that after obtaining permission Late Hiru Vengsarkar requested the defendant several times to execute the sale deed but defendant did not execute sale deed showing unjustified cause one after another although defendant received the remaining amount of consideration of Rs.80,000/-(Rupees Eighty thousands) only. After the death of Hiru Vengsarkar, plaintiff No. 1 served pleader's notice to the defendant twice on 27.05.2011 and 02.09.2011 respectively requesting him to execute the sale deed in accordance with the agreement for sale dated 07.01.2008 but in total violation of the terms of agreement the defendant kept himself mum. On 05.02.2012 plaintiff No. 1 personally requested the defendant to execute the sale deed in favour of the plaintiffs but defendant refused to execute any sale deed in favour of the plaintiffs. Plaintiffs have been and still are ready and willing to perform the agreement on their part.

6. The defendant and proforma defendants contested the suit by filling joint written statement and also submitted counter-claim. The written statement in brief is that there is no proper cause of action for the suit, the suit is bad for non-joinder of parties. The defendant and the proforma defendants are the joint pattadars and record holders of the suit land and the land and premises are still in their Joint patta without being partitioned. The plaintiff is well aware about the fact that the suit land is under joint patta of the defendant and proforma defendants. So any agreement executed by the defendant only without consent of

the proforma defendants regarding the suit land is void ab-initio and non-effective in the eye of law. The plaintiffs are the tenants of the premises of the suit land on rental basis. The defendant neither agreed to obtain permission from appropriate authority to sell the suit land nor received any consideration of Rs.80,000/-(Rupees Eighty thousands) only from the plaintiff acknowledging receipt thereon. The plaintiffs have manufactured the suit to avoid the liability to pay the arrear house rent amounting Rs. 25,500/-(Rupees Twenty five thousand five hundred) only. The plaintiffs are not paying any house rent to answering defendant and proforma defendants since 01.01.2008 in spite of their several times verbal request till date and an amount of Rs 25,500/-(Rupees Twenty five thousand five hundred) only is due from the plaintiffs as house rent@ Rs 500/-(Five hundred) only per month. Hence, they have preferred a counter claim.

7. The counter-claim of the defendant and proforma defendants in brief is that Hiru Veng Sarkar, the predecessor of the plaintiffs got the house and premises on rent @ Rs.500/-(Rupees five hundred) only per month from the defendants/counter-claimants in 1989. Hiru Veng Sarkar died in 2011 and after his death the plaintiffs are staying in the suit land as tenant. Hiru Veng Sarkar during his life time paid rent upto the month of December 2007 but since neither Hiru Veng Sarkar nor the present plaintiffs paid the rent. An amount of Rs. 25,500/-(Rupees Twenty five thousand five hundred) only is due from the plaintiffs as house rent. Due to increase of family members, the counter-claimants require the suit premises for extension of their residential house and requested the plaintiffs several times to vacate the rental premises and the plaintiffs assure to vacate the premises. But on 01.03.2012 when counter-claimant No.3 Mamoni Roy approached the plaintiffs to vacate the suit premises, the

plaintiffs denied to vacate the same. Hence, this counter-claim. The counter claimants want eviction of the plaintiffs and realization of arrear rent of Rs. 25,500/-(Rupees Twenty five thousand five hundred) only.

8. The plaintiff No. 1 and 2 filed written objection against the counter claim of the defendants with similar pleadings as in the plaint. It was pleaded that the counter-claim is not maintainable in law and facts and prayed for dismissal of the counter-claim with costs.

9. The learned Trial Court, upon consideration of the written statement as well as the counter-claim of the defendants, had framed as many as 14 issues, out of which seven related to the plaintiff's suit, and the remaining seven related to the counter-claim of the defendant therein.

10. On the substantive issue regarding specific performance of contract, the learned Trial Court found that the agreement for sale was a valid one and duly proved. However, on the point of limitation, the learned Trial Court found against the plaintiff. Therefore, although otherwise the plaintiff would have been entitled to a decree for specific performance, no relief could be granted in view of the fact that the plaintiff's suit was barred by limitation. The learned Trial Court also dismissed the counter-claim of the defendant as non-maintainable, in view of the minority of one of the defendants at the time of presentation of the counter-claim and his non-representation by any legal guardian, as per the provisions of Order 32 Rule 3 CPC which provides for the appointment of a guardian upon application being made. The learned Trial Court also held that the defendants/counter claimants failed to establish that the plaintiffs were tenants under them.

11. The learned Appellate Court, however, found fault with the findings of the learned Trial Court on the point of limitation and held as follows:

“13. According to Article 54 of the Limitation Act, the period of limitation for a suit for specific performance of a contract is three years and the time of limitation starts to run from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

16. There is a sale permission dated 21.12.2010 as Ext.4 which shows that the DC, Dhubri had given sale permission to sale 7 & ½ lessa land of KP No.142 (N), Dag No.599(O), 875(N) of Bidyapara Part I, Sheet No.3 & 4 by (1) Bimala Sarkar, (2) Dhaneswar Ray Sarkar, (3) Maneswar Ray Sarkar, (4) Mamoni Ray Sarkar and (5) Pramila Ray Sarkar to Pritikona Ghosh (Sarkar). It means that the defendant and proforma defendants had not denied execution of sale deed in favour of the plaintiff No.1 who is the wife of Hiru Veng Sarkar with whom the defendant entered into agreement to sale the suit land till 21.12.2010 which is the date of getting sale permission from DC, Dhubri. Ext.4 shows that the buyer is the plaintiff No.1 Pritikona Ghosh which means that the defendant and the proforma defendants except proforma defendant No.5 Manjula Ray Sarkar were willing to execute sale deed in respect of the suit land in favour of plaintiff No.1 Pritikona Ghosh (Sarkar) even after death of Hiru Veng Sarkar till 21.12.2010. But the defendant had not executed sale deed in favour of plaintiff No.1 even after obtaining sale permission dated 21.12.2010. Hence, if we assume that on 21.12.2010 the defendant refused to execute sale deed after obtaining

sale permission and if we count the period of limitation from 21.12.2010, then the time for filling the suit will be 21.12.2013. This suit is filed on 28.02.2012. I find that the suit was filed well within the period of limitation.”

12. However, a perusal of the entire appellate judgment nowhere indicates that the learned First Appellate Court took into consideration the cross objection filed by the respondents/defendants on 05.09.2017 in the aforesaid title appeal and which is very much available on record. In the said cross objection, the respondent/defendant had taken up a number of grounds, and in view of the provisions of Order 41 Rule 31, it was very much incumbent upon the learned First Appellate Court to take into consideration the aforesaid grounds taken up and said to be urged at the time of hearing of the appeal.

13. Learned counsel for the respondents has referred to the decision of the Hon'ble Apex Court in ***Nafees Ahmad & Another Vs. Soinuddin & Others***, reported in ***2025 INSC 520/2025 Supreme [SC] 665***, wherein it has been held as follows:

“12. The provisions of Rule 31 should therefore be reasonably construed and should be held to require the various particulars to be mentioned in the judgment only when the appellant has actually raised certain points for determination by the Appellate Court, and not when no such points are raised.

13. We must also look into the provisions of Rule 30 of Order 41 for the purpose of fortifying our interpretation of Rule 31 Order 41 Rule 30 CPC reads thus:

"30. Judgment when and where pronounced. (1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced."

14. Thus, this Rule does not make it incumbent on the Appellate Court to refer to any part of the proceedings in the court from whose decree the appeal is preferred. The Appellate Court can refer, after hearing the parties and their pleaders, to any part of these proceedings to which reference be considered necessary. It is in the discretion of the Appellate Court to refer to the proceedings. It is competent to pronounce judgment after hearing what the parties or their pleaders submit to it for consideration. It follows therefore that if the appellant submits nothing for its consideration, the Appellate Court can decide the appeal without any reference to any proceedings of the courts below and, in doing so, it can simply say that the appellants

have not urged anything which would tend to show that the judgment and decree under appeal were wrong."

14. In the instant case, it is not possible to determine what was actually submitted by learned counsel for the parties in the course of hearing, as the impugned appellate judgment does not refer to any submission whatsoever. But in view of the fact that the cross objection was very much a part of the record, the least that is expected of the Appellate Court is a reference to the same, which also is lacking in the instant case.

15. In view of the above, it appears that the learned Appellate Court failed to exercise jurisdiction vested in it by law and also acted with material irregularity in disposing of the appeal.

16. In view of the above, the impugned appellate Judgment and Decree dated 12.07.2018 is set aside and the matter is remanded to the learned First Appellate Court for a fresh decision, after taking into consideration the material on record as well as the submissions made on behalf of both the parties, if any.

17. The petition stands disposed of accordingly.

18. Send back the TCR.

JUDGE

Comparing Assistant