



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

REGULAR SECOND APPEAL No.48 OF 2021

1. Mafizuddin
S/O Late Hussain Ali,
2. Alimuddin
S/O Late Hussain Ali
3. Rahiz Uddin
S/O Late Azimuddin
4. Abdur Rahman
S/O Late Azimuddin
5. Shabjul Ali
S/O Alimuddin
6. Afzal Ali @ Abzal Hoque
S/O Alimuddin

All are residents of
Village- Kayakuchi Pathar
Mouza- Paka, Dist- Barpeta,
Assam.

.....Appellants

-Versus-

- Legal heirs of Late Saripon Nessa
1. Kashim Uddin,
S/O Late Mokshed Ali

2. Sahor Ali,
S/O Late Mokshed Ali
3. Mohar Ali,
S/O Late Mokshed Ali
4. Abdus Sukur Mamud
S/O Late Mokshed Ali
5. Legal heirs of Late Shona Miah
a) Rafiqul Islam,
b) Shafiqul Islam

All are residents of
Village- Kayakuchi Pathar,
P.O. Naligaon, Mouza- Paka,
Dist- Barpeta, Assam.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) : Mr. N. Haque, Advocate.

For the Respondent(s) : Mr. S. A. Bakhtiar, Advocate.

Date of Hearing : 07.05.2026.

Date of Judgment : **07.05.2026.**

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Haque, learned counsel appearing for the appellants. Also heard Mr. S. A. Bakhtiar, learned counsel appearing for the respondents.

2. The instant second appeal has been preferred against the judgment dated 11.12.2020 and decree dated 18.12.2020 passed by the learned Civil Judge, Barpeta in Title Appeal No. 51/2017, whereby the judgment and decree dated 06.09.2017 passed by the learned Munsiff No.1, Barpeta in Title Suit No. 276/2012 were affirmed.

3. This Court, while admitting the second appeal by order dated 08.11.2021, framed the following substantial question of law:

“Whether the First Appellate Court was justified in dismissing the appeal as not maintainable under Section 96(4) of the Code of Civil Procedure on the basis that the valuation of the suit was Rs. 500/- without taking into consideration the Second Schedule of the Provincial Small Cause Courts Act, 1887?”

4. The brief facts of the case are that the respondents/plaintiffs instituted the suit in question before the trial Court seeking declaration of their right, title, interest and confirmation of possession over the suit land, as legal heirs, along with recovery of possession by evicting the appellants/defendants from the schedule land. The suit was valued at Rs. 500/- for the purpose of jurisdiction and court fees were paid accordingly. Upon conclusion of the trial, the learned trial Court decreed the suit in favour of the respondents/plaintiffs in the following terms:

“i. A decree declaring that the plaintiffs have right, title, interest and possession over the ‘A’ schedule land.

ii. A decree evicting the defendants from the ‘C’, ‘C1’, ‘C2’ and ‘D’ schedule land.

iii. A decree cancelling the mutation order in favour of defendant No.1 in respect of the ‘D’ schedule land by declaring the same null, void and inoperative in law.

iv. A decree cancelling the mutation orders in favour of defendants No.1, 2 and 3 in respect of the ‘B’ schedule land by declaring the same null, void and inoperative in law.”

5. The aforesaid judgment and decree of the trial Court were assailed by the appellants/defendants before the First Appellate Court. The Appellate Court, however, dismissed the appeal on the ground that a regular first appeal was not maintainable since the decree arose out of a suit of a nature cognizable by a Court of Small Causes and the valuation of the subject matter did not exceed Rs. 10,000/-. Aggrieved thereby, the present second appeal has been preferred.

6. Mr. N. Haque, learned counsel appearing for the appellants, submits that the Appellate Court failed to take into consideration the Second Schedule to the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as “the Act of 1887”), which specifically excludes suits for possession of immovable property from the cognizance of a Court of Small Causes. He submits that since the suit

instituted by the respondents/plaintiffs was one for declaration of right, title and recovery of possession of immovable property, the same stood expressly excluded from the jurisdiction of a Court of Small Causes and, therefore, the Appellate Court was not justified in dismissing the appeal as not maintainable. He further contends, in the alternative, that even assuming the suit to be cognizable by a Court of Small Causes, the Appellate Court ought not to have mechanically rejected the appeal without examining whether any question of law arose for consideration.

7. Per contra, Mr. S. A. Bakhtiar, learned counsel appearing for the respondents, fairly submits that since the suit admittedly relates to declaration and recovery of possession of immovable property, the same is excluded from the cognizance of a Court of Small Causes and, therefore, the appeal could not have been rejected on the aforesaid ground.

8. I have heard the learned counsel for the parties and perused the materials available on record.

9. Section 96 of the Code of Civil Procedure reads as follows:

“96. Appeal from original decree.-(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees].

10. A plain reading of Section 96(4) CPC makes it evident that the bar contained therein applies only to decrees passed in suits “of the nature cognizable by Courts of Small Causes” where the value of the subject matter does not exceed Rs. 10,000/-.

11. Section 15 of the Act of 1887 provides as follows:

“15. Cognizance of suits by Courts of Small Causes. (1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits expected from the cognizance of a Court of Small Causes

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the [State Government] may, by order in writing direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

12. Thus, Section 15 of the Act of 1887 itself carves out specific exceptions to the jurisdiction of Courts of Small Causes by incorporating the categories of suits enumerated in the Second Schedule. Clause (4) of the Second Schedule expressly excludes:

“(4) a suit for the possession of immoveable property or for the recovery of an interest in such property;”

13. A conjoint reading of Section 15 and the Second Schedule of the Act of 1887 leaves no manner of doubt that

a suit for declaration of right, title and recovery of possession of immovable property is outside the cognizance of a Court of Small Causes.

14. In the present case, the suit is admittedly one for declaration of right, title and interest coupled with recovery of possession of immovable property. Merely because the valuation of the suit was below Rs. 10,000/-, the same would not attract the embargo contained in Section 96(4) CPC once the suit itself is not cognizable by a Court of Small Causes.

15. The learned First Appellate Court, therefore, fell into manifest error in dismissing the appeal as not maintainable under Section 96(4) CPC without appreciating that the nature of the suit stood expressly excluded from the jurisdiction of a Court of Small Causes under the Second Schedule to the Act of 1887.

16. Consequently, the substantial question of law framed by this Court is answered in favour of the appellants.

17. The impugned judgment passed by the learned First Appellate Court is accordingly set aside and the matter is remanded to the said Court for fresh consideration of the appeal on merits and in accordance with law.

18. The regular second appeal stands disposed of in the above terms.

JUDGE

Comparing Assistant