

RSA 280/2010
BEFORE
HON'BLE MR JUSTICE S. TALAPATRA

Heard Ms. B.R.A Sultana, learned counsel appearing for the appellant. This is an appeal under Section 100 of the Code of Civil Procedure against judgment and decree dated 15-06-2010 passed in Title Appeal No. 13 of 2008 by the Civil Judge, Senior Division No. 2, Kamrup, Guwahati.

It appears from the pleaded case in the plaint that the cause of action for the suit arose on 20-11-1996 for the first time, the date on which the Executive Magistrate attached the suit land and subsequently on 29.11.1999, the date on which the final order was passed by the Executive Magistrate, Rangia in Case No. 128 M of 1996. It also appears from the judgment and decree passed by the trial Court dated 09.04.2008 as passed in Title Suit No. 855 of 2006(new) corresponding to T.S Case No. 25 of 2006 (old) that the trial Court at the time of passing the judgment framed the following additional issue:

Whether the suit is bad for non-joinder of necessary party?

Without affording any opportunity to the parties to lead evidence or make their submissions on that issue, the judgment was pronounced.

Ms. B.R.A Sultana, learned counsel appearing for the appellant submits that the suit by its description is covered by Article 58 of the Limitation Act, 1963 and as such the period of limitation remains three years from the date of cause of action. She further submits that regarding the additional issue the first appellate Court held that the trial Court was competent to frame such issue in view of Order 14, Rule 5 CPC.

Ms. Sultana, learned counsel for the appellant refers that even then, the appellate Court has observed as follows:

Settlement of additional issue can be done lawfully by the trial Court, but it has to be settled under the provision as laid down in Rule 3 of the Order 14 of the Code of Civil Procedure. In the instant case before me, I have found that the additional issue has been framed at the time of writing the judgment. This is a violation of the law, laid down by Rule 3 or Order 14 of the Code. Thus, the parties to the case never had the opportunity to prove or disprove that issue. This fact is a sufficient ground for remanding the case to the trial Court for disposal of the additional issue. But, however, on the ground of case being old pending case he did not remand the case for further adjudication.

In view of the submissions advanced by the learned counsel for the appellant, admit this appeal on the following substantial questions of law:

1. Whether the suit is barred by limitation in view of the provision of Article 58 of the Limitation Act, 1963 on the basis of the pleaded cause of action by the plaintiff?
2. Whether by not affording opportunity to prove or disprove the additional issue as framed during the writing of the judgment, the trial court has committed illegality?

Issue usual notice on the respondents returnable on 21.09.2012.

The appellant shall take steps on the respondents by the registered post with A/D within a week from today.

Call for the LCRs.

List the matter again on 21.09.2012.

The Registry shall ensure receipt of the LCRs by the returnable date.