

GAHC010023632026



undefined

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

Case No. : RSA/19/2026

NIZAM UDDIN

S/O LATE NAZIM UDDIN, RESIDENT OF SINGERBOND PT.-IV, P.S-
LAKHIPUR, DIST- CACHAR, ASSAM, PIN- 788126

VERSUS

REZAUL KARIM AND 2 ORS.

S/O LATE KARIM UDDIN, R/O-SINGERBOND PT-IV, VILL AND P.O-
DOLUGRAM, PG- RUPAIRBALI, P.S- LAKHIPUR, DIST-CACHAR, ASSAM,
PIN-795001

2:IPACHAW (IN JAIL)

S/O LATE BAHA UDDIN

R/O- SINGERBOND PT-IV

VILL AND P.O- DOLUGRAM

PG- RUPAIRBALI

P.S- LAKHIPUR

DIST-CACHAR

ASSAM

PIN-795001 (PRESENTLY HE IS UNDERGOING LIFE IMPRISONMENT IN
CENTRAL JAIL
SILCHAR)

3:LAHIMAN BIBI

D/O LATE RAKIB UDDIN

W/O LATE ABDUL RASHID

R/O- CHIRIRPAR PT-I

PG- BANSKANDI

P.S- LAKHIPUR

DIST-CACHAR

ASSAM

PIN - 78810

Advocate for the Petitioner : G UDDIN, P ADHIKARI,MR. A UDDIN

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

23.02.2026

Heard Mr. G. Uddin, learned counsel for the appellant.

2. This second appeal, under Section 100 of the Code of Civil Procedure, is directed against the order dated 27.11.2025, passed by the learned Additional District Judge (FTC), Cachar, Silchar (First Appellate Court, for short), in Misc. Appeal No.17/2022. It is to be noted here that vide impugned order dated 27.11.2025, the learned Additional District Judge (FTC), Cachar, Silchar, has dismissed the Misc. Appeal.

3. Mr. Uddin, learned counsel for the appellant submits that the appellant is an Ex-Serviceman and while he was serving in Army in Gurdaspur, Punjab, he came to his native place and purchased a plot of land, as described in the schedule of the Title Suit No.137/2003, from the defendant No.1, while the said defendant No.1 was the absolute owner having right, title and interest by inheritance over the same and was in exclusive possession, with specific boundary, by executing a registered Sale Deed No.748/2003, registered before the Sub-Registrar, Lakhipur, on 06.09.2003 and 08.09.2003. The appellant was delivered possession of the same and by taking possession, the appellant has been cultivating the same. After his retirement from Army, he found that all his brothers and sisters separated themselves and living separately. Thereafter, in the first week of February, 2021, the appellant herein arranged some construction materials. But, on 09.02.2021, one Zamir Ahmed of Dalugram, threatened him that he is going to purchase the said land and also informed him that the purchased deed No.748/2003, in respect of the suit land was cancelled in Title Suit No.137/2003, and as such, the appellant has no right on the

said land. Thereafter, the appellant on 19.02.2021, came to know that on the basis of an ex-parte decree, passed in Title Suit No.137/2003, so passed by the learned Civil Judge (Sr. Division) No.1, Cachar, on 16.02.2005, the sale deed, by which he purchased the suit land, was cancelled. Thereafter, he had studied the case record of Title Suit No.137/2003, and he came to know about the ex-parte decree. Thereafter, he urgently applied for certified copy of the judgment and decree and on obtaining the same, he found that in the Title Suit No.137/2003, his address was given incorrectly. There was no village in the name of Dalugram, situated in Singerbond Pt-I, but in Singerbond Pt-IV, which is a distinct part away from Pt-IV and further, in absence of the petitioner, the process server's endorsement on the back of the summon reveals that the summon has been served on and received by person mentioned to be 'akannobilashi' and it cannot be said that the said notice was served under Order V Rule 18 of the CPC.

3.1. Mr. Uddin, further submits that before proceeding with the case ex-parte, it has to be proved that summon was duly served and without such service being proved, as required under Order IX Rule 6(a) CPC, the case was proceeded ex-parte and the ex-parte decree was passed and therefore, the appellant filed one petition which was registered as Misc. Case No.22/2021, before the learned Court below. In the said petition, the plaintiffs/respondents herein filed written objection by taking a stand that in the aforementioned suit, summon was duly served upon the defendants including the present appellant and the suit was accordingly, proceeded ex-parte and the sale deed No.748/2003 was cancelled by the Sub-Registrar, Lakhipur, on 01.12.2005 in the volume register in pursuance to the decree and that the petitioner remained silent and did not agitate and long 16 years have elapsed in the process and the decree has already been satisfied and the case is barred by limitation and hence, prayed to reject the same with costs. However, the learned Civil Judge (Sr. Division) No.1, Cachar, Silchar (Trial Court, for short), rejected the petitioner's prayer for setting aside the ex-parte judgment on 16.02.2005, vide order dated 24.08.2022.

3.2. Mr. Uddin further submits that being aggrieved by the order dated 24.08.2022, in Misc. Case No.22/2021, the appellant herein preferred the Misc. Appeal mainly on the ground that the learned Court below has failed to interpret Article 123 of the Limitation Act and that the limitation has to be counted from the date of knowledge and that the appellant was serving in Army when the Title Suit No.137/2003 was filed and in view of Order V Rule 28 of the CPC, summon should serve upon a soldier in his official address and that the learned Civil Judge has failed to consider the provision of procedural law that has laid down in Order V Rule 28 of the CPC and that the Process Server's report indicates that summon has been received by a person to be 'akannobilashi' and such service cannot be considered as a proper service and therefore, it is contended before the learned First Appellate Court to set aside the impugned order dated 24.08.2022, but vide impugned order dated 27.11.2025, the learned First Appellate Court has dismissed the same.

3.3. Mr. Uddin submits that this second appeal is preferred on the following substantial questions of law:-

- (i) Whether the learned Trial Court as well as the Appellate Court are erred in law for not considering the explanation i.e. "sufficient reason" in view of Order V Rule 28 CPC?
- (ii) Whether the judgments and decrees of the Courts below are vitiated while passing an ex-parte decree, when the judgment does not reveal a detailed reasoning as per Section 2(9) and read with Order XX Rule 4(2) of the CPC?
- (iii) Whether the finding of the Trial Court as well as the Appellate Court's judgments are in conformity with the provision of Section 31 sub-section (2) of the Specific Relief Act, 1963, when there is no finding as regard to fraud, mistake in Exhibit-1 sale deed No.748, dated 06.09.2003/08.09.2003?
- (iv) Whether the suit of the respondent/plaintiff was legally sustainable?

3.4. And under the given facts and circumstances, he submits that this appeal should be admitted on the aforesaid substantial question of law and notice should be issued to the respondents and the matter may be heard on merit.

4. Having heard the submission of learned counsel for the appellant, this Court has carefully gone through the memo of appeal and the documents placed on record and also perused the impugned order dated 27.11.2025, passed by the learned First Appellate Court and also the order dated 24.08.2022, passed by the learned Trial Court and also gone through the relevant provision of law.

5. It appears that the learned First Appellate Court had recorded a finding to the effect that the appellant was not found in the address (house) and finding his brother therein, the summon was served upon him as per mandate of the CPC and that his brother is an adult male member of the family, so he was very much entitled to receive the summon on behalf of the appellant and only thereafter, the learned Trial Court has proceeded with the suit ex-parte. The learned First Appellate Court also observed that the report of the Process Server is legally sustainable under the provision of the law and that during cross-examination in Misc. Case No.22/2021, the appellant as PW-1 admitted the signature of his brother Alim Uddin as Exhibit-A(2) and it is admitted from his cross-examination that during his service period in Indian Army, he came to his residence twice in a year and all the circumstances categorically proved the fact that the appellant has sufficient knowledge regarding the pendency of the suit, but he had maintained silence. The learned First Appellate Court had also observed that there is no specific denial by the appellant regarding the address in which the summon was delivered and in the given facts and circumstances, the Court is not in a position to held that summon was not duly served upon him and that the learned Trial Court has rightly come to the conclusion that the Misc. Case No.22/2021 is devoid of merit and accordingly, rejected the same and further, the First Appellate Court has observed that after hearing both the parties and upon meticulous scrutiny of the entire factual matrix of this case, it has also concurred with the reasoning and

the decision of the learned Civil Judge No.1, Cachar, Silchar, mostly on the ground that the appellant admitted his address and his brother who received the summon at that particular time and he also kept visiting his native place twice a year.

6. While the aforementioned finding of the learned First Appellate Court is examined in the light of the materials placed on record, this Court is unable to record concurrence with the submission of Mr. Uddin, learned counsel for the appellant. The sale deed, which was cancelled in the Title Suit No.137/2003, vide judgment and decree dated 16.02.2005, is enclosed with the memo of appeal as Annexure-J, at page No.98 and it appears that nowhere in the said sale deed, the official address of the appellant has been mentioned. He has been arrayed in the title suit as defendant and the address given in the said sale deed is mentioned.

7. It is not in dispute that the appellant herein was service in Indian Army at Gurdaspur, Punjab. And Order 5 Rule 28 CPC provides that for service on soldiers, sailors or airmen. It provides that where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant. Indisputably, no summon was issued to the appellant in the said address. But, for sending summon to the appellant herein in the said address, the same has to be made available. The appellant was arrayed in the Title Suit No.137/2003, as defendant No.1 on the basis of the address given in the sale deed. There only address of his native place was given. Nowhere his official address was given. That being so, there arose no occasion for sending the summon to the appellant in his official address in the said Title Suit. Having not furnished his official address now he cannot successfully raise a contention that the provision of Order 5 Rule 28 CPC was violated.

8. It also appears that the learned Trial Court, upon the application filed by the appellant before it, registered a case, being Misc. Case No.22/2021 and recorded the evidence of the appellant as PW-1, wherein he admitted the signature of his brother

Alim Uddin as Exhibit-A(2). Further, he admitted that he used to visit his residence twice in a year and as such, it is hardly believable that the appellant and his brother is residing separately and his brother had not informed him about the summon and that since he was serving as a soldier in Gurdaspur, Punjab, the summon ought to have been served upon him, as per provision of Order V Rule 28 of the CPC. In view of the aforesaid finding, now the learned counsel for the appellant cannot raise a contention that summon was not properly served upon the appellant herein. The appellant had failed to demonstrate that the aforesaid finding is not based on record. Having failed to demonstrate any illegality in the same, now he cannot be allowed to contend that he had not been informed by his brother about the case and that summon was not served upon him in his official address.

9. It also appears that the learned Courts below had recorded reason while arriving at the finding that summon was duly served upon the appellant herein. And in that view of the matter it cannot be said that Order XX Rule 4(2) of the CPC was violated.

10. Under the given facts and circumstances, no substantial question of law is found to be involved in this appeal and accordingly, the same stands dismissed at this motion stage itself.

JUDGE

Comparing Assistant