

GAHC010024292017



2026:GAU-AS:4947

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

RSA No. 167/2017

On the Death of Basiron Nessa her legal heirs

1. Haji Shaheb Ali Mollah @ Hazi Saheb Ali
S/O Late Mofez Uddin
Struck Off Vide Hon'ble Courts Order
Dated 03.03.2025
2. Baseruddin
S/O- Haji Shaheb Ali Mollah
3. Taseruddin @Toseruddin
S/O- Haji Shaheb Ali Mollah
4. Roffiquel Islam @Rofiquel Islam
S/O- Haji Shaheb Ali Mollah
5. Naseruddin
S/O- Haji Shaheb Ali Mollah
Appellant No. 1 to 5 are resident of-
Village - Kallyanpur, P.O. - Baguan
District- Goalpara, Pin-783129
6. Rahaton Nessa @Rahtul Nessa
W/O- Rufchan Ali
Village - Abrarbhita, P.O. Baguan
District - Goalpara, Pin-783129
7. Shohida Khatun
W/O- Abul Hussain
Village - Ghugudoba, P.O- Rajmita,
District - Goalpara, Pin-783129

.....Appellants

-Versus-

On the Death of Abdul Hamid his legal heirs and Others namely

1. Struck Off Vide Hon'ble Courts Order Dated 03.03.2025
2. Jobeda Khatun
D/O Late Abdul Hamid
W/O Anower Hussain Village Parlitol
P.O. Chalantapara PS Jogighopa
District Bongaigaon Pin 783388
3. Jahanara Khatun
D/O Late Abdul Hamid
W/O Taher Ali
Village Karichala PO Markula
PS Baguan District Goalpara Pin 783129
4. Nur Jahan Bewa @ Nur Jahan
S/O Late Abdvill Panikheti
PO Ramharichar PS Baguan
District Goalpara Pin 783101
5. Jahangir
S/O Late Abdul Hamid
6. Abdul Jalil
S/O Late Abdul Hamid
Respondent No. 1.5 And 1.6 are
R/O Village Pachim Pandoba
P.O. Markula P.S. Baguan
District Goalpara Pin 783129
7. Nur Furza
D/O Late Abdul Hamid
W/O Faijal Hoque
8. Nur Nehar
D/O Late Abdul Hamid
W/O Faijal Hoque
9. Basa Khatun Bewa @ Basa Khatun
D/O Abdul Hamid
W/O Late Rohim Uddin
Respondent No. 1.7 And 1.8 are resident of Village Panikheti
PO Ramharichar PS Baguan

- District Goalpara Pin 783101
10. Anowara Khatun Bewa @ Anoewara Khatun
W/O Late Abdul Hamid
 11. Joynal Abedin
S/O Late Abdul Hamid
 12. Moynal Hoque
S/O Late Abdul Hamid
Respondent No. 1.9 And 1.11 are
Resident of Village Pachim Pandoba P.O. Markula
P.S. Baguan District
Goalpara Pin 783129
 13. Khodeza Khatun
D/O Late Abdul Hamid
W/O Bakker Ali
Village Konkair Pachimpara
PO and PS Baguan
District Goalpara Pin 783129
 14. Sokina Khatun
D/O Late Abdul Hamid
W/O Ruhul Amin
Village Dosora Ambari
PO and PS Baguan
District Goalpara Pin 783129
 15. Kulsum Nessa
D/O Late Abdul Hamid
W/O Sahar Ali Village Simlabari
PO Simlabari PS Baguan
District Goalpara Pin 783129
 16. Rabia Khatun
D/O Late Abdul Hamid
W/O Samesh Ali
Village Poitari
P.O. Joybhum P.S. Baguan
District Goalpara Pin 783129
 17. Babul Hoque
S/O Late Abdul Hamid
Village Pachim Pandoba
P.O. Markula PS Baguan
District Goalpara Pin 783129
On the Death of Late Aber Uddin his legal heirs
namely

1. Struck Off Vide Hon'ble Courts Order Dated 03.03.2025
2. Hobibar Rahman @ Habibar Rahman
S/O Late Aber Uddin
Resident of Village Dosora Ambari
PO Balarbhita P.S. Baguan
District Goalpara Pin 783129
3. Nur Islam
S/O Late Aber Uddin
Village Markula
PO Markula PS Baguan
District Goalpara Pin 783129
4. Nazrul Islam
S/O Late Aber Uddin
Resident of Village Dosora Ambari
PO Balarbhita P.S. Baguan
District Goalpara Pin 783129
5. Nureza Khatun
D/O Late Aber Uddin
W/O Romjan Ali
Village Ram Hari Char
PO Ramhari Char P.S.
Panchorat District
Goalpara Pin 783101
6. Shahab Uddin @ Sahab Ali
S/O Late Sabar Uddin
7. Shaha Alom @ Shah Alom
S/O Late Sebar Uddin
Resident of Village - Dosora Ambari
Village Dosora Ambari
PO Balar Bhita
District Goalpara Pin 783129
8. Sobina Khatun
D/O Late Saber Uddin
W/O Iman Ali
Village Chalakura
PO Takimari PS Lakhipur
District Goalpara Pin 78312

.....Respondents

For Appellants : Ms. R. Choudhury, Advocate

For Respondents : Mr. N. Choudhury, Advocate

Date of Judgement **19.12.2025**

Reserved

Date of Judgment : **30.03.2026**

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

1. Heard Ms. R. Choudhury, the learned counsel for the appellants. Also heard Mr. N. Choudhury, the learned counsel for the respondents.
2. This appeal under Section 100 of the Code of Civil Procedure, 1908, has been filed by the appellants, who are the legal heirs of the original plaintiff namely, Basiron Nessa, impugning the judgment and decree dated 12.04.2017, passed by the learned Civil Judge, Goalpara, in Title Appeal No. 04/2014, whereby the judgment and decree dated 04.06.2013, passed by the Court of learned Munsif No.1, Goalpara in Title Suit No. 23/2009, was upheld and the appeal was dismissed. The Trial Court had also dismissed the suit filed by the predecessor in interest of the present appellants.
3. The facts relevant for consideration of the instant appeal, in brief, are that the predecessor in interest of the present appellants, namely, Basiron Nessa, had instituted a suit against the legal heirs of late Md. Ali Haji, (who are the predecessor in interest of

the present respondents), claiming partition of the ancestral land of the plaintiff and defendants, as per the Islamic law of succession.

4. The land of which partition was claimed in the plaint, measured approximately 40 bighas, 3 kathas and 1 lecha, left by the deceased father of the plaintiff, namely, Md. Ali Haji, and which are more specifically mentioned in Schedule A, B, C and D of the plaint.
5. It was pleaded in the plaint that at the time of his death, in the year 1977, deceased Md. Ali Haji left behind him his wife Sebaton Nessa, his deceased sons, namely, defendants Nos. 1 and 2, the only daughter, namely, plaintiff, and the legal heirs of another son, Sebar Uddin, who had expired. The legal heirs of Sebar Uddin were impleaded in the suit as defendants Nos. 3, 4, 5 and 6. It was pleaded that the plaintiff being daughter of the deceased Md. Ali Haji was entitled to 1/7th share of his property by way of inheritance. It is also contended in the plaint that though, the plaintiff was entitled to get the land measuring 5 bigha and 7 lechas out of the property of her deceased father, however, prior to death of her mother Sebaton Nessa, she was given a plot of land measuring 1 bigha, 4 kathas and 3 lechas, at Markula. The said land has been fully described in Schedule D of the plaint. She was also given another plot of land at Kadotika, measuring about 1 bigha, which is shown in Schedule "E" of the plaint. It is stated in the plaint that at that time, she did not claim the remaining portion of the share of land to which she is entitled to, as her mother was alive at that time.

6. Thereafter, in the year 1987, when her mother Sebaton Nessa died, the plaintiff approached the defendants to seek partition of the entire land, so that the land to which the plaintiff was entitled to may be given to her. However, it is alleged in the plaint that in the month of February 2007, the defendants jointly dispossessed the plaintiff, even from the land shown in Schedule-D and E, which were given to her earlier. Under the aforesaid circumstances, the plaintiff, Basiron Nessa, approached the Court of learned Munsiff No. 1, Goalpara, by filing the Title Suit No. 23/2009, seeking partition of the ancestral land of her father and mother, according to the shares to which she was entitled to.
7. The defendants contested the suit by filing written statement making usual defence therein like the maintainability of suit, misjoinder of cause of action, as well as joinder of necessary parties, amongst other defences. The defendants also took plea that their father, Md. Ali Haji, never owned and possessed the land measuring 40 bighas 3 kathas and 1 lecha, as alleged by the plaintiff in her plaint. It is also stated in the written statement that the plaintiff has not specifically described the area of land with *dag* number and *patta* number which were recorded in the names of her parents and as such it was contended that on the basis of mere speculation, the land cannot be partitioned. The allegation of dispossession of the plaintiff from Schedule-D and E land has also been denied by the defendants in their written statement.
8. On the basis of the pleadings of the parties, the Trial Court framed the following issues:

- i. Whether there is any cause of action for the suit?
 - ii. Whether the suit is maintainable in its present form and manner?
 - iii. Whether the plaintiff has paid the proper court fees.
 - iv. Whether the plaintiff is entitled to any share in the suit land?
 - v. Whether the plaintiff is entitled to partition in the suit land?
 - vi. To what relief the parties are entitled to?
- 9.** In support of her case, the plaintiff examined three witnesses (PWs), whereas the defendants examined four witnesses (DWs) in support of their case. However, by judgment dated 04.06.2013, the Trial Court dismissed the suit filed by the plaintiff. While dismissing the suit the Trial Court has held that the suit is barred by Section 34 of the Specific Relief Act, 1963 and is not maintainable in the form and manner in which it has been filed. It also reached a conclusion that since the plaintiff herself has not been able to disclose the total area of the suit land over which she has filed partition suit and has also unable to show that the aforesaid land belongs to her parents, she is not entitled to the reliefs claimed in the plaint.
- 10.** Being aggrieved by the judgment and decree passed by the Trial Court, the plaintiff Basiron Nessa preferred an appeal under Section 96 of the Code of Civil Procedure, 1908, before the Court of learned Civil Judge, Goalpara, impugning the judgment and

decree of the Trial Court. The said appeal was registered as Title Appeal No. 04/2014. During the pendency of the aforesaid appeal, the original plaintiff expired and thereafter, her legal heirs, i.e., the present appellants were substituted in her place in the aforesaid appeal. However, the First Appellate Court, by its judgment and decree dated 12.04.2017, dismissed the appeal filed by the present appellants and affirmed the judgment and decree of the Trial Court.

11. Thereafter, on being aggrieved by the decision of the First Appellate Court, the appellants have approached this Court by filing the instant Regular Second Appeal. While admitting the appeal, by its order dated 31.05.2017, this Court had formulated following substantial questions of law in this appeal:

- i. Whether the learned Court below committed wrong in dismissing the suit of the appellant/plaintiff on the face of shares mentioned under Mohammedan law for daughters, that too on the face of admission that the plaintiff/appellant is one of the legal heirs of the predecessor in interest of the parties to the suit.
- ii. Whether the judgment and decree passed by both the court below are perverse, both on appreciation of materials on record and the legal position.

12. Ms. R. Choudhury, the learned counsel for the appellants has submitted that both the courts below have committed perversity in dismissing the suit of the plaintiff even after clear admission by the defendants in their written statement, whereby, it was

admitted that the appellant/plaintiff was the daughter of late Md. Ali Haji and as such, there could not be any dispute that as per Islamic law, she is entitled to get a share to the extent of $1/7^{\text{th}}$ portion in the property left by her deceased parents. She submits that when it was admitted by the defendants that she was given land mentioned in Schedule D and Schedule E, i.e., total of 5 Bighas 4 Kathas 3 Lechas in her share, there remains no doubt that her parents would have been possessing more than 40 Bighas of land as she is entitled to get only $1/7^{\text{th}}$ share of the property of her deceased father.

- 13.** The learned counsel for the appellants submits that during the pendency of the first appeal, the plaintiff had filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, for allowing the plaintiff to adduce additional evidence at appellate stage to prove the area of land which was owned by her deceased father.
- 14.** She submits that the First Appellate Court, by its order dated 29.06.2016, passed in the Title Appeal No. 04/2014, had observed that the application for adducing additional evidence at appellate stage filed by the plaintiff would be decided at the time of final hearing of the appeal. However, while passing the impugned judgment in the appeal filed by the plaintiff, nothing was discussed about the aforesaid petition. Hence, she submits that the conclusion arrived at by the First Appellate Court while affirming the judgment and decree of the Trial Court is perverse.

- 15.** The learned counsel for the appellants has submitted that in view of the admission by the defendants that she is the daughter of late Md. Ali Haji, as well as the fact that she was given 5 bighas 4 kathas and 3 lechas of land, it was not required by her to prove that her father owned more than 40 bighas of land.
- 16.** The learned counsel for the appellants submits that in view of the admission of the defendants regarding her status as a legal heir of the deceased Md. Ali Haji, it is not required for her to seek a declaration of her title or the suit property and prayer for mere partition may be made under the facts and circumstances of the case.
- 17.** The learned counsel for the appellants submits that by not seeking any relief for declaration of title by the plaintiff, the defendants were not prejudiced in any manner. She submits that under the facts and circumstances of this case, the suit for partition is maintainable without seeking any declaration of right, title and interest over the suit property. She submits that the First Appellate Court as well as the Trial Court committed perversity in ignoring the admitted facts and dismissing the suit under Section 34 of the Specific Relief Act, 1963. She submits that the bar in the Section 34 of the Specific Relief Act, 1963 is applicable only in those declaratory suits where a declaration is sought for without seeking further relief than a mere declaration, even where the plaintiff was able to seek further relief than a mere declaration.

18. The learned counsel for the appellants further submits that the suit filed by the plaintiff was a suit for partition and in view of the admitted fact that she is the daughter of late Md. Ali Haji, for not seeking declaration of her title over the suit property, the suit cannot be dismissed. In support of her submissions, the learned counsel for the appellants has cited the following rulings:

i. Santokh Singh Vs Mahant Iqbal Singh reported in **(2000) 7 SCC 215.**

ii. Gautam Sarup Vs. Leela Jetly and Others reported in **(2008) 1 SCC 85.**

iii. Rajiv Ghosh Vs. Satyanarayan Jaiswal, reported in **(2025) 5 SCC 485.**

19. The learned counsel for the appellants has also submitted that the mother of the plaintiff, namely Sebaton Nessa, had also died in the year 1987 and the defendants have refused to give share to the plaintiff to which she is entitled to out of the property left by her deceased mother. She submits that this fact is proved by the witness of the defendant side itself namely, PW-2, Jahangir, who had deposed during his cross-examination that no partition took place after the death of the mother of the plaintiff namely, Sebaton Nessa.

20. The learned counsel for the appellant, submits that the Trial Court had erred and committed perversity in dismissing the suit for partition totally on irrelevant consideration and in view of the admissions of the defendants, the First Appellant Court's

judgment may be set aside and the suit of the plaintiff may be decreed on the basis of admission made by the defendants and the shares to which she is entitled to may be given to her. In alternative, she has made a prayer for remanding the case to the First Appellate Court to decide the application filed by the appellant under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and thereafter, allowing the appellant to adduce additional evidence and decide the matter afresh for the ends of justice.

- 21.** On the other hand, Mr. N. Choudhury, the learned counsel for the respondents has submitted that the Trial Court as well as the First Appellate Court has rightly dismissed the suit of the plaintiff as she failed to relieve the burden cast on the plaintiff seeking the relief of partition of the suit property. He submits that though the defendants admitted the fact that the plaintiff is the daughter of late Md. Ali Haji, however, the plaintiff has failed to prove the area and specification of the properties mentioned in the schedule of the plaint. The learned counsel for the respondents submits that rather during cross examination while deposing as PW-1, the plaintiff had categorically stated that she is unaware about the total area of the suit land over which she has claimed partition.
- 22.** As such, he submits that the plaintiff has failed to relieve the initial burden of proving the area of the land over which she was seeking the relief of partition. He further submits that though, the plaintiff has also claimed partition in respect of the shares of land which was left behind by her deceased mother Sebaton Nessa, however, no specification of the property, which fell in the

share of her deceased mother over which, she was also seeking partition has been mentioned in the plaint. As such, he submits that the Trial Court as well as the First Appellate Court were correct in dismissing the claim of the plaintiff as her pleadings were not specific about the land over which she was claiming partition.

- 23.** The learned counsel for the respondents has submitted that it has been stated by the defendant as well as the plaintiff has herself admitted in her claim that the plaintiff has been given share in the landed properties of deceased Md. Ali Haji which has been mentioned in Schedule D and E. Hence, a suit for the second partition is not maintainable anymore. He submits that the witnesses for defendants have deposed regarding the fact that about 30 years ago the land of the late Md. Ali Haji has already been partitioned in which the plaintiff also given her share. Hence, he submits that the suit by the plaintiff is not maintainable and the Trial Court as well as the First Appellate Court committed no perversity.
- 24.** He submits that the DW-3 namely, Rustam had deposed during his cross-examination that after the death of Sebaton Nessa, plaintiff has been given land both in Markula Village and Kadotika Village, which shows that even after death of her mother, the plaintiff got share in the property left by her deceased father and mother.
- 25.** The learned counsel for the respondents further submits that the evidence available on record is sufficient to dismiss the suit of the

plaintiff under Order 41 Rule 24 of the Code of Civil Procedure, 1908. He submits that this is a case where evidence on record is sufficient to determine the case finally and there is no need of remanding the same back to the First Appellate Court. He further submits that the plaintiff has also failed to make out a case for allowing her to adduce additional evidence at appellate stage and therefore, the prayer of the plaintiff made under order 41 Rule 27 of the Code of Civil Procedure, 1908 was rightly not considered by the First Appellate Court. In support of his submission, the learned counsel for the respondents has cited following rulings:

- i. ***Union of India Vs. Ibrahim Uddin & Another*** reported in ***(2012) 8 SCC 148***
- ii. ***Shivakumar & Others Vs. Sharanabasappa & Others*** reported in ***(2021) 11 SCC 277.***
- iii. ***Sirajudheen Vs. Zeenath and Another*** reported in ***2023 SCC online SC 196.***

26. The learned counsel for the respondents has therefore, submitted that the instant appeal is devoid of any merit and no perversity has been committed by the Trial Court or the First Appellate Court and accordingly, prayed for dismissing the appeal with cost.

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

- 28.** At the outset, it is pertinent to mention herein that the instant appeal is against concurrent findings of the First Appellate Court as well as the Trial Court whereby the suit of the appellant was dismissed mainly on two counts:
- i.** That the plaintiff failed to seek any relief of declaration of title in respect of the property over which she has sought for the partition.
 - ii.** She also failed to prove the area of landed property owned by her parents.
- 29.** Both the courts held that the suit of the plaintiff is barred by Section 34 of the Specific Relief Act, 1963. The First Appellate Court also held that the suit of the plaintiff is also barred by Section 97 of the Assam Land and Revenue Regulation, 1886. It also declined to remand back the suit to the Trial Court under Order 41 Rule 23 A of the Code of Civil Procedure, 1908 as the Appellate Court was of the view that the Trial Court did not committed any illegality regarding justifying any interference in the judgment and decree passed by the Trial Court.
- 30.** It also held that since the relief of declaration of title was not prayed for by the plaintiff, hence, even if the suit is remanded back, the plaint may be required to be amended and same cannot be done in the appellate stage. The First Appellate Court held that the suit cannot be remanded back to the Trial Court for facilitating the plaintiff to cure the formal defect of seeking relief of declaration of title over the suit land by amending the plaint.

- 31.** If we peruse the judgment of the Trial Court, which was delivered on 04.06.2013 in Title Suit No. 23/2009, it appears that the Trial Court dismissed the suit mainly on the basis of negative finding on the Issue Nos. 4 and 5 i.e., whether the plaintiff is entitled to any share in the suit land merely on the ground that she failed to prove the quantum of the suit land over which she was seeking partition and no documents relating to revenue records were exhibited by the plaintiff.
- 32.** If we peruse the substantial questions of law, which were formulated by this Court on 31.05.2017, while admitting the instant appeal, it appears that both the questions revolve around the question of perversity by the Trial Court as well as the First Appellate Court in dismissing the suit of the plaintiff.
- 33.** As regards the first substantial question of law is concerned, it appears that the Trial Court as well as the Appellate Court have not discussed the question of entitlement of the plaintiff over her parents' property. On perusal of the judgment passed by the Trial Court, it appears that the Trial Court, while deciding the Issue Nos. 4 and 5, which relates to the entitlement of plaintiff to any share in the suit land, as well as to whether she is entitled to claim partition of the suit land. The basis of her entitlement, i.e., being the daughter of the late Md. Ali Haji, was not considered by both the Courts. Rather, it decided the issue against the plaintiff merely on the ground that she failed to prove as to what was the total area of the suit land over which the partition has been claimed.

- 34.** On perusal of the records, it appears that the original plaintiff as well as the present appellants, who were substituted as appellants in place of the original plaintiff in the first appeal, had filed applications which were registered as Petition No. 786/2015 and Petition No. 132/2016, wherein prayer under Order 41 Rule 27 of the Code of Civil Procedure, 1908 was also made for allowing the plaintiff to adduce additional evidence at appellate stage in order to prove some original documents relating to the suit land.
- 35.** Though, the First Appellate Court by its order dated 29.06.2016 passed in Title Appeal No. 04/2014 observed that the petition will be heard along with the final hearing of the appeal, however, in the impugned judgment passed in the first appeal, apart from mentioning about the petition filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 by the appellants nothing has been discussed as to whether the said application was allowed or dismissed. Even if, by way of implication, it is deemed to have been rejected, in that case also it suffers from the vice of absence of any reasons for doing so.
- 36.** This Court is of the considered opinion that the First Appellate Court ought to have considered and given a finding on the prayer of the appellants under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for adducing additional evidence at appellate stage. The grounds taken in the applications filed by the appellants as well as their predecessor in interest i.e., the original plaintiff in her petition, which was numbered as Petition No. 786/2015, are mainly that the plaintiff had no personal

knowledge about the existence of records of right in her name, in respect of the suit land in spite of her due diligence. The said plea has never been considered or discussed by the First Appellate Court, either at the time when the application was filed or at the final hearing in the impugned judgment itself.

- 37.** Hence, considering the first appeal, without considering the application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 filed by the appellant during the pendency of the first appeal, brings an element of perversity in dismissing the first appeal. If the First Appellate Court would have allowed the said application, the final outcome of the first appeal could have been different, which this Court is not in a position to infer now.
- 38.** This Court is, therefore, of the considered opinion that rendering of the judgment in the first appeal by the First Appellate Court, without even considering the application filed by the appellant under Order 41 Rule 27 of the Code of Civil Procedure, 1908 brings an element of perversity in arriving at the final outcome in the appeal, due to the possibility of exclusion of material evidence. Same can be cured only by considering the applications filed by the appellants under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (Petition No. 786 dated 19.08.2015 and Petition No. 132 dated 14.03.2016), afresh by the Appellate Court.
- 39.** For the aforesaid reasons, the case is to be remanded back to the First Appellate Court to decide the aforesaid applications and thereafter, decide the appeal giving afresh judgment depending

upon the outcome of the decision of the applications filed by the appellants under Order 41 Rule 27 of the Code of Civil Procedure, 1908.

- 40.** One another pertinent matter, which needs to be clarified here that though, the First Appellate Court in Paragraph No. XIII of the impugned judgment has observed that the Civil Court cannot partition the properties as there is specific bar under Section 97 of the Assam Land and Revenue Regulation, 1886. However, this Court is of the considered opinion that the partition dealt with by Section 97 of the Assam Land and Revenue Regulation, 1886, is the partition of a revenue paying estate, whereas the partition suit filed by the appellants is regarding ascertaining the extent of shares in the suit land, amongst the legal heirs of the deceased parents of the plaintiffs. In a partition suit the extent of share to which the plaintiff is entitled to in a property, which is jointly owned by the plaintiffs and defendants is considered. Whereas, in partition under Section 97 of the Assam Land and Revenue Regulation, 1886, the division of revenue paying estate into one or more such estates amongst the joint pattadars is made by the Revenue Authority. Hence, a suit for partition before a Civil Court and a partition proceeding under Section 97 of the Assam Land and Revenue Regulation, 1886, are two distinct procedures dealt with by different authorities the former is dealt with by a Civil Court whereas later is dealt with by a Revenue Authority. Hence, the observation made by the First Appellate Court that the suit for partition is barred under Section 97 of the Assam Land and Revenue Regulation, 1886, is not correct.

- 41.** As the defendants have not disputed the status of the plaintiff Basiron Nessa as the daughter of late Md. Ali Haji and that she is entitled to inherit the extent of share allowed to a daughter as per Islamic rights, hence, the suit filed by the plaintiff cannot be regarded as hit by the proviso to Section 34 of the Specific Relief Act, 1963, as the said proviso operates as bar for the Court in making a declaration in granting a relief of declaration where the plaintiff has not sought further relief than a mere declaration of title and not vice versa. Hence, this Court is of considered opinion that the suit of the plaintiff ought not to have been dismissed by holding that same is barred by Section 34 of the Specific Relief Act, 1963.
- 42.** In view of these discussions made in the following paragraphs and reasons stated thereon this Court is of considered opinion that the decision of the Trial Court as well as the First Appellate Court exhibits a clear strain of perversity and as such, the impugned judgment is set aside.
- 43.** The case is remanded back to the First Appellate Court with a direction to consider the application filed by the original plaintiff, which was registered as Petition No. 786/2015 under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for allowing the plaintiff to adduce additional evidence at appellate stage. After considering the said application and depending on the outcome of the such consideration the Appellate Court shall proceed with the appeal and dispose of the appeal by rendering a fresh judgment taking into consideration all the materials available before the Court on record.

- 44.** Send back the records of Trial Court as well as the Appellate Court along with a copy of this judgment to the First Appellate Court i.e., the learned Civil Judge, Goalpara immediately.
- 45.** Since both the parties are represented by their engaged counsel, they are directed to appear before the First Appellate Court i.e., the learned Civil Judge, Goalpara either in person or through their engaged counsel on **18.05.2026** in Title Appeal No. 04/2014 so that the First Appellate Court may comply with the directions given in this judgment.
- 46.** This Regular Second Appeal is, accordingly, disposed of.

JUDGE

Comparing Assistant

**Amita
Sharma** Digitally signed
by Amita Sharma
Date: 2026.04.06
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