

GAHC010056282021



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

Case No. : RSA/69/2021

KASHEM ALI AND 2 ORS.
S/O. LT. MOYEZ UDDIN, R/O. VILL. MOTIRCHAR, P.S. AND DIST. DHUBRI,
ASSAM.

2: MUSSTT. FATEMA KHATUN BIBI
W/O. KASHEM ALI
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI
ASSAM.

3: a) MD. SIRAJUDDIN AHMED (SON)
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI ASSAM.

3: f) MUSSTT. GOLENA AKHTAR AHMED (DAUGHTER)
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI ASSAM.

3: d) MD. NASIUR AHMED (SON)
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI ASSAM.

3: LEGAL HEIRS OF LT. GOIJUDDIN MONDOL AND MUSSTT. AZIRAN BEWA
REPRESENTED-

3: e) MUSSTT. RUNI AHMED (DAUGHTER)
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI
ASSAM.

3: c) MD. NASIB AHMED (SON)
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI ASSAM.

3: b) MD. MOKTAR AHMED (SON)
R/O. VILL. MOTIRCHAR
P.S. AND DIST. DHUBRI
ASSAM

VERSUS

ABDUL WAHAB MONDOL AND 7 ORS.
S/O. LT. ALEPUDDIN MONDOL, VILL. AMERBHITA, P.S. AND DIST. DHUBRI,
ASSAM.

2:MD. GUL SANOWAR MONDAL

S/O. LT. KHALIL UDDIN MONDOL
VILL. JHAGAR PART-I
P.S. AND DIST. DHUBRI
ASSAM.

3:MD ASBDUL BAREK MONDOL
S/O. LT. KHALIL UDDIN MONDOL
VILL. JHAGAR PART-I
P.S. AND DIST. DHUBRI ASSAM.

4:MD. MOHIRUDDIN MONDOL

S/O. LT. KHALIL UDDIN MONDOL
VILL. JHAGAR PART-I
P.S. AND DIST. DHUBRI
ASSAM.

5:MD. KAMRUL HOQUE MONDOL
S/O. LT. GOLZAR HOSSAIN MONDOL
VILL. JHAGAR PART-I
P.S. AND DIST. DHUBRI
ASSAM.

6:THE SENIOR SUB REGISTRAR
DHUBRI P.S.
P.O. AND DIST. DHUBRI
ASSAM.

7:THE ADDL. DY. COMMISSIONER
PATTAN BRANCH
DHUBRI.

8:THE STATE OF ASSAM
REP. BY THE COLLECTOR DHUBRI
P.O.

P.S. AND DIST. DHUBRI

Advocate for the Petitioner : MR. A ALAM

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 03.08.2021

Heard Ms. S. Roy, learned counsel for the appellant. Also heard Mr. U. Das, learned counsel for the respondents No. 6, 7 and 8.

The appeal is admitted for hearing on the following issues.

- (i) Whether the defendants having failed to prove that the suit is not maintainable, the learned lower Appellate Court was justified in reversing the finding of the learned trial court by holding that the suit of the plaintiffs is not maintainable in its present form and manner?
- (ii) Whether the learned lower Appellate Court erred in law for holding that there is no cause of action of the suit inasmuch as when the facts in the plaint asserted by the plaintiffs are denied by the defendants in their written statement?
- (iii) Whether evidence on record established that the defendant No. 1 has received a part consideration amount of Rs. 60,000/- on different dates as against the total sale consideration of Rs. 88,000/-, the learned Appellate Court was justified in holding that the plaintiffs have failed to prove that they were ever ready and

willing to perform their part of obligation towards execution of the sale deed on the strength of Ext.1?

- (iv) Whether the First learned Appellate Court erred in law in presuming that the plaintiffs abandoned the agreement Ext. 1 when the defendants failed to prove that the parties have arrived at an agreement to substitute the old agreement vide Ext. 1 with a new contract vide Ext.A?
- (v) Whether the mutual oral agreement between the plaintiffs to execute the sale deed in favour of the plaintiff No. 1 is not on consistent with the Ext. 1, the learned First Appellate Court was justified in holding that the decree for specific performance of contract cannot be decreed in favour of the plaintiff No. 1?

Issue notice returnable on six weeks.

Since, Ms. U. Das, learned counsel has entered appearance on behalf of the respondents No. 6, 7 and 8, no formal notice need be issued to the said respondents. However, extra copy of the appeal memo shall be furnished to him within one week. Steps for service of notice on the remaining respondents shall be taken by registered post with A/D and also other usual process within three days.

Call for the LCR.

List this matter after six weeks.

JUDGE