

GAHC010106302010



2026:GAU-AS:2350

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

Case No. : RSA/91/2010

MD. SHAFIQR RAHMAN CHOUDHURY and ANR
S/O LATE HAJI AHMED ALI CHOUDHURY.

2: MD. SIRAJ UDDIN CHOUDHURY

S/O LATE HAJI AHMED ALI CHOUDHURY
BOTH RESIDENTS OF VILL. KARIMGANJ
DIST. KARIMGANJ
ASSAM

VERSUS

MD. BAHARUL ISLAM CHOUDHURY and 8 ORS,
S/O LATE ASSADAR ALI CHOUDHURY.

2:MD. ABDUL QUYAM CHOUDHURY

S/O LATE ASSADAR ALI CHOUDHURY.

3:MD. HARUN RASHID CHOUDHURY

S/O LATE ASSADAR ALI CHOUDHURY.

4:MD. ABAAS UDDIN CHOUDHURY

S/O LATE ASSADAR ALI CHOUDHURY

5:MUSTT. JOBURA KHATUN

W/O LATE ASSADAR ALI CHOUDHURY

6:MUSTT. LAILA BEGUM CHOUDHURY

W/O LATE ABDUL FATTAH CHOUDHURY.

7:MD. SURAB UDDIN CHOUDHURY

S/O LATE ABDUL FATTAH CHOUDHURY

8:DILWAR HUSSAIN CHOUDHURY

S/O LATE ABDUL FATTAH CHOUDHURY.

9:MD. ANWAR HUSSAIN CHOUDHURY

S/O LATE ABDUL FATTAH CHOUDHURY
ALL RESIDENTS OF VILL. SUPRAKANDI
P.O. MANIKGANJ
P.S. KARIMGANJ
DIST. KARIMGANJ
ASSAM

Advocates for the appellant : Mr. B. Malakar, Adv.

Advocates for the respondents : None appeared.

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 12.02.2026.

Date of pronouncement of judgment : 18.02.2026.

Whether the pronouncement is of the : No.

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

Heard Mr. B. Malakar, learned counsel for the appellants. None appears for the respondents.

2. This Regular Second Appeal has been preferred against the impugned Judgment & Decree dated 16.06.2009, passed by the learned Addl. District Judge, FTC, Karimganj in Title Appeal No. 6 of 2005, allowing the appeal and thereby reversing the Judgment & Decree dated 09.07.2002 passed by the learned Civil Judge, Junior Division-I, Karimganj, in Title Suit No. 180/1999, by which the suit of the plaintiff/present respondents was dismissed.

3. The facts leading to the present second appeal may be briefly outlined. The present respondents had instituted a suit against the present appellants before the Court of the learned Civil Judge, Junior Division, Karimganj, seeking declaration of their landholder right and confirmation of possession over the scheduled land (hereinafter referred to as the Suit Land), along with consequential relief of permanent injunction as well as cancellation of the document described in Schedule-2 to the plaint, i.e., a Sale Deed alleged to be executed by the plaintiffs in favour of the defendants.

4. It was the case of the plaintiffs that the land described in Schedule-1 of

the plaint was purchased by the plaintiff No. 1 on 25.1.1976 from Atul Chandra Malakar and others vide registered document No. 6298 of Sub-Registrar, Karimganj. On 22.9.1980 the plaintiff No. 1 sold that plot of land to Abdul Hoque, vide registered Deed No. 9496 of Karimganj Sub-Registrar. The possession of the land was also delivered to Abdul Hoque on the same date. On 6.11.1985 said Abdul Hoque sold the said land to plaintiff Nos. 1 to 4 and their two brother, viz., Abdul Fattah Choudhury and Salim Uddin Choudhury vide registered document No. 8571 dated 29.11.1985 of Karimganj Sub-Registrar. Possession of the said land was also delivered to the aforesaid purchaser and since 6.11.1985, they have been possession the aforesaid land in ejmali. Abdul Fattah Choudhury and Selim Uddin Choudhury died leaving behind their legal representative, the plaintiffs No. 5 to 7. The defendants No. 1 and 2 are neighbors of the plaintiffs and they had a good relationship. The said defendants requested the plaintiff No. 1 to help them in obtaining loan from the bank. Accordingly, the plaintiff No. 1 put some signatures in both blank stamp paper and blank plain papers on good faith to help the defendant Nos. 1 and 2. The plaintiff No. 1 also handed over the xerox copy of his purchase deed. But on 6.11.1994 the plaintiffs got knowledge that the defendant Nos. 1 and 2 created a fraudulent sale deed dated 8.4.1994, in respect of the said land by using the signed blank stamped papers wherein it

is written that the plaintiff No. 1 received Rs. 10,000/-.

5. The defendant Nos. 1 and 2 submitted their written statement. They have stated that the suit land (the land described in the schedule-1 of the plaint) belonging to the plaintiff No. 1 and on 8.4.1994, the plaintiff No. 1 executed sale deed on receipt of Rs 10,000/-, as consideration money and also handed over the possession of the land to the defendant, but did not turn up before the Sub-Registrar for registration, that is why registration of the deed was refused and subsequently on appeal, District Registrar directed the Sub-Registrar to register it and then the Sub-Registrar registered the deed.

Following Issues were framed by the court below:-

1. Whether there is any cause of action for the suit?
 2. Whether the suit is maintainable in its present form?
 3. Whether the plaintiff has got right, title and interest over the suit land?
 4. Whether the deed No. 5103 dated 8.4.1994 is void?
 5. Whether the plaintiff is entitled to get relief as prayed for?
- 6.** During trial the plaintiff No. 1 examined himself as P.W 1 and exhibited

three documents vide Exhibit-1, 2 and 3. The defendant side cross-examination him. The defendant also examined defendant No. 2 as DW 1. DW 2 is Haji Abdul Salam Choudhury; DW 3 is Sri Satyabrata Choudhury. DW 4 is Abdul Latif and DW 5 is Abdul Aziz. At the time of preparing the judgment, the court below struck off Issue No. 2 and decided all other issues against the plaintiffs. While deciding the Issue No. 5, the court below held that deed No. 8803 dated 29.11.1985 is not admissible in the eye of law due to non-examination of attesting witness and executants. The court below dismissed the suit accordingly.

7. Being aggrieved, the plaintiffs therein preferred an appeal as aforesaid, which came to be decided in favour of the plaintiffs/appellants by the learned Addl. District Judge, FTC, Karimganj, by way of the impugned order, and the suit of the plaintiff was decreed.

8. At the time of admission of the instant second appeal, the following substantial questions of law were formulated:

“(1) Whether the plaintiff could prove the Exhibit-1, sale deed, as required by law?

(2) Whether the judgment of the learned First Appellate Court is in accordance with the provisions of Order 41 Rule 31 of the Code of Civil

Procedure, 1908, as there was no discussion on the evidences on record.”

9. The question No. 1 is taken up first for discussion. The learned Trial Court, upon discussion of the evidence, held with regard to the question at hand as follows:-

“Plaintiff side in order to show that the suit land is the joint property of plaintiff No. 1 and his brothers has produced registered deed No. 8803 dated 29.11.85, but the said document was not proved either by the Scribe or executants or attesting witnesses as such said document is not admissible in evidence.”

10. As against the above finding, the learned First Appellate Court came to the following findings:-

1. The plaintiffs’ claim is based on Exbt.-1 deed dated 29.11.1985.
2. The defendant did not challenge the sale of the Suit land to Dr. Abdul Hoque in the year 1980 and its resale by Dr. Abdul Hoque to the plaintiffs and his brothers by way of the sale deed dated 29.11.1985 (Exbt.-1).
3. Hence, the evidence of the PW-1 was sufficient to prove that the plaintiffs and his brothers purchased the suit land on

29.11.1985 vide the Exbt.-1 sale deed and hence, the said Ext. has evidentiary value, although the plaintiff did not prove the signatures of the executants, scribe or the attesting witnesses of the said Exbt.-1 sale deed.

11. Therefore, the question revolves around whether the Exbt.-1 was proved in accordance with law, as otherwise, the finding of the learned First Appellate Court that the same has evidentiary value cannot be sustained in law.

12. Section 67 of the Evidence Act states as follows:-

“67. Proof of signature and handwriting of person alleged to have signed or written document produced. — If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting.”

13. Further, Section 68 of the Evidence Act reads as follows:-

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an

attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

14. As per prevalent practice, it is often seen that attestation of all kinds of transfer under the Transfer of Property Act including sale, lease, exchange, mortgage, and gift is sought to be proved during trial. However, the requirement of attestation under the Act is explicitly mentioned in two kinds of transfer, i.e., mortgage and gift, vide Section 59 and Section 123 respectively. In contrast, as far as sale is concerned, which is dealt with vide Section 54 of the Transfer of Property Act, the relevant part thereof states the following:-

”54. Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of a reversion or other intangible thing, can be made only by registered instrument.”

15. Whereas Section 59 dealing with mortgage and Section 123 dealing with gift requires both to be effected by way of a registered instrument, there is the added requirement that the same should be attested by at least

two witnesses. However, there is no such requirement in the case of sale under Section 54.

16. In *Bayanabai Kaware vs. Rajendra*, reported in (2018) 1 SCC 585, it was held by the Hon'ble Apex Court that:-

“18.....The execution of the sale deed does not need any attesting witness like the gift deed, which requires at least two attesting witnesses at the time of its execution, as per Section 123 of the Transfer of Property Act, 1882.”

17. A similar observation was made in *Hans Raji vs. Yosodanand*, reported in (1996) 7 SCC 122.

18. Therefore, a sale deed is not a document that is required by law to be attested and therefore, it is Section 67 of the Evidence Act that would come into play in case of a sale deed, which requires that if the document is alleged to be signed by any person, the signature of that person must be proved. In simple terms, the signature of the executant of the Sale Deed must be proved in any manner permitted by law to make it admissible in evidence.

19. It is an admitted fact that the signature of the executant of Exbt-1, Dr. Abdul Hoque, has not been exhibited or proved in any other manner, as the

perusal of the evidence of PW-1 makes it abundantly clear. There is no manner in which the plaintiffs can be said to have proved the signature of the executant of Exbt-1, either by any direct or circumstantial evidence. Therefore, the requirement of Section 67 of the Evidence Act has not been met in the instant case and therefore, the Exbt-1 sale deed cannot be said to have been proved in accordance with law.

20. Furthermore, Section 91 of the Evidence Act provides as follows:-

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.— Wills [admitted to probate in 4 [India]] may be proved by the probate.”

21. In the instant case, although the document in question, i.e., Exbt-1

registered sale deed, was tendered in evidence, since it was not proved in accordance with law as laid down in Section 67 of the Evidence Act, the bar of Section 91 of the Evidence Act would apply and hence, the learned First Appellate Court could not have considered the oral evidence of PW-1 with regard to the disposition of the suit land to hold that the instrument in question has evidentiary value and thereafter, proceed to decree the suit on that premise.

22. Further, the finding of the learned First Appellate Court that the defendants neither challenged the fact of sale of the suit land to Dr. Abdul Hoque nor the fact of purchase of the suit land by plaintiffs (plaintiff Nos. 1 to 4 and their two brothers) from Dr. Abdul Hoque appears to be vitiated by perversity, inasmuch as the defendants in their written statement at paragraph 8 have specifically stated that the rest of the story of the plaintiff selling the suit land to one Dr. Abdul Hoque and then again repurchasing the same suit land by the plaintiff No. 1 and his brothers are denied by the answering defendants.

23. The Hon'ble Supreme Court, with regard to the scope of a Second Appeal under Section 100 CPC, in *Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar*, reported in (1999) 3 SCC 722 has laid down as under:-

“It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

24. In the instant case, the conclusions drawn by the learned First Appellate Court were clearly erroneous, being contrary to the mandatory provisions of law, i.e., Sections 67 and 91 of the Evidence Act, and also

against the settled position of law. Furthermore, the conclusions of the First Appellate Court were clearly based upon inadmissible evidence. Hence, it is a fit case where interference in second appeal is called for by holding that Exbt-1 was not proved in accordance with law by the plaintiffs. The question No. 1 stands answered accordingly.

25. The second question framed at the time of admission of the instant appeal as a substantial question of law is whether the judgment of the learned First Appellate Court is in accordance with the provisions of Order 41 Rule 31 of the CPC, as there was no discussion on the evidence on record.

26. Order 41 Rule 31 of the CPC provides as follows:-

“31. Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state-

(a) The points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.”

27. But the question as framed is limited to whether there was any violation of the provisions of Order 41 Rule 31 of the CPC due to non-discussion of the evidence on record, and not of any other requirement laid

down in the aforesaid provision.

28. The Hon'ble Supreme Court in *Somakka (Dead) by LRS vs. K.P. Basavaraj (Dead) by her LRS*, in *Civil Appeal No. 1117 of 2009* decided on 13.06.2022, after considering a catena of precedents, held as follows:-

“From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the Trial Court. The impugned judgment of the High Court is thus unsustainable in liable to be set aside.”

29. On perusal of the First Appellate Court's judgment, it does not appear to be the case where there was no discussion at all of the evidence on record taken into consideration by the learned Trial Court, but the question of the extent or adequacy of such discussion of the evidence, is a pure question of fact and not of law, much less a substantial question of law. Therefore, the said question does not require adjudication in the present second appeal, although it may have been amenable to discussion in a civil revision on the ground of commission of any material irregularity by the learned First

Appellate Court.

30. In view of what has been discussed above, and in view of the answer to the substantial question of law No. 1, as formulated by this Court at the time of admission, the impugned Judgment & Decree of the First Appellate Court cannot be sustained and is accordingly set aside.

31. The Judgment & Decree of the learned Trial Court stands affirmed and the instant second appeal stands allowed.

JUDGE

Comparing Assistant