

GAHC010106632023



2026:GAU-AS:13557

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

Case No. : CRP(IO)/150/2023

ABDUL MALIK
SON OF LATE AYAB ALI,
RESIDENT OF VILLAGE- MANIKUNA,
P.O.- KALIMA,
DISTRICT- KARIMGANJ, ASSAM.
PIN- 788712.

VERSUS

SAHADEV RAM NAMASUDRA AND ANR
S/O- LATE ANIL NAMASUDRA
RESIDENT OF VILLAGE- LAUTIKAR,
P.O.- MANIKGANJ,
DISTRICT- KARIMGANJ, ASSAM,
PIN- 788712.

2:ON THE DEATH OF INTAZ ALI
HIS LEGAL HEIRS-

2.1:ABDUL QUYUM CHOUDHURY
S/O- LATE INTAZ ALI

R/O- VILLAGE- KHUDPURAHURIA

P.O.- MANIKGANJ

DISTRICT- KARIMGANJ
ASSAM

PIN- 788712.

2.2:ABDUL KALAM CHOUDHURY

S/O- LATE INTAZ ALI

R/O- VILLAGE- KHUHPURAHURIA

P.O.- MANIKGANJ

DISTRICT- KARIMGANJ
ASSAM

PIN- 788712.

2.3:ABDUL SALAM CHOUDHURY
S/O- LATE INTAZ ALI

R/O- VILLAGE- KHUHPURAHURIA

P.O.- MANIKGANJ

DISTRICT- KARIMGANJ
ASSAM

PIN- 788712

Advocate for the Petitioner : MR. D HUSSAIN, MR. R A MAZUMDER, MD E AHMED, MR M ISLAM, MR. R A CHOUDHURY

Advocate for the Respondent : MR. N H MAZARBHUIYAN (r-2.1), MS. L WAJEEDA (r-2.1), MR R I BHUYAN (r-2.1), MR. M H SAIKIA (r-2.1)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

14.09.2026

[1] Heard Mr. D. Hussain, the learned counsel for the petitioner. Also heard Mr. I.S. Mazarbhuiyan, the learned counsel appearing on behalf of Mr. N.H. Mazarbhuiyan, the learned counsel for the respondent No. 2.

[2] It appears that the other respondents have

not appeared in this case.

[3] Though a coordinate bench of this court, by its order dated 11.09.2024, has held that the notices issued to the other respondents are deemed to be served. As such, this court is proceeding *ex-parte* against the absentee respondents.

[4] This civil revision application under Article 227 of the Constitution of India has been filed by the petitioner, Sri Abdul Malik, impugning the order dated 21.03.2023, passed by the court of learned Munsiff No. 2, Karimganj, whereby prayer for sending the Exhibit-1 for forensic examination to ascertain as to the thumb impression, which appears in the said exhibit, is of thumb impression of the defendant No. 1, namely, Sri Sahadev Ram Namasudra was rejected.

[5] The facts relevant for consideration of this civil revision application, in brief, are that the present petitioner, as plaintiff, has preferred a Title Suit bearing T.S. No. 52/1999 before the court of learned Munsiff No. 2 Karimganj, praying for specific performance of contract. On the basis of the unregistered agreement dated 16.01.1998, which has been exhibited by the present petitioner, in the trial of the aforesaid title suit as Exhibit-1.

[6] The said agreement for sale was executed on 16.01.1998, by the defendant No.1, in favour of the

present petitioner, which the defendant is denying. In the aforesaid suit, the plaintiff has examined 6(six) witnesses and the defendant has also examined 2(two) witnesses and the suit is pending at the argument stage.

[7] The learned counsel for the petitioner submits that on 28.09.2022, the plaintiff /present petitioner, filed an application, which was numbered as Petition No. 21/2001, praying for sending the Exhibit-1 for expert opinion regarding the fact as to whether the thumb impression appearing on Exhibit-1, is the thumb impression of the defendant No.1, namely, Sri Sahadev Ram Namasudra. However, by the impugned order dated 21.03.2023, the trial court rejected the said petition.

[8] The learned counsel for the petitioner has submitted that under Section 39 of the Bharatiya Sakshya Adhinyam, the court may call for an opinion regarding genuineness of finger impression (thumb impression in this case), from expert in that field. He further submits that the court has also power to order comparison of thumb impression appearing on the Exhibit-1 with the admitted thumb impression of the defendant No. 1, under Section 72 of the Bharatiya Sakshya Adhinyam.

[9] He further submits that, since the defendant has denied putting his thumb impression over Exhibit-1, the said fact is a relevant fact and it would

assist the court to come to a definite finding regarding genuineness of the thumb impression which appears on Exhibit-1. He further submits that obtaining expert opinion in this regard would help the court in rendering a just decision in the pending title suit.

[10] In support of his submission, he has cited a ruling of coordinate bench of this court, in the case of "***Mahendra Saikia And Anr. Vs. Biren Saikia,***" [order dated 06.12.2024, passed in CRP (IO) No. 500/2024].

[11] On the other hand, Mr. I.S. Mazarbhuiyan, has opposed the said prayer of the petitioner on the ground that the trial court has correctly rejected the prayer for sending the thumb impression of the defendant No. 1 on Exhibit-1 for expert opinion on the ground that the plaintiff has got sufficient opportunity to prove the execution of Exhibit-1 by defendant No. 1 and has also adduced the evidence of 6(six) witnesses in this regard. He submits that the trial court has rightly rejected the prayer on the ground that the Title Suit No. 52/1999 is an old pending case and fixed at the stage of argument when the prayer for sending the thumb impression on Exhibit-1 for expert opinion was made. He submits that the trial court also took into consideration the fact that a similar application was made by the petitioner on 12.08.2015, however, he did not pursue

the said matter. He submits that the trial court was right in rejecting the prayer for sending the thumb impression on Exhibit-1 for expert opinion at this belated stage. As such, he submits that the instant CRP(IO) filed by the petitioner is liable to be dismissed.

[12] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for the petitioner in support of his submission.

[13] Though, there is no doubt that the trial court has the power to order comparison of thumb impression on a document, which is disputed, like in this case the thumb impression of Exhibit-1 with an admitted thumb impression of defendant No. 1 under Section 72(3) of the Bharatiya Sakshya Adhiniyam, 2023. However, this power is discretionary and the court may exercise such discretion, if the facts and circumstances of a case warrant so.

[14] In the instant case, the prayer for referring the thumb impression of the defendant No. 1 on Exhibit-1 was rejected by the trial court mainly because of the fact that such a prayer was made at a belated stage when the suit was pending for final argument as well as on the ground that similar prayer was made earlier in the year 2015. The trial court also took into consideration

the fact that the plaintiff got sufficient opportunity of cross-examining the defendants' witnesses, as such, after closure of plaintiff's and defendants' witnesses when the matter was fixed for final argument, the trial court did not find it justified to direct such an examination. Under such circumstances, the exercise of discretionary jurisdiction may not be regarded as the perverse or arbitrary exercise of powers.

[15] It is a well settled proposition of law that in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or facts or just because another view than the view taken by the courts subordinate to it is a possible view. In other words, the supervisory jurisdiction has to be very sparingly exercised. In the instant case, the reasons cited by the trial court for rejecting the prayer for referring the Exhibit-1 for expert opinion cannot be regarded as arbitrary, capricious or perverse justifying any interference by this court in exercise of its supervisory powers.

[16] In view of the discussions made and reasons stated in the foregoing paragraphs, this court does not find any infirmity in the impugned order justifying interference by this court. As such, this CRP (IO) is dismissed.

[17] The stay of further proceeding of Title Suit

No. 52/1999 granted earlier by a co-ordinate bench of this court is hereby vacated. The trial court is directed to proceed with the title suit and bring it to its logical conclusion at the earliest.

[18] Let a copy of this judgment be sent to the trial court for information and doing the needful.

JUDGE

Comparing Assistant