

GAHC010113802015



2026:GAU-AS:4616

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

RSA 25 of 2015

1. Sri Hem Chandra Borah
S/O Late Fatik Ch.Bora,
R/O Village Chatial, Mouza Chatial,
District - Nagaon, Assam

.....Appellant

-Versus-

1. Sri Tarini Kanta Borah
S/O Late Fatik Chandra Bora,
R/O Vill. Chatial, Mouza-Chatial,
District - Nagaon, Assam.

.....Respondent

For Appellant	:	Mr. P Sundi, Advocate
For Respondents	:	Ms. U. Chakraborty, Advocate
Date of Hearing	:	09.12.2025
Date of Judgment	:	30.03.2026

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

- 1.** Heard Mr. P Sundi, the learned counsel for the appellant. Also heard Ms. U. Chakraborty, learned counsel for the respondent.
- 2.** This appeal under Section 100 of the Code of Civil Procedure 1908, has been preferred by the appellant, Sri Hem Chandra Borah, impugning the judgment and decree dated 08.07.2014 and 18.07.2014, respectively, passed by the Court of learned Civil Judge, Nagaon in Title Appeal No. 27/2013, whereby the judgment and decree dated 30.04.2013 and 20.05.2013 respectively, passed by the Court of learned Munsif, Kaliabor, Nagaon in Title Suit No.13(K)/2011 was set aside and reversed.
- 3.** The Trial Court had dismissed the suit of the respondent. Whereas, the First Appellate Court by reversing the finding of the Trial Court had decreed the suit of the respondent/plaintiff.
- 4.** The facts relevant for consideration of the instant Regular Second Appeal, in brief, are that both the parties here to are brothers and son of late Fatik Chandra Bora. The father of the parties in this appeal, namely, late Fatik Chandra Bora died in the year 1987 leaving behind four sons including the present appellant and respondent and two daughters and his wife. His wife, namely, Pratima Bora also died in the year 1989. During the lifetime of late Fatik Chandra Bora, he gave shares of his landed property to his two daughters, who were married during his

lifetime. After his death his property devolved upon his legal heirs including his sons and his wife.

5. Late Fatik Chandra Bora had a landed property measuring 02 bighas and 14 lechas and over the said property there is a two-storied wooden residential building. the said property is situated in village Chatial Kissam, Mouza Chatial, covered by Dag No.782 under Periodic Patta 204.
6. The present respondent, namely, Tarini Kanta Borah, after the death of his father, filed a suit before the Court of learned Munsif at Kaliabor against the present appellant, namely, Hem Chandra Borah, claiming half of the share of the aforesaid property. The said suit was registered as Title Suit No. 13/2011. In the plaint of the aforesaid suit, it was pleaded by the present respondent that his late father, in the year 1980, had gifted the aforesaid property measuring 2 bigha 12 lechas to the present appellant and respondent equally in two parts and, thereafter, their names were mutated in the records of right. It is further pleaded that after the death of the father of the plaintiff and defendant the present appellant occupied entire plot of land along with the buildings situated thereof. When the plaintiff requested the defendant to vacate his share of the land, the defendant refused to do so and, hence, he was compelled to file the suit.
7. In the aforesaid suit the present respondent sought for a relief of declaration of his right, title and interest over half of the share of the suit property and consequential relief of partition and delivery of khas possession of the half of the share of the suit property as

well as a relief of permanent injunction for restraining the present appellant from disturbing the possession of the plaintiff over his share of this suit land.

8. The present appellant, after institution of the suit, and after receiving the summons from the Trial Court, as defendant, contested the suit by filing written statement wherein he took, apart from usual defences of maintainability and of limitation, a defence that no gift deed was executed by their deceased father during his lifetime as pleaded by the plaintiff in his claim. It was also pleaded that it is the defendant/present appellant, who was in possession of the suit land and was residing there along with his family.
9. On the basis of the pleadings of the parties, the Trial Court framed following issues in the aforementioned Title Suit:
 - i. Whether there is any cause of action for the suit?
 - ii. Whether the suit is maintainable in its present form?
 - iii. Whether the suit is barred by law of limitation?
 - iv. Whether the suit is bad for non-joinder of necessary parties?
 - v. Whether the suit is properly valued and proper court fee has been paid?
 - vi. Whether the plaintiff is entitled to a decree of half share over the suit land, suit property with consequential relief of possession and separate possession of suit land and buildings

described in the schedule of the plaintiff equally into two parts by evicting the defendant from plaintiff's share?

vii. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for in respect of the suit land and building?

viii. To what other reliefs the plaintiff, the parties are entitled to?

10. In support of his case, the plaintiff examined three plaintiff witnesses and exhibited certain documents. The defendant also examined himself as DW-1 and exhibited certain documents. However, by the judgment dated 30.04.2013, the Trial Court had dismissed the suit of the plaintiff by deciding the issue No. 6, 7 and 8 against the plaintiff, though, other issues were decided in favour of the plaintiff.

11. Being aggrieved by the judgment and decree of the Trial Court, the plaintiff/present respondent filed an appeal before the Court of learned Civil Judge, Nagaon, Assam, impugning the aforesaid judgment and decree. The said appeal was registered as Title Appeal No.27/2013.

12. The First Appellate Court formulated following point for determination in the aforesaid first appeal:

"Whether plaintiff is entitled to half share of the suit property and he has right, title and interest in respect of half share of the suit properties and whether plaintiff is entitled for possession in respect of half share of the suit property and partition thereof".

- 13.** Ultimately, after hearing the learned counsel for both sides and after considering the materials on record, by the judgment dated 08.07.2014, the First Appellate Court allowed the appeal filed by the present respondent/plaintiff and set aside the judgment of the Trial Court and reversed it.
- 14.** The First Appellate Court by its aforesaid judgment held that the plaintiff is entitled to half share of the suit property and has right, title and interest in respect of the half of the suit property. It was also observed that he is entitled to partition of his share of property and recover khas possession in respect of half share of the suit property. The directions for the issuance of precept to the revenue authority to cause the partition of the suit land was also made by the aforesaid judgment.
- 15.** The present appellant/defendant on being aggrieved by the judgment of reversal by the Appellate Court, preferred the instant Regular Second Appeal by impugning the aforesaid judgment. On 18.02.2015, while admitting this Regular Second Appeal, this Court formulated following substantial questions of law in this instant Regular Second Appeal:
 - i.** Whether the Trial Court below misconstrued the mandate of Section 123 of the Transfer of Properties Act pertaining to valid gift of movable property and thereby illegally decreed the suit of the plaintiff?
 - ii.** Whether the plaintiff's suit being one for partition of the ancestral property was barred by non-joinder of necessary

parties in the form of other legal heirs of Fatik Chandra Borah.

- 16.** It is also pertinent to mention that at the time of admitting the instant Regular Second Appeal, this Court by order dated 18.02.2025 passed in Misc. Case No. 393/2015 had stayed the execution of the impugned judgment and decree dated 08.07.2014 and 18.07.2014, respectively, passed by the Court of the learned Civil Judge, Nagaon in Title Appeal No. 27/2013.
- 17.** Mr. P. Sundi, the learned counsel for the appellant has submitted that the First Appellate Court has committed perversity in arriving at the finding that the plaintiff has right, title and interest over half of the share of the suit property without considering the material evidence on record. He submits that the pleaded case of the plaintiff in the plaint was that his father gifted the suit property to the plaintiff and the defendant in two equal parts. However, the plaintiff has not proved any gift deed to substantiate the said claim.
- 18.** He submits that the mere fact that the name of the plaintiff was also mutated in the records of right in respect of the suit land on the basis of a gift deed, in itself, does not confer any title of the plaintiff over the said property as admittedly no gift deed has been executed by the deceased father of the plaintiff and defendant.
- 19.** He submits that if the plaintiff has failed to prove the existence of any gift deed and if the claim of the plaintiff over the suit property was considered by way of inheritance after partition, the

necessity of impleading other legal heirs of the deceased Fatik Chandra Bora was there. He submits that in absence of the other legal heirs of the late Fatik Chandra Bora, the First Appellate Court has erred in decreeing the suit without there being any basis for the same.

- 20.** He submits that the judgment of the First Appellate Court is, therefore, perverse and the same is liable to be set aside. He further submits that the Trial Court was correct in dismissing the suit of the plaintiff inasmuch as it failed to substantiate the claim that the suit land was gifted in favour of both the plaintiff and defendant by their deceased father as no gift deed could be exhibited by the plaintiff.
- 21.** On the other hand, Ms. U. Chakraborty, the learned counsel for the respondent has submitted that there is no substantial question of law involved in this appeal and same is liable to be dismissed. She submits that the First Appellate Court, after taking into consideration the materials available on record has correctly arrived at finding that the deceased father of the plaintiff and defendant had made the arrangement of distributing his property to his children before his death and, accordingly, an oral gift was made of the suit property in favour of the plaintiff and the defendant. She submits that the First Appellate Court has correctly treated the oral gift as a family arrangement.
- 22.** She submits that the oral testimony of the witnesses have clearly mentioned that the father of the plaintiff and defendant have given, by way of oral gift, the said property equally to his sons,

namely, the plaintiff and defendant. She submits that though the phrase "oral gift" does not have statutory basis, however, in absence of a gift deed, same may be treated as an oral Family arrangement made by the deceased father of the plaintiff and defendant for distributing his property among his successors.

- 23.** She submits that as regards the question of non-joinder of the other heirs of deceased Fatik Chandra Bora, both the First Appellate Court as well as the Trial Court have arrived at the right conclusion that the suit of the plaintiff is not barred by non-joinder of necessary parties. She accordingly, submits that the instant Regular Second Appeal filed by the appellant is liable to be dismissed.
- 24.** I have considered the submissions made by the learned counsel for both the sides. I have also gone through the materials available on record very carefully.
- 25.** It is not in dispute that the existence of a substantial question of law is a *sine qua non* for exercising jurisdiction by this Court under Section 100 of the Code of Civil Procedure, 1908. As to what may be regarded as a substantial question of law, various interpretations have been given by the Apex Court as well as various High Courts including this Court. However, it is a settled proposition of law that where a question is settled by the highest court of the land or the general principles to be applied in determining the question involved are well settled and the question is of mere applying those principles or in a case where

the question raised is palpably absurd, such a question would not be regarded as a substantial question of law.

26. Though, by order dated 18.02.2015, passed in the instant Regular Second Appeal, two substantial questions of law were formulated as already discussed in the foregoing paragraph, however, for the sake of clarity, the aforesaid questions are reformulated in the following manner:

- i.** Whether the First Appellate Court committed perversity while decreeing the suit of the plaintiff by misconstruing the mandate of Section 123 of the Transfer of Property Act, 1882 and by treating the oral gift to the basis of the claim for partition by the plaintiff;
- ii.** Whether the First Appellate Court committed perversity by ignoring the fact that when granting the relief of the partition of ancestral property of the plaintiff and defendant in the absence of a gift deed, the presence of all other heirs of the late Fatik Chandra Bora was necessary as they were necessary parties in the suit for partition.

27. On perusal of the copy of the plaint filed by the present respondent in the Title Suit No. 13/2011, it appears that the specific plea of the plaintiff in the plaint was that his deceased father late Fatik Chandra Bora had gifted the suit property to him and the appellant in two equal parts in the year 1980 and same is reflected in the Jamabandi.

28. It also appears that the Trial Court while dismissing the suit of the plaintiff took into consideration this pleading and as well as

the fact that no gift deed was executed by the father of the plaintiff. It also took into consideration that as per Section 123 of the Transfer of Property Act, 1888, for effecting the transfer of immovable property by way of gift, it must be effected by a registered deed, which was absent in this case. It also took into consideration that mere mutation of the name of the plaintiff in Jamabandi would not entitle him to an ownership over the suit land.

- 29.** The First Appellate Court on the other hand, took into consideration the fact that the deceased Fatik Chandra Bora had made arrangements for distribution of his landed property amongst his heirs, while he was living, and accordingly, he gifted the suit land in two equal shares to the plaintiff and the defendant.
- 30.** Admittedly, no gift deed has been exhibited by the plaintiff in support of his contentions before the Trial Court. Rather, while deposing as a witness, he has stated that no written gift deed was executed by his deceased father. As such, the claim that the suit property was gifted to the plaintiff and the defendant in equal share has no basis and the Trial Court appears to be right while dismissing the suit of the plaintiff in absence of a registered gift deed on the basis of which the plaintiff has claimed half of the share of the suit property.
- 31.** Even otherwise, if it is accepted that there was no registered gift deed and the oral gift should be treated as a family arrangement made by the deceased father of the plaintiff and defendant to

distribute his property while he was alive, in such a case, the presence of all the legal heirs, would be necessary for deciding the issue of partition.

- 32.** There is no dispute over the legal proposition that a testamentary transfer of immovable property to one's successors may be made by way of will. Whereas, an intestate transfer may be made by way of inheritance. The immovable property may also be conveyed by way of a sale deed or gift deed. The apportionment of shares amongst heirs may also be made by way of family settlement deed or relinquishment deed.
- 33.** In the instant case, in the paragraph No. 24 of the impugned judgment, the First Appellate Court has observed that the plaintiff has one share of the land in the suit property by way of inheritance. That statement is not based on any evidence, as in absence of a gift deed or anything to indicate that the property was gifted equally to the plaintiff and defendant excluding other legal heirs of late Fatik Chandra Borah. Though, the plaintiff may have a share in the suit property, however, to decide the said question, entire property left by the deceased Fatik Chandra Bora has to be taken into consideration and all the legal heirs of the deceased Fatik Chandra Bora have to be made party to such a decision. For the said purpose, the suit land cannot be singled out. It is also in the evidence that apart from the suit land, the deceased Fatik Chandra Bora left many other properties which were inherited by other heirs and the plaintiff has also inherited some of such property. His claim over half of the share of the suit property is based mainly on the endorsement made in the

Jamabandi, wherein it has been reflected that the said property has been gifted to the defendant and plaintiff in equal shares. However, in absence of a gift deed, the entry made in Jamabandi cannot be relied upon.

- 34.** The Apex Court in the case of "**Associate Builders Vs. Delhi Development Authority**" reported in **(2015) 3 SCC 49** has observed as follows:-

***32.** A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], it was held : (SCC p. 317, para 7)*

"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429], it was held : (SCC p. 14, para 10)

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

- 35.** Thus, from the above observation of the Apex Court, it appears that there is a broad distinction between decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence, which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse.

- 36.** In paragraph No. 19 of the impugned judgment, the First Appellate Court has discussed the lands in respect of which the mutation of the names of legal heirs of the late Fatik Chandra Borah has been made and thereafter, it has observed that the parties to suit and other legal heirs have not disputed their mutation in respect of other lands on the suit patta in the Jamabandi. However, this observation appears to be without any basis as the other legal heirs of late Fatik Chandra Borah were not made party in the aforesaid suit. The First Appellate Court had merely on the basis of the entry made in the Jamabandi came to the conclusion that late Fatik Chandra Borah had gifted the suit property equally to the plaintiff and defendant, without there being any admissible and reliable evidence of alienation of the suit property by way of gift by the deceased late Fatik Chandra Borah in favour of his two sons only. It is a settled proposition of law that entries made in revenue record cannot be regarded as a document of title.
- 37.** Moreover, it is the pleaded case of the plaintiff that the suit land was gifted to him and the defendant in equal shares by their deceased father. However, no reliable evidence could be produced before the Court regarding the said gift and the First Appellate Court also overlooked the mandate of the Section 123 of the Transfer of Property Act, which requires that a gift of transfer of immovable property has to be by way of registered deed only.
- 38.** In the absence of a registered gift deed, the partition of the suit property being the ancestral property of the deceased Fatik

Chandra Borah could have been effected only in presence of other legal heirs of the deceased Fatik Chandra Borah. The other legal heirs of deceased Fatik Chandra Borah becomes necessary party under such circumstances, therefore, for non-joinder of necessary party also in such a case, the suit would have failed.

- 39.** Accordingly, in view of the discussions made and reasons stated in the foregoing paragraphs, this Court is of considered opinion that the decision of the First Appellate Court is hit by perversity in arriving at a finding regarding entitlement of the plaintiff to the half of the share in the suit property without there being any admissible and reliable evidence to that effect on record.
- 40.** The substantial questions of law are accordingly, answered in favour of the appellant and this appeal is allowed.
- 41.** Accordingly, the impugned judgment of the First Appellate Court is hereby set aside.
- 42.** Prepare the decree accordingly.
- 43.** Send back the records of the trial court as well as the first appellate court along with a copy of this judgment to the concern courts immediately.

JUDGE

Comparing Assistant

**Amita
Sharma** Digitally signed
by Amita Sharma
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