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

Case No. : RSA/163/2025

JEHERUL ISLAM AND ORS
S/O. LT. NAZRUL ISLAM.

2: ALTAB HUSSAIN
S/O. LT. NAZRUL ISLAM.

3: MOINUL HAQUE
S/O. LT. NAZRUL ISLAM.

4: SAHIDUL HAQUE
S/O. LT. NAZRUL ISLAM.

5: SAFIJUL HAQUE
S/O. LT. NAZRUL ISLAM.

6: BAHARUL HAQUE
SON OF LATE NAZRUL ISLAM

7: JABIUL HAQUE
SON OF LATE NAZRUL ISLAM

ALL R/O VILLAGE- BANBARIA MAUZA- NAGAON
DISTRICT-BARPETA (ASSAM)
PIN-781309

VERSUS

FAYJAL HAQUE MIA AND ANR
SON OF ABDUL MOTALEB MIA VILLAGE- RADHAKUCHI. MOUZA-
NAGAON. DISTRICT- BARPETA, (ASSAM), PIN-781309.

2:PAHAR KHA
S/O- LATE SABJAL KHA R/O VILLAGE RADHAKUCHI P/O AND DIST-
BARPETA

ASSA

Advocate for the Petitioner : M ALI, MR. A K AZAD,MR M HUSSAIN,MR. N HAQUE,MR. S R BARBHUIYA,MS P BANIA,MR H A AHMED,MR K BHUYAN

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 16.03.2026

Mr. N. Haque, learned counsel for the appellants.

2. This appeal, under Section 100 of the CPC, is directed against the judgment dated 10.06.2025, passed by the learned Civil Judge (Sr. Division), Barpeta, in Title Appeal No.09/2021. It is to be noted here that vide impugned judgment, dated 10.06.2025, the learned Civil Judge (Sr. Division), Barpeta, has dismissed the appeal and thereby affirmed the judgment and decree dated 30.03.2021, passed by the learned Civil Judge (Jr. Division) No.1, Barpeta, in Title Suit No.73/2014.

3. It is also to be noted here that vide impugned judgment and decree dated 30.03.2021, the learned Civil Judge (Jr. Division) No.1, Barpeta, has decreed the suit of the plaintiff declaring right, title and interest over Schedule 'B' land of the plaintiff and also for recovery of possession by evicting the defendant there from, and permanent injunction, and also to issue precept to the concerned revenue authority to make partition over 'B' schedule land within 'A' schedule land by creating separate dag and patta, in favour of the plaintiff, the respondent herein

.

4. Mr. Haque, learned counsel for the appellants, submits that the learned trial court, as well as the learned first appellate court, has relied upon the certified copy of the sale deed (Exhibit No. 4), without the contents of the same being proved by adducing any evidence and that the presumption under Section 92 of the Bharatiya Sakshya Adhiniyam (BSA), 2023 is available only in respect of the signature and every other part of the document, which purports to be in the handwriting of any particular person, and that it was duly executed and attested by the person, by whom it purports to be executed and the documents are said to be in proper custody, if they are in the place in which and under the case of the person with whom they would naturally be. In that view of the matter, the finding of the learned trial court as well as the learned first appellate court appears to be contrary to the established legal proposition and as such, substantial questions of law are involved in this appeal and the same are suggested in the memo of appeal and therefore, Mr. Haque has contended to admit the appeal and to issue notice to the respondents and to call for the record and thereafter, to hear both the parties and to answer the substantial questions of law.

5. Perused the memo of appeal and the grounds mentioned therein and the suggested substantial questions of law and also perused the judgment dated 10.06.2025 passed by the learned Civil Judge (Sr. Division), Barpeta, in Title Appeal No.09/2021 and also perused the judgment and decree dated 30.03.2021, passed by the learned Civil Judge (Jr. Division) No.1, Barpeta, in Title Suit No.73/2014.

6. It is worth mentioning in this context that Section 92 of the Bharatiya Sakshya Adhiniyam (BSA), 2023 corresponds directly to Section 90 of the Evidence Act. Both are perimateria provision. Key Similarities of both the

Sections are:-

- (i) Focus on age (30+ years), proper custody, and document appearance free from suspicion.
- (ii) "May presume" language gives courts discretion, not a mandatory rule.
- (iii) Aimed at easing proof when witnesses or executants are unavailable due to time.

6.1. The presumption under Section 90 of the Evidence Act is available when the document is proved to be 30 years old and is produced from proper custody which the Court in any particular case considers proper and the Court may presume that the signature and every other part of such document, which purport to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. This presumption is only in respect of genuineness of a document (i.e., existence or handwriting), not truth of contents. Therefore, besides truth, the contents of the documents also have to be proved by cogent evidence.

6.2. This Court in **Paramesh Sarmah & Ors. Vs. Islamali & Ors.**, reported in **2000 (3) GLT 4536** in para-9 has held as under:

"9. The condition on which the execution of a document may presume for:-

- (1) That it must have been existed for 30 years or more;**
- (2) It must be produced in court from proper custody.**

The document must be in appearance free from suspicion and doubt;

- (3) It must be in a handwriting of a person and should not be anonymous.

Generally there is no presumption about recitals in ancient document, but in special circumstances a recital of consideration, legal necessity, etc., may be presumed under 5. 90.....”

6.3. Further, in case of Huidrom Achou Singh Vs. Thokchom Ningol Ningthemcha Ongbi Idempishak Devi and others, reported in 1986 (1) GauLR 98, dealing with Section 90 of the Evidence Act held as under:-

"Section 90 of the India Evidence Act deals. with presumption as to documents thirty years old. Under it where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that, the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting and, in case of document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed and documents are said to be proper custody if they are in the place in which; and under the case of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

The content of a document has different aspects. So far as handwriting is concerned, under Section 90 the presumption is that it was written by the scribe. So far as the truth of the contents is concerned, it is to be proved by evidence.

This section was designed to meet situations of varying character, where passage of time might have obliterated the

proof of the genuineness of any disputed document and wide powers are conferred on the Court. The Section only says that the Court may raise the presumption mentioned in it, not that it must do so, and the expression "may presume" ought generally to be construed in the more rigorous of the senses allowed by Section 4 of the Act. The presumption is rebuttable. The Court must examine the surrounding circumstances tending to establish the connection of the party producing the document with the person with whom the document should naturally have been."

6.4. Moreover, this presumption is not available when document is a certified copy. Reference in this context can be made to a decision of Hon'ble Supreme Court in *Lakhi Baruah vs. Padma Kanta Kalita*, reported in (1996) 8 SCC 357, wherein with regard to admissibility in evidence of thirty years old documents produced from proper custody, it was observed as under:-

"16. So far as applicability of presumption arising from Section 90 of the Evidence Act, 1872 in respect of copy of the old document is concerned, the earliest decision of the Indian Court was made in 1880 in *Khetter Chunder Mookerjee v. Khetter Paul Sreeterutno* [ILR (1879-1880) 5 Cal 886 6 CLR 199]. Later on, in the decisions of various High Courts the presumption under Section 90 was also made applicable to the certified copy. The Privy Council, upon review of the authorities, however, the decision rendered did accept in *Khetter* [ILR (1879-1880) 5 Cal 886: 6 CLR 199] and other decisions of the High Court, where the presumption was attached also to copies, correct. It was indicated that in view of the clear language of Section 90 the production of the particular document would be necessary for applying the statutory presumption under Section 90. If the document produced was a copy admitted under Section 65 as secondary evidence and it was produced from proper custody and was over thirty years old, then the signature authenticating the copy might be presumed to be

genuine; but production of the copy decisions was not sufficient to justify the presumption of due execution of the original under Section 90. In this connection, reference may be made to the Seethayya V. Subramanya Somayajulu [(1928-29) 56 IA 146: AIR 1929 PC 115] and Basant Singh v. Brij Raj Saran Singh [AIR 1935 PC 132 1935 All LJ 847: 39 CWN 1057 62 IA 180]. In view of these Privy Council decisions, disproving the applicability of presumption under Section 90 to the copy or the certified copy of an old document, in the subsequent decisions of the High Courts, it has been consistently held by different High Courts that production of a copy or a certified copy does not raise the presumption under Section 90.

17. The position since the aforesaid Privy Council decisions being followed by later decisions of different High Courts, is that presumption under Section 90 does not apply to a copy or a certified copy even though thirty years old; but if foundation is laid for the admission of secondary evidence under Section 63 of the Evidence Act, 1872 by proof of loss or destruction of the original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 be presumed to be genuine.

18. In the facts of this case, the presumption under Section 90 was not available on the certified copy produced by the defendants and, in our view, the High Court is justified in refusing to give such presumption in favour of the defendants. We may also indicate that it is the discretion of the court to refuse to give such presumption in favour of a party, if otherwise, there is occasion to doubt due execution of the document in question. The plaintiffs' definite case was that the deed of sale in favour of Holiram was a forged and fabricated document. In the aforesaid facts, there was a requirement to produce the original copy so that the question of due execution by Plaintiff 1 could have been

contested by the parties."

7. In the instant case both the courts below had relied upon the sale deed (Exhibit – 4), which is a certified copy. Though the original deed was produced, the same was not legible. Besides the contents of the deed appears to be not proceed as required under the law. In view of above, this second appeal is admitted on the following substantial questions of law:-

(i) Whether presumption as to execution and attestation of the certified copy of the sale deed (Exhibit-4) can be made under Section 92 of the Bharatiya Sakshya Adhiniyam (BSA), 2023?

(ii) Whether certified copy of the sale deed (Exhibit-4) is a public document in view of Section 74(1) of the Bharatiya Sakshya Adhiniyam (BSA), 2023 and the said sale deed is admissible under Section 60 of the BSA, 2023 without any proof of the contents of the said sale deed?

8. Issue notice to the respondents, returnable within 4(four) weeks.

9. Step be taken by speed post and also by usual process within a week from today.

10. Registry shall call for the records from the learned Courts below.

11. List the matter after 4(four) weeks.

JUDGE

Comparing Assistant