

Assam Schedule VIII. Form No. 133

HIGH COURT FORM No. (J) 3.

HEADING OF JUDGMENT IN APPEAL

District: Sivasagar

In the Court of Civil Judge, Sivasagar

Present: - Shri O. Mize. AJS

Wednesday, the 30th day of October, 2019

Misc. Appeal No.01/2019

1. Sri Jadav Dhekia Phukan,
S/O- Late Rajani Kanta Dhekial Phukan.
R/O- Sunpura (Borkola),
P.O.- Gargaon, P.S. Simaluguri,
Dist. Sivasagar, Assam.

.....Appellant.

-Versus-

1. Sri Lakhiram gogoi,
S/O- Late Tukheswar Gogoi.
R/O- Nahar-Ali Khanikar Gaon,
P.O.- Gargaon, P.S.- Simaluguri.
Dist. Sivasagar (Assam).

.....Respondent.

2. Sri Luhit Dhekia Phukan,

S/O- Late Rajani Kanta Dhekial Phukan.

R/O- Nahar-Ali Khanikar Gaon,

P.O.- Gargaon, P.S. Simaluguri,

Dist. Sivasagar, Assam.

.....Proforma Respondent.

(1) Give dated or dates This suit/case coming up for final hearing on
25.10.2019 in the presence of

Sri M. Borthakur.....Advocate for the Appellant.

Sri U. Sarma Advocate for the Respondents.

and having stood for consideration to this day the Court delivered the following
judgment:-

JUDGMENT

1. This appeal has been preferred by the appellant/plaintiff against the order dated 08.03.2019 passed by the learned Munsiff, Nazira in T.S. No.14/2018 whereby the learned trial Court has allowed the petition 365/18 filed by the defendant no.1/respondent no.1 u/o 7 rule 10 CPC praying to return the plaint filed by the plaintiff/appellant.

2. The facts leading to the present appeal is that the appellant/ plaintiff had filed T.S. No.14/2018 before the Id. trial court for a decree for declaring plaintiff/appellant's right, title & interest over the suit land and also for a decree for recovery of possession of the suit land which is described in schedule of the plaint.

3. Summons were issued to the defendants/respondents. The suit was proceeded ex-parte against defendant No.2 (proforma defendant). Defendant No.1-Sri Lakhiram Gogoi appeared and filed petition praying for time for filing written statement. But, on 29.11.2018 defendant No.1/respondent No.1 had filed petition 365/18 u/o 7 Rule 10 CPC praying to return the plaint filed by the plaintiff/appellant which was allowed by Id. trial court vide order dated 08.03.2019 and it was ordered to return the plaint of the plaintiff/appellant.

4. Being highly aggrieved and dissatisfied with the aforesaid order dated 08.03.2019 allowing petition 365/18 by the learned trial court in T.S. No.26/2014, the appellant/plaintiff has preferred this appeal on the following grounds :-

i. The order passed by the Id. Munsiff, Nazira is bad in law and on facts, as well, and cannot be sustained at all.

ii. The Id. court below on wrong appraisal and appreciation of actual facts pertaining to the location of the suit land wrongly held that the suit land does not fall within the territorial jurisdiction of the Munsiff, Nazira.

iii. The appellant in his plaint specifically highlighted the location of the suit land under Simaluguri P.S., i.e. within the local limits of the Civil Judge, Sivasagar and the Id. court below while passing the said impugned order totally failed to consider the above vital aspect of the case and ought not to have passed the said impugned order.

iv. The Id. court below solely based on its finding on the report of the Circle Officer, Nazira Revenue Circle, inasmuch as, as per report of the Nazira Revenue Circle the suit land falls under the Revenue Circle of Sonari and did not call for a report from the Id. SDO (C), Nazira to ascertain the territorial jurisdiction of the suit land while passing the said impugned order and ought not to have passed such an impugned order.

v. That before deciding the petition u/o 7 R.10 r/w S.151 CPC, as referred to hereinabove, the Id. court below ought to have called for a report from the O.C., Simaluguri PS to ascertain the local limits of the said police station and ought to have seen whether the suit land falls within the local limits of Simaluguri PS and without complying with the above procedure the Id. court below ought not to have passed the said impugned order.

vi. That the findings of the Id. court below are prematured, erroneous and hasty as it failed to apply its judicious mind while passing the said impugned order.

vii. That the Id. court below while passing the said impugned order grossly misconstrued the difference between Revenue Jurisdiction and Territorial Jurisdiction of the suit land.

5. I have heard the argument of Id. counsel for the appellant and Id. counsel for the respondent. I have also perused the materials on record.

6. POINT FOR DETERMINATION:- Whether the impugned order dated 08.03.2019 passed by Id. trial court is just & proper or needs any interference in this appeal?

7. DECISION WITH REASONS. During the argument Id. counsel for the appellant has argued that, the suit land is situated under Nazira Sub-Division. Id. trial court has not called report from Id.SDO(C) to ascertain in which district or sub-Division the suit land is situated and held that the court at Nazira has no jurisdiction as the suit land falls under sonari revenue circle. On the other hand Id.counsel for the respondent has argued that Id. trial court has no jurisdiction as the suit land falls under Sonari revenue circle.

8. I have gone through the entire materials on record and the impugned order. It appears from the impugned order dated 08.03.2019 passed by Id. trial court in T.S. No.14/2018 that Id. trial court has held that the suit land is located

beyond the territorial jurisdiction of the court of Id. Munsiff, Nazira. However, Id. trial court has not shown any ground in the impugned order how it was ascertained that the suit land is located beyond the territorial jurisdiction of the court at Nazira.

9. It appears from the case record of T.S. 14/18 that the Civil Nazir, Munsiff Office, Nazira had submitted a report that as per the report of Circle Officer, Nazira, the suit land falls in the territorial jurisdiction of Sonari Revenue Circle. There is also a letter sent by Civil Nazir, Munsiff Office, Nazira for a report regarding the territorial jurisdiction of Nazira Court over the suit land and there is seal and signature of I/C Circle Officer, Nazira Revenue Circle on the said letter and it is written on the said letter that, "The said land does not belong to Nazira Revenue Circle. In this regard forwarded to Sonari Revenue Circle." It is clear from the said note of I/C Circle Officer, Nazira Revenue Circle that, no report is given regarding the location of the suit land and district or sub-division in which the suit land is situated. It appears to me that learned trial court may have passed the impugned order after seeing the said report.

10. Section 16 C.P.C says as follows:- Suits to be instituted where subject-matter situate---Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.— In this section “property” means property situate in ¹[India].

11. So, it is clear from section 16 of CPC that, the suit for recovery of immovable property shall be instituted in the court in whose jurisdiction the property is situated. As per the note written by the i/c Circle officer, Nazira Revenue Circle, the suit land does not falls under Nazira Revenue Circle. However, it also appears from the schedule of the plaint and the letter sent by civil Nazir, Munsiff Office, Nazira to the Circle Officer, Nazira Revenue Circle that the suit land described in the schedule is under Simaluguri P.S and Nazira Sub-Division, Dist. Sivasagar, Assam. A report was also called by this court from Addl. Deputy Commissioner, Nazira Sub-Division, Nazira and the Addl. Deputy Commissioner, i/c Nazira Sub-Division sent a report that the suit land falls within the territorial jurisdiction of Nazira Sub-Division. So, it appears to me that Id. trial court has not ascertained the court within whose jurisdiction the suit land is situated. Section 16 C.P.C does not says about the jurisdiction of Revenue Circle. It says about the court within whose jurisdiction the property is situated. It also appears that there is no order of the court for report.

12. So, it appears to me that it is to be properly ascertained under the territorial jurisdiction of which court the suit land is situated, which I leave to

learned trial court. I deem it fit and proper if learned trial court dispose the petition afresh after ascertaining within the territorial jurisdiction of whose court the suit land is situated by calling report from concerned authorities regarding the location of the suit land and under the territorial jurisdiction of which district or Sub-Division the suit land is situated. In the view of the aforesaid findings, I find ground to interfere with the impugned order passed by Id. trial court.

13. In the result, the appeal is allowed. The order dated 08.03.19 passed by Id. trial Court in Title Suit No.14/18 is set aside. The suit is remanded back to the court of learned Munsiff, Nazira for disposing afresh the petition under order 7 rule 10 c.p.c filed by the defendant no.1 after ascertaining where the suit land is situate by calling report from concerned authorities. Prepare decree accordingly.

14. Send back the case record of T.S. No.14/18 to learned Munsiff, Nazira with a copy of this judgment.

15. Given under my hand and seal of this Court on this 30th day of October, 2019.