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**(2023) 09 GAU CK 0007**

**Gauhati High Court**

**Case No:** Regular Second Appeal No. 124 Of 2010

Khagendra Haloi

APPELLANT

Vs

On The Death Of  
Binapani Talukdar Her  
Legal Heirs Prakash  
Talukdar And Anr

RESPONDENT

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**Date of Decision:** Sept. 7, 2023

**Acts Referred:**

- Code of Civil Procedure, 1908 - Section 100, Order 41 Rule 31

**Citation:** (2023) 09 GAU CK 0007

**Hon'ble Judges:** Parthivjyoti Saikia, J

**Bench:** Single Bench

**Advocate:** R. Sarma, N.K. Kalita

**Final Decision:** Allowed

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### Judgement

1. Heard Mr. R. Sarma, learned counsel representing the appellant as well as Mr. N.K. Kalita, learned counsel appearing for the respondents.

2. This is a Regular Second Appeal under Section 100 of the Code of Civil Procedure (CPC) whereby the judgment dated 16.12.2009 and the decree

dated 28.01.2010 passed by the court of learned Civil Judge, Nalbari in Title Appeal No.11/2009, arising out of the judgment and decree dated

05.09.2009 passed by the court of learned Munsiff No.1, Nalbari in Title Suit No.02/2006, is under challenge.

3. The present second appeal was admitted for hearing upon the following two substantial questions of law –

1. Whether in absence of pleadings and prayer for partition, the learned lower appellate court can pass preliminary decree for partition?

2. Whether on the basis of compromise petition filed before the learned trial court which ultimately was not acted upon by the parties, the learned

lower appellate court can direct rectification of the sale deed no.470/888 without recording a finding that due intention of the parties to the instrument

had not been reflected in the sale deed in question?

4. On 25.03.1998, Shri Khagendra Nath Haloi borrowed Rs. 7,200/- from Lt. Binapani Talukdar. In lieu of that, he had allowed her to occupy 2 Bighas

of land covered by Dag No.232 of KP Patta No.73 of Village- Batachara under Paschim Baska Mouza of Barama P.S. Khagendra Nath Haloi had

executed a hand note also to that effect. Before expiry of hand note, Khagendra Nath Haloi offered the aforesaid money of Rs. 7,200/- to Lt.

Binapani Talukdar but she refused to accept the money. Thereby, Lt. Binapani Talukdar continued to occupy the said land. Therefore, Khagendra

Nath Haloi filed a suit praying for declaration of right, title and interest over the suit land and for recovery of the same.

5. Lt. Binapani Talukdar filed a written statement and a counter-claim. She has admitted that she had given Rs. 7,200/- to Khagendra Nath Haloi and

in lieu of that, he had allowed her to occupy 1 Bigha of land attached to the western boundary of another plot of 1 Bigha of land.

6. Regarding the other plot of land, Lt. Binapani Talukdar has claimed that her deceased husband Lt. Basanta Talukdar had purchased the said plot of

land from Khagendra Nath Haloi. She further claimed that at that time, a registered sale deed was executed. According to Binapani Talukdar, the

said sale deed had mention erroneous Dag No. and Patta No. of the land sold. Lt. Binapani Talukdar further disclosed that Khagendra Nath Haloi

had undertaken to make corrections of the sale deed at a subsequent stage and therefore, she continued to occupy the land.

7. Lt. Binapani Talukdar has further stated that the plot of land that was given to her by Khagendra Nath Haloi when he took Rs. 7,200/- from her,

was returned to him when he had returned the money. According to Lt. Binapani Talukdar, Khangendra Nath Haloi did not make any corrections in the sale deed as he had promised earlier.

8. In the counter claim, Lt. Binapani Talukdar had prayed for a direction asking Khangendra Nath Haloi to rectify the sale deed by inserting correct dag number and patta number. She also prayed that her right, title and interest over the suit plot of land which her husband had purchased from Khangendra Nath Haloi should be declared.

9. During the trial of the case, Khangendra Nath Haloi examined 3 witnesses and Lt. Binapani Talukdar examined 2 witnesses. On the basis of the evidence on record, the trial court decreed the suit of Khangendra Nath Haloi and the counter-claim of Lt. Binapani Talukdar was dismissed.

10. The learned first appellate court partially allowed the appeal. The first appellate court declared the right, title and interest of Khangendra Nath

Haloi over the plot of 1 Bigha land situated on the western side of the land that was allegedly purchased by the husband of Lt. Binapani Talukdar. The

learned first appellate court directed Khangendra Nath Haloi to rectify the sale deed by which he had sold 1 Bigha of land to the deceased husband of

Lt. Binapani Talukdar.

11. I have considered the submissions made by the learned counsels of both sides.

12. I find that the first appellate court's judgment did not comply with the provision of law as laid down in Order 41 Rule 31 of the Code of Civil

Procedure. The first appellate court did not frame any point for determination.

13. The framing of points for determination by the Appellate Court is only to enable it to concentrate and rivet its attention on the controversy between

the parties and to facilitate the weighing and balancing of the evidence, facts and considerations appearing on both sides and to arrive at a conclusion

on the merits of the controversy.

14. The provisions of Order 41, Rule 31 of the Code of Civil Procedure are mandatory and if the judgment of the Appellate Court does not follow the

provisions of Order 41, Rule 31, the judgment is vitiated.

15. Therefore, the appeal is allowed. The judgment of the first appellate court is set aside. The case is remanded to the first appellate court for passing

a fresh judgment after compliance of the provisions of Order 41 Rule 31 of the Code of Civil Procedure.

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