

GAHC010054732023



2025:GAU-AS:16754

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

Case No. : RSA/52/2023

KHURSIDA AHMED
W/O ARIF UDDIN AHMED,
RESIDENT OF MILAN NAGAR, SANTIPUR, PO BALADMARI, PS AND DIST
GOALPARA . ASSAM 783121

VERSUS

ENUISH ALI AND 3 ORS.
S/O LATE KAIMUDDIN SHEIKH,
VILLAGE HASILABIL JANNATPUR, PO GOBINDAPUR, PS AND DIST
GOALPARA, ASSAM 783101

2:SAYED ALI
S/O LATE ABDUL HAI

VILLAGE HASILABIL JANNATPUR
PO GOBINDAPUR
PS AND DIST GOALPARA
ASSAM 783101

3:STRUCK OFF
VIDE HON'BLE COURT'S ORDER DATED 01.04.2024

4:SRI RAM TRANSPORT FINANCE CO.
BONGAIGAON
ASSA

Advocate for the Petitioner : MR. M H RAJBARBHUIYAN, MR. A S ALI,MR. A MANNAF

Advocate for the Respondent : MR. A WAHAB (r-1, 2), MR. A WAHAB(R-1),MS F N ZAMAN(R-1),MS. R CHOUDHURY(R-1),MR A ALIM SK (r-1, 2)

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the Appellant : Mr. M.H. Rajbarbhuiyan, Advocate

Advocate for the Respondents : Ms. R. Choudhury, Advocate

Date on which judgment is reserved : 04.09.2025

Date of pronouncement of Judgment : **03.12.2025**

Whether the pronouncement is of the
Operative part of the judgment ? :

Whether the full judgment has been
Pronounced ? : Pronouncement of
full judgment.

JUDGEMENT AND ORDER (CAV)

1. This appeal was admitted on the following substantial question of law:
*"Whether the Money Suit No. 02/2014 filed by
the respondents/plaintiffs against the appellant/defendant in
the facts and circumstances of the agreement,
16.10.2012(Ext. 1) and on the failure to abide by the
agreement, dated 16.10.2012, by the respondents/plaintiffs;*

the decree drawn in the Money Suit No. 02/2014 pursuant to judgment, dated 15.03.2021, passed by the Court of the learned Civil Judge, Goalpara, is sustainable in law?"

Factual Matrix

2. The appellant in this case is Khurshida Ahmed, who was the defendant in the original Money Suit No.2/2014. The respondent is the original plaintiff Md.Enuish Ali whereas proforma respondent Nos. 2 and 4 are Sayed Ali and Sriram Transport Finance Corporation, Bongaigaon. The name of the respondent No.3, Ali Driver was struck off vide order of this Court dated 01.04.2024. The plaintiff and the defendants will be referred to according to their original standing in the original Money Suit No.2/2014. A Money Suit No.2/2014 was brought up by Md.Enuish Ali and Khurshida Ahmed, who is the present appellant and was arrayed as defendant No. 1 whereas the other respondents Nos. 2 and 3 Sayed Ali and Sriram Transport Finance Corporation, Bongaigaon were arrayed as proforma defendant Nos. 1 and 3, in the original money suit.

3. The plaintiff's case in brief is that he entered into an agreement with the defendant for sale of a public carrier truck bearing registration No. AS-19A-6722 which is also described in the schedule of the plaint. On 16.10.2012, the agreement was executed for a consideration amount of Rs. 8,90,000/- to be paid to the defendant and out of the said consideration, the plaintiff paid Rs. 4,90,000/- as advance to the defendant. The plaintiff was to pay the balance amount of Rs. 4,00,000/- at monthly installment @ Rs. 13,500/- to the finance company. It was also included in the recitals of the agreement that the defendant had already paid Rs. 1 lac to the finance company and the plaintiff would have to pay Rs. 1 lac to the defendant which was in addition to the

earnest money and on failure of the plaintiff to pay Rs. 1 lac to the defendant, the earnest money of Rs. 4,90,000/- shall be forfeited and the defendant shall have the right to take back the vehicle. On the premise of this agreement, the defendant handed over the vehicle to the plaintiff.

4. It is averred by the plaintiff that on 05.11.2012, when he went to pay the monthly installment of Rs. 13,500/- to Sriram Transport Finance Corporation at Bongaigaon, he learnt that an amount of Rs. 67,500/- was lying as outstanding dues against the defendant's account. The finance company informed the plaintiff that the defendant had paid only one installment on 05.05.2011. It is thus contended that the defendant fraudulently executed the agreement for sale, stating that she had paid Rs. 1,00,000/- (Rs.1 lac) to the finance company.

5. It is further contended that on 08.11.2011, the plaintiff approached the defendant and requested her to take back the vehicle and return the earnest money which he had already spent in maintaining the vehicle, but the defendant did not respond. The vehicle was seized in connection with Goalpara PS Case No.200/2013 and the same was given in Zimma to the defendant. The defendant contested the money suit by filing a written statement and challenging the maintainability of the suit, and vehemently denied borrowing money from the plaintiff. The defendant has averred that the plaintiff failed to perform his part of the contract as per the agreement and denied any fraudulent act on her part.

Decision of the learned Trial Court.

6. The learned Trial Court relied on the evidence adduced by the plaintiff. The plaintiff adduced the evidence of 5 witnesses, whereas the defendant adduced

the evidence of 3 witnesses. Documents were exhibited by both the sides. The execution of the deed of agreement was an admitted fact, but the disputed fact is that the defendant has denied any outstanding dues to the tune of Rs.67,500/-. In the recitals of the agreement executed by the plaintiff, it was stated that the defendant had already paid Rs.1 lac but the plaintiff has alleged that only one installment of Rs.16,411/- was paid way back on 05.05.2011 whereas the deed was executed on 16.10.2012. It was well within the knowledge of the defendant that she had to pay an outstanding amount of Rs.67,500/- whereas contrary to her knowledge, the defendant had fraudulently executed the deed (after 1 and ½ years) stating that she had already paid Rs.1 lac to the Branch Manager of Sriram Transport Finance Corporation. As PW-5 deposed that the defendant purchased Tata truck on hire purchase agreement, but she failed to pay the installments after 23.06.2011, the deed was executed between the plaintiff and the defendant as there was an outstanding loan and it was agreed that the plaintiff, PW-1 would pay Rs.13,500/- as monthly installments till clearance, to the finance company.

7. It was held by the learned trial court that the liability was imposed on the plaintiff on the ground that the defendant had already paid Rs.1 lac to the finance company, which was not the case. The defendant's evidence as DW-1 was also taken into account by the learned trial court and it was held by the learned trial court that the defendant failed to rebut the evidence of PW-1 and PW-5 that she has to pay outstanding dues to the finance company. It was held by the learned trial court that the evidence belies the defendant's stance that she had earlier paid Rs. 1 lac and the plaintiff has to perform his part of the contract. According to the provisions of Section 23 of the Indian Contract Act

1972 ('Contract Act' for short) , fraudulent object of an agreement is not lawful and thus the agreement is void. It was held from the established fact that there was breach of contract on the part of the defendant. As per Section 73 of the Contract Act and on the allegation of suppression of material facts at the time of execution of the agreement, the suit was decreed with cost and the earnest money of Rs. 4,90,000/- was directed to be paid to the plaintiff with interest at the rate of 7% per annum.

Decision of the appellate court

8. Aggrieved by the judgment and decree in Money Suit No. 2/2014, the defendant Khurshida Ahmed preferred an appeal registered as Money Appeal No. 1/ 2021, and this appeal was also dismissed and decided in favour of the plaintiff. The contention of the appellant was that the original agreement for sale of the vehicle was not produced and the appeal suffers from infirmity and was dismissed by the learned appellate court of first instance. The learned appellate court has held that the loan obtained by the appellant to purchase the truck bearing registration No.AS-19/A-6722 is not disputed. The evidence of PW-5 Rakesh Kalita was relied upon as this witness has categorically deposed in his cross-examination that the appellant had purchased an old Tata truck bearing registration No. AS-19/A-6722 on hire purchase agreement on 25.03.2012 from Sriram Transport Finance Company, for an amount of Rs. 4,00,000/- (Rupees Four Lacs). As per the recitals of the Exhibit- 4, Exhibit- 5 and Exhibit -6 , the period of recovery of loan finance was fixed for a period of four years with 47 EMIs @ Rs. 13,500/-.PW-5 has testified that after paying the first installment of Rs.16,500/- . On 23.03.2011, the respondent failed to pay the remaining 47 EMIs in terms of the agreement. This has not been disputed by the appellant.

Therefore, it was held by the appellate court also that the appellant was not legally entitled to enter into any agreement for sale with the respondent. It was observed by the learned court that during the subsistence of the loan, the appellant could not have sold the vehicle to the 3rd party as she had no ownership or right over the vehicle and it is the finance company which is the owner of the vehicle. It was also held that the transfer of ownership of a vehicle is covered by Motor Vehicles Act and it is an admitted fact that the appellant had entered into an agreement of sale on 16.10.2012, during the subsistence of the loan. The Exhibit- 1, although secondary evidence was taken into consideration as the original deed was not called for or brought on record and exhibited. As per the terms of Exhibit- 1 and on the admission of the appellant of having received an amount of Rs. 4,90,000/- out of the total consideration of Rs. 8,90,000/- on 16.10.2012, it was held that the transaction between the appellant and the respondent was proved. It was also held that the appellant has never denied in her pleadings or her evidence that there was a transaction of Rs. 4,90,000/-, rather she has admitted in her cross-examination that she has not submitted any receipt to prove payment of Rs. 1 lac to the finance company. The evidence of DW-2, Arifuddin that an amount of 50,000/- out of Rs 4,90,000/- has not been paid by the plaintiff/ respondent was not taken into account as this evidence was beyond pleadings. Evidence was carefully scrutinized by the appellate court who after recording sound reasoning has dismissed the appeal on contest with costs and the stay order was vacated.

Decision:-

9. Heard learned counsel Mr. M.H. Rajbarbhuiyan for the appellant and learned counsel Ms. R. Choudhury for the respondents.
10. I have considered the submissions at the bar with circumspection.

11. At the very outset, it can be held that this appeal is devoid of merits. The defendant miserably failed to refute the contentions of the appellant. Sound reasonings were ascribed while deciding the original money suit as well as the appeal. It is thereby held that the substantial question of law whether the money suit is sustainable in law is answered in the affirmative. The decision of the learned trial court was appropriate and so is the decision of the learned appellate court. It would be apt to reiterate that the execution of Exhibit -1 has not been disputed. The only bone of contention is that the defendant claims to have paid Rs.1 lac whereas the defendant paid only Rs 16,500/- and this has been proved by substantiating evidence of PW-1 and PW-5. When the agreement was executed fraudulently, the question of part performance of contract does not arise at all. Thus, there appears to be no substantial question of law. The irony is that the vehicle was seized in connection with a criminal case and handed over to the possession of the appellant/defendant, so when the appellant has not denied that she has returned the vehicle, the direction to recover the entire money Rs. 4,90,000/- by the plaintiff cannot be held to be infirm or erroneous. It has already been discussed in the foregoing discussions while highlighting the decision of the learned trial court and the appellate court that the payment of Rs.4,90,000/- out of the agreed amount of Rs.8,00,000/- (Rupees Eight lacs) has not been disputed or refuted by the defendant. This is sufficient to prove on pre-ponderance of probabilities that the plaintiff is entitled to recover the amount of Rs. 4,90,000/- which has been paid to the defendant.

12. In the wake of the foregoing discussions, appeal stands dismissed as this appeal is devoid of merits.

13. Send back the original trial court records as well as the appellate court records to their respective courts.

14. The order of the learned appellate court in Money Appeal No.1/2021 dated 23.12.2022 as well as the order of the learned trial court in Money Suit No.02/2014 dated 15.03.2021 is hereby upheld.

JUDGE

Comparing Assistant