

TITLE APPEAL NO:17 OF 2011  
APPELLANT: SHRI MANTU SK & ORS Vs  
RESPONDENT: SMTI HELENA BEWA & ORS

Assam Schedule VII, Form No.132.

HIGH COURT FORM NO.(J)2

*HEADING OF JUDGMENT OF APPEAL/ CASE*  
DISTRICT : DHUBRI.

In the Court of the Civil Judge, Dhubri  
**Present : Yusuf Azaz, AJS.**  
**Civil Judge, Dhubri.**

**TITLE APPEAL No: 17/ 2011**  
Thursday, the 12<sup>th</sup> January, 2017

1) SHRI MANTU SK

**2) LEGAL HEIRS OF ALIBAR HUSSAIN**

2a) ~~SMTI SAJED BEWA (NAME STRUCK OFF DUE TO DEATH)~~

2b) SHRI SOHIDUR RAHMAN

2c) SHRI SAHIFUL ISLAM

2d) SMTI ALIFA BEGUM

3) SHRI LUTFAR RAHMAN

4) SHRI MAJAFFAR HUSSAIN

**5) ON DEATH OF SIRAJUDDIN SK HIS LEGAL HEIRS**

5(i) SMTI ADARBHAN BEWA

5(ii) SMTI ANARBHAN BEWA

5(iii) SHRI ATOWAR RAHMAN

5(iv) SHRI ANOWAR HUSSAIN

5(v) SHRI SAHINUR ISLAM

5(vi) SMTI SEREJA BEGUM

5(vii) SMTI MEHABUBA AKTARA AHMED

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- 6) SHRI SAMSUDDIN SK
- 7) SHRI MIR HUSSAIN (UNSOUND MIND REPRESENTED BY HIS SON NUR HUSSAIN)
- 8) SMTI MAFIDA KHATUN
- 9) SMTI MASUKA KHATUN
- 10) SMTI AMINA KHATUN
- 11) SMTI HASINA KHATUN
- 12) SMTI AFRUZA KHATUN
- 13) SMTI RASIDA KHATUN
- 14) SMTI MEJEDA KHATUN
- 15) SMTI JARINA BEWA
- 16) ~~SMTI LUTFAR NESSA BEWA (NAME STRUCK OFF DUE TO DEATH)~~

..... APPELLANT (s).

- versus-

**1) ON DEATH OF BAHADUR ISLAM HIS LEGAL HEIRS**

- 1(i) SMTI HELENA BEWA
- 1(ii) SHRI REAFIUL ISLAM
- 1(iii) SHRI ROSHIDUL ISLAM
- 1(iv) SHRI MOHIDUL ISLAM
- 1(v) SMTI JAHANARA PERBIN
- 1(vi) SHRI HAFIJUR RAHMAN

**2) ON DEATH OF BODIAR ZAMAL HIS LEGAL HEIRS**

- 2a) SHRI ABU SAYED MD KAMRUZ ZAMAN
- 2b) SHRI ABU SAYED SAMSUS ZAMAN
- 2c) SHRI ABU SAYED MD NURUZZAMAN

.....RESPONDENT

- 1) SHRI SAHABUDDIN

**2) LEGAL HEIRS OF LT SAH ALAM**

- 2a) SMTI BACHHANI BEWA
- 2b) SHRI KERAMAT ALI

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2c) SHRI JAHIDUL HOQUE  
2d) SMTI CHHAYMA BEGUM

3) SHRI SAKIMUDDIN  
4) SMTI AMINA KHATUN  
5) SMTI MAMENA KHATUN  
6) SMTI ROKSANA KHATUN

**7) ON DEATH OF SK AHMED ALI HIS LEGAL HEIRS**

7a) SHRI AKMAL HUSSAIN  
7b) SHRI AMINUR RAHMAN  
7c) SHRI INAM HUSSAIN  
7d) SMTI RUNA BIBI  
7e) SMTI MINA BIBI  
7f) SMTI IYAKATUN NESSA

.....PROFORMA RESPONDENT

This suit coming on this day (or having been heard on) 3/12/2016  
presence of

SHRI B.K DAS, Advocate..... for the appellant(s).

SHRI A. ISLAM, Advocate .....for the respondent

And having stood for consideration to this day, the court  
delivered the following judgment :

**JUDGMENT**

1. This first appeal has been preferred by the plaintiffs/appellants on being dissatisfied with the judgment & decree dated 29/9/2010 passed by the learned Munsiff, Bilasipara in Title Suit No: 124/ 2007 (Originally Title

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Suit no:8/ 2000) whereby the learned trial court dismissed the suit on contest.

2. Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no:124/ 2007 was called for and received.
3. In order to decide the appeal, let me narrate, in brief, the facts leading to this appeal:
4. The plaintiffs/ appellants had pleaded that one Daulat Munshi was the owner of a plot of land measuring about 40 Bighas 2 Kathas 10 Lessas covered by Touzi no:11 (more particularly described in the schedule of the plaint and hereinafter referred to as the suit land) and after his death, the suit land devolved upon his two sons namely, Afazuddin Ahmed (father of the plaintiffs and the proforma defendant no:1 to 6) and the proforma defendant no:7, Sk Ahmed Ali. The plaintiffs pleaded that the proforma defendant no:7, Sk Ahmed Ali left for Bangladesh and settled there and the entire suit land came under the possession of Afazuddin, i.e the predecessor of the plaintiffs upon consent and knowledge of Sk Ahmed Ali. Thereafter Afazuddin also died on 25/7/1996 and thus the plaintiffs and the proforma defendant no:1 to 6 inherited the suit land after his death. According to the plaintiffs, after about two months of the death of Afazuddin, they came to know that the defendants, i.e Bahadur Islam (since deceased) and Shri Bodiar Zamal had instituted Misc case no: 138/ 1996 before the Executive Magistrate, Bilasipara stating therein that the suit land was gifted to them by Afazuddin and Sk Ahmed Ali and as such the plaintiffs enquired

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further in this regard and obtained the certified copy of the said alleged gift deed no: 2002/ 1948 and upon receiving the said gift deed the plaintiffs came to know that Afazuddin never executed the gift deed and that the signatures upon the said gift deed no:2002/ 1948 did not belong to Afazuddin. The plaintiffs have pleaded that the gift deed no:2002/ 1948 is forged and manufactured to grab the suit land. The plaintiffs further stated that Afazuddin had sons, daughters and wives and as such he could not have gifted the entire suit land in favour of the defendants. On the contrary, Afazuddin had during his lifetime divided the suit land in favour of his sons, daughters and wives; hence this suit praying for the declaration that the said gift deed no:2002/ 1948 is null, void and inoperative in law.

5. The principal defendants, Shri Bahadur Islam and Shri Bodiar Zamal (both died during pendency of the suit and appeal) filed their joint written statement stating therein that the suit is not maintainable and that the suit is barred by limitation and it is barred by res- judicata. The abovenamed defendants admitted that the suit land originally belonged to Daulat Munshi and after his death the same devolved upon Afazuddin and Sk Ahmed Ali. The defendants also admitted that Sk Ahmed Ali left for Bangladesh in the year 1951. The abovenamed defendants further pleaded that Afazuddin and Sk Ahmed Ali had gifted them the suit land by executing the gift deed no:2002/ 1948 and also delivered the possession of the same to them and as such they became the owners having the right, title and interest over the suit land. The defendants admitted that they had instituted Misc case no:138/ 1996 before the Executive Magistrate, Bilasipara because the plaintiffs started to create

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trouble after the death of Afazuddin. According to the defendants, their predecessor and original owner of the suit land namely, Daulat Munshi had three sons namely, Afazuddin (father of plaintiffs), Sk Ahmed Ali (proforma defendant no:7) and Azimuddin (father of principal defendants) and five daughters, but out of the abovenamed three sons, the father of the defendants namely, Azimuddin died during the lifetime of Daulat Munshi and as such the defendants could not have inherited the properties of Daulat Munshi and because of this reason, Afazuddin and Sk Ahmed Ali had executed the gift deed no:2002/ 1948 in favour of the defendants and delivered the possession of the suit land to the defendants.

6. The defendants further pleaded that during the year 1992 they allowed the plaintiff no:1 to reside over 10 Lessas of the suit land, but the plaintiff no:1 started to undertake permanent construction over the said portion of land as such the defendants herein as plaintiffs filed Title Suit no: 314/ 1996 against the plaintiffs for eviction and the said suit is still pending for disposal; hence prayed for dismissal of the suit.
7. The proforma defendants did not contest the suit as such the suit proceeded ex-parte against them.
8. Upon the pleadings of the parties, the learned trial court framed the following issues:

***(1) Whether the suit is maintainable in its present form?***

***(2) Whether the suit is barred by law of limitation?***

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***(3) Whether the suit is bad for non joinder of necessary parties or mis joinder. The legal heirs of Late Malika Bibi has not (been) made party in the suit?***

***(4) Whether the suit is liable to be dismissed due to having no cause of action?***

***(5) Whether the suit is barred by law of res- judicata?***

***(6) Whether the plaintiff is liable to claim decree as prayed for?***

***(7) What other relief/ reliefs, the parties are entitled?***

9. After hearing both sides, the learned trial court by the impugned judgment dated 29/9/2010 dismissed the suit. On being aggrieved by and dissatisfied with the impugned judgment, the plaintiffs/appellants preferred the present appeal, amongst others, on the following grounds:

***(i) That the learned lower trial Court has erred in law and facts in deciding the suit;***

***(ii) That the court below failed to appreciate the evidence on record in its proper perspective;***

***(iii) That the learned trial court ought to have held that the gift deed no: 2002/ 1948 (Exhibit 1) is forged and manufactured and as such the defendants could not have acquired any right, title or interest over the suit land;***

***(iv) That the learned trial court ought to have held that mere registration of a document without proof of its execution is not admissible in evidence and cannot confer any right;***

***(v) That the learned lower trial court ought to have decreed the suit.***

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**DISCUSSION, DECISION & REASONS FOR THE DECISION**

Let me now, discuss the materials on record and try to arrive at a definite finding as regards the issues in this suit.

**POINTS FOR DETERMINATION:**

***Point for determination no:1:Whether the learned trial Court had rightly decided the issue no:6 wherein it held that the plaintiffs have failed to prove that the gift deed no:2002/ 1948 is forged or fraudulent or manufactured and hence the plaintiffs are not entitled to any decree?***

10. The learned counsel for the plaintiffs/ appellants, Shri B.K Das had contended that the plaintiffs had sufficiently proved that Afazuddin never gifted the suit land to the defendants and also did not execute any gift deed; as such the learned trial Court ought to have held that the gift deed is fraudulent. The learned counsel for the appellants had further contended that Afazuddin used to sign his name only as "Afazuddin" but in the gift deed it is shown as "Afazuddin Ahmed" which shows that Afazuddin did not execute the said gift deed. It is further contended by the engaged counsel for the appellants that mere entries in revenue records does not confer any title, but the person claiming title must show some documents of title in his favour.
11. The learned counsel for the respondents, Shri A. Islam had contended that the gift deed was duly executed by Afazuddin and Sk Ahmed Ali and the same is sufficiently proved by the defendants as such the decision of the learned trial Court in this regard is liable to be affirmed.

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12. I have perused the impugned judgment and the case record and it appears that the learned trial Court had held that the plaintiffs have failed to prove that the gift deed no:2002/ 1948 was forged or manufactured or fraudulent.

13. Let me now discuss the materials on record and try to arrive at an independent finding in this regard. Before embarking upon a discussion as regards the above issue, let me first state the facts which are admitted to by both the parties. It appears from the pleadings of both the parties that it is an admitted fact that the suit land originally belonged to Daulat Munshi, the predecessor of both the parties. It is also an admitted fact that after the death of Daulat Munshi the suit land fell in the share of two brothers namely, Afazuddin (predecessor of the plaintiffs) and Sk Ahmed Ali (proforma defendant no:7). However, the only dispute in this case is that according to the principal defendants, Afazuddin and Sk Ahmed Ali had gifted the suit land to them by executing gift deed no:2002/ 1948; whereas the plaintiffs contended that no such gift deed was executed and that Afazuddin never gifted any land to the defendants. The plaintiffs have alleged that the registered gift deed no:2002/ 1948 is forged and fraudulent; whereas the defendants claimed that the gift deed is duly executed by Afazuddin and Sk Ahmed Ali; as such it is seen that the initial burden lies upon the plaintiffs to prove that the aforesaid gift deed is forged or fraudulent.

14. Both the parties have produced the certified copy of gift deed no:2002/ 1948 which is marked as exhibit 1 and exhibit A. The original gift deed is not produced as the same is claimed to have been lost. In fact Sub-

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Registrar, Dhubri had also informed vide exhibit 6 that the thumb impression register in respect of the aforesaid gift deed is also lost.

15. It is an admitted fact that none of the plaintiffs were allegedly present at the time of the execution of the aforesaid gift deed no:2002/ 1948, because the plaintiffs have claimed that they knew nothing about the execution of the aforesaid gift deed and only in the year 1996 they came to know about the existence of the aforesaid gift deed; as such the evidence of the plaintiffs regarding the execution or non execution of the aforesaid gift deed is not material. The plaintiffs have examined Shri Mantu Sk (PW1), Shri Ahmed Ali (PW2), Shri Azizur Hoque (PW3) and Shri Abul Hussain (PW5) but none of the abovenamed witnesses were present at the time of the execution or registration of the aforesaid gift deed no:2002/ 1948 (Exhibit 1); as such it is seen that the plaintiffs could not produce any direct evidence to prove that Afazuddin and Sk Ahmed Ali did not execute the aforesaid gift deed but the same was executed by some other persons by forging the signatures of Afazuddin and Sk Ahmed Ali.

16. Let me now discuss the circumstantial evidences brought on record by the plaintiffs to show that Afazuddin could not have executed the gift deed no:2002/ 1948 (Exhibit 1). The plaintiffs have claimed that Afazuddin was not literate and he could somehow write his name as "Afazuddin", but the perusal of the exhibit 1 reveals that the alleged signature of Afazuddin is written as "Afazuddin Ahmed", which indicates that the signature of Afazuddin in the exhibit 1 is forged. The plaintiffs have also produced two deeds admittedly executed by Afazuddin which are marked as exhibit 2 and exhibit 4 to show that Afazuddin used to

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sign his name only as "Afazuddin" and not as "Afazuddin Ahmed" (in Bangla or assamese). The PW2, Shri Ahmed Ali who worked at Postal Department also deposed that Afazuddin used to sign as "Afazuddin" only and not as "Afazuddin Ahmed" while receiving registered posts addressed to him. I have perused the exhibit 2 and exhibit 4 and it appears that Afazuddin had signed therein as "Afazuddin" only and not as "Afazuddin Ahmed" but whether this minor difference would be sufficient enough to hold that the exhibit 1 (gift deed no:2002/ 1948) was forged. In my considered opinion the above material is very weak in the facts and circumstances of this case and the same could not, by its own, lead me to infer that the signature upon the exhibit 1 did not belong to Afazuddin Ahmed. The perusal of the impugned judgment reveals that the learned trial Court had also noticed the above fact and he had also held, and rightly so, that signatures of a person varies during his lifetime and that the exhibit 1 was allegedly executed in the year 1948; whereas the exhibit 2 and exhibit 4 were executed in the year 1979 and 1984, i.e after about 30 years from the date of execution of the exhibit 1, as such during this long period of time a person may change his signature and may shorten it. Moreover, when the exhibit 1 was executed in the year 1948, Afazuddin would have been quite young whereas during the year 1979 and 1984 he would have grown considerably older and as such due to difficulty in writing he might have shortened his signature. The signature of "Afazuddin" in the exhibit 2 and exhibit 4 also points to the fact that Afazuddin might be having great difficulty in signing the same because the signature is very shaky and twisted and the letters end sooner without definite flow. The plaintiffs could not produce any contemporary document containing the

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admitted signature of Afazuddin as such merely because in exhibit 1 it is written as "Afazuddin Ahmed" whereas in exhibit 2 and exhibit 4 it is written as "Afazuddin" it cannot be held that the exhibit 1 is forged.

17. On the contrary, the defendants had examined Shri Bodiazamal (DW1) who was allegedly present at the time of the execution of the exhibit 1 and he had specifically deposed that Afazuddin and Sk Ahmed Ali gifted the suit land to them and had executed the registered gift deed no:2002/ 1948. The plaintiffs had cross examined Shri Bodiazamal (DW1) but nothing material could be elicited from his cross examination so as to doubt or disbelieve him. In fact, the plaintiffs had not at all cross examined the DW1 as regards the execution of the exhibit 1 or as regards the fact that Afazuddin did not execute the gift deed. The plaintiffs merely suggested that Afazuddin did not execute the gift deed to which the DW1 denied. There is absolutely nothing on record to doubt or disbelieve the DW1.

18. The defendants had further examined Smti Meherjan Bewa (DW2), who is the sister of Afazuddin and she had specifically deposed that Afazuddin and Sk Ahmed Ali gifted the suit land to the defendants and also delivered the possession of the same to them and executed the gift deed no:2002/ 1948. The DW2 is a natural witness and independent witness and it appears that she does not have any interest in the outcome of this case. In fact she (DW2) is the paternal Aunt of both the plaintiffs as well as the defendants as such there appears to be no explanation as to why she would favour one of the parties over other or more particularly as to why she would lie to favour the defendants. Moreover, she being a member of the family would naturally be a privy

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to the transactions dealing with family property. In fact she had specifically deposed that she knew about the gift and that she alongwith her other sisters had consented to the aforesaid gift and had signed upon the same. There is absolutely nothing on record to doubt or disbelieve the evidence of the DW2; as such it appears from the evidence of the DW1 and the DW2 that the gift deed no:2002/ 1948 was executed by Afazuddin and Sk Ahmed Ali.

19. In fact it is an admitted fact that neither Afazuddin nor Sk Ahmed Ali ever disputed or challenged the execution of the aforesaid gift deed no:2002/ 1948 during their lifetime, which specifically shows that they had in fact gifted the suit land and as such they never disputed or challenged the same because they had the opportunity to do the same. In fact Afazuddin admittedly died in the year 1996 and Sk Ahmed Ali was still alive at the time of institution of this suit; as such it is seen that they had lived long enough after the execution of the aforesaid gift as such if they intended to have challenged or disputed the gift deed, then they had every opportunity to do the same, however, they choose not to challenge the same.

20. In fact even after institution of this suit, the proforma defendant no:7, Sk Ahmed Ali, one of the co-executant of the gift deed no:2002/ 1948 choose not to challenge the execution of the gift deed and the suit proceeded ex-parte against him.

21. Even otherwise, the registered gift deed no:2002/ 1948 is more than thirty years old and as such its execution may be presumed under section 90 of the Indian Evidence Act, 1872. The learned counsel for the

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appellants had contended that the presumption under section 90 of the Indian Evidence Act, 1872 is not to be mandatorily raised in each and every case, but it is stated that the Court "may presume" and not "shall presume"; hence no presumption under this section can be raised in the facts and circumstances of this case. The learned counsel for the appellants had relied upon the judgment of the Hon'ble Orissa High Court in the case of **Gouri Shankar Kaur Vs State of Orissa [AIR 1984 Orissa 88]** to show that the presumption under section 90 is not mandatory. I have perused the above referred judgment and there is no dispute as regards the settled position of law that presumption under section 90 is not mandatory, but it is open to the Court to raise such presumption. In the instant case at hand, the gift deed no:2002/ 1948 is a admittedly a registered document, and moreover the alleged executants of the said gift deed never challenged the execution of the aforesaid documents before any authority at any point of time and the said gift deed is produced from proper custody as such there appears to be sufficient ground to raise to presumption under section 90 of the Indian Evidence Act, 1872 in the facts and circumstances of this case in respect of the genuineness of the signatures of the executants in the said deed.

22. In addition to the above, both the parties in this case are Muslim as such no registered document is required to constitute a valid gift. A Muslim may gift his properties orally, but only three essential conditions of a gift has to be fulfilled and they are the declaration made by the donor to gift the property; and acceptance of the said gift by the donee; and delivery of possession of the gifted property. In the instant case at hand, the DW1 and the DW2 had specifically deposed that Afazuddin

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and Sk Ahmed Ali gifted the suit land and also executed the gift deed no:2002/ 1948 and delivered the possession of the suit land to the defendants, which shows that the donors declared their intention to gift and had also delivered the possession of the suit land and the defendants had accepted the said gift by coming into possession of the suit land, which shows that all the essential conditions of a valid Muslim gift are proved in this case.

23. In fact the Hon'ble Apex Court had in a similar case of **Abdul Rahim Vs Abdul Zabar [(2009) 6 SCC 160]** had held that if a gift deed is a registered document, it carries with it a presumption that it was validly executed and it is for the party questioning the transaction to show that the transaction was not valid. In the instant case at hand, the exhibit 1 is a registered gift deed and it contains a declaration of Afazuddin and Sk Ahmed Ali that they had gifted the suit land and delivered the possession of the same to the defendants; hence it is held that the suit land was validly and duly gifted to the defendants and all the conditions of a Muslim gift are fulfilled.

24. The learned counsel for the appellants had contended that no possession of the suit land was delivered to the defendants, but the plaintiffs were all along in possession of the suit land. The above contention of the plaintiffs is not sustainable because the plaintiffs were admittedly not present at the time of the alleged gift. On the contrary, the defendants had sufficiently proved by examining DW1 and DW2 who had specifically stated that the possession of the suit land was delivered to the defendants at the time of the gift.

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25. The learned counsel for the appellants had contended that after Afazuddin died he was buried in the suit land, which shows that the suit land was in possession of the plaintiffs. The above contention of the appellants is not sustainable because merely if a person is buried over the suit land, the same would not give any possessory right over the said land to the deceased's successors. In fact, the DW2, Smti Meherjan Bewa had specifically deposed that Afazuddin and her father, Daulat Munshi were buried near each other, which shows that the burial was done over the ancestral property and both the father and son were buried near each other, but it cannot be inferred from the above that the defendants were never in possession of the suit land or that the possession of the suit land was not delivered at the time of the gift.

26. The learned counsel for the appellants had contended that the DW2, Smti Meherjan Bewa, who was one of the daughters of Daulat Munshi had specifically stated in her examination in chief that the daughters of Daulat Munshi including herself gave consent to the said gift, but later on stated that she signed on the gift deed, which are two different matters. The learned counsel for the appellants had contended that giving consent is very different from giving signature because a person may give his signature without giving consent to the transaction. In my considered opinion there is absolutely no contradiction or difference in the statements made by the DW2 in her examination in chief and in her cross examination because the bare reading of both the above statements would show that the daughters of Daulat Munshi had consented to the gift and also signed upon the gift deed; hence the statements are not self contradictory.

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27. Moreover, the plaintiffs had nowhere pleaded that the daughters of Daulat Munshi had any right, title or interest over the suit land, but the plaintiffs had all along maintained that the suit land belonged to Afazuddin and Sk Ahmed Ali and later on Sk Ahmed Ali went to Bangladesh as such Afazuddin became the sole owner; as such the plaintiffs cannot now turn around and say that the daughters of Daulat Munshi had any right over the suit land and that their consent was necessary for giving a valid gift.
28. The learned counsel for the appellants had further contended that the DW2, Smti Meherjan Bewa had contended that she had also signed upon the gift deed, but her signature is not present in the said deed which shows that she is lying. I have perused the exhibit 1 and it appears that the same does not bear the signature of Meherjan Bewa or the other sisters, but the said exhibit 1 was executed in the year 1948; whereas the DW2 examined herself in this regard after about 60 years; as such there is likelihood of loss of memory or corruption of memory in respect of the specific details of the transactions after such a long period of time, but her evidence broadly relating to the gift had remained unshaken and as such her evidence is reliable and slight difference in her statements cannot be considered as material or brand the otherwise consistent evidence of the DW2 as a bunch of lie.
29. The learned counsel for the appellants had further relied upon the judgment of the Hon'ble Gauhati High Court in the cases of **Tulan Ch Kakoty Vs Laburam Laskar [ (2012) 5 GLR 71]** and **Banamali Deka Vs Upendra Nath Das [ (1995) 1 GLR 77]** to show that no evidence beyond pleadings can be looked into. I have perused the

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above referred judgments and there is no dispute as regards the law laid down therein, but in the instant case at hand I had not relied upon any evidence which is beyond the pleadings of the parties. In fact the plaintiffs had pleaded that no such gift was ever given to the defendants; whereas the defendants pleaded that Afazuddin and Sk Ahmed Ali had gifted the suit land and delivered the possession of the same, and I had considered the evidences on record which were led by the parties either to prove or disprove the above pleadings and no other.

30. The perusal of the impugned judgment reveals that the learned trial Court rightly considered all the above materials on record and had rightly appreciated the evidence and had arrived at the correct conclusion that the plaintiffs have failed to prove that Afazuddin and Sk Ahmed Ali did not execute the gift deed no:2002/ 1948 and as such the decision of the learned trial Court in the issue no:6 is hereby affirmed.

31. DECISION: The decisions of the learned trial court in the issue no: 6 is affirmed.

***Point for determination no:2:Whether the learned trial Court had rightly decided the issue no:2 wherein it held that the suit is barred by limitation?***

32. The learned trial Court had held that the period of limitation prescribed for cancellation of a deed is three years from the date of accrual of cause of action and as such this suit which is instituted beyond the prescribed period of limitation of three years is barred by limitation.

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33. The learned counsel for the appellants had contended that the plaintiffs came to know about the gift deed after it obtained the certified copy of the same on 4/3/1997 and as such this suit instituted on 1/3/2000 is within the prescribed period of limitation of three years. The learned counsel for the appellants had contended that the learned trial Court had held that the suit was instituted on 14/3/2000, but in fact the same was instituted on 1/3/2000; hence the suit is within the prescribed period of limitation of three years.
34. I have perused the plaint and it appears that the plaint was presented before the Court on 1/3/2000 and not 14/3/2000 as observed by the learned trial Court. Let me now decide as to since which date the cause of action would arise. The perusal of the plaint reveals that the plaintiffs had pleaded that the defendants had instituted Misc case no:138/ 1996 and therein they mentioned about the gift deed and since then the plaintiffs came to know about the said gift deed. The plaintiffs further pleaded that thereafter they obtained the certified copy of the said gift deed 4/3/1997 and thus the cause of action arose from date day. In my considered opinion, the plaintiffs admittedly came to know about the impugned gift deed in the year 1996 itself when the Misc case no:138/ 1996 was instituted and as such the cause of action would arise from that day onwards on which date the plaintiffs gathered the knowledge regarding the gift and not from the date when the plaintiffs allegedly obtained the certified copy of the said gift deed. In addition to the above the PW2, Shri Ahmed Ali had specifically deposed in his cross examination that he came to know about the deed (gift deed) in the year 1996 and that in the year 1996 the plaintiffs read over the said deed to him. It is proved from the evidence of the PW2 that the

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plaintiffs came to know about the gift deed in the year 1996 itself and the plaintiffs also read the said gift to the PW2 in the year 1996 itself; hence it is seen that the cause of action arose in the year 1996 itself and not on 4/3/1997 when the plaintiffs allegedly obtained the certified copy of the said gift deed.

35. Moreover, the plaintiffs have specifically pleaded that Afazuddin died on 25/7/1996 and after about two months from the death of Afazuddin, the defendants herein filed Misc case no:138/ 1996 wherein they stated about the alleged gift and then the plaintiffs came to know about the said gift and thereafter made inquiries. It is seen from the above that the plaintiffs came to know about the gift deed after about two months from the death of Afazuddin, i.e it would be sometime during the month of September or October, 1996 and as such this suit instituted on 1/3/2000 is well beyond the prescribed period of limitation of three years.

36. In addition to the above, the plaintiffs alleged that they obtained the certified copy of the gift deed on 4/3/1997, but they had not produced the said certified copy, for reasons best known to it, to prove that the said certified copy of the gift was obtained on 4/3/1997; as such in the absence of the certified copy of the gift deed which was allegedly obtained on 4/3/1997, it cannot be believed that the plaintiffs obtained the gift deed on 4/3/1997.

37. In view of the above discussions it is held that even if it is held that the plaintiffs had the knowledge about the impugned gift deed only in the year 1996, then also this suit instituted on 1/3/2000 is filed beyond the

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prescribed period of limitation of three years for cancellation of the said gift deed; as such it is held that the suit is barred by limitation and the learned trial Court had rightly held that the suit is barred by limitation.

38. DECISION: The suit is barred by limitation; as such the decision of the learned trial Court in the issue no:2 is hereby affirmed.

39. I have perused the decisions of the learned trial Court in the issue no:1,3,4, and 5 and it appears that the decisions rendered in the above issues are correct as such the same are affirmed. Moreover, the appellants had not challenged the decision of the learned trial Court in the above issues.

40. In view of the above discussions, more particularly the decisions reached in the issue no:2 and 6 it is held that the learned trial Court had rightly decided the issue no:7 and rightly held that the plaintiffs are not entitled to any relief.

#### ORDER

41. In view of the above discussions the appeal is dismissed on contest with cost and the impugned judgment and decree dated 29/9/2010 passed by the learned Munsiff, Bilasipara in Title Suit no: 124/ 2007 is hereby affirmed.

42. Prepare decree accordingly.

43. The appeal is dismissed on contest with cost.

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44. Send back the LCR alongwith a copy of the judgment to the learned trial Court.

Given under my hand and the seal of this Court on this the 12<sup>th</sup> day of January, 2017 at Dhubri.

Yusuf Azaz,  
Civil Judge, Dhubri

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.