GAHC010174222025

2026:GAU-AS:304

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

Case No. : RSA/131/2025

JAVED PERVEZ CHOUDHURY

VERSUS

BEGUM NAJIFA YASMIN CHOUDHURY

Advocate for the Petitioner : MR. A K HANNAN, MR M J QUADIR

Advocate for the Respondent : MS. S K LASKAR, MR. S R BARBHUIYA,MR M HUSSAIN,MR. N HAQUE,MR. A K AZAD

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT

Date : 08-01-2026

Heard Mr. M.J. Quadir, learned counsel for the appellant. Also heard Mr. N. Haque, learned counsel for the sole respondent.

2. This is an appeal under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 25.06.2025 passed by the Learned Civil Judge (Sr. Div.), Hailakandi, in T.A. No. 09/2025, whereby the judgment &

decree passed by the learned Civil Judge (Jr. Div.), Hailakandi in Matrimonial (D) Suit No. 18/2024 was set aside.

3. After hearing the appellant, this Court had framed the following substantial question of law:-

> "*Whether the learned lower appellate Court has rightly set aside the Judgment and Decree passed by the learned Civil Judge (Junior Division), Hailakandi, in Matrimonial (D) Suit No. 18/2024, on the ground of jurisdiction in the absence of jurisdictional Family Court?*"

4. It is submitted by Mr. M.J. Quadir, the learned counsel for the appellant that the present appellant as a plaintiff had filed a Matrimonial (D) Suit before the learned Civil Judge (Jr. Div.), Hailakandi which was registered as the Matrimonial (D) Suit No. 18/2024, whereby it was prayed for a declaration of dissolution of marriage dated 25.07.2021, in the form of talaq along with a decree for confirmation of written divorce, executed and given by the appellant on 12.11.2023, 17.12.2023 and 30.01.2024 to the respondent, with further prayer for declaratory relief that the marriage between the appellant and the respondent is dissolved & freeing them from their marital tie.

5. Mr. Quadir, the learned counsel for the appellant further submitted that during pendency of the suit, the appellant had adduced five witnesses including himself and exhibited some documents.

6. After considering the evidence on record as well as the document adduced, the Learned Civil Judge (Jr. Div.), Hailakandi had passed the judgment

dated 15.05.2025 with the following reliefs:

> *(i) that the marriage between the parties stands dissolved in the f orm of 'talaq'; and*
>
> *(ii)that the written divorce/talaq executed by the appellant is hereby confirmed.*

7. Mr. Quadir, the learned counsel for the appellant further submitted that notices were duly served upon the defendant/respondent but failed to appear before the learned Trial Court below and the case proceeded *exparte*. He further submitted that the learned Civil Judge (Jr. Div.), Hailakandi had made detail discussions on the following issues:

> *(i) Whether the marriage between plaintiff and defendant is dissolved upon talaq by the plaintiff?*
>
> *(ii) Whether the plaintiff is entitled to the decree as prayed for?*

8. Thereafter, considering the documents as exhibited by the appellant, wherein it has also been shown that he issued three (3) consecutive notices to the defendant/respondent but in spite of receiving those notices, she never returned to her matrimonial house and as per the requirement of 'talaq e hasan' and as such the divorce was already completed. Thereafter, the learned Civil Judge (Jr. Div.), Hailakandi had passed the decree, declaring that the marriage between the parties stands dissolved in the form of talaq and the written divorce/talaq, executed by the plaintiff was also confirmed.

9. Mr. Quadir, the learned counsel for the appellant further submitted that it is not a case of seeking any divorce before the learned Civil Judge (Jr. Div.), Hailakandi but it was case seeking declaration that the talaq which was given by

the plaintiff in written form is valid and the wife can be considered as a divorced wife of the present appellant. Thus, the learned counsel submitted that there cannot be any bar to entertain such nature of declaratory suit by the learned Civil Judge (Jr. Div.), Hailakandi and the consequent decree passed by the learned Trial Court as a valid one. He further submitted that thereafter, the respondent/defendant had preferred an appeal in the Court of learned Civil Judge (Sr. Div.), Hailakandi against the said judgment and decree passed by the learned Civil Judge (Jr. Div.), Hailakandi on 15.05.2025 and 22.05.2025, which was registered as the T.A. No. 09/2025, and the learned Appellate Court had framed three issues for determination but without discussing on the merit of the case had allowed the appeal only with the view that the learned Civil Judge (Jr. Div.), Hailakandi has no jurisdiction to entertain such nature of case and as a result, the appellate Court had declared the decree passed by the learned Civil Judge (Jr. Div.), Hailakandi as nullity and there is no further discussion on the merit of the case.

10. Being aggrieved by the said judgment and decree passed by the learned Civil Judge (Sr. Div.), Hailakandi in T.A. No. 09/2025, the present Regular second Appeal has been preferred under Section 100 of the Code of Civil Procedure, 1908.

11. The learned counsel for the appellant further submitted that the learned appellate Court had misconceived with the law and failed to appreciate the fact that the plaintiff/appellant had approached the Court of learned Civil Judge (Jr. Div.), Hailakandi only with a prayer for declaration that the talaq given by the plaintiff is a valid talaq as well as with a further declaration that the written talaq/divorce, executed and given by the appellant/plaintiff on 12.11.2023,

17.12.2023 and 30.01.2024 can be considered as a final talaq. He further submitted that as per the Family Courts Act, 1984, the District Judge Court and the other subordinate Courts are barred in entertaining the matrimonial disputes which includes decree for divorce, decree of nullity, restitution of conjugal rights, judicial separation or dissolution of marriage or any other suit/ petitioners that are filed under the Hindu Marriage Act, 1955 and/or Special Marriage Act, 1954. But here in the instant case, the appellant had only prayed for a declaration that the talaq which was given by the plaintiff/appellant on three subsequent dates in written form was a valid talaq, which was accordingly decreed by the learned Civil Judge (Jr. Div.), Hailakandi. So, the question of entertaining such kind of petition by the Family Court or in absence of the Family Court, by the Court of District Judge does not arise at all as the Court of Munsiff or Civil Judge (Jr. Division) has every authority and power to entertain such declaratory suit.

12. In support of his submission, Mr. Quadir, the learned counsel for the appellant relied upon the decision of the Hon'ble Apex Court in the case of ***Samar Kumar Roy through Legal Represntative (Mother) vs. Jharna Bera***, reported in ***(2017) 9 SCC 591*** and basically emphasized on para 15 and 16, which reads as under:

> "***15.*** *It is obvious that a suit or proceeding between parties to a marriage for a decree of nullity or restitution of conjugal rights or judicial separation or dissolution of marriage, all have reference to suits or petitions that are filed under the Hindu Marriage Act and/or Special Marriage Act for the aforesaid reliefs. There is no reference whatsoever to suits that are filed for declaration of a legal character under Section 34 of the Specific Relief Act. Indeed, in Dhulabhai v. Madhya Pradesh (1968) 3 SCR 662, this Court had occasion to consider whether the civil court's jurisdiction was expressly or impliedly barred by statute. After referring to a number of judgments, this Court laid down 7 propositions of law, of which two are of relevance to the present case:*

> "*32.....(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*
>
> *Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.*
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> * * * *
>
> *(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."*

> ***16.*** *On a reading of the aforesaid propositions, it is clear that the examination of the remedies provided and the scheme of the Hindu Marriage Act and of the Special Marriage Act show that the statute creates special rights or liabilities and provides for determination of rights relating to marriage. The Acts do not lay down that all questions relating to the said rights and liabilities shall be determined only by the Tribunals which are constituted under the said Act. Section 8(a) of the Family Courts Act excludes the Civil Court's jurisdiction in respect of a suit or proceeding which is between the parties and filed under the Hindu Marriage Act or Special Marriage Act, where the suit is to annul or dissolve a marriage, or is for restitution of conjugal rights or judicial separation. It does not purport to bar the jurisdiction of the Civil Court if a suit is filed under Section 34 of the Specific Relief Act for a declaration as to the legal character of an alleged marriage. Also as was pointed out, an exclusion of the jurisdiction of the civil courts is not readily inferred. Given the line of judgments referred to by the High Courts, and given the fact that a suit for declaration as to legal character which includes the matrimonial status of parties to a marriage when it comes to a marriage which allegedly has never taken place either de jure or de facto, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law".*

13. In that context, the learned counsel for the appellant also placed reliance on the judgment of a co-ordinate Bench of this Court passed in RSA No.49/2024 (Tika Ram Nepal vs. Ambika Devi) and emphasized on para 14 of the said judgment, which reads as under:

> *"14. I have decided to agree with Mr. Biswas when he submitted that the Family courts Act would be applicable where there is a Family Court. At Sonitpur, there is no Family Court. So, the citizens of Sonitpur has to depend upon the available courts there. They cannot be compelled to travel to another place or city to get legal relief. Moreover, Section 8A of the Family Courts Act excludes civil court's jurisdiction in respect of a suit or proceeding which is between the parties and filed under the Hindu Marriage Act or Special Marriage Act where the suit is to annul or dissolve a marriage or is for restitution of conjugal rights or judicial separation. It does not purport to bar jurisdiction of the civil court if a suit is filed under Section 34 of the Specific Relief Act for a declaration as to the legal character of an alleged marriage".*

14. Mr. N. Haque, learned counsel appearing for the sole respondent submitted in this regard that the learned appellate Court had rightly passed the order, as the learned Civil Judge (Jr. Div.), Hailakandi has no jurisdictional authority to pass such kind of declaration. Mr. Haque further submitted that though it is stated to be a declaratory suit but by the said suit, the appellant is seeking for a decree of divorce which cannot be entertained or passed by the Court of learned Civil Judge (Jr. Div.), Hailakandi. Mr. Haque accordingly submitted that the learned appellate Court had rightly discussed the point of jurisdiction and accordingly, it was held that the decree which was passed by the learned Civil Judge (Jr. Div.), Hailakandi is a nullity, as it did not possess any jurisdictional authority to pass such kind of declaration, whereby the prayer for declaration of divorce is granted by the learned Court below. Mr. Haque further submitted that it is the Family Court under which such nature of matrimonial suits/petitions can be decided and in absence of the Family Court, the District Judge has the authority/power to entertain such kind of matrimonial suit/ petitions.

15. Mr. Haque further submitted that as per Section 8 of the Family Courts Act, 1984, the jurisdiction of the District Judge or Subordinate Court is barred in presence of the Family Court and where the Family Court is absent, it is only the wherein such kind of matrimonial suits/proceedings seeking divorce or

dissolution of marriage etc. can be entertained by the District Court or by the District Judge. He further submitted that the learned appellate Court had also granted the opportunity to the appellant to approach the proper forum, seeking the decree of divorce through talaq and instead of approaching the appropriate forum, the appellant had approached this Court by filing this appeal under Section 100 of the Code of Civil Procedure, 1908, which is not maintainable and the same is liable to be dismissed. Mr. Haque accordingly submitted that there is no reason to make any interference in the judgment and order passed by the learned appellate Court in the T.A. No. 09/2025, whereby the judgment & decree, passed on 25.06.2025.

16. Hearing the submissions made by learned counsel for both sides, I have also perused the case record and the annexure filed along with the appeal.

17. The present Regular Second Appeal has been filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 25.06.2025 passed by the learned Civil Judge (Sr. Div.), Hailakandi, in T.A. No. 09/2025, whereby the judgment & decree passed by the learned Civil Judge (Jr. Div.), Hailakandi in Matrimonial (D) Suit No. 18/2024 was set aside. However, the learned appellate Court had made an observation that the parties are at liberty to approach the appropriate forum for relief.

18. While passing the impugned order, the learned appellate Court did not discuss the case on merit and only on the point of jurisdiction, the appeal was decided with the observation that the learned Civil Judge (Jr. Div.), Hailakandi had no jurisdiction to try a case which relates to matrimonial dispute, by which the appellant sought for relief of decree of divorce. It is also observed by the

learned appellate Court that the "District Court" is the competent forum to deal with the matrimonial issues under the Hindu Marriage Act in absence of the Family Court and in that case, the District Court would be equally competent to deal with the matrimonial issues under dissolution of Muslim Marriage Act in absence of the Family Court. It is further held that the learned Civil Judge (Jr. Div.), Hailakandi is neither the Court with an equivalent jurisdiction, competency or authority to that of the Family Court and the District Court, to deal with such cases and thus, without much discussion on the merit of the case, the learned Civil Judge (Sr. Div.), Hailakandi had opined that the judgment and the decree passed by the Civil Judge (Jr. Div.), Hailakandi is a nullity on the point of lack of jurisdiction. Accordingly, the substantial question of law is also formulated as stated above, wherein also the jurisdictional issue is raised.

19. It is a settled law that the family disputes, the dissolution of marriage, decree of divorce under the Hindu Marriage Act or the Special Marriage Act can only be entertained by the Family Court under Sections 7 & 8 of the Family Courts Act, 1984 and in absence of the Family Court, the District Court can examine the matters. It is also rightly observed by the learned Appellate Court that in view of Section 2(4) of the Code of Civil Procedure, 1908, read with Sections 3/17 of General Clauses Act, 1897, the "District Court" with family jurisdiction would be a Principal Civil Court of original jurisdiction i.e. the learned District.

20. Here in the present case, it is the plea of the appellant that he has not sought for any decree of divorce or talaq, before the Court of Civil Judge (Jr. Div.), Hailakandi. It is the further claim of the appellant that on three subsequent date i.e. on 12.11.2023, 17.12.2023 and 30.01.2024, the appellant

had already given written talaq to the respondent and even after service of those three notices, the respondent did not return to her matrimonial house and thus the talaq is complete within the meaning of talaq-e-hasan. But it is seen that while passing the impugned judgment and decree, the learned Civil Judge (Jr. Div.), Hailakandi had passed the decree that the marriage between the parties stands dissolved in the form of talaq and the written divorce/talaq, executed by the plaintiff on 12.11.2023, 17.12.2023 and 30.01.2024, was also confirmed.

21. Thus it is seen that though it is submitted by Mr. Quadir, the learned counsel for the appellant that it was merely a declaratory suit in regards to the talaq given by the plaintiff but it is seen that the learned trial Court below had already dissolved the marriage between the parties in the form of talaq and thus it is seen that in the garb of declaration of valid talaq, the learned Civil Judge (Jr. Div.), Hailakandi had authenticated the talaq given by the appellant husband to the respondent wife. It is also not a case that a simple declaration is sought for any legal character under Section 34 of the Specific Relief Act, 1963 which has already been observed by the Hon'ble Apex Court but it is a case wherein in the name of declaratory suit, the plaintiff is seeking a divorce decree which is authenticated by the Court of learned Civil Judge (Jr. Div.), Hailakandi, under his seal and signature. Accordingly, it is not a simple case of declaration under Section 34 of the Specific Relief Act, 1963, rather the plaintiff is seeking a decree of divorce/talaq by the Matrimonial (D) Suit No. 18/2024, which he had filed before the learned Civil Judge (Jr. Div.), Hailakandi.

22. It is a settled principle that in absence of the Family Court in the District, the only competent authority to deal with such matrimonial matter is by the

District Judge or the Civil Court. But the learned Civil Judge (Jr. Div.), Hailakandi had no such authority or power to pass any decree of divorce/talaq.

23. Thus, this Court is of the opinion that the learned appellate Court did not commit any error or mistake while disposing the appeal on the point of jurisdiction with a further direction to the parties to approach the appropriate forum, seeking any relief of divorce/talaq. Further, the appellate Court had rightly observed that the decree passed by the learned Civil Judge (Jr. Div.), Hailakandi can be considered as a nullity due to lack of jurisdiction and hence, the question of discussion on merit on the other issues are also does not arise and accordingly, the appellate Court had rightly observed and passed the judgment and award dated 25.06.2025, passed in T.A. No. 09/2025 directing the parties to approach the competent authority.

24. Accordingly, in the opinion of this Court, the appeal is devoid of merit and accordingly dismissed.

JUDGE

Comparing Assistant