

GAHC010010602023



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

Case No. : CRP(IO)/25/2023

PRADUNNA HAJONG AND 6 ORS
S/O. LT. DIGENDRA HAJONG, R/O. KADAMTOLA GOALPUR, 4TH NO.
MATIA CAMP, DIST. GOALPARA, ASSAM.

2: PRATISH HAJONG
S/O. LT. DIGENDRA HAJONG
R/O. KADAMTOLA GOALPUR
4TH NO. MATIA CAMP
DIST. GOALPARA
ASSAM.

3: PRADIP HAJONG
S/O. LT. DIGENDRA HAJONG
R/O. KADAMTOLA GOALPUR
4TH NO. MATIA CAMP
DIST. GOALPARA
ASSAM.

4: ADHIR HAJONG
S/O. LT. DIGENDRA HAJONG
R/O. KADAMTOLA GOALPUR
4TH NO. MATIA CAMP
DIST. GOALPARA
ASSAM.

5: TARANI KANTA HAJONG
S/O. LT. DHARANI KANTA HAJONG
R/O. KADAMTOLA GOALPUR
4TH NO. MATIA CAMP
DIST. GOALPARA
ASSAM.

6: PRANAY HAJONG
S/O. NILAMBAR HAJONG

R/O. KADAMTOLA GOALPUR
4TH NO. MATIA CAMP
DIST. GOALPARA
ASSAM.

7: UTTAM ADHIKARI @ UTTAM HAJONG
S/O. LT. HARENDRA ADHIKARI
R/O. KADAMTOLA GOALPUR
4TH NO. MATIA CAMP
DIST. GOALPARA
ASSAM

VERSUS

RAM PAD NATH AND 2 ORS
S/O. LT. KHAGENDRA CHANDRA NATH, R/O. KADAMTOLA GOALPUR, P.O.
DALGOMA, P.S. MATIA, DIST. GOALPARA, ASSAM.

2:TAPAN CHANDRA NATH
S/O. LT. KHAGENDRA CHANDRA NATH
R/O. KADAMTOLA GOALPUR
P.O. DALGOMA
P.S. MATIA
DIST. GOALPARA
ASSAM.

3:FANINDRA CHANDRA NATH
S/O. LT. KHAGENDRA CHANDRA NATH
R/O. KADAMTOLA GOALPUR
P.O. DALGOMA
P.S. MATIA
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR. N B P SINGHA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 20-01-2023

Heard Mr. N. B. P. Singha, the learned counsel appearing on behalf of the Petitioners.

2. This is an application filed under Article 227 of the Constitution of India challenging the order dated 16.12.2022 whereby the learned Court of the Civil Judge, Goalpara vide the order dated 16.12.2022 have allowed the plaintiffs to file their written statement against the counter claim.

3. For the purpose of appreciating the facts involved in the instant case, it is relevant to take note of that the respondents herein had instituted a suit being Title Suit No.32/2022 before the Court of the Civil Judge, Goalpara claiming right, title and interest of the plaintiffs over the suit land; for a decree for khas possession of the suit land by evicting the defendants, their men, women, workmen, agents etc. from the suit land and even by demolishing any structure on the suit land; for mesne profit of Rs.1,00,000/- per annum be passed in favour of the plaintiffs along with interest and for other reliefs.

4. Pursuant to the suit being filed, the defendants who are the petitioners herein jointly filed a written statement cum counter claim on 26.08.2022. However, on the very date, the Court below instead of treating the counter claim as a cross-suit and applying the provisions of Order VIII Rule 6(A)(3) fixed the matter for issues. The said order dated 26.08.2022 which is enclosed as Annexure-1 to the petition on the face of it shows that the Court below had

committed a mistake which has prejudiced the plaintiffs. It further appears from the records that the suit proceeded and the learned counsel appearing for the plaintiffs did not point out before the Court about the mistake committed by the Court. The suit reached the stage of filing of the evidence of the plaintiffs. At that stage, the learned counsel for the plaintiffs filed an application on 16.12.2022 pointing out the mistake which the Court has committed while passing the order dated 26.08.2022 by not giving an opportunity to the plaintiffs to file written statement against the counter claim and as such prayed that the earlier order be recalled and the plaintiffs be allowed to file the written statement for the counter claim.

5. The Court realizing the said mistake which has caused prejudice to the plaintiffs, vide the order dated 16.12.2022 not only allowed the plaintiffs to file the written statement to the counter claim but also fixed 19.01.2023 for objection and hearing. It is against this order that the petitioners have approached this Court on the grounds that the Court below ought not to have allowed the written statement to be filed to the counter claim that too without giving any opportunity to the defendants to object to the petition filed being Petition No.1964/2022.

6. It is a well settled principle of law as held by the Supreme Court in the case of ***Budhia Swain and Others Vs. Gopinath Deb and Others*** reported in **(1999) 4 SCC 396** as to when the Court can exercise the power to recall. It has been mentioned that every Court has inherent power to recall its own order when such order is obtained by fraud practice upon the Court or where the Court was mislead by a party or when the Court itself commits a mistake which prejudices a party or where a judgment was rendered in ignorance of the fact that a

necessary party had not been served at all or had died and the estate was not represented. Paragraph No.8 of the said judgment being relevant is quoted hereinbelow:

“8. *In our opinion a tribunal or a court may recall an order earlier made by it if*

- (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,*
- (ii) there exists fraud or collusion in obtaining the judgment,*
- (iii) there has been a mistake of the court prejudicing a party, or*
- (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.*

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.”

7. If this Court further peruses the provisions of Order VIII Rule 6(A) and 6(G), it would be apparent that the counter claim shall have the same effect as a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original claim and on the counter claim. In terms with Sub-Rule (3) of Rule 6(A) of Order VIII, the plaintiff has a liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the Court. In terms with Rule 6(G) of Order VIII, the Rules applicable to written statement by a defendant shall apply to a written

statement filed in answer to a counter claim. Therefore, a conjoint reading of Order VIII Rule 6(A) and 6(G), the provisions of Order VIII Rule 1 shall duly apply.

8. At this stage, this Court finds it also pertinent to take note of the submission made by the learned counsel appearing on behalf of the petitioners to the effect that 90 days have long passed by and the plaintiffs did not file the written statement to the counter claim. The answer to the same can be found from Order VIII Rule 1 which stipulates that the defendant shall within 30 days from the date of service of the summons on him, present the written statement of his defence. In the instant case, the Trial Court neither fixed the date for filing of the written statement which is mandated under Order VIII Rule 6(A)(3) nor had taken any steps in terms with Order VIII Rule 1 which is required to be taken in terms with Order VIII Rule 6(G). This has seriously prejudiced the rights of the plaintiffs. Vide the impugned order dated 16.12.2022, the Trial Court recalled its earlier order and allowed the plaintiffs to file their written statement to the counter claim. Taking into account the judgment of the Supreme Court in the case of ***Budhia Swain and Others (supra)***, the Trial Court had the inherent powers to correct the mistake committed by the Trial Court by recalling its earlier order which the Trial Court had done vide the order dated 16.12.2022 when the said aspect of the matter was pointed out. The direction to file objection and objection hearing by the Trial Court in its order dated 16.12.2022 in the opinion of this Court was unnecessary inasmuch as the Trial Court by rectifying its own mistake have allowed the filing of the written statement. Under such circumstances, this Court does not find any ground for interference with the order dated 16.12.2022.

9. This aspect of the matter can also be looked into from another angle inasmuch as this Court in the present case is exercising the Superintending Powers under Article 227 of the Constitution of India. In the judgment of the Supreme Court rendered in the case of ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*** reported in **(2010) 8 SCC 329**, the Supreme Court observed that the High Court cannot at the drop of the hat in exercise of the powers of superintendence under Article 227 of the Constitution interfere with the orders of the Tribunals or Courts inferior to it. It was further observed that the High Court cannot in exercise of its power act as a Court of Appeal over the orders of the Court or Tribunal subordinate to it. It has been further observed that the High Court can interfere in exercise of its power of superintendence when there is a patent perversity in the orders of the Tribunals and the Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. Further to that, it was observed that in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the Tribunals or the Courts subordinate to it, is a possible view. In other words, the jurisdiction has to be exercised sparingly.

10. In the instant case as has been observed above, the Trial Court by not giving the opportunity to the plaintiffs to file their written statement had committed a grave error which had prejudiced the plaintiffs and this was sought to be corrected vide the order dated 16.12.2022. Interfering with the said order in the facts of the instant case would be contrary to the law laid down by the Supreme Court in the case of ***Shalini Shyam Shetty (supra)***.

11. Under such circumstances, this Court finding no merit in the instant

petition, dismisses the same at the motion stage itself.

12. The Registry is directed to intimate the Court below about the instant order.

JUDGE

Comparing Assistant