

GAHC010031502023



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

Case No. : CRP(IO)/42/2023

SOKINA BIBI ALIAS SAKINA BIBI AND 3 ORS
W/O ABDUL MAZID MIAH, VILL-HEKAIPARA, P.O.-CHANDRAPARA, P.S.
AND DIST-KOKRAJHAR, BTR, ASSAM

2: SAFURA BEGUM ALIAS SAFURA BEGUM (BIBI)
W/O AMZAD HUSSAIN
VILL-BAYJER ALGA PT-IV
P.O.-NAYER ALGA
P.S.-BILASHIPARA
DIST-DHUBRI
ASSAM

3: SUFIA KHATUN
W/O ABDUR REZZAK AHMED
VILL-TAPATTARI
P.O. AND P.S.-ABHAYAPURI
DIST-BONGAIGAON
ASSAM

4: SULTANA NASIRA
W/O ABDUR RAHIM
VILL-BAMUNIGAON PART-II
P.O.-NAYARHAT
P.S.-BAMUNIGAON PART-II
P.O.-NAYARHAT
P.S.-ABHAYAPURI
DIST-DHUBRI
ASSA

VERSUS

GOLAM MOSTAFA MONDAL AND 3 ORS.
S/O LATE SEKENDAR ALI MONDAL, R/O VILL-MOKRAPARA, P.O.-
K/BHOTGAON, P.S. AND DIST-KOKRAJHAR, BTR, ASSAM, PIN-783370

2:HAFIZUR RAHMAN MONDAL
S/O LATE SEKENDAR ALI MONDAL
R/O VILL-MOKRAPARA
P.O.-K/BHOTGAON
P.S. AND DIST-KOKRAJHAR
BTR
ASSAM
PIN-783370

3:SABBIR HUSSAIN MONDAL
S/O LATE SEKENDAR ALI MONDAL
R/O VILL-MOKRAPARA
P.O.-K/BHOTGAON
P.S. AND DIST-KOKRAJHAR
BTR
ASSAM
PIN-783370

4:SONABHAN BEWA
W/O LATE SEKENDAR ALI MONDAL
R/O VILL-MOKRAPARA
P.O.-K/BHOTGAON
P.S. AND DIST-KOKRAJHAR
BTR
ASSAM
PIN-78337

Advocates for the petitioner : Ms. R. Choudhury

Advocates for the respondent : Mr. B. K. Jain

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing & Judgment : 14.06.2023

JUDGMENT & ORDER (ORAL)

Heard Ms. R. Choudhury, learned counsel for the petitioners. Also heard Mr. B. K. Jain, learned counsel appearing on behalf of the respondents.

2. This civil revision petition, under Article 227 of the Constitution of India *read with* Section 151 of the Code of Civil Procedure, is directed against the Order dated 20.12.2022, passed by the learned Civil Judge, Kokrajhar, in Misc (J) Case No. 05/2022, whereby, the petition under Order VI Rule 17 of the Code of Civil Procedure, filed by the present petitioners for amendment of 'B' Schedule land of the plaint, was rejected.

3. The brief facts of the case is that the petitioners are the daughters of Late Sekandar Ali and they jointly, as plaintiffs, preferred a suit before the learned Civil Judge, Kokrajhar, against the respondents for declaration that the petitioners/ plaintiffs, being the legal heirs of Late Sekandar Ali, have right, title and interest over the total lands left by their deceased father and also prayed for partition of their share over the suit property left by their deceased father. The suit was numbered as T.S. No. 9/2019 and later on, it was transferred to the Court of learned Munsiff, Kokrajhar, and the suit was, accordingly, renumbered as T.S. No. 32/2021. But, subsequently, it was again transferred to the Court of learned Civil Judge, Kokrajhar.

4. On receipt of summons, the respondents/defendants accordingly appeared and filed their written statement denying the case of the petitioners/plaintiffs and also filed their counter-claim claiming their right, title and interest over the

suit land, where the petitioners/plaintiffs also filed their written objection against the counter-claim filed by the respondents/defendants. During the pendency of the suit, the present petitioners filed a petition under Order VI Rule 17 *read with* Section 151 of the Code of Civil Procedure for amendment of the 'B' Schedule of the plaint. The said petition was numbered as Misc. (J) Case No. 5/2022. The present respondents, as defendants, filed their written objection against the amendment petition and the learned Civil Judge, Kokrajhar, vide order dated 20.12.2022, rejected the prayer of the plaintiffs for amendment of the plaint only on the ground that the amendment portion in the petition is not clear and distinct regarding the proposed amendment. In paragraph No. 8 of the amendment petition, it is specifically stated that they filed the petition for amendment only in respect of Schedule 'B' property. The proposed amendment is also written specifically with inverted commas. But the learned Trial Court, without considering the petition, has acted illegally and rejected the prayer for amendment of the petition.

5. It is further stated that the learned Court below has misread the amendment petition and came to a wrong findings observing that there is no schedule of the proposed amendment and the portion, which is required to be amended in Schedule 'B' is also not clear. It is further contended that the proposed amendment will not change the nature and character of the suit and amendment is also necessary for determining the real controversies in question between the parties. But, without appreciating these facts, the learned Court below rejected the prayer for amendment and hence, the same is liable to be set aside and quashed. While projecting the plaint, due to some *bona fide* mistake, the homestead land measuring 1B 2K 10L covered by Dag No. 116 /

424 under Patta No. 74 was not mentioned and land under Dag No. 70/53 was mistakenly mentioned as 6B 3K 7L in Schedule 'B' of the plaint instead of 5B 0K 10L. The opposite party also did not raise any specific objection to this pleading of the plaintiff and the learned Court below, without considering all these aspects of the case, illegally rejected the prayer for amendment, which is necessary to determine the real controversy between the parties.

6. It is well settled that under Order VI Rule 17 of the Code of Civil Procedure, the Court has the discretion to amend the pleadings in a manner if it appears to the Court as just and proper for deciding the real controversy between the parties and in the present case also, the amendment, which is sought for, is necessary for determining the actual dispute or controversy between the parties. The learned Court below failed to appreciate the legal position in its proper perspective and failed to exercise its jurisdiction and rejected the prayer for amendment of the plaint and for which, the petitioners/plaintiffs had to approach this Court for setting aside the order dated 21.12.2022, passed by the learned Civil Judge, Kokrajhar, in Misc (J) Case No. 5/2022.

7. The learned counsel for the respondents/defendants, Mr. B. K. Jain, has submitted that it is a fact that the petitioners/ plaintiffs and the respondents/defendants are brothers and sisters and the plaintiffs have filed the suit claiming their share over the property left by their father. Accordingly, the plaintiffs/petitioners filed the suit for declaration of right, title and interest and khas possession of the suit land described in Schedule 'B' of the plaint claiming *inter alia* that they are entitled to get their share of land as described in the

Schedule 'B' of the plaint. The plaintiffs sought for amendment of Schedule 'B' of the plaint claiming 1B 2K 10L and out of Schedule 'A' land, which is a homestead land, and in the Schedule A(I), only 2B 4K 3L of land is available and it is the claim of the plaintiffs/ petitioners that they allowed the defendants/respondents to cultivate their land. So, if the A(I) land is a homestead land, then it is not at all possible to make any cultivation over there. Further it is submitted that the amendment sought for is inconsistent with their original plaint and thus, if the amendment is allowed at this stage, the defendants will be prejudiced and hence, it is submitted that the learned Court below rightly rejected the prayer for amendment of the petition.

8. On the other hand, the learned counsel for the petitioners/plaintiffs, Ms. R. Choudhury, has submitted that before framing of issues, the petition for amendment was filed when it has come to the knowledge of the plaintiffs/petitioners regarding some mistakes in mentioning the area and Dag number of the suit land. More so, the plaintiffs, being the sisters of the defendants, have claimed their share on this property and they not only claiming over the agricultural land but also claiming their share over the homestead land and hence, the defendants will no way be prejudiced if the plaint is amended, as sought for. Rather, the amendment is also necessary for determining the real dispute in controversy between the parties.

9. In this context, the learned counsel for the petitioners/plaintiffs also relied on a decision of this Court passed in CRP(IO)/16/2022, dated 08.06.2022, wherein, the judgment of the Hon'ble Supreme Court in **Sajjan Kumar Vs. Ram Kishan [(2005) 13 SCC 89]** was also relied on while discussing on the

issue of amendment under Order VI Rule 17 CPC.

10. After hearing the submissions made by the learned counsels for both sides and also on perusing the materials available on record, it is seen that the plaintiffs/petitioners filed the petition for amendment before commencement of the evidence of the parties as well as before framing of issues by the learned Court below. The amendment petition was filed by the plaintiffs/petitioners when some mistakes regarding the Schedule of the land has come to the knowledge of the petitioners/ plaintiffs and accordingly, they filed the amendment petition for Schedule 'B' land, which is the suit land. The main objection raised by the learned counsel for the respondents/ defendants is that the amendment petition is totally inconsistent with their original plaint and the homestead land is stated to be the agricultural land and it is claimed by the petitioners/plaintiffs that they allowed to cultivate their share of cultivable land to defendant Nos. 1 to 3, whereas they claimed their share in the homestead land which cannot be cultivable land. But, it is a fact that the petition for amendment is filed before commencement of the evidence and thus, it also cannot be denied that the defendants will get the opportunity to file their additional written statement against the amended plaint and can take their defence plea even at the stage of evidence. Further it is seen that the amendment of the Schedule 'B' property will not change the nature and character of the suit land, rather it will be necessary for determination of real controversy between the parties. The land may be homestead land or the agricultural land, but the question to be determined in regarding the entitlement of shares of the petitioners/plaintiffs in the property left by the father of both the plaintiffs as well as defendants and if the Schedule of the said land is

disputed or ambiguous and if the amendment is not allowed, then there is every possibility of more complication at the stage of execution in the event if the plaintiffs succeeds in the suit.

11. This Court, in the above referred civil revision petition, i.e. CRP (IO)/16/2022, while relying on the decision of Hon'ble Supreme Court in the case of **Sajjan Kumar (supra)**, has held in paragraph No. 13 as under:

“13. At this stage, another aspect also needs to be taken into account that amendment caused to the boundaries of a Schedule does not change the nature and character of the suit and as such a Three Judges Bench of the Supreme Court in the case of Sajjan Kumar Vs. Ram Kishan reported in (2005) 13 SCC 89 held that it is true that the plaintiff ought to have been diligent and prompt in seeking amendment in the plaint at an earlier stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. It was further observed that a proposed amendment was necessary for bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complication at the stage of execution in the event the plaintiff succeeds in the suit. Paragraph 5 of the said judgment is quoted herein below:-

Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 Civil Procedure Code would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

12. The learned Court below rejected the prayer for amendment only on the

ground that the portion for which the amendment is sought for in Schedule 'B' is not clear and it is also not clear as to whether the whole Schedule 'B' land is required to be replaced or only a portion of Schedule 'B' land is required to be amended. So, only on the said ground, the prayer for amendment of the plaintiffs was rejected and there is no other discussion made by the learned Civil Judge as to why the prayer for amendment was rejected.

13. In view of the discussions made above, I am of the opinion that the learned Civil Judge has committed some error or mistakes while passing impugned order dated 20.12.2022, in Misc (J) Case No. 05/2022, and hence, interference of this Court is felt necessary and accordingly, the same is hereby set aside and the petition for amendment filed by the petitioners/plaintiffs is allowed for necessary amendments in Schedule 'B' of the plaint, as prayed for.

14. With the above observation, the present petition stands disposed of.

JUDGE

Comparing Assistant