

GAHC010034372016



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

Case No. : CRP/489/2016

ON THE DEATH OF NABA KANTA DAS, HIS LEGAL HEIRS (a) SMTI. SIKHA
RANI DAS (WIFE)
R.K. MISSION ROAD, DIST.- DHUBRI, PIN- 783324

1: (d) SMTI. NANDITA DAS (DAUGHTER)
WIFE OF NIRMALYA PAUL

R.K. MISSION ROAD
DIST.- DHUBRI
PIN- 783324

1: (c) SMTI. ARPITA DUTTA (DAUGHTER)
TOLLYGUNGE
GOLF CLUB ROAD
KOLKATA

1: (b) TRIDIP KUMAR DAS (SON)
R.K. MISSION ROAD

DIST.- DHUBRI
PIN- 78332

VERSUS

SIKHA SARKAR @ CHEPO and 10 ORS.
W/O LT. RAJENDRA KR. SARKAR

2: RAJESH CHOUDHURY
S/O LT. RAJENDRA KR. SARKAR

3: RAMANATH CHOUDHURY
S/O LT. RAJENDRA KR. SARKAR

5: BISHNU CHOUDHURY

S/O LT. RAJENDRA KR. SARKAR

6:LACHIT CHOUDHURY
S/O LT. RAJENDRA KR. SARKAR

7:PAKU CHOUDHURY
S/O LT. RAJENDRA KR. SARKAR

5 TO 7 ARE R/O W/NO.16
R.K. MISSION ROAD
DHUBRI TOWN
P.S. and DIST- DHUBRI
ASSAM
PIN-783301

9:DR. RARNENDRA NATH CHOUDHURY
S/O LT. RAJENDRA KR. SARKAR
R/O R.K. MISSION ROAD
DHUBRI TOWN
W/NO.16
BIDYAPARA
P.S. and DIST- DHUBRI
ASSAM
PIN-783301

10:THE STATE OF ASSAM
REP. BY THE DY. COMMISSIONER
DHUBRI
P.O.
P.S. and DIST- DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

01.02.2023

Herd Mr. P. K. Roy, learned Senior Counsel assisted by Mr. A. Chakraborty,

learned counsel for the petitioner. Also heard Mr. D. Kalita, learned counsel for the respondent No. 9 and Ms. K. Phukan, learned counsel for the respondent No. 10.

2. The present revision petition is filed assailing an order dated 04.10.2016 passed by the learned Munsiff No. 1, Dhubri in Title Suit No. 208/2011, whereby the petition filed by the present petitioner as plaintiff to call Circle Officer, Dhubri as witness to prove the document which has been produced by the plaintiff, was rejected.

3. The learned Court below rejected the aforesaid application on the ground that the map, which the plaintiff wants to prove, was not issued by the concerned Circle Officer and therefore, it would be a futile exercise to call him and depose. The second ground for rejection of the application is that there are sufficient evidence in record to decide the fate of the suit, therefore refused to call the Circle Officer.

4. Mr. Roy, learned Senior Counsel for the petitioner submits that the ground for rejection as cited is not tenable in the eye of law inasmuch as when a plaintiff wishes to summon an officer to prove a record, the Court cannot come into the authenticity of the said document before calling the witness.

5. Mr. Roy, learned Senior Counsel further argues that in an application for calling a witness to the witness box to prove certain official documents, the Court ought not to have commented on the availability of the evidence on record to decide the suit on merit. Therefore, according to Mr. Roy, the learned Trial Court has exceeded in its jurisdiction in coming to such determination inasmuch as the plaintiff will have a right to bring sufficient evidence before the

Court permissible under the law.

6. Mr. D. Kalita, learned counsel for the respondent No. 9 submits that the learned Court below while passing the impugned order has not committed any error of jurisdiction inasmuch as it is within the competence of the learned Trial Court to look into the document. He further contends that as the map is not issued by the Circle Officer, the learned Court below has rightly refused to call the Circle Officer to witness box to prove the veracity of such record.

7. This Court has given anxious consideration to the submissions made by the learned counsel for the parties.

8. The plaintiff has instituted the suit alleging encroachment at the hand of respondent No. 9. Earlier also, the plaintiff had filed a suit alleging similar encroachment against the said defendant/respondent No. 9, however, the said suit was dismissed and it is stated that the same is pending at the second appellate stage. However, as the learned court below has come to a conclusion that the subsequent suit was filed for the cause of action of further encroachment. Therefore, this Court is not entering into the merit or factum of filing of earlier suit and dismissal thereof.

9. The application reveals that the plaintiff earlier filed an application for an Amin Commission to ascertain the veracity of encroachment along with the map of the area. However, such prayer was refused on the ground that at that relevant point of time no survey map was available as the settlement operation was going on at that point of time.

10. In the aforesaid backdrop, an application in question was filed alleging that the plaintiff himself has obtained a surveyed map and therefore, the Circle

Officer be called for to prove the same.

11. In the given facts, this Court is of the considered view that while the learned Court below was within his competence to reject or accepts such application in terms of the provision of Order 26 Rule 9 of the CPC. However, the present application has not been dismissed on the ground that the petitioner has failed to make out the case to exercise jurisdiction under the provision of Order 26 Rule 9 of the CPC, rather came to a conclusion that there are sufficient evidence to decide the issue and the map is not issued by the Circle Officer, without calling the Circle Officer.

12. Therefore, this Court is of the considered opinion that the learned Court below has failed to exercise its jurisdiction resulting in failure of justice. Accordingly, the order dated 04.10.2016 passed by the learned Munsiff No. 1, Dhubri in Title Suit No. 208/2011, is set aside with a liberty to the learned Court below to take the matter afresh and pass fresh reason order.

13. As the Suit is pending since the year 2016, the parties shall appear before the learned trial Court below on 13.03.2023 and an appearance of the parties, the learned Court below shall proceed in terms of the present order.

14. In view of the aforesaid, this revision petition is closed.

JUDGE

Comparing Assistant