

GAHC010054982023



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

Case No. : CRP(IO)/70/2023

MD. ABDUL RAHIM @ RAHIM BADSHA AND 18 ORS
S/O LATE AYAN ALI

2: JAYNUB BEGUM
D/O LATE JAYAN ALI
VILL-BAROIPARA

3: ABDUL MUTALEB @ ABDUL MATLEB
S/O LATE YUSUF ALI
VILL-MANDALPARA

4: UMMEHANI BEGUM
W/O NUR ISLAM
D/O LATE HATEM ALI
VILL-BAROIPARA

5: AZIZUL HAQUE
S/O LATE HASMAT ALI
VILL-BAROIPARA

6: SAHED ALI
S/O LATE ABED ALI

7: AHED ALI
AGE ABOUT 38 YEARS

8: OMAR ALI
AGE ABOUT 36 YEARS

9: JUBBAR ALI @ ABDUL JUBBAR
ALL ARE SONS OF LATE ABED ALI

10: AYAN ALI
S/O LATE HAJI SAJAN ALI

11: MOHAMMAD ALI
AGE ABOUT 54 YEARS

12: ABDUL HYE
AGE ABOUT 52 YEARS

13: GAJIUR RAHMAN
AGE ABOUT 50 YEARS

14: AKKAS ALI
ALL ARE SONS OF LATE OSMAN ALI

15: FELANI BEGUM @ REJIA KHATUN
AGE ABOUT 66 YEARS

16: MONOWARA BEGUM
AGE ABOUT 42 YEARS

17: JAHANARA BEGUM
ALL ARE D/O LATE OSMAN ALI

18: ARSHAD ALI
S/O LATE IMAN ALI

19: SAHITON BEGUM
D/O LATE IMAN ALI
ALL ARE RESIDENTS OF VILL-BAROIPARA. ALL ARE UNDER PACHIM
SHAILMARY MOUZA
P.O.-GHANSHIMULLY
P.S.-KHARUPETIA
DIST-DARRANG
ASSA

VERSUS

MD. ABDUL RAHIM
S/O LATE ABDUL SAMAD, VILL-BAROIPARA, MOUZA-PACHIM SAILMARI,
P.S.-KHARUPETIA, DIST-DARRANG, ASSAM

Advocate for the Petitioner : R RAHMAN

Advocate for the Respondent :

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

15.03.2023

Heard the learned counsel Mr. R. Rahman appearing for the petitioners.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 17.02.2020 passed by the Munsiff No.2, Mangaldai in Misc(J) Case No.06/2018.

3. Md. Abdul Samad filed a suit against Auyb Ali and others on the issue of a dispute over land. These petitioners filed an application before the Trial Court claiming that they are necessary parties in the suit and prayed for impleading them as defendants. The Trial Court declined to allow the said prayer.

4. It may be mentioned that the petitioners approached the Trial Court when the hearing of plaintiffs' evidence was already closed and the hearing of the evidence of the defendants' side was going on. The Trial Court held that if the present petitioners are impleaded as defendants, the court has to go for *de novo* trial. For that reason, the Trial Court dismissed the petition of the petitioners.

5. I have given my anxious considerations to the submissions to the learned counsel for the petitioners.

6. In a civil suit, the plaintiff is the dominus litis. It means that it is the wish of the plaintiff against whom he would seek relief in a suit. It is also the

prerogative of the Trial Court to decide on the point of necessity of a particular person in a suit. If the Trial Court finds that the suit is bad for non joinder of a particular party, then the Trial Court would ask the plaintiff to implead those parties. In a civil suit, nobody is expected to ask the court to implead him as one of the parties. This prerogative lies with the plaintiff and the court itself only.

7. Here, in this case, Trial Court has not given any opinion about the necessity of the petitioners in the suit. Rather, the petitioners themselves appeared before the court at the final stage of the hearing of the suit.

8. The Trial Court has rightly held that if they are impleaded as parties in the suit, the court will have to go for *de novo* trial of the suit.

9. For the aforesaid two reasons, the present petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant