

GAHC010058652019



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

Case No. : CRP/45/2019

RAJEN DUBEY AND 5 ORS.

S/O- LT BHURA DUBEY, R/O- VILL- LABACPAR PART-III, P.O. PAILAPOOL,
P.S. LAKHIPUR, DIST- CACHAR, ASSAM, PIN- 788098

2: RAM ABATAR DUBEY

S/O- LT CHANDRASEKHAR DUBEY
R/O- VILL- LABACPAR PART-III
P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 788098

3: RAM CHANDRA DUBEY

S/O- LT CHANDRASEKHAR DUBEY
R/O- VILL- LABACPAR PART-III
P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 788098

4: SRI GOPI NATH DUBEY

S/O- LT CHANDRASEKHAR DUBEY
R/O- VILL- LABACPAR PART-III
P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 788098

5: BALARAM DUBEY

S/O- LT CHANDRASEKHAR DUBEY
R/O- VILL- LABACPAR PART-III

P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 788098

6: TARA DUBEY
W/O- LT SHYAM PRASAD DUBEY
R/O- VILL- LABACPAR PART-III
P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 78809

VERSUS

MADHURI DUBEY AND 2 ORS.
W/O- LT RAMA KANTTA DUBEY, R/O- VILL- LABACPAR PART-III, P.O.
PAILAPOOL, P.S. LAKHIPUR, DIST- CACHAR, ASSAM, PIN- 788098

2:MANJURI DUBEY ALIAS MANJULA DUBEY
D/O- LT RAMA KANTA DUBEY
R/O- VILL- LABACPAR PART-III
P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 788098

3:BIJIT BHOWMIK
S/O- LT GAURANGA BHOWMIK
R/O- VILL- LABACPAR PART-III
P.O. PAILAPOOL
P.S. LAKHIPUR
DIST- CACHAR
ASSAM
PIN- 78809

Advocate for the Petitioner : MR. I ALAM

Advocate for the Respondent : MR R ISLAM (r-1,2)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

06.11.2023

Heard the learned counsel Mr. I. Alam appearing for the petitioners. Also heard Mr. R. Islam, learned counsel representing respondent nos.1 and 2.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 24.09.2015 passed by the learned Civil Judge No.2, Cachar, Silchar in Misc Case No.06/2014 arising out of Title Suit No.62 of 2011 whereby the application under Order VII Rule 17 of the Code of Civil Procedure was dismissed.

3. The petitioners being the plaintiffs filed the Title Suit No.62 of 2011 praying for declaration of right, title and interest over a plot of land.

4. Subsequently, the defendant no.3 of T.S. No.62 of 2011 filed two separate suits being Title Suit No.56 of 2012 against the defendant nos.1 and 2 of the said suit and T.S. No.61 of 2012 against the defendant nos.1 and 2 of the said suit praying for specific performance of contract for sale.

5. The petitioners came to know that those two suits were filed by the

defendant no.3 where the subject-matter is the same as his suit.

6. The petitioner has claimed that he did not know about those facts. He has claimed that though the defendants filed the written statement in his suit, they did not reveal of that fact in their written statement.

7. It may be mentioned that T.S. No.56 of 2012 and T.S. No.61 of 2012 were decreed in favour of the defendant no.3. Pursuant to the decrees passed in those suits, the learned trial court even executed the sale deeds.

8. Therefore, the petitioners filed an application under Order VII Rule 17 of the Code of Civil Procedure before the trial court praying for amendment of the plaint to incorporate those things and also to incorporate a prayer for cancellation of the aforesaid sale deeds.

9. The learned trial court did not allow the prayer for amendment on various grounds and in my considered opinion, the grounds on the basis of which the prayer for amendment of the plaint was rejected by the learned trial court need not be discussed elaborately in this order.

10. I find that the amendments, as prayed for by the plaintiffs/petitioners would not change the nature and character of the suit. Therefore, I am of the view that the learned trial court erroneously oriented itself and arrived at an incorrect finding. The impugned order dated 24.09.2015 passed by the learned Civil Judge No.2, Cachar, Silchar in Misc Case No.06/2014 arising out of Title Suit No.62 of 2011 is set aside.

11. The amendment, as prayed for by the plaintiffs/ petitioners shall be allowed by the leaned trial court.

12. With the aforesaid direction, the Civil Revision Petition is disposed of.

JUDGE

Comparing Assistant