

GAHC010058752021



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

Case No. : CRP(IO)/39/2021

SURESH KR AGARWALLA
S/O LATE MAHABIT PRASAD AGARWALLA, R/O A.T. ROAD, SIVASAGAR
TOWN, P.O., P.S. AND DIST. SIVASAGAR, ASSAM 785640

VERSUS

JYOTI DEVI AND 5 ORS
W/O LATE RAJESHWAR PRASAD SAHU, R/O ARUNUDAI PATH, K.P.
CHARIALI, P.O., P.S. AND DIST. SIVASAGAR, ASSAM 785640

2: PURNAM DEVI

D/O LATE RAJESHWAR PRASAD SAHU
R/O ARUNUDAI PATH
K.P. CHARIALI
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM 785640

3: SUMAN DEVI

D/O LATE RAJESHWAR PRASAD SAHU
R/O ARUNUDAI PATH
K.P. CHARIALI
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM 785640

4: KARISHMA DEVI

(REPRESENTED BY HER MOTHER SMTI JYOTI DEVI) D/O LATE
RAJESHWAR PRASAD SAHU

R/O ARUNUDAI PATH
K.P. CHARIALI
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM 785640

5:UDAI PRASAD SAHU

S/O LATE RAJESHWARF PRASAD SAHU
R/O ARUNUDAI PATH
K.P. CHARIALI
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM 785640

6:ABHIJIT PRASAD SAHU

S/O LATE RAJESHWAR PRASAD SAHU
R/O ARUNUDAI PATH
K.P. CHARIALI
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM 78564

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

26.06.2023

Heard Mr. A. Ganguly, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the order dated 15.02.2021, passed by the learned Munsiff No.2 at Sivasagar in Petition No.168/2020, filed in Title Suit No.24/2018. It is to be mentioned here that vide impugned order, the learned court below had dismissed the petition filed by the

petitioner/defendant, under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, for amendment of the written statement.

3. The background facts leading to filing of the present petition is adumbrated herein below:

"The respondents herein, being plaintiffs, have instituted one Title Suit No.24/2018 for eviction of the defendant and his men from the suit premises and giving its khas possession to the plaintiffs with cost of the suit. The petitioner herein, being the defendant of the said title suit has filed written statement. While filing the said written statement, the petitioner could not annex one copy of Jamabandi of a plot of land measuring 18 lechas comprising Dag Nos.2186 & 2187 of periodic patta No.1965 of Nagarmahal Mouza, Sivasagar Town, wherein one RCC building is standing over the said plot of land and therefore, in order to rebut the contention of the plaintiffs regarding the *bona-fide* requirement of the suit premises, the petitioner has filed a petition before the learned Court below, being Petition No.168/2020, on 04.06.2020, under Order 6 Rule 17 of the CPC for allowing him to amend the written statement. But, the learned court below has rejected the same. Being aggrieved, the petitioner approached this court."

4. The learned counsel for the petitioner, referring to the petition at page 52 of the present petition submits that in the written statement the petitioner had stated that the suit room is his only source of livelihood and if he is evicted therefrom he will be highly prejudiced and will suffer irreparable loss and hardship and that the plaintiffs own one RCC building standing over a plot of land measuring 18 lechas comprising Dag Nos.2186 & 2187 and P.P. No.1965 of Nagarmahal Mouza of Sivasagar Town and the plaintiffs have been residing there and doing their business and the present petitioner could not obtain the copy of Jamabandi of the said plot of land, and he obtained the same later on, from the office of the Circle Officer, Sivasagar and thereafter, preferred the petition before the learned Court below for allowing to amend the written statement under Order 6 Rule 17 of the CPC.

5. The learned counsel for the petitioner further submits that Hon'ble Supreme Court has categorically stated that Court should always be liberal in respect of allowing the

parties to amend the pleadings specially the written statement, but, the learned court below had dismissed the petition without just reason and therefore, the learned counsel for the petitioner has contended to allow this petition.

6. Having heard the submission of the learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 15.02.2021. It is to be mentioned here that the respondents have chooses not to contest the petition, inspite of service of notice upon them.

7. It appears that the learned Court below has rejected the petition mainly on two grounds. Firstly, the learned Court below held that any claim for *bona-fide* requirement of suit premises has to stand on its own feet and merit and the onus is not upon the defendant to prove that there is no *bona-fide* requirement, but it is upon the plaintiff seeking the eviction to prove that there is a *bona-fide* requirement. The onus of proof and the burden of proof lies upon the person claiming the *bona-fide* requirement and not otherwise. And the other ground is that the defendant of the said case was the plaintiff in the Title Suit No.9/2005 as seen from the perusal of the case record, and from the submission of the learned counsel for the respondent/plaintiff the Court presumed that the knowledge of the estate of the respondent/plaintiff was well within the knowledge of the petitioner.

8. Having examined the grounds, so assigned by the learned Court below for dismissing the petition filed by the petitioner, in the light of facts and circumstances on the record and also in the light of submission, so advanced by learned counsel for the petitioner this court finds no infirmity in the impugned order so passed by the learned court below. Admittedly, the burden of proving *bona-fide* requirement of the suit premises is upon the person who claimed it. The burden cannot be shifted to the petitioner who wants to step into the shoes of the plaintiff which cannot be permitted under the given facts and circumstances on the record.

9. It is to be noted here that the power conferred to the High Court under Article 227 of the Constitution of India is restricted. It has to be exercised and only in appropriate cases, in order to keep the subordinate court within the bounds of their authority and not

correcting error of fact which only a superior court can do in exercise of in statutory power as the court of appeal; the High court cannot, in exercise of a jurisdiction under Article 227, convert itself into a court of appeal. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Chandrasekhar Singh vs. Shivaram Singh**, reported in **1979 3 SCC 118**.

10. Here in this petition the petitioner has failed to show from the material on record that the learned court below, while dismissing this petition, exceeds its jurisdiction or its authority so as to invoke the supervisory jurisdiction of this court. Having considered above and also considering the submission of the learned counsel for the petitioner, this Court find no ground to interfere with the impugned order and accordingly, the petition stands dismissed.

11. In terms of above, this Civil Revision Petition stands disposed of. The parties have to bear their own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant