

GAHC010059192023



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

Case No. : CRP(IO)/83/2023

LILA BEGUM

W/O- MASTAN ALI, D/O- LATE ROIS ALI, R/O- VILL.- NARIKHOLI, P.O.
LAXMI BAZAR, P.S. AND DIST. KARIMGANJ, ASSAM, PIN- 788724.

VERSUS

ABDUL KARIM AND 9 ORS

S/O- LATE RAIYAZ ALI, R/O- LONGAI ROAD (SARALKA ROAD), P.O.
SETTLEMENT ROAD, P.S. AND DIST. KARIMGANJ, ASSAM, PIN- 788724.

2:PIYARA BEGUM

W/O- ABDUL MUTLIB
NOW RESIDENT OF VILL.- ALONGJURI
P.O. SILCHAR ROAD
P.S. AND DIST. KARIMGANJ
ASSAM
PIN- 788724.

3:THE REGISTRAR

BIRTH AND DEATH
KARIMGANJ MUNICIPAL BOARD
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

4:THE JOINT DIRECTOR OF HEALTH SERVICES

CUM ADDL. DISTRICT REGISTRAR OF BIRTH AND DEATH
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

5:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

6:THE DEPUTY INSPECTOR OF SCHOOLS
KARIMGANJ AND AERO
LA-3
NORTH KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

7:THE KARIMGANJ MUNICIPAL BOARD
KARIMGANJ
REPRESENTED BY THE CHAIRMAN
KARIMGANJ MUNICIPAL BOARD
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

8:THE OFFICER-IN-CHARGE
KARIMGANJ POLICE STATION
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

9:THE SUPERINTENDENT OF POLICE
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710.

10:THE STATE OF ASSAM
NOTICE TO BE SERVED THROUGH THE DEPUTY COMMISSIONER
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM
PIN- 788710

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 21.12.2023

Heard Mr. K. Uddin, learned counsel for petitioner. Also heard Mr. T.R. Gogoi, learned Govt. advocate appearing for the respondent nos. 5, 8, 9 and 10. There are total 10 respondents in this matter and no other respondent has entered appearance and they are unrepresented when the matter is called.

2. As per office note dated 16.08.2023, 20.11.2023 and vide order dated 22.11.2023, it appears that the notice on all the respondents have been duly served.

3. The petitioner herein claims that on her complain, the birth certificates of respondent nos. 1 and 2 had been cancelled by the competent authorities after due enquiry on certain anomalies being noticed in the issuance of the said two birth certificates. Aggrieved by the said action of the competent authority in cancellation of birth certificates, the respondent nos. 1 and 2 had instituted TS 214/2022 in the Court of learned Munsiff No. 3, Karimganj [now Civil Judge (Junior Division) No. 3, Karimganj], with prayer for declaration that the birth certificates of the plaintiffs were genuine and the cancellation of birth certificates by the Registrar of Birth and Deaths, Karimganj Municipal Board was illegal, arbitrary and beyond the norms and procedures and also for other consequential reliefs. In course of proceedings of the said suit, the petitioner, on whose complaint the cancellation process was allegedly initiated, approached before the learned Trial Court with an application under Order I Rule 10(2) read

with Section 151 CPC for impleadment in the suit as well as in the connected misc. case, wherein she claims to be the daughter of Late Rois Ali and Suran Bibi, asserting that the respondent nos.1 and 2 were not the children of her parents.

4. The learned counsel for the petitioner has submitted that the principal respondent nos. 1 and 2 did not file any written objection.

5. However, the learned Trial Court by the order dated 21.01.2023, rejected the said prayer on the ground that the object of Order I Rule 10(2) CPC was to enable the Court, at any stage of the suit, to add a person as a party, to adjudicate upon and settle all the questions in the suit and accordingly, arrived at a conclusion that when impleading of a third party would mean *de novo* trial, a third party shall not be impleaded. The learned trial Court has also expressed its opinion that where the impleadment of a person would change the complex of the litigation, his/ her presence is neither necessary for decision of the question involved in the proceedings nor to enable the Court effectively and completely to adjudicate upon and settle the question involved in the case. Accordingly, the petitioner was not considered to be a necessary or proper party in the suit and therefore, the petition for impleading was dismissed.

6. The learned Govt. advocate has submitted that the stand of the government is not adversarial. Nonetheless, he has produced the para-wise comment which he has received. From the para-wise comments which is dated 15.06.2023, issued by the Deputy Commissioner, Karimganj, it appears that upon enquiry about the birth certificates issued to respondent nos. 1 and 2 (plaintiffs), namely, Abdul Karim and Piyara Begum, it was found that the same was not genuine and accordingly, the certificates were cancelled and the

relevant documents in support of such contention have also been forwarded with the instructions.

7. We not desire to make any further comments which may prejudice any parties to this proceeding.

8. It appears that the learned trial Court, while deciding the petition for impleadment, which was registered as Misc.(J) Case No. 440/2022, had failed to consider the provision of Section 50 of the Evidence Act, 1872, which is reproduced below:

“50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869), or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).”

9. From the above, it appears that when a learned trial Court is required to form an opinion as to the relationship of one person to another, the opinion expressed by any person, who is a member of the family, has special means of knowledge on the subject and therefore, relevant.

10. In this case, the petitioner has approached the learned trial Court and has projected that she is the daughter of Late Rois Ali, whose parentage is claimed by the principal respondent nos. 1 and 2. Therefore, the Court is of the unhesitant view and opinion that the petitioner herein, who claims to be the daughter of Late Rois Ali and Smt. Suran Bibi, is definitely be a proper and necessary party when it come to adjudication on the relationship of the respondent nos. 1 and 2, who claim to be the son and daughter of her parents.

11. It is inconceivable that by way of a decree, someone can be allowed to become children of a particular parent even without participation by other sons and daughters of the same parent in the litigation. It would amount to the creation of a relationship, which according to the petitioner, does not exist.

12. For the reasons which are assigned hereinbefore, the Court is of the considered opinion that in litigation where the existence of relationship between the respondent nos. 1 and 2 and the parents of the petitioner is involved, the petitioner is definitely a proper and necessary party and without her presence a suit ought not to be proceed with. Accordingly, the Court is inclined to hold that the impugned order dated 21.01.2023 suffers from jurisdictional error for which the same is found not sustainable on facts and in law as it was passed without considering the issue of relevancy as provided under Section 50 of the Evidence Act, 1872.

13. This application is allowed. The impugned order dated 21.01.2023, passed by the learned Munsiff No. 3, Karimganj [now Civil Judge (Junior Division) No. 3, Karimganj] is set aside and quashed. Resultantly, the proceedings of Misc.(J) Case No. 440/2022 stands restored to file in the learned Court of Civil Judge (Junior Division) No. 3, Karimganj.

14. The said learned court shall hear the matter afresh and decide the said misc case. However, the said learned Court shall not be influenced by the observations, if any, made in this order.

15. The petitioner who is represented by her learned counsel shall appear before the learned trial Court on 22.01.2024 and by producing a certified copy of this order, await for further instruction of the said learned Court.

16. The learned Govt. advocate shall provide a copy of the para-wise comments to be kept as a part of the record.

With the observations as indicated above, this petition stands allowed.

JUDGE

Comparing Assistant