

GAHC010084472019



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

Case No. : CRP/66/2019

GAUTAM KUMAR BORDOLOI AND ANR.
S/O LT. SARADA KANTA BORDOLOI, R/O KAMALA KANTA ENCLAVE, FLAT
NO. 3(B), THIRD FLOOR, OPPOSITE BHARAT PETROL PUMP, HOUSE NO.
175, KHANAPARA, GUWAHATI-781022, KAMRUP (M), ASSAM

2: GORIMA BORDOLOI
W/O LT. ROHINI KUMAR BORDOLOI
R/O CHANDMARI COLONY
NIZARAPARA
CHANDMARI
GUWAHATI-781003
KAMRUP (M)
ASSA

VERSUS

UPAKUL BORDOLOI AND 2 ORS.
S/O LT. SARADA KANTA BORDOLOI, R/O RUKMANI NAGAR, BIHU FIELD,
HOUSE NO.-5, SECOND FLOOR, KHANAPARA-781022, GUWAHATI,
KAMRUP (M), ASSAM

2:ALAKJYOTI BORDOLOI
S/O LT. SARADA KANTA BORDOLOI
R/O HOUSE NO. 69 JANAKPUR NEAR DPI OFFICE
KAHILIPARA
GUWAHATI-781019
KAMRUP (M)
ASSAM

8:BIMAL AGARWAL
S/O SRI BADRI PRASAD AGARWAL
C/O AGARWAL AUTOMOBILE JANIGANJ
SILCHAR-788001
ASSA

Advocate for the Petitioner : MR. R C SANCHATI

Advocate for the Respondent : MR. D NANDI

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

05.06.2023

Heard Mr. R. C. Sancheti, the learned counsel for the petitioners and Mr. D. Nath, the learned counsel appearing on behalf of the respondent Nos.1 & 2 as well as Mr. K. L. Gupta, the learned counsel appearing on behalf of the respondent Nos.5, 6, 7 & 8.

2. The instant application has been filed challenging the order dated 08.03.2019 whereby the learned Court of the Civil Judge No.3, Kamrup (M), Guwahati had struck off the names of the plaintiff Nos.2 & 3 and transposed the said plaintiffs as defendants to the suit to avoid multiplicity of proceedings.

3. It appears from the record that the suit being Title Suit No.128/2010 was filed by six plaintiffs seeking declaration of their right, title and interest in respect to the land described in the Schedule to the plaint; for cancellation of certain sale deeds; for issuance of precepts as well as for permanent injunction.

4. In the said suit, the plaintiff Nos.2 & 3 filed an application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 (for short, 'the Code') read with Section 151 of the Code praying inter-alia that their

names should be struck off as plaintiff Nos.2 & 3 and to add them as defendants thereto and allow them to file written statement and contest the suit.

5. To the said application the remaining plaintiffs, i.e. plaintiff Nos.1, 4, 5 & 6 submitted an objection.

6. The learned Trial Court vide the order dated 08.03.2019 permitted the withdrawal of the plaintiff Nos.2 & 3 from the suit as plaintiffs and transposed the said plaintiffs as defendants on the ground of doing justice and to avoid multiplicity of proceedings. It is this order which has been challenged in the instant proceedings.

7. I have heard the learned counsel for the parties and perused those materials on record.

8. A perusal of Order XXIII Rule 1 (1) of the Code stipulates that after the institution of the suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. Taking into account the said provision, the plaintiff Nos.2 & 3 at any stage of the suit, could abandon their suit and/or abandon their part of the claim. It seems that the same was done as could be seen from the perusal of the application so filed by the plaintiff Nos.2 & 3. Therefore, allowing the plaintiff Nos.2 & 3 to withdraw by the impugned order is in accordance with law.

9. The provision of Order XXIII Rule 1A of the Code would only apply in the circumstance when a suit is withdrawn and abandoned by the plaintiff under Order XXIII Rule 1 of the Code and the defendant applies to be transposed as the plaintiff under Rule 10 of Order 1 of the Code and it is

under such circumstances that the Court can allow such transposition subject to that the Applicant has a substantial question to be decided as against any of the other defendants.

10. However, in the instant case, the plaintiff Nos.2 & 3 though sought for withdrawal of their claim as against the defendants, but at the same breath sought for transposition as the defendants. The transposition as defendants has to be taken into account applying the law as applicable under Order I Rule 10 of the Code and more particularly keeping in mind that the plaintiff Nos.1, 4, 5 & 6 are now the dominus litus.

11. It is also relevant to take note of that if the plaintiff Nos.2 & 3, upon withdrawal has a substantial interest in the subject matter of the suit, the said plaintiff Nos.2 & 3 in the instant case can have been joined as defendants but subject to reasons to be recorded as to why the said plaintiffs have to be joined as defendants.

12. In the instant case, it would be seen that in spite of the specific objections raised by the plaintiff Nos.1, 4, 5 & 6, the learned Trial Court did not deal with the said objection and on a misconceived notion applied the principle of Order XXIII Rule 1A of the Code for which the order dated 08.03.2019 in so far as transposing the plaintiff Nos.2 & 3 as defendants in the suit is set aside.

13. This Court also finds it relevant to take note of that the application was also filed under Order I Rule 10 (2) of the Code by the plaintiff Nos.2 & 3 which also requires to be adjudicated in the manner by taking into account the law laid down in Order I Rule 10 of the Code. This Court, therefore, disposes of the instant petition directing the learned Court of

the Civil Judge No.3, Kamrup (M), Guwahati to dispose of the application under Order I Rule 10 (2) of the Code by taking into account the plaintiff Nos.2 & 3 as applicants seeking impleadment in the suit as defendants and then applying the law decide the said application as to whether the plaintiff Nos.2 & 3 would be entitled to be arrayed as defendants in the suit.

14. Taking into account that vide order dated 08.05.2019 the further proceedings in Title Suit No.128/2010 has been stayed. This Court in view of the disposal of the instant petition and taking into account that the parties are duly represented directs the parties to appear before the learned Trial Court on 06.07.2023.

15. With the above observation and direction the instant petition stand disposed of.

JUDGE

Comparing Assistant