

GAHC010089552018



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

Case No. : CRP/46/2018

BINOY KALITA AND 4 ORS.
S/O- LATE SANA KALITA, R/O- VILL- BHAREGAON, P.O- SARUPETA,
MOUZA- HASTINAPUR, P.S- PATACHARKUCHI, DIST- BARPETA, ASSAM

2: GITIKA KALITA
D/O- LATE SANA KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM

3: SASHI KALITA
S/O- LATE KALARAM KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM

4: KRIPA KALITA
S/O- LATE KALARAM KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM

5: GOPAL KALITA
S/O- KALARAM KALITA
R/O- VILL- BHAREGAON

P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSA

VERSUS

PRIYA KALITA AND 5 ORS.
S/O- LATE ASUKHA KALITA, R/O- VILL- BHAREGAON, P.O- SARUPETA,
MOUZA- HASTINAPUR, P.S- PATACHARKUCHI, DIST- BARPETA, ASSAM,
PIN- 781318

2:ASWINI KALITA
S/O- LATE ASUKHA KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM
PIN- 781318

3:HAREKRISHNA KALITA
S/O- LATE ASUKHA KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM
PIN- 781318

4:SADA KALITA
S/O- LATE ASUKHA KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM
PIN- 781318

5:KRISHNA KALITA
S/O- LATE KALIKANTA KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR

P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM
PIN- 781318

6:PAREMESWAR KALITA
S/O- LATE ASUKHA KALITA
R/O- VILL- BHAREGAON
P.O- SARUPETA
MOUZA- HASTINAPUR
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MR. B PATHAK

Advocate for the Respondent : MR K KALITA (R1-4, R6)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

04.08.2023

Heard Mr. B. Pathak, learned counsel appearing for the petitioners.
Also heard Mr. R. Sarma, counsel representing the respondents.

2. This is an application under Section 115 of the Code of Civil Procedure seeking revision of the order dated 06.03.2018 passed by the learned Munsiff, Bajali, Pathsala in T.S. No.5/2013.

3. In the suit before the trial court, the respondent appeared and filed

an application under Order 1 Rule 10(2) of the Code of Civil Procedure praying for his impleadment in the suit as one of the defendants.

4. The petitioner objected to the said prayer.

5. The trial court allowed the prayer of the respondent on the ground that the other defendants while filing counter claim, made a plea that the respondent is a necessary party in the said suit. Therefore, the trial court impleaded the respondent as one of the defendants.

6. Aggrieved by the aforesaid order of the trial court, the present revision petition has been filed.

7. Mr. Pathak submits that the petitioner being the plaintiff of the suit, is the dominus litis. According to Mr. Pathak, when the plaintiff/petitioner did not make the respondent a party in the suit, the court should not have impleaded him as one of the defendants.

8. *Per contra*, Mr. Sarma has supported the order of the trial court.

9. I have considered the submissions made by the learned counsels of both sides.

10. The principles of impleadment of parties under Order 1 Rule 10 of the CPC are laid down by the Supreme Court in *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, (2012) 8 SCC 384. The Supreme Court has held as under:

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party,

who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

11. I find that the learned Munsiff has elaborately discussed the issue and has held that the present respondent is a necessary party in the said case and therefore, impleaded him as one of the defendants.

12. The learned trial court has correctly exercised the power under Order 1 Rule 10 of the CPC. The impugned order does not require any interference of this Court. Therefore, the present petition is found to be

devoid of merit and stands dismissed accordingly.

The Civil Revision Petition is disposed of.

JUDGE

Comparing Assistant