

GAHC010105112021



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

Case No. : CRP(IO)/72/2021

ON THE DEATH OF LATE SAFAR UDDIN
HIS LEGAL HEIRS

1.1: MD. ABDUL GONI
S/O LATE SAFAR UDDIN
R/O VILL-KALGACHIA
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

1.2: MD. ABDUL HAI
S/O LATE SAFAR UDDIN
R/O VILL-KALGACHIA
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

1.3: MUSTT. SHAR BHANU
D/O LATE SAFAR UDDIN
R/O VILL-KALGACHIA
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

1.4: MUSTT. KAD BHANU
D/O LATE SAFAR UDDIN
R/O VILL-KALGACHIA
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

1.5: MUSTT. TARA BHANU
D/O LATE SAFAR UDDIN
R/O VILL-KALGACHIA
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSA

VERSUS

ON THE DEATH OF LATE BABUR ALI HIS LEGAL HEIRS, MUSTT. SUHAGI
NESSA,
W/O DAROG ALI, VILL- BALAIPATHER, MOUZA-RUPSI, P.S.-KALGACHIA,
DIST-BARPETA, ASSAM

2:MUSTT. MOIZAN NESSA
W/O ABUL HUSSAIN
VILL-KALGACHIA
MOUZA-RUPSHI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

3:MUSTT. SAHAR BHANU
W/O ABDUL MIA
VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

4:ON THE DEATH OF LATE MAHAMMED ALI
HIS LEGAL HEIRS MD. SUKUR ALI
S/O LATE MAHAMMED ALI

R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

5:MD. ABUL KALAM
S/O LATE MAHAMMED ALI
R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA

ASSAM

6:MD. CHAN MIA
S/O LATE MAHAMMED ALI
R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

7:ON THE DEATH OF LATE MARFAT ALI
HIS LEGAL HEIR
MD. TAFAZZAL ALI
S/O LATE MARFAT ALI
R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

8:ON THE DEATH OF LATE AZIZUL HOQUE
HIS LEGAL HEIRS MD. SAIFUL ISLAM
ON THE DEATH OF MD. SAIFUL ISLAM
HIS LEGAL HEIRS

8.1:KOHINUR KHATUN
W/O LATE SAIFUL ISLAM

R/O VILL-KHARBALI
MOUZA-RUPSI

P.S.-KALGACHIA
DIST-BARPETA
ASSAM

8.2:NARJINA PARBIN
R/O VILL-KHARBALI
MOUZA-RUPSI

P.S.-KALGACHIA
DIST-BARPETA
ASSAM (BEING MINOR REPRESENTED BY RESPONDENT NO. 4.1.1)

8.3:SHAHIL AHMED
R/O VILL-KHARBALI
MOUZA-RUPSI

P.S.-KALGACHIA

DIST-BARPETA
ASSAM (BEING MINOR REPRESENTED BY RESPONDENT NO. 4.1.1)

8.4:AKIL AHMED
R/O VILL-KHARBALI
MOUZA-RUPSI

P.S.-KALGACHIA
DIST-BARPETA
ASSAM (BEING MINOR REPRESENTED BY RESPONDENT NO. 4.1.1)

9:MD. SADULLAH ALI
S/O LATE AZIZUL HOQUE
R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

10:MUSTT. RINA PARBEEN
D/O LATE AZIZUL HOQUE
R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSAM

11:MD. SAHAJ ALI
S/O LATE AZIZUL HOQUE
R/O VILL-KHARBALI
MOUZA-RUPSI
P.S.-KALGACHIA
DIST-BARPETA
ASSA

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : MR. P S DEKA

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. P.K. Roychoudhury,
Advocate.

For the Respondents : Mr. P.S. Deka,
Advocate.

Date of Hearing : 26.05.2023.

Date of Judgment : 15.06.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. P.K. Roy Choudhury, learned counsel appearing for the petitioners. Also heard Mr. P.S. Deka, learned counsel representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 05.04.2019 passed by the learned Munsiff No.1, Barpeta in Misc.(J) Case No.131/2019 arising out of Title Suit No.51/2012.

3. The present petitioners are the defendants in the Title Suit No.51/2012. They filed written statement-cum-counterclaim. After that, they filed a petition under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the written statement-cum-counterclaim. That petition was registered as Misc. (J) Case No.131/2019. The trial court after hearing both sides, partially allowed the amendment and partially rejected some other proposed amendments. The reason for rejection of the proposed amendments was that the amendments would affect the

nature of the suit.

4. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

5. I find that the learned trial court has dealt with the manner in a very cryptic manner. On a reading of the impugned order, it is difficult to understand as to why the proposed amendments would change the nature and character of the suit. It also difficult to understand as to why the proposed amendment was allowed. This Court is of the opinion that the learned trial court has failed to exercise its judicious mind while dealing with the matter.

6. Therefore, the impugned order dated 05.04.2021 is bad in law and is set aside accordingly. The trial court is directed to decide the prayer for amendment of the written statement-cum-counterclaim of the petitioners afresh.

7. Accordingly, the revision petition stands disposed of with the aforesaid direction.

JUDGE

Comparing Assistant