

GAHC010117782022



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

Case No. : CRP/66/2022

MD. ATOWAR RAHMAN AND ANR
S/O- LATE AZGAR ALI SARKAR, R/O- VILL- BALADMANI CHE BAGAN,
(NEAR BIHU FIELD), WARD NO. 17, P.O. BALADMANI, P.S. AND DISTRICT-
GOALPARA, ASSAM, PIN- 783121.

2: RUNA LAILA JOTDAR
W/O- MD. ATOWAR RAHMAN
R/O- VILL- BALADMANI CHE BAGAN
(NEAR BIHU FIELD)
WARD NO. 17
P.O. BALADMANI
P.S. AND DISTRICT- GOALPARA
ASSAM
PIN- 783121

VERSUS

BABULAL CHHAJER AND 2 ORS
SON OF LATE BIRDHICHAND CHHAJER, R/O- KACHARI ROAD, BARA
BAJAR, P.O. AND P.S.- GOALPARA, DISTRICT- GOALPARA, ASSAM, PIN-
783101.

2:BIRENDRA KUMAR CHHAJER
SON OF LATE BIRDHICHAND CHHAJER
R/O- KACHARI ROAD
BARA BAJAR
P.O. AND P.S.- GOALPARA
DISTRICT- GOALPARA
ASSAM
PIN- 783101.

3:ASHOK KUMAR CHHAJER
SON OF LATE BIRDHICHAND CHHAJER
R/O- KACHARI ROAD

BARA BAJAR
P.O. AND P.S.- GOALPARA
DISTRICT- GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MR H SARMA

Advocate for the Respondent : MR P C GOSWAMI

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

25. 01. 2023

Heard Mr. H Sarma, learned counsel for the petitioners. Also heard Mr. AC Sarma, learned Senior counsel assisted by Mr. JK Bhuyan, learned counsel for the respondents.

2. The present revision petition is filed assailing the order dated 19.05.2022, whereby the learned court below rejected the prayer of the petitioners to stay the suit and to defer the filing of the written statement.
3. The record reveals that the plaint was presented on 09.09.2021 and thereafter summons to the defendant Nos. 1 and 2 were served on 26.09.2021. The defendants appeared and filed an application on 03.01.2022 under Section 151 of the CPC for stay of the suit as well as defer the filing of the written statement, which was rejected by the learned trial court below.
4. Considering the material available on record, this court is of the considered opinion that the learned trial court has rightly refused to stay the proceeding of the suit inasmuch as ground for such stay of the suit was an order passed by the Settlement Officer of Goalpara on 25.09.2020 wherein the learned Settlement Officer declined to pass any order of

eviction of the present defendants from the disputed land in question and relegated the parties to a civil suit. Therefore, such relegation cannot be a ground to stay the suit. Accordingly, the decision of the learned court below declining the stay the suit is upheld inasmuch as the order of Settlement Officer cannot be treated to be a suit pending within the meaning of Section 10.

5. Coming to the next point, Mr. AC Sarma, learned Senior counsel for the petitioners fairly submits that defendants may be allowed sometimes to file the written statement as a last chance.
6. Considering the fact that if the present petitioners are allowed to file their written statements, the same will aid the learned trial court to come into a just decision and it will not prejudice the present petitioners. Accordingly, it is provided that the present petitioners/ defendant Nos. 1 and 2 may file their written statements on or before 24.02.2023 before the learned trial court below and on such filing of written statements, the learned trial court shall accept the same and proceed with the matter. If no such written statements are filed on that date, the learned trial court below shall be at liberty to proceed with the suit in terms of the order dated 19.05.2022.
7. Registry to return the records forthwith so that the same reaches the learned trial court below well ahead of 24.02.2023.
8. With the said observation, this petition stands disposed of.

JUDGE