

GAHC010156882023



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

Case No. : CRP(IO)/245/2023

SOMA MAZUMDAR AND 2 ORS
W/O LATE DIBAKAR MAZUMDAR, R/O WARD NO. 4, RABINDRA SARNI,
P.O. AND P.S.-DHUBRI, DIST- DHUBRI, ASSAM

2: RANJU MAZUMDAR
W/O BHOLA MAZUMDAR
R/O WARD NO. 4
RABINDRA SARNI
P.O. AND P.S.-DHUBRI
DIST- DHUBRI
ASSAM

3: SONALI MAZUMDAR
W/O MRIDUL MAZUMDAR
R/O WARD NO. 4
RABINDRA SARNI
P.O. AND P.S.-DHUBRI
DIST- DHUBRI
ASSA

VERSUS

ON THE DEATH OF MINATI PAUL CHOUDHURY, HER LEGAL HEIRS
ON THE DEATH OF TAPAS PAUL CHOUDHURY, HIS LEGAL HEIRS

1.1:SMTI PUSPO PAUL CHOUDHURY
W/O LATE TAPAS PAUL CHOUDHURY
R/O WARD NO. 2
P.M. DUTTA ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

1.2:SANTANU PAUL CHOUDHURY
S/O LATE TAPAS PAUL CHOUDHURY
R/O WARD NO. 2
P.M. DUTTA ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

1.3:MARAJIT PAUL CHOUDHURY
S/O LATE TAPAS PAUL CHOUDHURY
R/O WARD NO. 2
P.M. DUTTA ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

2:CHANDAN PAUL CHOUDHURY
S/O LATE MAKHAN PAUL CHOUDHURY
R/O WARD NO. 2
P.M. DUTTA ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

3:SMTI MALABIKA GHOSH
W/O LATE PARTHA PRATIM GHOSH
R/O WARD NO. 2
P.M. DUTTA ROAD
DHUBRI TOWN
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

02.08.2023

Hear Shri GN Sahewalla, learned Senior Counsel assisted Shri M Sahewalla, learned counsel for the petitioners.

2. The petitioners, who are three in numbers, have filed this petition under Article 227 of the Constitution of India challenging an order dated 03.07.2023 passed by the learned Munsiff No. 2, Dhubri in TS No. 420/2015. By the said order dated 03.07.2023, a petition made under Order XXII Rule 2 of the Code of Civil Procedure (CPC) read with Section 151, which was filed by the aforesaid petitioners for substitution of their names in place of the defendant no. 3 in the aforesaid title suit, has been rejected.

3. The facts projected in the petition is that there were 3 nos. of defendants in the suit and defendant no. 3 was the Power of Attorney holder of the defendant nos. 1 and 2. During the pendency of the suit, defendant no. 3 expired. Shri Sahewalla, learned Senior Counsel has submitted that amongst the three petitioners, the petitioner no. 1 is the wife of defendant no. 3. However, the learned Senior Counsel fairly submits that the petitioner nos. 2 and 3 are not immediate relatives but it is submitted that there are two relinquishment deeds by the defendant nos. 1 and 2 in favour of the petitioners and on the strength of such relinquishment deeds, the rejection ought not to have been done. It is further submitted that under the provisions of Order I Rule 10 (2), the Court can even *suo moto* add or strike out any parties in the interest of justice.

4. Considered the aforesaid submissions and the impugned order has also been

examined.

5. Though the learned Senior Counsel appears to be correct in contending that the Court never exercised powers for impleadment, the discussion in the impugned order appears to be confined to the petition filed under Order XXII Rule 2 and there is no reflection in the order that any contention was made to invoke the powers under Order I Rule 10 (2).

6. Under these circumstances, this Court, in exercise of revisional jurisdiction, would not be in a position to find any legal infirmity with the said order. At the same time, the issue of existence of relinquishment deeds in favour of the petitioners without there being any adjudication cannot be foreclosed at this stage.

7. In view of the above, this Court is of the view that interest of justice would be served if the equities are balanced. Therefore, while dismissing the present petition in absence of any grounds made out for such interference, the petitioners are at liberty to file appropriate application under Order I Rule 10 (2) for impleadment of parties and in the event of such application being filed, the same is directed to be considered in its own merits and without being influenced by the earlier order of dismissal dated 03.07.2023 wherein, admittedly, only the application under Order XXII Rule 2 of the Code of Civil Procedure (CPC) read with Section 151 was the subject matter of consideration.

JUDGE

Comparing Assistant