

GAHC010163982022



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

Case No. : CRP(IO)/191/2022

MOSTT JAMELA KHATUN @ JAMELA BEWA @ MOSTT JAMILA KHATUN
W/O LATE MOJIBAR RAHMAN, R/O VILL-BALADMARA, P.O. AND P.S.-
FAKIRGANJ, DIST-DHUBRI, ASSAM

VERSUS

MOSTT ROUSHANARA KHATUN @ MOSTT ROUSHANARA BIBI AND 4 ORS
W/O MOZZAMMEL HOQUE, R/O DHUBRI TOWN, WARD NO. 7 OLD DTO
OFFICE NEAR FAKIRPARA MOSJID, P.O., P.S. AND DIST-DHUBRI, ASSAM,
PIN-783301

2:MOZZAMMEL HOQUE
S/O ASMAT ALI
C/O MOSTT ROUSHANARA KHATUN @ MOSTT ROUSHANARA BIBI
R/O DHUBRI TOWN
WARD NO. 7 OLD DTO OFFICE NEAR FAKIRPARA MOSJID
P.O., P.S. AND DIST-DHUBRI, ASSAM
PIN-783301 PERMANENT ADD- R/O VILL-FAISATARI
P.O.-TUMNI
P.S.-SOUTH SALMARA
DIST-SOUTH SALMARA-MANKACHAR
ASSAM

3:THE CIRCLE OFFICER, DHUBRI REVENUE CIRCLE
AT DHUBRI

4:THE SENIOR SUB REGISTRAR OF DHUBRI SUB REGISTRATION OFFICE
ASSAM

5:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR OF DHUBRI
DIST-DHUBRI

Advocate for the Petitioner : MR. K K DEY

Advocate for the Respondent : GA, ASSAM (OP3-OP5)

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 1.3.2023

Heard Mr. K. K.Dey, learned counsel for the petitioner. Also heard Mr. S. Das, learned counsel for the respondent and Mr. K. K. Bhattacharria, learned counsel for respondent Nos. 3,4 and 5.

2. The present petition is filed assailing an order dated 26.7.2022 passed by the learned Civil Judge, Dhubri in Misc.(J) case No. 53/2022 arising out of Title Suit No. 32/2021. The aforesaid Misc Case was registered on an application filed by the plaintiffs under Order 6 Rule 17 of the CPC for amendment of the plaint.

3. The petitioner as plaintiff instituted a suit for decree of declaration and cancellation of two deeds and recovery of *khas* possession over the Schedule-C land. The defendants appeared in the suit and filed their written statement alongwith an application under Order 39 Rule 1 and 2 CPC for grant of injunction which was registered as Misc(J) Case No. 90/2020. The learned trial court below under order dated 12.3.2021 granted an injunction by restraining the defendant from entering into the suit land or to construct any structure over the same until final disposal of the Title suit No.94/2020.

4. Being aggrieved the defendant approached the appellate court by preferring an appeal under the provision of Order 43 Rule 1(r) CPC which was registered as Misc (Appeal) Case No. 06/2021. The said appeal was disposed of

by the learned Appellate court by modifying the injunction order and restrained the defendants appellants from constructing any structure over the suit land till final disposal of the suit and it was provided that there shall not be any restriction into the entry and exit to the suit land by the appellants opposite parties. Thereafter an application under Order 6 Rule 17 of CPC for amendment of plaint was filed. The amendment sought for was as under:

“That, soon after the judgment of Misc.(Appeal) No. 06/2021 on 7.8.2021 preferred by the defendants as appellants the defendants on 16.8.2021 at about 12 noon entered into the suit land of schedule-‘C’ and constructed a G.I.Sheeted Chapra house and in the night completed the fencing of the said chapra house by bamboo thatch and residing there by disobeying the Hon’ble Court order of injunction by twisting it to their choice and wish”.

5. From the amendment it is discernible that the plaintiff claims that even after the appellate order, the defendants appellant on 16.8.2021 entered into the suit land and constructed G. I sheet house. Such amendment was rejected by the learned court below on the ground that as the plaintiff has already sought for recovery of possession, there is no necessity for bringing such amendment inasmuch as in the event of decreeing the suit recovery of possession otherwise can be granted.

6. Mr. Dey learned counsel for the petitioner submits that the aforesaid incident occurred after passing of the judgment by the appellate court and therefore, it has become necessary to incorporate such fact inasmuch as the same will neither change the nature and character of the suit land nor the same has been filed at a very belated stage. He contends that while amendment was rejected even PWs were not examined. Therefore, according to Mr. Dey, the learned trial court has committed serious error of law by passing the aforesaid order ignoring settled proposition of law.

7. Per contra, Mr. S. Das, learned counsel for the respondent submits that learned trial court was right and it has not committed any jurisdictional error by dismissing such amendment petition inasmuch as the plaintiff herself has pleaded at paragraph 15 of the plaint that the house standing in the schedule-C land was removed by the defendant inasmuch as the plaintiff herself prays for recovery of the possession. In that view of the matter, the amendment is not at all necessary for determination of the issue before that.

8. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties.

9. The Hon'ble Apex Court in the case of **LICI Vs Sanjeev Builders Pvt. Ltd** reported in **2022 SCC ONLINE SC 1128** has laid down certain principles of law for consideration of amendment of plaint. Such principles have been laid down at paragraph 17 of the said judgment. The Hon'ble Apex Court in the case of **LICI** (supra) categorically held that all amendments are to be allowed, which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. The Hon'ble Apex Court went further by holding that this is mandatory as is apparent from the use of the word "shall" in later part of the order 6 Rule 17 of the CPC. Hon'ble Apex Court at sub-Para- (iii) of Para 17 held that the prayer of amendment is to be allowed, if the amendment is required for effective and proper adjudication of the controversy between the parties. It was also held that a prayer of amendment is generally required to be allowed unless by the amendment a time barred claim is sought to be introduced or amendment will change the nature and character of the suit.

10. Coming to the case in hand, by way of amendment the plaintiff wanted to bring and plead a fact which according to the plaintiff occurred after passing of

the judgment by the appellate court, in the injunction petition. Such fact in the considered opinion of this court is a necessary fact for the purpose of determination of issue. Such amendment shall not prejudice the defendant inasmuch as evidence has not yet started and defendant can very well be granted a chance to file a written statement against such amendment.

11. The argument advanced by Mr. Das, learned counsel for defendant No.1 basically touches the merit of the amendment. It is a settled proposition of law that while considering an application under Order 6 Rule 17 CPC, the merit of the amendment cannot be and should not be gone into and same should be dealt with at an appropriate time by the learned trial court and party is to prove such pleadings through evidence to be laid during the trial. Whether the alleged dispossession and construction happened or not happened after passing of the judgment by the appellate court is a matter to be decided in the suit on the basis of evidence that may be laid by the party and correction of the same cannot be determined at the time of determination of an application under Order 16 Rule 7 of the CPC.

12. In view of the aforesaid this court is of the opinion that the learned trial court has erroneously rejected the amendment petition in ignorance of settled proposition of law thereby causing injustice to the plaintiff. Accordingly, the impugned order dated 26.7.2022 passed by the learned Civil Judge, Dhubri in Misc.(J) Case No. 53/2022 is hereby set aside. The amendment sought for be allowed. The learned Trial Court shall pass necessary order to that effect.

JUDGE

Comparing Assistant