

GAHC010164472022



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

Case No. : CRP(IO)/194/2022

KRISHNA GOPAL KARMAKAR
S/O LATE GOUR CHANDRA KARMAKAR, R/O VILL-BAGARIBARI,
ARAIANI, P.O. AND P.S.-BAGARIBARI, DIST-KOKRAJHAR, BTAD, PIN-
783349, ASSAM

VERSUS

JANARDHAN SAHA AND 5 ORS.
S/O LATE KALIDAS SAHA, R/O VILL-BAGARIBARI, ARAIANI, P.O. AND P.S.-
BAGARIBARI, DIST-KOKRAJHAR, BTAD, PIN-783349, ASSAM

2:RISHIKESH SAHA
S/O LATE KALIDAS SAHA
R/O VILL-BAGARIBARI
ARAIANI
P.O. AND P.S.-BAGARIBARI
DIST-KOKRAJHAR
BTAD
PIN-783349
ASSAM

3:GOPAL SAHA
S/O LATE SRIDAM SAHA
R/O VILL-BAGARIBARI
ARAIANI
P.O. AND P.S.-BAGARIBARI
DIST-KOKRAJHAR
BTAD
PIN-783349
ASSAM

4:BISWAJIT SAHA

S/O LATE SRIDAM SAHA
R/O VILL-BAGARIBARI
ARAIANI
P.O. AND P.S.-BAGARIBARI
DIST-KOKRAJHAR
BTAD
PIN-783349
ASSAM

5:NANDA DULAI SAHA
S/O LATE SRIDAM SAHA
R/O VILL-BAGARIBARI
ARAIANI
P.O. AND P.S.-BAGARIBARI
DIST-KOKRAJHAR
BTAD
PIN-783349
ASSAM

6:SMTI. MAYA RANI SAHA
W/O LATE SRIDAM SAHA
R/O VILL-BAGARIBARI
ARAIANI
P.O. AND P.S.-BAGARIBARI
DIST-KOKRAJHAR
BTAD
PIN-783349
ASSA

Advocate for the Petitioner : MR. R BARUAH

Advocate for the Respondent : MD H R AHMED (r

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioners : Mr. A. Ikbal, Advocate.

For the Respondents : None appears.

Date of Hearing : 24.05.2023.

Date of Judgment : 24.05.2023.

JUDGMENT & ORDER (ORAL)

1. Though notices were duly served upon the respondent Nos. 3, 4, 5 and 6 and they were represented by their engaged counsel, however, none represented them, when the matter was called on 26.04.2023 and 15.05.2023. This Court in absence of the learned counsel for aforesaid respondents adjourned the matter in the interest of justice on 26.04.2023 and fixed it on 15.05.2023. When on 15.05.2023, none represented the respondent Nos. 3, 4, 5 and 6, this Court again adjourned the case in the interest of justice providing that if none appears for the respondent Nos. 3, 4, 5 and 6, on the next date fixed, the matter shall be taken up for final disposal on the materials available on record.
2. When the matter was called today, none appears for the respondent Nos. 3, 4, 5 and 5 and accordingly, heard Mr. A. Ikbal, learned counsel for the petitioner.
3. The present revision petition is filed assailing an order dated 25.07.2022 passed by the learned Munsiff No. 1, Kokrajhar in Misc. (J) case No. 6/2022 arising out of Title Suit No. 6/2016 (Old) / Title Suit No. 40/2021 (New).
4. The present petitioner as plaintiff instituted the aforesaid suit before the learned Court of Civil Judge at Kokrajhar for declaration of right, title and interest, recovery of possession and permanent injunction against the present respondent Nos. 3, 4, 5 and 6. But due to the recent amendment of the Bengal, Agra and Assam Civil Courts Act, 1887, the aforesaid title suit was transferred to the learned Court of Munsiff No. 1, Kokrajhar and

renumbered as Title Suit No. 40/2021 (New).

5. On receipt of summons, the respondent Nos. 3, 4, 5 and 6 appeared before the learned trial Court and filed their written statement. Therefore, issues were framed and trial commenced. After filing evidence on affidavit of PW-1 and PW-2, the plaintiff filed the Misc. (J) Case No. 6/2022 under the provision of Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of certain pleading made in the plaint which shall be dealt at the later part of this order. The said PW1 and PW-2 were cross examined.
6. The respondent / defendant Nos. 1 to 6 preferred an objection to the aforesaid application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908.
7. After hearing the parties, the learned trial Court below rejected the application on the ground that the plaintiff was not diligent at the time of filing of the suit inasmuch as he did not go through the relevant documents before filing of the suit which he should do. It was also concluded that if the amendment is allowed, the structure of the suit will be changed which will be prejudice to the defendants.
8. Mr. Ikbal, learned counsel for the petitioner referring to the paragraph 2 of the plaint submits that at para 2 of the plaint, a specific statement was made that one Mohendra Chandra Saha, the father of the proforma defendant and one Kalidas Saha, the father of the main defendant Nos. 1 and 2 of the suit were two brother and during their life time, they both jointly held the possession of a plot of land measuring 3 Kathas 16 Lechas covered by Dag No. 110/224 under Periodic Khiraj Patta No. 106/141 and

Khatian No. 132 situated at the Village- Khanabari, Bagribari Araiani Part-II under P.S. & Revenue Circle- Bagribari and it was also pleaded that during their life time, both jointly sold 1 Katha 1 Lecha out of their said total land to Gopal Ch. Saha and his brother Gobinda Ch. Saha and after sale, the said 1 Katha 1 Lechas of land was separated from the said Patta No. and opened a new Patta No. 231 in 1987 and accordingly the record was corrected in 1994 in the name of Gopal Ch. Saha and Gobinda Ch. Saha. After such sale, the land remained only 2 Kathas 15 Lechas and which stood in the name of two brothers Mahendra Ch. Saha and Kalidas Saha and they both were the Khatiandars/Pattadars of the said land.

9. Subsequently, by way of an amendment application, following amendments in a nutshell were sought to be introduced.

I. It was sought to be introduced that land measuring 3 Katha 16 Lechas were owned by Mahendra Ch. Saha and another land measuring 4 Katha 18 Lechas were possessed by Kalidas Saha. Both sons of Gajendra Ch. Saha.

II. It was also sought to be introduced that after death of Gajendra Ch. Saha, the land measuring 3 Katha 16 Lechas were mutated in the name of Mahendra Ch. Das and other land measuring 4 Katha 18 Lechas were mutated in the name of Kalidas Saha by virtue of a family arrangement.

III. It was also sought to incorporated a fact that Mahendra Ch. Saha by a registered sale deed, vide Deed No. 3026, sold 1 Katha 1 Lecha of land out of share land measuring 3 Kathas 16 Lechas to Gopal Ch.

Saha and his brother Gabinda Ch. Saha and delivered the possession of the said land to them at that time. After such sale, his land remained on 2 Kathas 15 Lechas.

IV. It was also sought to be pleaded that by yet another sale deed vide No. 1152/890, 1 Katha 7½ Lechas of land was sold to Sridam Saha.

V. Another introduction was regarding sale deed dated 11.05.1993, whereby the remaining 1 Katha 7½ Lechas of land was sold to the plaintiff, however, such pleading was already there in the original plaint.

VI. Regarding share of Kalidas Saha measuring 4 Katha 18 Lechas of land it was sought to be pleaded that after his death, the said land was recorded in the name of his two sons.

10. From the reading of the plaint, it seems that the plaintiff claims his right, title, interest over the suit land on the basis of sale deed which was executed by the son of Mahendra Ch. Saha. From the pleading in the original plaint, it is the basic case of the plaintiff that the plaintiff's claims right, title, interest and over the suit land by virtue of the sale deed executed by his vendors.

11. He also pleaded in the plaint regarding the lenience of the owner's of the land and the way, the land was handed over to his vendor.

12. By way of the amendment what is sought to done according to the learned counsel is to pin pointedly clarify the dispute which will render the learned court below to arrive at a satisfactory decision.

13. He further contends that the amendment sought for has been rejected only on the ground of delay and that too without giving any reason how the delay has occurred and why the plaintiff was said to be not diligent. In support of such contention, Mr. Iqbal, learned counsel for the petitioner relies on the decision of the Hon'ble Apex Court in the case of ***Life Insurance Corporation of India –Vs- Sanjev Builders Private Limited & Anr*** reported in ***2022 SCC Online SC 1128***.
14. Law is by now well settled that the Court should be liberal in granting amendment to the plaint where the amendment sought for is/are necessary for determining the real question of controversy subject to however, the conditions that it does not cause injustice or prejudice to the other side.
15. It is equally well settled that while allowing or rejecting a prayer of amendment, the Court is to consider whether the amendment sought for is required for effective and proper adjudication, whether the same will lead multiplicity of proceeding or whether the amendment if allowed, will cause injustice to the other side.
16. It is also equally well settled that when amendment is sought to seek to withdraw any clear admission made by the parties is required to be rejected when it results in withdrawal of a right conferred upon the other side by virtue of such pleading originally made.
17. It is also to be considered whether the amendment sought for shall change the nature of the suit or such amendment is sought with a malafide intention.
18. Now coming to the case in hand, as discussed hereinabove, the basic

structure of the suit was for declaration of right, title and interest on the basis of a registered sale deed. In the un- amended plaint, such pleading was specifically made. It was also specifically pleaded that the vendor of the plaintiff purchased the land from a person who inherited the said land from Mahendra Ch. Saha, the predecessor-in-interest of the defendants.

19. Thus, by the amendment, what the plaintiff is trying to bring in is the sequence and lenience how the land was transferred from Mahendra Ch. Saha to his legal heirs. Therefore, in the considered opinion of this Court, the basic structure of the suit will not be changed.
20. The fact also remains that the learned trial Court below rejected the plaint on the ground that the structure of the suit will be changed which will prejudice the defendants. However, the learned trial court below is totally silent how the structure of the suit will be changed and in what manner, the defendant will be prejudiced.
21. A judicial order needs to be a reasoned order and it cannot decided on whim and fancies and without giving any reason. On this count also, the impugned order is liable to be interfered.
22. Be that as it may, from the reading of the un-amended plaint and the amended sought for and for the reasons as discussed hereinabove, this Court is of the unhesitant view that the amendment sought for shall not change the nature and character of the suit rather it is necessary for determining the real question in controversy.
23. This Court is also of the considered opinion that the explanation given regarding the background of the transfer of the land and coming the same

into hands of the plaintiff rather shall help the learned trial Court to come into just decision.

24. Coming to the point of due diligence, it cannot be said that the plaintiff was not diligent inasmuch as immediately after leading evidence, he has filed the application seeking amendment.
25. Coming to the cause of prejudice, if the amendment is allowed, the defendants shall invariably get a chance to file a fresh written statement and till today defendants have not laid any evidence. The fact also remains that the defendants have not objected to the present revision petition in the present case.
26. Considering the aforesaid, the present revision petition stands allowed by setting aside the impugned order dated 25.07.2022 passed by the learned Munsiff No. 1, Kokrajhar in Misc. (J) case No. 6/2022 arising out of Title Suit No. 6/2016 (Old) / Title Suit No. 40/2021 (New) and by allowing the amendment as sought for.
27. The petitioner shall take the necessary recourse for incorporation of such amendment before the learned trial Court below in terms of Order VI Rule 17 of the Code of Civil Procedure, 1908.

JUDGE

Comparing Assistant