

GAHC010208482023



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

Case No. : CRP/148/2023

NEELAKSHI SANDILYA AND ANR
W/O LATE OM PRAKASH SANDILYA, R/O SHIVANJALI, MANIRAM DEWAN
LANE-III, BAMUNIMAIDAN, GUWAHATI-781021 OPPOSITE TO SBI,
CHANDMARI BRANCH H. NO. GMC-3, P.O.-BAMUNIMAIDAN, DIST-
KAMRUP (M), ASSAM

2: SANGHAMITRA SANDILYA
D/O LATE OM PRAKASH SANDILYA
R/O SHIVANJALI
MANIRAM DEWAN LANE-III
BAMUNIMAIDAN
GUWAHATI-781021 OPPOSITE TO SBI
CHANDMARI BRANCH H. NO. GMC-3
P.O.-BAMUNIMAIDAN
DIST-KAMRUP (M)
ASSA

VERSUS

MD KHABIRUDDIN AHMED
S/O LATE MAJU SEIKH, R/O VILL - MULLAPARA, MOUZA - RANGAMATI,
P.S. - MANGALDAI, P.O. - HOWLI MOHANPUR, DIST - DARRANG, ASSAM -
784529

Advocate for the Petitioner : MR K KHANNA

Advocate for the Respondent : MR. S K ROY

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 04.10.2023

Heard Ms. M. Das, learned counsel for the petitioners. Also heard Mr. K. Rahman, who has entered appearance for the respondent no.5 by filing vakalatnama today.

2. By filing this application under Article 227 of the Constitution of India, the petitioners have assailed the order dated 11.08.2023 passed by the learned Civil Judge (Senior Division), Darrang in Misc. (J) Case No. 38/2023, by which the application filed by the petitioners under Section 114 read with Order XLVII Rule 1 CPC for review of the orders dated 06.06.2022 and 28.06.2022 passed by the said learned trial Court in TS 16/2019 was rejected.

3. The facts leading to this application is that one Om Prakash Sandilya (since deceased), was the sole defendant in TS 16/2019, who had died on 20.05.2022. It appears from the order dated 06.06.2022, that on his death, a petition for substitution, bearing petition no. 1400/2022 was filed under Order XXII Rule 4 CPC with a prayer for substituting the legal heirs of the deceased defendant. The said petition was put up on 28.06.2022 for objection, if any and on 28.06.2022, the learned trial Court had allowed the prayer for substitution and issue notice on the newly impleaded legal representatives.

4. Aggrieved by the said *ex parte* order allowing substitution, the petitioners who were substituted as legal representative of the deceased defendant had filed a review petition, wherein the petitioners have raised plea that their substitution was allowed without issuance of prior notice and without

hearing them. The learned trial Court had observed in its order that the right of sue had survived and therefore, the review petition was rejected with cost.

5. The learned counsel for the petitioners has referred to the copy of the plaint and it was submitted that their predecessor-in-interest, namely, Om Prakash Sandilya was impleaded in a representative capacity as an attorney and it is submitted that being an attorney, his legal heirs representative could not be substituted and subjected to defend the suit for specific performance of contract. It is submitted that the learned trial Court had erroneously decided the point that the right of sue survives and in that connection, it is submitted that the suit land is described in two schedules, being Schedule A and B and that the Schedule B land is owned by the different persons and is unconnected with the interest of the sole defendant. It is also submitted that before substitution, a notice was required to be issued mandatorily upon the legal representative sought to be impleaded and by not issuing the prior notice, the right of hearing of the petitioners were curtailed and in support of the said submission, the learned counsel for the respondents has placed reliance on the case of *N. Jayaram Reddy and Ors. Vs. Revenue Divisional Officer and Land Acquisition Officer, Kurnool, MANU/SC/0018/1979*. The relevant paragraph 28 on which the reliance is placed is quoted below.

“28. The first limb of this rule audi alteram partem is that a person must be given an opportunity of being heard before a decision one way or the other affecting him is recorded. As a corollary to this rule it is provided in the CPC that where a party to the proceeding dies pending the proceeding and the cause of action survives, the legal representatives of the deceased party should be brought on record which only means that such legal representatives must be afforded an opportunity of being

heard before any liability is fastened upon them. It may be that the legal representatives in a given situation may be personally liable or the estate of the deceased in their hands would be liable and in either case a decision one way or the other, adverse or favourable to them, cannot be recorded unless they are given an opportunity of being heard. Order 22, Rules 3 and 4 codify these procedural safeguards translating into statutory requirement one of the principles of natural justice.

6. The observations made by the Supreme Court of India in paragraph 28 quoted above is self explanatory and cannot be construed to be a decision to the effect that before impleading the legal representatives within the period allowable for substitution, the legal representatives are entitled to prior notice before being substituted. Therefore, the reliance on the said decision does not help to supplement the point which is urged by the learned counsel for the petitioners.

7. In the plaint, it is seen that a statement has been made to the effect that the predecessor-in-interest of the petitioners, namely, Om Prakash Sandilya (since deceased) was one of the legal heirs of Late Shiva Prasad Sarma and was authorized by the other legal heirs to sell and contract with the purchaser. Therefore, the predecessor of the petitioners, being one of the legal heirs and representatives of the Late Shiva Prasad Sarma was the sole defendant in the suit and the learned counsel for the petitioners could not show that their predecessor-in-interest was sued in representative capacity alone. Therefore, insofar as the substitution of the present petitioners are concerned, the Court cannot find fault with the impugned order passed by the learned court below.

8. Nonetheless, the issue as to whether against the substituted

petitioners, the suit would be maintainable in respect of the other co-owners is a question which is left to be decided by the learned trial Court as the same cannot be a subject matter of the adjudication in this application where order passed on an application filed under Order XXII Rule 4 CPC for substitution. Therefore, insofar as the impugned order is concerned, the Court is unable to find any jurisdictional error committed by the learned trial Court in allowing substitution. Therefore, this petition is dismissed at the motion stage without issuance of notice on the respondent.

9. It is made clear that this order is only confined to the examination of the legality of the impugned order dated 28.06.2022, passed by the learned trial Court to allow substitution as well as the rejection of the prayer for review by order dated 11.08.2023. Therefore, nothing contained in this order would be construed to have determined respective rights of any of the parties to this application.

10. Both sides, who are duly represented by their learned counsel shall appear before the learned trial Court on the date fixed and await further instruction from the said learned Court.

JUDGE

Comparing Assistant