

GAHC010210052022



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

Case No. : CRP/107/2022

ON THE DEATH OF BIJON KUMAR GHOSH HIS LEGAL HEIRS AND 5 ORS.
REPRESENTING

1.1: SMTI USHA RANI GHOSH
W/O LATE BIJON KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

1.2: BISWAJIT GHOSH
S/O LATE BIJON KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

1.3: BIPRENDRA GHOSH
S/O LATE BIJON KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

1.4: BIRESWAR GHOSH
S/O LATE BIJON KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA

P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

2: SATYABRATA GHOSH
S/O LATE GOPENDRA KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

3: PRATYUSH KUMAR GHOSE
S/O LATE GOPENDRA KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

4: PRASANTA KUMAR GHOSH
S/O LATE GOPENDRA KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

5: PIJUSH KUMAR GHOSH
S/O LATE GOPENDRA KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM
PIN-781003

6: PURNENDU KUMAR GHOSH
S/O LATE GOPENDRA KUMAR GHOSH
R/O SALGANGA
P.O.-SALGANGA
P.S.-UDHARBOND
DIST-CACHAR
ASSAM

PIN-78100

VERSUS

BALARAM GOSWAMI AND 7 ORS.

R/O SALGANGAPAR, P.S.-UDHARBOND, DIST-CACHAR, ASSAM, PIN-788031

2:BIRBHADRA GOSWAMI

R/O SALGANGAPAR

P.S.-UDHARBOND

DIST-CACHAR

ASSAM

PIN-788031

3:BOERNYA GOSWAMI

R/O SALGANGAPAR

P.S.-UDHARBOND

DIST-CACHAR

ASSAM

PIN-788031

4:SIMA BHUMIJ

R/O SALGANGAPAR

P.S.-UDHARBOND

DIST-CACHAR

ASSAM

PIN-788031

5:UTTAM BHUMIJ

R/O SALGANGAPAR

P.S.-UDHARBOND

DIST-CACHAR

ASSAM

PIN-788031

6:SUMIJ BHUMIJ

R/O SALGANGAPAR

P.S.-UDHARBOND

DIST-CACHAR

ASSAM

PIN-788031

7:MONA BHUMIJ

R/O SALGANGAPAR

P.S.-UDHARBOND

DIST-CACHAR ASSAM PIN-788031

8:SAPTAMI BHUMIJ

R/O SALGANGAPAR
P.S.-UDHARBOND
DIST-CACHAR ASSAM PIN-78803

Advocate for the Petitioner : MR. S K GHOSH

Advocate for the Respondent : MR. A DAS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

25.01.2023

Heard Mr. S. K. Ghosh, learned counsel for the petitioners. Also heard Mr. A. Das, learned counsel for the respondents.

2. The present petitioners as plaintiffs filed a suit being Title Suit No. 71/2015 before the learned Civil Judge No. 2, Cachar, Silchar, for declaration of right, title, interest and confirmation of possession over the suit property. The said suit was dismissed by Judgment and Decree dated 20.12.2018 on the ground that the plaintiffs had failed to adduce evidence. Being aggrieved, the plaintiffs/petitioners preferred an appeal before the learned Additional District Judge, FTC, Cachar, Silcahr, which was registered as Title Appeal No. 01/2019.

3. The learned appellate court below after considering the appeal, hearing the learned counsel for the parties by its order dated 21.03.2022, set aside the Judgment and Decree dated 20.12.2018 and allowed the plaintiffs/petitioners to adduce evidence subject to payment of a cost of Rs. 8,000/- before the learned trial Court on or before 21.04.2022.

4. Accordingly, the parties appeared before the learned trial court below and dismissed the suit for default on the ground that the plaintiffs had failed to

deposit the cost as awarded by the learned appellate Court below within the stipulated period. However, Mr. Ghosh, learned counsel for the petitioners relying on Annexure-VII (page 32) submits that the plaintiffs had already deposited the said amount before the learned court below on 13.06.2022.

5. Be that as it may, Mr. A. Das, learned counsel for the respondents submits that as the case has been remanded back by the learned appellate Court allowing the plaintiffs to adduce evidence and such order has not been challenged by the respondents, he will not object if the plaintiffs are allowed to lead evidence on deposit of aforesaid cost.

6. In view of the aforesaid submissions, this Court is of the considered opinion that the learned trial Court below shall verify whether the plaintiffs/petitioners had already deposited the cost amount in terms of the application dated 13.06.2022 (Annexure-VII), if the cost has already been deposited, same may be given to the defendants/respondents in terms of the appellate Court's order and if such no amount has been deposited, the plaintiffs/petitioners shall deposit the said amount on 15.02.2023, before the learned trial Court below and in the event of such payment, learned trial court shall restore the suit and proceed with the same in terms of the appellate judgment.

7. In the aforesaid terms, this petition is disposed of.

JUDGE

Comparing Assistant