

GAHC010214582022



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

Case No. : CRP(IO)/247/2022

MD. JUBER AHMED
S/O LATE MD ABDUL SUKKUR, R/O WARD NO. 19, MARKAJ ROAD, HOJAI
TOWN, MOUZA-HOJAI, DIST-HOJAI, ASSAM, PIN-782428

VERSUS

SMTI JAGABAI SATNAMI AND 7 ORS
W/O LT. SADRAM SATNAMI, VILL-BARPUKHURI, MOUZA-JUGIJAN, DIST-
HOJAI, ASSAM

2:RAGHU SATNAMI
S/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSAM

3:SANTU SATNAMI
S/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSAM

4:KESH SATNAMI
S/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSAM

5:BISHNU SATNAMI

S/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSAM

6:SMTI MAINA SATNAMI
D/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSAM

7:SMTI KURTIBAI SATNAMI
D/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSAM

8:SMTI KESHARIBAI SATNAMI
D/O LT. SADRAM SATNAMI
VILL-BARPUKHURI
MOUZA-JUGIJAN
DIST-HOJAI
ASSA

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : MR. P D NAIR (R1 TO R8)

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Ms. D Dutta, Advocate

For the Respondents : Mr. G Alam, Advocate

Date of Hearing : 23.01.2023

Date of Judgement :23.01.2023

JUDGEMENT & ORDER (ORAL)

Heard Ms. D Dutta, learned counsel for the petitioner. Also heard Mr. G Alam, learned counsel for all the respondents.

2. The present petition is filed assailing the order dated 15.12.2021 and order dated 26.05.2022 passed by the learned Munsiff, Hojai Sankardev Nagar in TS No. 52/2013. It is the case of the petitioner that the present petitioner is one of the legal heirs of the original defendant No. 1 in TS No. 52/2013. It is the further case of the petitioner that the said defendant No. 1 after filing written statement had expired during the pendency of the suit.
3. In view of his death, no steps were taken by the learned counsel for the defendant No. 1. Accordingly, the learned trial court by its order dated 15.12.2021 directed that the suit shall proceed ex-parte.
4. Subsequent to that, on 08.03.2022, an application was filed at the behest of the present petitioner to file proper application for vacating of the order dated 15.12.2021. Accordingly, the court on 18.03.2022 without observing anything on the application filed by the present petitioner, which was registered as 229/2022, fixed the matter for ex-parte evidence on 26.05.2022.
5. When the matter was again taken up on 26.05.2022, the plaintiff had filed evidence on affidavit of PW2, PW3 and PW4 and the matter was fixed for ex-parte argument. On that date, the petitioner filed another application seeking time to file proper application for vacating the order dated 15.12.2021. However, as similar prayer was made on 08.03.2022 and no such application was filed on 26.05.2022, the learned court below rejected such application and fixed the matter for argument. In the aforesaid backdrop, the present application is filed.

6. The learned counsel for the petitioner submits that he may be given a chance to file appropriate application for vacation of the ex-parte order inasmuch as the written statement has already been filed, he may be granted a chance to adduce evidence as well as cross-examine the witnesses of the plaintiffs otherwise there will be failure of justice.
7. Per contra, the learned counsel for the respondent submits that the defendants are very negligent and for their negligence the plaintiff cannot be allowed to suffer inasmuch as the defendant sought time on 08.03.2022 for filing of proper application. The learned counsel for the respondents further contends that even on 26.05.2022, the defendants had failed to file proper application. Therefore, it cannot be said that the learned court below has committed any error of jurisdiction to interfere with such decision.
8. This court has given anxious consideration to the submissions advanced by the learned counsels. The undisputed fact is that the predecessor in interest of the petitioner as defendant No. 1 had filed his written statement and the plaintiff had only in the meantime submitted evidence on affidavit of the witnesses. In the aforesaid backdrop, if a chance is given to the present petitioner to file an appropriate application for vacating the ex-parte order, no prejudice shall be caused to the plaintiffs.
9. It is the bounded duty of a court to bring out the truth and real fact in a suit and therefore, if the defendants are given a chance to adduce evidence and to cross-examine the plaintiff's witnesses it will rather help the learned court below to deliver a just decision.
10. Therefore, this court is of the considered opinion that ends of justice would be met and failure of justice can be avoided, if the matter is remanded

back to the trial court giving a further chance to the present petitioner to file appropriate application for vacation of the ex-parte order dated 15.12.2021.

11. Accordingly, this present application is allowed by setting aside the order dated 26.05.2022 whereby the petition No. 845/2022 of the present petitioner was rejected. Accordingly, the present petitioner may by next date fix file appropriate application for vacation of the ex-parte order dated 15.12.2021 and on such application being filed the learned trial court shall consider the same on its own merit and pass necessary order.

JUDGE

Comparing Assistant