

GAHC010215732019



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

Case No. : CRP(IO)/327/2019

SIVASAGAR TOWN LAKHIMI AND GENERAL FLAT HOUSING CO-
OPERATIVE SOCIETY LTD.
UNDER REGISTRATION NO. 5-3 HAVING ITS REGD. OFFICE AT SANKAR
MANDIR ROAD AND BRANCH OFFICE AT THANA ROAD, PO AND PS-
SIVASAGAR, REP. BY THE SECRETARY SRI DHRUBA JYOTI @ DIGANTA
BORDOLOI, S/O- LT. PRAFULLA BORDOLOI, AGE 44 YEARS, R/O-
SIVASAGAR TOWN, WARD NO. VII, PO, PS AND DIST- SIVASAGAR, ASSAM.

VERSUS

SRI SREEMANTA LAL DOWARAH AND 7 ORS.
S/O- LT. BASANTA LAL DOWARAH, R/O- WARD NO. IIX, PO, PS AND DIST-
SIVASAGAR, ASSAM, PIN-

2:SUNILA DOWARAH
W/O- LT. BASANTA LAL DOWARAH
R/O- WARD NO. IIX
PO
PS AND DIST- SIVASAGAR
ASSAM
PIN-

3:SUSANTA LAL DOWARAH
S/O. LT. HEMANTA LAL DOWARAH
R/O- WARD NO. IIX
PO
PS AND DIST- SIVASAGAR
ASSAM
PIN-

4:SUMANTA LAL DOWARAH
S/O. LT. HEMANTA LALA DOWARAH

R/O- WARD NO. IIX
PO
PS AND DIST- SIVASAGAR
ASSAM
PIN-

5:PRASANTA LAL DOWARAH
S/O. LT. KUNJALAL DOWARAH
R/O- WARD NO. IIX
PO
PS AND DIST- SIVASAGAR
ASSAM
PIN-

6:RINA CHOWDHURY
W/O. SRI ROMEN CHOWDHURI
R/O. CHANDMARI
NIZARAPAR
GUWAHATI-781003.

7:BINA CHOWDHURY

W/O. LT. REBONANDA CHOWDHURY
R/O. NA0JAN-6
UJANBAZAR
GUWAHATI-01.

8:CHARULATA DOWARAH
D/O. LT. LALIT DOWARAH
R/O. PANCH ALI
AMULAPATTY
NEAR SHIVA THAN
GOLAGHAT
P.O.
P.S. AND DIST. GOLAGHAT
ASSAM

Advocate for the Petitioner : MR. S DASGUPTA

Advocate for the Respondent :

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

ORDER

Date : 21-12-2023

On the prayer made by Mr. S. Dasgupta, learned counsel for the petitioner, the names respondent nos.5 and 8 be struck off.

2. As per the order dated 19.10.2022 service on the other remaining respondents is accepted to be completed.

3. By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 22.11.2017 and 08.02.2019 passed by the learned Civil Judge (Senior Division), Sivasagar thereby dismissing Misc. (J) case no.130/2017 and Misc.(J) case no.145/2017.

4. By Misc.(J) case no.130/2017, prayer was made under Order VI Rule 17 CPC read with section 151 CPC to amend the plaint, proposing to delete the names of respondent nos.5 and 8 and to implead their legal representatives. On the said petition being rejected by order dated 22.11.2017, the petitioner had filed a review petition under Order XLVII Rule 1 CPC which was registered as Misc.(J) case no.145/2017, whereby prayer was made to review the order dated 22.11.2017.

5. The learned counsel for the petitioner has submitted that when the suit was instituted, the petitioner-plaintiff was unaware that the defendant nos.5 and 8 had expired and therefore, the prayer for amendment of the plaint was made.

6. Having considered the circumstances under which this

application under Order VI Rule 17 read with section 151 CPC being Misc.(J) case no.130/2017 was filed, the Court is of the considered opinion that by way of an amendment of the plaint the parties in the proceedings cannot be struck off or added. The petitioner may be well advised of the legal provisions by virtue of which parties can be added or struck off.

7. Having held that parties cannot be impleaded by way of amendment as there are provisions in the CPC for addition or impleading of parties, this revision is dismissed.

8. However, it is provided that in the event an appropriate application is filed, the learned Civil Judge (Senior Division), Sivasagar shall consider the same and pass appropriate order in accordance with law and the impugned orders dated 22.11.2017 in Misc.(J) case no.130/2017 and order dated 08.02.2019 passed by the said learned Court in Misc.(J) case no.145/2017 shall not come in the way of adjudication of the appropriate application filed by the petitioner.

9. The interim order passed earlier, staying the proceeding of the suit stands vacated.

10. The petitioner shall appear before the learned trial Court on 19.01.2024, and by producing a certified copy of this order, await instructions by the said learned Court.

11. This petition stands dismissed with liberty as prayed for.

JUDGE

Comparing Assistant