

GAHC010240152022



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

Case No. : CRP(IO)/288/2022

JESMIN BEGUM AND 4 ORS
W/O LATE ELIAS ALI, R/O VILL- ABHAYAPURI TOWAN WARD NO. 1, P.O.
AND P.S.-ABHAYAPURI, DIST- BONGAIGAON, ASSAM

2: SAIFUL ISLAM
S/O LATE ELIAS ALI
R/O VILL- ABHAYAPURI TOWAN WARD NO. 1
P.O. AND P.S.-ABHAYAPURI
DIST- BONGAIGAON
ASSAM

3: YESMIN BEGUM
D/O LATE ELIAS ALI
R/O VILL- ABHAYAPURI TOWAN WARD NO. 1
P.O. AND P.S.-ABHAYAPURI
DIST- BONGAIGAON
ASSAM

4: SAFIQUUL ISLAM
S/O LATE ELIAS ALI
R/O VILL- ABHAYAPURI TOWAN WARD NO. 1
P.O. AND P.S.-ABHAYAPURI
DIST- BONGAIGAON
ASSAM

5: SARIFUL ISLAM
S/O LATE ELIAS ALI
R/O VILL- ABHAYAPURI TOWAN WARD NO. 1
P.O. AND P.S.-ABHAYAPURI
DIST- BONGAIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE DEPUTY COLLECTOR CUM DEPUTY
COMMISSIONER, BONGAIGAON, P.O. AND P.S.-BONGAIGAON, ASSAM

2:THE EXECUTIVE ENGINEER
DEPARTMENT OF IRRIGATION (CIVIL)
BONGAIGAON
P.O. AND P.S.-BONGAIGAON
DIST-BONGAIGAON (ASSAM)

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 20.3.2023

Heard Ms. R. Choudhury, learned counsel for the petitioner. Also heard Mr. T. R. Gogoi, learned counsel for the respondent No.1 and Mr. P. Nayak, learned counsel for respondent No. 2.

2. The present petition is filed assailing the order dated 17.8.2022 passed by learned Munsiff, North Salmara, Abhayapuri arising out of Title Suit No. 09 of 2010. The present petitioner had instituted a suit for declaration of right, title and interest over the scheduled land and also for declaration that the defendants are not having any right, title and interest over the suit land. After conclusion of the trial, the matter was fixed for delivery of judgment.

3. At that stage the learned trial court under its order dated 21.6.2017, appointed Circle Officer, Srijangram Revenue Circle as Amin Commissioner for the purpose of surveying and demarcating of the suit land. An issue for such Commission was framed to the following effect "as to whether the suit land is

covered by Patta No.103/166, Dag No. 139/28 measuring 3 bighas 4 kathas 18 lechas or under Dag No. 92(kha) measuring 4 bighas 8 lechas". As reflected in the order dated 21.6.2007 the reason of appointing such Commissioner was that the pleaded case of the plaintiff was that the suit land is covered by patta No.102/166, dag No.139/28 measuring 3 bighas 4 kathas 18 lechas whereas the defendant in their pleadings stated that suit land is covered by dag No.92 (kha) measuring 4 bighas 8 lechas which is the khass land.

4. Subsequent to such direction, the Circle Officer, Srijangram submitted a report on 31.10.2017 with the finding that the suit land is a patta land and under the possession of the plaintiff in terms of the current status and record. However it was also reported that the suit land was earlier a part of dag no. 92(old) 35(new) covering 25 bigha 0 katha 12 lechas which was khass land. It was also reported that the demarcation could not be done of the whole plot as some areas are submerged by water.

5. Subsequently another report was submitted by the Commissioner on 28.11.2017 with a finding that the demarcation reveals additional land of 1 katha 7 lechas is a part of land covered by Government Dag No. 92(old)/35(new) of the village and also stated that the plaintiff was occupying 4 bighas 1 kathas 5 lechas against the entire land measuring 3 bighas 4 kathas and 18 lechas. It was also revealed that the remaining other plots of land, the Government is occupying over a plot of land measuring 21 bighas 1 katha 0.9 lechas against the Government land measuring 25 bighas 0 kathas 12 lechas.

6. In the aforesaid backdrop, the petitioner filed a petition before the learned Trial court being Petition No. 30 dated 9.1.2019 praying for a fresh survey of land and demarcation to identify the boundary of the suit land in the southern part by subtracting the excess occupation as reported by the Circle Officer

measuring 1 katha 7 lechas of the land and by handing over the same to the defendant. It was also pleaded that the plaintiff was ready and willing to bear the cost of such demarcation.

7. Such petition was rejected on the ground that the suit was an old pending suit since 2010 and at the pending stage of argument and therefore at that stage passing of order for survey and demarcation will cause delay of the proceeding.

8. Thereafter another petition being Petition No.223/20 dated 25.2.2020 reiterating the similar prayer with an additional prayer that the plaintiff be allowed to abandon the claim over the land, which was found to be in excess possession, was filed. Such petition was also rejected by the learned court below by the impugned order and the learned court below came to a conclusion that when the plaintiff itself has not claimed right, title and interest over the property under Dag No. 92, therefore there is no question of abandonment of any claim. Accordingly, the petition was dismissed.

9. Heard learned counsel for the parties. This court is of the opinion that the claim made by the petitioner through the petition No. 223/20 abandoning her claim and for demarcation of the land in terms of the report of the Circle Officer ought to have been decided while passing the judgment and finally determine the issues inasmuch as the petitioner can't ask for determination of the final issues by way of interim application.

10. By the impugned order the court has come into a conclusion that the defendant has abandoned a claim, which itself was not a claim of the plaintiff. However, the Circle Officer's report says that the petitioner is occupying excess land over her land and the same belongs to the Government.

11. The Commissioner's report is a piece of evidence collected by the court for proper determination of the issues which is reflected in the order of appointing of the Commissioner. And thereafter, the learned Trial Court is to pass the judgment on the basis of evidences available before it.

12. In view of aforesaid, this court is of the opinion that the application filed by the petitioner, at best, be taken as an additional argument as the appointment of commission was done at the time of delivery of the judgment and therefore such application and prayer may be treated as argument of the learned counsel for the parties and same be decided when the final judgment is passed, taking note of all the relevant evidences and material.

13. Accordingly, it is provided that the finding in the impugned order regarding abandonment of the claim should not be treated as final and learned trial court shall also consider such claim and include its decision in the final judgment .

14. With the aforesaid observation, this revision petition stands closed.

However this court has not observed anything on the merit of the claim of the plaintiff or the defence of the defendant. The learned trial court shall pass the judgment on the material available on record and without being influenced by any observation made in this present petition.

JUDGE

Comparing Assistant