

GAHC010268442013



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

Case No. : CRP(IO)/71/2013

SATYENDRA PHUKAN
S/O LT. SALIA PHUKAN, PERMANENT R/O CHANGCHOKI GAON, MOUZA-
GARUBAT, NAGAON, ASSAM, PRESENTLY RESIDING AT VILL.
SANTINAGAR, HOUSE NO.17, POWER HOUSE BY LANE NO.1,
KAHILIPARA, GHY-19, KAMRUP, ASSAM

VERSUS

SMTI KUSHAMAI PHUKAN and ORS.
W/O LT. ANIL PHUKAN

2:1.B. SRI DILIP PHUKAN

3:1.C. PURNIMA PHUKAN

4:1.D SMTI MINATI PHUKAN

1.B

1.C.

and 1.D. ARE RESPECTIVELY SON AND DAUGHTERS OF LT. ANIL PHUKAN
ALL ARE R/O CHANGCHOKI
MAUZA GARUBAT
DIST- NAGAON
ASSAM

5:2. NITYANANDA PHUKAN

6:3.NAKUL PHUKAN

7:4. MRIDUL PHUKAN
NO.2
3and4 ARE SONS OF LATE MULAN PHUKAN
ALL ARE R/O CHANGCHOKI
MAUZA GARUBAT
DIST- NAGAON
ASSAM

8:5. RUPESWARI GOHAIN
W/O LT. SOBHEN GOHAIN
R/O KOPOHUWA TAKELIGAON
DIST- MARIGAON
ASSAM

9:6. CHENIMAI BORA
W/O LT. CHAMANI BORA
R/O KAMPUR DHEMAJI GAON
MAUZA GARUBAT
NAGAON
ASSAM

10:7. DEEPA BORA
W/O SRI NIRANJAN BORA
R/O KAMPUR PARULGURI
MOUZA GARUBAT
NAGAON
ASSAM

11:8. MONI PHUKAN
W/O TULAN PHUKAN
R/O CHANGCHOKI
MOZA GARUBAT
NAGAON
ASSAM

12:9. M/S BHARATI AIRTEL LTD.
ARAVALI CRISCEANT
NATIONAL MENDALA ROAD
VASANTKUNJ
PHASE-II
NEWDELHI- 110070
REPRESENTED BY ITS MANAGING DIRECTO

Advocate for the Petitioner : MR.M P PARASHAR

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

06.06.2023

Heard Mr. B. D. Goswami, the learned counsel for the petitioner. None appears on behalf of the respondents on call.

2. It appears from the order dated 01.06.2023 passed by the Lawazima Court that service of notice upon the respondents have been duly effected. Considering the same, the instant petition is taken up for disposal.

3. The instant application has been filed under Article 227 of the Constitution challenging the order dated 11.07.2013 passed in Title Suit No.48/2009 whereby the application seeking amendment of the plaint was rejected on the ground that the same was filed at the stage of argument. The application seeking amendment of the plaint has been enclosed as Annexure-3 to the Revision Application.

4. From a perusal of the said amendment sought for is in relation to certain amendments sought to the Schedule to the plaint, and more particularly, relating to the description of the land as well as regards the share in the Schedule land.

5. At this stage, this Court finds it relevant to refer to Order VII Rule 3 of the Code of Civil Procedure, 1908 which stipulates that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and if such case property can be identified by boundaries or numbers in a record of settlement or survey and the plaint should specify such boundaries or numbers. It further reveals

from Order XX Rule 9 of the CPC that where the subject matter of the suit is an immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

6. The Supreme Court in the case of ***Pratibha Singh and Another vs. Shanti Devi Prasad and Another***, reported in ***(2003) 2 SCC 330*** observed at paragraph No.15 that if the plaintiff committed an error the defendant should have objected to it promptly. It was observed that the default or carelessness of the parties does not absolve the Trial Court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiff and should have insisted on a map of the immovable property forming subject-matter of the suit being filed. The Supreme Court further observed at paragraph No.17 of the said judgment that when the suit as to an immovable property has been decreed and the property is not definitely identified, the defect in the court's record caused by overlooking of provisions contained in Order VII Rule 3 and Order XX Rule 9 of the CPC is capable of being cured on the basis that after all a successful plaintiff should not be deprived of the fruits of decree. It was observed that the resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. It is also no longer *res integra* that the amendment of the Schedule to the plaint, on the above rationale, can be permitted at any stage.

7. Considering the above, this Court therefore, upon perusal of the amendment application and the amendment sought for being only limited to the description of the Schedule land and the claim of the share, this Court is

of the opinion that this is a fit case to exercise the supervisory jurisdiction under Article 227 of the Constitution for setting aside the impugned order dated 11.07.2013 and thereby allowing the amendment as sought for by the application dated 28.05.2013 being petition No.1550/2013.

8. In that view of the matter, the amendment application being petition No.1550/2013 is allowed and the petitioner who is the plaintiff in the suit is directed to file the amended plaint within a period of 14 (fourteen) days from the date of the instant order failing which the provision of Order VI Rule 18 shall duly apply.

9. The Trial Court, upon filing of the instant application, shall proceed with the suit by giving due notice to the defendants who have however not appeared before this Court.

JUDGE

Comparing Assistant