

GAHC010008322011



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

Case No. : CRP/346/2011

MD. TAZIR UDDIN and 4 ORS
S/O LATE SIRAJ UDDIN

2: MD. SAMS UDDIN
S/O LATE SIRAJ UDDIN

3: MUST. RUFIA BIBI
W/O LATE SIRA UDDIN
ALL ARE RESIDENTS OF VILL. HORINADIK
P.O. ANGLA BAZAR
P.S. BADARPUR
DIST. KARIMGANJ
ASSAM.

4: MUST. NEKJAN BEGUM
D/O LATE SIRAJ UDDIN
R/O VILL. NAHARPUR
P.O. MALUA
P.S. BADARPUR
DIST. KARIMGANJ
ASSAM.

5: MUST. LUTHFA BIBI
D/O LATE SIRAJ UDDIN
VILL. DAKSHINKUL
P.O. BHANGA BAZAR
P.S. BADARPUR
DIST. KARIMGANJ
ASSAM

VERSUS

ON THE DEATH OF MD. TAJ UDDIN HIS LEGAL HEIRS NAMELY
S/O LATE SOMED ALI, R/O VILL. HORINADIK, P.O. ANGLA BAZAR, P.S.

BADARPUR, DIST. KARIMGANJ, ASSAM. PIN 788806

1.1:MAMTAZ BEGUM
W/O- LATE TAJ UDDIN
RESIDENT OF VILL.- HORINADIK
P.O.- ANGLA BAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806

1.2:AHMED KABIR
S/O- LATE TAJ UDDIN
RESIDENT OF VILL.- HORINADIK
P.O.- ANGLA BAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806.

1.3:ABIDA SABNAM
D/O- LATE TAJ UDDIN
RESIDENT OF VILL.- HORINADIK
P.O.- ANGLA BAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806.

1.4:TAHERA SABNAM
D/O- LATE TAJ UDDIN
RESIDENT OF VILL.- HORINADIK
P.O.- ANGLA BAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806.

1.5:REJAUL HANIF
S/O- LATE TAJ UDDIN
RESIDENT OF VILL.- HORINADIK
P.O.- ANGLA BAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806

2:MD. MATAB UDDIN

S/O LATE KHUSID ALI
R/O VILL. HORINADIK
P.O. ANGLA BAZAR
P.S. BADARPUR
DIST. KARIMGANJ
ASSAM
PIN-788806

3:ON THE DEATH OF MD. ABDUL SATTAR HIS LEGAL HEIRS
NAMELY -

3.1:KULCHUMA BEGUM
W/O LATE MD. ABDUL SATTAR. RESIDENT OF VILL- HARINADIK
P.O.- ANGLAR BAZAR
P.S.- BADARPUR
DISTRICT- KARIMGANJ
ASSAM. PIN- 788806.

3.2:SOFIQUR RAHMAN
S/O LATE MD. ABDUL SATTAR. RESIDENT OF VILL- HARINADIK
P.O.- ANGLAR BAZAR
P.S.- BADARPUR
DISTRICT- KARIMGANJ
ASSAM. PIN- 788806

3.3:ABDUL AHAD
S/O LATE MD. ABDUL SATTAR. RESIDENT OF VILL- HARINADIK
P.O.- ANGLAR BAZAR
P.S.- BADARPUR
DISTRICT- KARIMGANJ
ASSAM. PIN- 788806.

3.4:RINA BEGUM
D/O LATE MD. ABDUL SATTAR. RESIDENT OF VILL- HARINADIK
P.O.- ANGLAR BAZAR
P.S.- BADARPUR
DISTRICT- KARIMGANJ
ASSAM. PIN- 788806.

4:ON THE DEATH OF MD. ABDUL MATIN HIS LEGAL HEIRS
NAMELY -

4.1:NURUNNESSA
W/O LATE MD. ABDUL MATIN. RESIDENT OF VILL- HARINADIK
P.O.- ANGLAR BAZAR
P.S.- BADARPUR
DISTRICT- KARIMGANJ
ASSAM. PIN- 788806.

4.2:MAKLISUR RAHMAN

S/O LATE MD. ABDUL MATIN. RESIDENT OF VILL- HARINADIK

P.O.- ANGLAR BAZAR

P.S.- BADARPUR

DISTRICT- KARIMGANJ

ASSAM. PIN- 788806.

4.3:RAFIQUR RAHMAN

S/O LATE MD. ABDUL MATIN. RESIDENT OF VILL- HARINADIK

P.O.- ANGLAR BAZAR

P.S.- BADARPUR

DISTRICT- KARIMGANJ

ASSAM. PIN- 788806.

4.4:HENA BEGUM

D/O LATE MD. ABDUL MATIN. W/O FAKAR UDDIN. RESIDENT OF VILL- JAROILTOLA

P.O.- MOHAKAL

P.S.- BADARPUR

DISTRICT- KARIMGANJ

ASSAM. PIN- 788806.

5:MD. ABDUL MANIK

R-3

4 AND 5 ARE S/O- LATE MUHIB ALI

R/O VILLAGE- HORINADIK

PO- ANGLA BAZAR

PS- BADARPUR

DIST- KARIMGANJ

ASSAM

PIN- 788806

16:ON THE DEATH OF MD. HAJI MOIN UDDIN HIS LEGAL HEIR
NAMELY -

16.1:AKIRUNNESSA

W/O LATE MD. HAJI MOIN UDDIN

RESIDENT OF VILL- HARINADIK

P.O.- ANGLAR BAZAR

P.S.- BADARPUR

DISTRICT- KARIMGANJ

ASSAM. PIN- 788806.

21:THE STATE OF ASSAM

22:THE SUB-REGISTRAR OFFICE

P.O. BHANGA BAZAR

P.S. BADARPUR

DIST.KARIMGANJ
PIN-788806

23:THE SUB-REGISTRAR
KARIMGANJ SADAR
KARIMGANJ
P.O.
P.S. and DIST. KARIMGANJ
PIN-78880

Advocate for the Petitioner : G UDDIN, M J QUADIR,S HASNAIN

Advocate for the Respondent : MR.G SARMA, MR K DEKA (r-1 to 2),MR S DAS (r-1 to 3 to 6),K GOSWAMI,S CHAKRABORTY,GA, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

16.12.2024

Heard Mr. M. J. Quadir learned counsel for the petitioner and Mr. S. Das, learned counsel for the respondents.

2. This application has been preferred under Article 227 of the Constitution of India read with Section 151 of CPC against the order dated 21.06.2011 passed by the learned Munsiff No.1, Karimganj in TS No. 237/2008.

3. The petitioners have instituted a title suit being TS 237/2008 praying for a declaration of right, title and interest over the suit property and recovery of khas possession.

4. The respondents as defendants appeared before the trial court and submitted their written statement wherein they stated that the suit land is under the use and occupation of 1119 Anglerbazar LP School. Subsequently, the authorities of the Anglerbazar/LP School in collusion with the defendant/respondents trying to change

the nature and feature of the suit land and thus, this fact is required to be brought in the plaint of the suit by way of amendment.

5. The petitioners accordingly filed a petition under Order VI Rule 17 read with Section 151 CPC before the court of learned Munsiff, Karimganj on 15.01.2010. Against the said petition, the respondents/defendants filed their written objection on 08.03.2010 for amendment of the plaint on the ground that the proposed amendment would change the nature and feature of the suit.

6. The learned Munsiff after hearing both the parties, rejected the amendment petition vide order dated 21.06.2011 on the ground that the amendment petition was filed after a long period of institution of the suit and the amendment is a major one and if the amendment is allowed, the nature and feature of the suit would be changed.

7. It is submitted by the learned counsel for the petitioner that the learned Munsiff failed to appreciate the facts of the case in its proper prospective that the respondent Nos. 1 and 2 illegally encroached the suit land by dispossessing the plaintiffs there from and started construction of pucca structure thereon and accordingly, the petitioners prayed for recovery of khas possession of the suit land by evicting the respondent Nos. 1 and 2.

8. According to learned counsel for the petitioner, the learned Munsiff has failed to appreciate the fact that the respondents/defendants in their respective written statements admitted that the suit land is under the use and occupation of the Anglerbazar LP School. As such, the fact is required to be brought in the plaint of the suit by way of amendment for determining the real question in controversy between the parties. Accordingly, learned counsel has prayed to allow the amendment of the petition for proper adjudication of the matter pending between the parties.

9. On the other hand, learned counsel for the respondents though raised objection

in amending the plaint but has admitted that the suit land is now under the possession of Anglerbazar LP School.

10. Having heard the learned counsel for the parties, the admitted fact is that the second scheduled suit land is under the occupation of the Anglerbazar LP School. As such, it is required to amend the plaint by impleading Anglerbazar LP School and its authorities as defendants as proposed by the petitioner in his petition before the trial court. The order of the trial court shows that the suit was filed in the year 2008 and the amendment petition was filed after a long period i.e. in the year 2010 and it is one of the grounds to reject the amendment of the plaint. But as per Order VI Rule 17 CPC, the settled position of law is that the amendment can be done at any stage before commencement of the trial.

11. In the case in hand, though written statements were filed but issues are not framed and the evidence of the plaintiff also not submitted before the trial court.

12. Keeping in mind the object of Order VI Rule 17 CPC and under the facts and circumstances of the case, this Court is of the view that the necessary amendments are required for proper adjudication of the case.

13. Accordingly, the prayer of the petitioner is allowed as per Schedule given in the petition vide No.61/32 dated 05.01.2010. The order dated 21.06.2011 passed by the learned Munsiff is hereby set aside.

14. The trial court is directed to do the necessary amendments in the plaint as per petition dated 05.01.2010.

15. Accordingly, the revision petition is disposed of.

JUDGE

Comparing Assistant