

GAHC010022952023



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

Case No. : CRP(IO)/98/2023

MAZIBUR RAHMAN AND 11 ORS.
(HUSBAND), S/O LATE TAYEB ALI SK., R/O VILL-SONAHARA, P.S.-
BAGUAN, DIST-GOALPARA, ASSAM

2: SAHADOT ALI
(SON)
S/O MOZIBAR RAHMAN
R/O VILL-SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

3: ABU BAKKAR SIDDIK
(SON)
S/O MOZIBAR RAHMAN
R/O VILL-SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

4: MOZIDA KHATUN
(DAUGHTER)
W/O MOFIDUL ISLAM
R/O HELAPAKHRI
P.S.-MORNAI
DIST-GOALPARA
ASSAM

5: MOMIRON NESSA
(DAUGHTER)
W/O LATE LALCHAN ALI
R/O NAKALIAPARA RAMHARIR CHAR
GOALPARA RIVER P.S.
DIST-GOALPARA

ASSAM

6: MOFIDA KHATUN
(DAUGHTER) W/O AMIR HAMJA
R/O SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

7: OBIRAN NESSA
(DAUGHTER)
D/O MOZIBAR RAHMAN
R/O SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

8: SHOHIDUL ISLAM
(GRAND SON)
S/O LATE ARMAN ALI
R/O SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM (BEING MINOR
REPRESENTED BY PETITIONER NO. 12)

9: NUR ALIP
(GRAND SON)
S/O LATE ARMAN ALI
R/O SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM (BEING MINOR
REPRESENTED BY PETITIONER NO. 12)

10: SHAHID UI ISLAM
(GRAND SON)
S/O LATE ARMAN ALI
R/O SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM (BEING MINOR
REPRESENTED BY PETITIONER NO. 12)

11: ARJUMA KHATUN
(GRAND DAUGHTER)
D/O LATE ARMAN ALI
R/O SONAHARA

P.S.-BAGUAN
DIST-GOALPARA
ASSAM (BEING MINOR
REPRESENTED BY PETITIONER NO. 12)

12: SHAHIDA KHATUN
(DAUGHTER IN LAW)
W/O ARMAN ALI
R/O SONAHARA
P.S.-BAGUAN
DIST-GOALPARA
ASSA

VERSUS

AZIBAR RAHMAN AND 4 ORS.
S/O LATE MONSER ALI, R/O NOLONGA, P.S.-BAGUAN, DIST-GOALPARA,
ASSAM

2:AYESHA KHATUN
W/O LATE MONSER ALI
R/O NOLONGA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

3:TOSIRON NESSA
D/O LATE MONSER ALI
R/O VILL-BALABARI
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

4:BASIRON BEWA
D/O LATE MONSER ALI
W/O LATE ABDUL HAMID
R/O NALANGA UZANPARA
P.S.-BAGUAN
DIST-GOALPARA
ASSAM

5:MORIOM NESSA
D/O LATE MONSER ALI
W/O ANOWAR HUSSAIN
R/O VILL-LALKURA
P.S.-BAGUAN
DIST-GOALPARA
ASSA

Advocate for the Petitioner : Mr. S. Hoque, Advocate

Advocate for the Respondent : Mr. M.H. Talukdar, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

26.04.2024

- 1.** This is an application under Article 227 of the Constitution of India challenging the order dated 19.10.2022, passed in Misc.(J) Case No. 19/2021, arising out of T.A. No. 03/2020 whereby, the application filed for amendment of the written statement in the appellate stage was rejected by the learned First Appellate Court holding the said application was not maintainable. It was however mentioned in the said order that the appellants, who are the petitioners herein, can take the plea of adducing additional evidence as per the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short, the Code) or raise the ground in the memo of appeal by seeking necessary amendment in the memo of appeal.
- 2.** In the opinion of this Court, the said order does not require any interference in view of the reasons so assigned in the impugned order and further to that, without amending the grounds of objection in the memo of appeal in terms with Order XLI Rule 3(3) of the Code, the grounds for filing the application under Order VI

Rule 17 of the Code could not at all have been entertained.

3. Accordingly, the instant petition, therefore, stands dismissed.
4. The order dated 04.04.2023 stands vacated and the learned First Appellate Court, i.e. the Court of the learned Civil Judge, Goalpara shall proceed with the adjudication of T.A. No. 03/2020 in accordance with law. As the parties are duly represented, this Court directs the parties to appear before the learned First Appellate Court, i.e. the Court of the learned Civil Judge, Goalpara on 20.05.2024 for further proceedings of the appeal.
5. Before parting with the records, this Court makes it clear that the dismissal of the instant application shall not preclude the rights of the petitioners, herein, who are the appellants in the said appeal to take the benefit of the liberty so given in the impugned order.

J U D G E

Comparing Assistant