

GAHC010033622016



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

Case No. : CRP/473/2016

BINAPANI DAS
W/O. LT. KULENDU KR. DAS, SILPHUKHURI, GUWAHATI-03, KAMRUPM,
ASSAM.

VERSUS

GAJENDRA NATH KALITA and 9 ORS.
S/O. LT. RUP RAM KALITA, UDAYAN BIHAR, OIL NARENGI, P.S.
NOONMATI, GUWAHATI-26, KAMRUPM.

2:SMT MINU DAS @ DIPALI DAS

W/O. LT. DR. SUBHENDU KR DAS

3:SMT BHARATI DAS

4:SRI MANAS DAS

5:SRI BUBLU DAS

ALL ARE SONS AND DAUGHTER OF LT. DR. SUBHENDU KR DAS AND
RESIDENT OF KARNACHAL
SILPUKHURI
GUWAHATI-03.

6:SMT. NILIMA DAS

W/O. LT. JOGENDRA KUMAR DAS

7:SRI DEBENDRA KR DAS

S/O. LT. JOGENDRA KR DAS.

8:SRI KUSUM KR DAS

9:SRI SANJIT KR DAS

BOTH ARE SONS OF LT. KULENDU KR DAS
R/O. KARNACHAL
SILPUKHURI
GUWAHATI-03.

10:SRI KAMALESWAR BARMAN

S/O. LT. MONA BARMAN
R/O. C/O. UTTAM BARMAN
NEAR MARIA SCHOOL
BIRKUCHI
P.O. NARENGI
GUWAHATI-26

Advocate for the Petitioner : MR.H DAS

Advocate for the Respondent : MR.A CHOUDHURYR- 1and10R-1

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

18.03.2024

This is an application under Section 115 of the Code of Civil Procedure, 1908, (for short, the Code) challenging the order dated 23.09.2016 passed by the

learned Munsiff No.2 at Guwahati in Misc.(J) Case No.185/2015 arising out of Title Suit No.511/2010. By the impugned order dated 23.09.2016, the application for amendment of the plaint was rejected.

2. This Court taking into account the amendment to the Code of Civil Procedure, 1908 by the amending Act of 2002 is of the opinion that the instant application is not maintainable under Section 115 of the Code. Be that as it may, for the interest of justice, the instant application is converted to a proceeding under Article 227 of the Constitution.

3. This Court has duly taken note of the impugned order dated 23.09.2016 passed by the learned Trial Court whereby the application filed by the petitioner/plaintiff was rejected. A perusal of the impugned order categorically shows that the learned Trial Court erroneously have dealt with the merits of the amendment sought for and not what was required to be taken note of in terms of the provisions of Order VI Rule 17 of the Code.

4. This Court has also taken note of the application filed under Order VI Rule 17 of the Code and from a perusal thereof, it reveals that the amendment so sought for are necessary for the purpose of effective adjudication of the suit. Further to that, the said amendments under no circumstances would change the nature and character of the suit property. Consequently, as the learned Trial Court did not consider the said aspect of the matter, the impugned order dated 23.09.2016 passed by the learned Trial Court is set aside and quashed and the application seeking amendment of the plaint is allowed.

5. The petitioner/plaintiffs are directed to file the amended plaint by 02.04.2024 before the learned Trial Court. The stay order dated 22.12.2016 passed by this Court stands vacated in view of the above directions.

6. The parties herein are directed to appear before the learned Trial Court on 02.04.2024 as abovementioned.

7. With the above, the petition stands disposed of.

JUDGE

Comparing Assistant