

GAHC010037902019



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

Case No. : CRP(IO)/53/2019

RENUKA DAS AND ANR.

D/O. LT. GHANASHYAM DAS, R/O. GHANASHYAM BHAWAN, SORBHOG
TOWN, WARD NO. IV, P.O. SORBHOG, DIST. BARPETA, ASSAM-781317.

2: SMT. KHIRODA DAS

W/O. LT. RATNESWAR DAS
R/O. GHANASHYAM BHAWAN
SORBHOG TOWN
WARD NO. IV
P.O. SORBHOG
DIST. BARPETA
ASSAM-781317

VERSUS

TARINI BALA DAS AND 4 ORS.

W/O. LT. KHAGEN CH. DAS, R/O. GHANASHYAM BHAWAN, SORBHOG
TOWN, WARD NO. IV, P.O. SORBHOG, DIST. BARPETA, ASSAM-781317.

2: RANJIT DAS

S/O. LT. KHAGEN DAS
R/O. GHANASHYAM BHAWAN
SORBHOG TOWN
WARD NO. IV
P.O. SORBHOG
DIST. BARPETA
ASSAM-781317.

3: HITESH DAS

S/O. LT. KHAGEN DAS
R/O. GHANASHYAM BHAWAN

SORBHOG TOWN
WARD NO. IV
P.O. SORBHOG
DIST. BARPETA
ASSAM-781317.

4:BENUDHAR DAS

S/O. LT. KHAGEN DAS
R/O. GHANASHYAM BHAWAN
SORBHOG TOWN
WARD NO. IV
P.O. SORBHOG
DIST. BARPETA
ASSAM-781317.

5:SMT. KARABI DAS

D/O. LT. KHAGEN DAS
R/O. GHANASHYAM BHAWAN
SORBHOG TOWN
WARD NO. IV
P.O. SORBHOG
DIST. BARPETA
ASSAM-781317

For the Petitioner(s) : Mr. C. Sharma, Advocate

For the Respondent(s) : None appears.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 13.03.2024

1. This is an application under Article 227 of the Constitution challenging the order dated 28.11.2018 passed in Title Suit No.6/2016 by the learned Civil Judge, Bongaigaon.

2. From a perusal of the materials on record, it reveals that the Petitioners

herein as Plaintiffs had instituted a suit being Title Suit No.6/2016 seeking declaration, partition, confirmation of possession as well as for injunction.

3. Pursuant to the filing of the suit, a written statement was filed by the Defendants. In the said written statement, at paragraph No.10, it was categorically mentioned that on the death of late Ghanashyam Das, there were 7 legal heirs which included one Smti Senno Das. The said aspect of the written statement has relevance taking into account that in paragraph No.2 of the plaint, the plaintiffs had only stated that Late Ghanashyam Das left behind 6 legal heirs. Thereupon, issues were framed and evidence adduced by the plaintiffs.

4. At the time of cross-examination of the Plaintiff Witness No.1, an application was filed under Order I Rule 10(2) read with Order VI Rule 17 seeking amendment of the plaint as well as also impleadment of one Smti Snehalata Das @ Sarkar as one of the Defendants to the suit. The amendment sought for were mentioned in paragraph No.11 of the said application. The said application upon being filed was rejected vide order dated 28.11.2018 for which the Petitioners have approached this Court by filing the instant proceedings.

5. This Court has heard Mr. C. Sharma, the learned counsel for the Petitioners who submitted that the entire suit of the Plaintiffs would be dismissed on technical ground if the said Smti Snehalata Das @ Sarkar is not impleaded as a Defendant. He submitted that the amendments which have been sought for as stated in paragraph No.11 of the said petition would not change the nature and character of the suit but the same are essential for the purpose of proper adjudication of the suit. The learned counsel further submitted that no prejudice would be caused to the Defendants if the amendment is allowed. Further to that, it was also submitted that prior to the trial, the amendment was not filed

on account of the advice not being received by the Petitioners from their counsel for which the Petitioners should not be allowed to pay such a heavy price resulting in the dismissal of the suit on technical grounds.

6. Upon hearing the learned counsel for the Petitioners and also perusing the copy of the plaint and the written statement, it is the opinion of this Court that without making Smti Snehalata Das @ Sarkar as a party to the suit, the relief more particularly for partition which have been sought for would not be complete. This technicality would result in dismissal of the suit.

7. This Court has also taken note of that the amendments which have been sought for would not change the nature and character of the suit. Rather the said amendments as mentioned in Paragraph No.11 of the application are required for an effective adjudication of the suit. This Court is not unmindful of the delay in filing the said application seeking impleadment as well as amendment but for the ends of justice, the said impleadment as well as the amendment of plaint is required to be permitted.

8. Accordingly, this Court impleads Smti Snehalata Das @ Sarkar, daughter of late Ghanashyam Das and wife of Late Sibendra Narayan Sarkar, resident of village Khanabari, Ponay Nayani, Bogribari, P.O. Bogribari P.S. Gauripur in the district of Dhubri, Assam, 783331 as the Defendant No.6 to the Title Suit No.06/2016. This Court also permits the amendment which have been sought for in paragraph No.11 of the application filed under Order VI Rule 17 read with Order I Rule 10(2) before the learned Trial Court. The Petitioners who are the Plaintiffs are directed to file the amended plaint before the Trial Court on 27.03.2024.

9. This Court however also finds it relevant to take note of that on account of

the Plaintiffs' negligence, the suit has now proceeded to the stage of evidence which in view of the instant order would stand relegated to the stage of pleadings. This would result in rendering the entire proceedings since filing of the written statement till date meaningless. Not only the precious judicial time is lost in time devoted to the suit but this Court is also aware of the pain and agony faced by the adversary party in relegating the suit to the stage of pleadings. Under such circumstances, this Court therefore is of the opinion that certain cost has to be imposed upon the Petitioners while allowing the said application else prejudice would be caused to the Defendants who had all along participated in the suit. Accordingly, this Court is of the opinion that an amount of 75,000/- shall be the reasonable cost which can be imposed upon the Petitioners/plaintiffs in the instant case.

10. Accordingly, this Court directs the Plaintiffs to deposit the cost of an amount of Rs.75,000/- before the learned Trial Court along with the amended plaint on 27.03.2024 and the deposit of the said cost of Rs.75,000/- shall be a condition precedent for acceptance of the amended plaint.

11. The Defendants would be at liberty to file an application before the learned Trial Court for release of the said amount and the learned Trial Court shall release the said amount to the Defendants upon such application being filed.

12. Interim order passed on 25.02.2019 stands vacated in view of order passed hereinabove.

JUDGE

Comparing Assistant