

GAHC010046002023



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

Case No. : CRP(IO)/74/2023

HITESWARI GOGOI AND 4 ORS.
W/O LT. BADAN GOGOI R/O MOLOKHUBOSA BOIRAGIMOTH P.O.
DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 786001

2: KHAGEN GOGOI
S/O LT. BADAN GOGOI R/O MOLOKHUBOSA BOIRAGIMOTH P.O.
DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 786001

3: JITEN GOGOI
S/O LT. BADAN GOGOI R/O MOLOKHUBOSA BOIRAGIMOTH P.O.
DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 786001

4: JITUL GOGOI
S/O LT. BADAN GOGOI R/O MOLOKHUBOSA BOIRAGIMOTH P.O.
DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 786001

5: JINU GOGOI
D/O LT. BADAN GOGOI R/O MOLOKHUBOSA BOIRAGIMOTH P.O.
DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 78600

VERSUS

JIBA KANTA GOGOI @ NEMU AND 3 ORS.
S/O LT. PHOTIK GOGOI R/O MOLOKHUBOSA BOIRAGIMOTH P.O.
DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 786001

2: THE CIRCLE OFFICER
DIBRUGARH WEST REVENUE CIRCLE P.O. DIBRUGARH P.S AND DIS.
DIBRUGARH ASSAM PIN 786001

3: THE DEPUTY COMMISSIONER
DIBRUGARH
P.O. DIBRUGARH P.S AND DIS. DIBRUGARH ASSAM PIN 786001

4:THE STATE OF ASSAM
REP .BY THE SECRETARY TO THE GOVT. OF ASSAM REVENUE DEPTT.
DISPUR GUWAHATI

Advocate for the petitioner(s): Mr. AR Shome

Advocate for the respondent(s): X X

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

22.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 07.12.2021 passed by the Court of the learned Munsiff No.2, Dibrugarh in Title Suit No.35/2016, whereby the application filed by the petitioners under Section 151 of the Code of Civil Procedure, 1908 (for short, the Code) on 19.02.2020 was rejected. A perusal of the materials on record reveal that the plaintiffs adduced one plaintiff witnesses. Thereupon, on 05.06.2018, the counsel for the plaintiffs apprised the Court that the plaintiffs did not wish to adduce further evidence. Under such circumstances, the learned Trial Court proceeded with the suit thereby fixing 10.07.2018 of the cross of the PW-1. It is, however, relevant to take note of that as on date, the cross examination of the PW-1 is not complete as informed by the learned counsel for the petitioners.

2. This Court has also taken note of the application filed by the petitioners, who are the plaintiffs under Section 151 of the Code on 19.02.2020. A perusal of the said application is bereft of any particular as to what prejudice had been caused to the plaintiffs, if further evidence is not permitted to be given or for that matter, the said application does not mention, who are the other witnesses, whose evidence the plaintiffs would like to adduce. Under such circumstances, this Court finds no error in the order dated 07.12.2021 passed by the learned Trial Court. Accordingly, this Court finds no grounds for interfering with the said order, more so, in a proceeding under Article 227 of the Constitution.

3. Before concluding, this Court finds it relevant to take note of the submission of the learned counsel appearing on behalf of the petitioners who submitted that the learned Trial Court ought to have given better particulars before the learned Trial Court as to whose evidence, the plaintiffs ought to have adduced, apart from the PW-1. He submitted that taking into account that the suit has not till date proceeded to the stage of defendant evidence, the petitioners may be permitted to file a fresh application giving due particulars and in that regard appropriate directions may be passed to the learned Trial Court to consider the said application.

4. This Court is of the opinion that in present facts the dismissal of the instant application shall not preclude the petitioners, who are the plaintiffs, in the suit to file a fresh application before the learned Trial Court giving due particulars as to who other witnesses, the plaintiffs wish to adduce and how their evidence could be relevant and not permitting such evidence, would cause serious

prejudice to the plaintiffs. If such an application is filed, the learned Trial Court shall consider the same, if so permissible under the law. The said permission to file such an application is subject to the suit having not proceeded to the stage of defendant's witness.

5. With the above, the instant revision petition stands disposed of.

JUDGE

Comparing Assistant