

GAHC010061552024



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

Case No. : CRP(IO)/110/2024

MD. SAHABUDDIN AHMED
S/O- LATE MONU SHEIKH,
R/O- VILLAGE DEHAN GARIGAON,
P.O- GARIGAON, P.S- JALUKBARI, GUWAHATI-12, DIST- KAMRUP (M),
ASSAM

VERSUS

RAHMAN ALI
S/O- NARAM ALI ,
R/O- VILLAGE DEHAN GARIGAON,
P.O- GARIGAON, P.S- JALUKBARI, GUWAHATI-12, DIST- KAMRUP (M),
ASSAM

Advocate for the Petitioner : MR. A SATTAR

Advocate for the Respondent : MR. R K BHUYAN

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

05.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 21.11.2023 passed in Misc.(J) Case No.80/2019 arising out of Title Suit No.266/2012 whereby the learned Trial Court i.e. the Court of the learned Civil Judge (Junior Division) No.2 Kamrup(M) at Guwahati had rejected the application seeking amendment of the counter claim on the ground that the amendment was not be necessary for the purpose of determining the real question in controversy between the parties.

2. Mr. A Sattar, the learned counsel appearing on behalf of the petitioner submitted that the counter claim which was filed by the petitioner was in respect of the illegal trespass made by the plaintiff over the Schedule D land and as such *inter alia*, had sought for in the counter claim for recovery of possession of the Schedule D land by removing the men, materials etc., of the plaintiff. He submitted that taking into account the provisions of Order XXVI Rule 10(2) of the Code of Civil Procedure, 1908 (for short, the Code), the report of the Commissioner becomes a part of the record and as such, the petitioner, therefore, does not further insist on the amendment, for which the petitioner would not like to further press the instant proceeding. He, however, submitted that as the suit is presently at the stage of examination of the Commissioner, the petitioner who is the counter claimant may be permitted to re-examine the Commissioner, in the circumstance, anything is necessary for an effective adjudication of the counter claim.

3. I have also heard Mr. RK Bhuyan, the learned counsel appearing on behalf of the respondent.

4. Taking into account the above, the instant petition, therefore, stands closed on withdrawal. The order dated 21.11.2023, therefore, stands not interfered.

5. This Court is of the opinion that if during the cross examination of the Commissioner by the plaintiff, the petitioner/counter claimant wants to re-examine the Commissioner, the Trial Court shall permit the petitioner to do so.

6. With the above, the instant petition stands disposed of.

7. Interim order dated 22.03.2024 stands vacated and the parties are, therefore, directed to appear before the learned Trial Court on 02.05.2024. On the next date so fixed, the learned Trial Court shall fix as per its business such date for appearance of the Commissioner.

JUDGE

Comparing Assistant