

GAHC010065332024



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

Case No. : CRP/35/2024

AJIT BARUAH
SON OF LATE PHONIDHAR BARUAH BORAGDHOI GAON TIPLING, P.S.
DULIAJAN, DIST. DIBRUGARH, ASSAM

VERSUS

NIRMALI SAIKIA AND 6 ORS
W/O SRI JATIN SAIKIA R/O TIPLING NOLONI PATHAR GAON, PO AND P.S.
DULIAJAN DIST. DIBRUGARH, ASSAM 786602

2:SMTI URBOSI DOIMARI
W/O SRI MRIDUL DOIMARI

R/O TIPLING NOLONI PATHAR GAON
PO AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM 786602

3:SMTI MADHUSMITA DOIMARI
W/O LATE ANIL DOIMARI

R/O TIPLING NOLONI PATHAR GAON
PO AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM 786602

4:SMTI USHA DOIMARI
W/O SRI MONESWAR DOIMARI

R/O TIPLING NOLONI PATHAR GAON
PO AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM 786602

5:SRI MRIDUL DOIMARI

S/O LATE MUKUNDA DOIMARI
R/O TIPLING NOLONI PATHAR GAON
PO AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM 786602

6:SRI UPEN DOIMARI
S/O MONESWAWR DOIMARI

R/O TIPLING NOLONI PATHAR GAON
PO AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM 786602

7:SRI MONESHWAR DOIMARI
S/O LATE MOHAN CHANDRA DOIMARI

R/O TIPLING NOLONI PATHAR GAON
PO AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM 78660

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

01.04.2024

Heard Mr. D Das, the learned senior counsel, assisted by Mr. S Khound, the learned counsel appearing on behalf of the petitioner.

2. This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the order dated 16.02.2024 passed in Misc.(J) Case No.83/2022 arising out of Title Suit No.30/2022 by the Court of

the learned Civil Judge, Dibrugarh whereby the application filed by the petitioners, who were the defendants in the said suit under Order VII Rule 11 of the Code was rejected.

3. This Court has duly perused the provisions of Order VII Rule 11 of the Code. The entire thrust of the claim of the petitioners herein is that the suit filed by the plaintiffs, from a perusal of the plaint itself, was barred by law and as such, the plaint ought to have been rejected under Order VII Rule 11(d). The submissions made on behalf of the petitioners is that the plaintiffs in their suit have sought for declaration of their right, title and interest as well as for permanent injunction against the defendants in respect of the suit land.

It is the case of the petitioners that the suit land is a Government land and to that effect the learned senior counsel appearing on behalf of the petitioner has drawn the attention of this Court to the order dated 26.04.2016 wherein the Additional District Magistrate Dibrugarh has in his order dated 26.04.2016 have referred the said land to be a Government land. It is, therefore, the contention that the declaration so sought for is not maintainable as the Government is not a party to the suit, for which the suit would fail and as such is required to be nipping at the bud.

4. This Court while perusing the copy of the plaint, which is the only requirement for deciding an application under Order VII Rule 11, finds it relevant to note that the plaintiffs claimed to be occupants of a land measuring 11 bighas 4 kathas 3 lessas covered by Dag No.292 of PP (periodic patta) No.34 situated at Boragadhoi Gaon(Tipling) Mouza under Tengakhat Revenue Circle, Dibrugarh. In paragraphs 2 and 4, it has been categorically mentioned as to

how the plaintiffs acquired rights over the suit land. It is further seen from a perusal of paragraphs 15 to 21 that allegations have been made that the defendants are trying to dispossess the plaintiffs from the suit land. There is no mention in the plaint that the suit land is a Government land. In fact, from a perusal of the Schedule to the plaint, it is seen that the land has been described as a land measuring 11 bighas 4 kathas 3 lessas covered by Dag No.292 of Periodic Patta No.34. The reference in the description of the land as a Periodic Patta land means and implies that as per the plaintiffs the suit land is not a Government land. On the basis of the said, the plaintiffs have sought for declaration of their right, title, interest and absolute ownership, possession over the suit land and have sought for permanent injunction.

5. In the backdrop of the above, if this Court takes note of Order VII Rule 11(d), it would be seen that to invoke the said provision one has to read the statements of the plaint as it is and as to whether from a reading of the same, the suit is barred by law.

6. Under such circumstances, as from the perusal of the plaint, it does not disclose that the suit land is a Government land, the question of rejection of the plaint on the ground of Section 34 of the Specific Relief Act, 1963 by the petitioners is completely misconceived.

7. This Court further finds it very relevant to take note of that while considering an application under Order VII Rule 11, the Court is only required to look into the statements made in the plaint as well as the documents relied

upon. The order dated 26.04.2016 passed by the learned Additional District Magistrate Dibrugarh being not a part of the plaint, the same could have been taken into consideration by the learned Trial Court.

8. In the backdrop of the above, if this Court duly takes note of the order dated 16.02.2024 passed by the learned Trial Court in Misc.(J) Case No.83/2022, this Court is of the opinion that the learned Trial Court has duly applied the law in the proper perspective, for which the instant petition stands dismissed.

9. However, in the peculiar facts of the case, no cost is being imposed.

10. Before parting with the records, this Court observes that the instant order has been passed in relation to an adjudication under Order VII Rule 11 and as such, the observations so made herein or even in the impugned order shall not affect the decision of the learned Trial Court in the suit.

11. With the above, the revision petition stands dismissed.

JUDGE

Comparing Assistant