

GAHC010082462023



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

Case No. : Tr.P.(C)./36/2023

SMTI. AKLIMA BEGUM
W/O LATE JAMAL UDDIN, P/R/A VILL-BORBALA, P.O.-BORBALA, MOUZA-
BETBARI, P.S.-HOWLY, DIST-BARPETA, ASSAM

VERSUS

MRS. REZIA KHATUN AND 3 ORS.
W/O LATE MIR MD. ALE KHAN, R/O VILL AND P.O.-MOZABARI, P.S.-SIDLI,
PIN-783373

2:MD. AMJAD HUSSAIN KHAN
S/O LATE MIR MD. ALE KHAN
R/O VILL AND P.O.-MOZABARI
P.S.-SIDLI
PIN-783373

3:SAMSUL ALOM KHAN
S/O LATE MIR MD. ALE KHAN
R/O VILL AND P.O.-MOZABARI
P.S.-SIDLI
PIN-783373

4:MRS. AZIFA KHATUN
D/O LATE MIR MD. ALE KHAN
R/O VILL-PADMER ALGA
P.O.-DINATOLA
P.S.-GAURIPUR
DIST-DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : Mrs. R. Begum, Advocate

Advocate for the Respondent : Mr. M.S. Alam, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

26.04.2024

- 1.** This is an application under Section 24 of the Code of Civil Procedure, 1908 for transfer of the proceedings of Title Suit No. 30/2022, along with the connected Miscellaneous Applications, pending in the Court of the learned Civil Judge, Kajalgaon, Chirang to any Court in the district of Barpeta having competence to adjudicate the dispute.
- 2.** This court has perused the copy of the plaint, which shows that the suit so filed being Title Suit No. 30/2022 is a suit for specific performance of an agreement for sale dated 06.06.2020 and other consequential reliefs in respect to a plot of land situated in the district of Chirang (BTR), Assam.
- 3.** This Court enquired with the learned counsel appearing on behalf of the petitioner as to why the petitioner, who is the defendant, seeks the transfer of the said suit to Barpeta. The learned counsel submitted that the petitioner, who is the defendant, is a 70 years old lady and has kidney ailments.
- 4.** This Court finds it relevant to take note of that in the said suit the petitioner/the defendant is not required to be present in person and

in the said suit the petitioner can very well be represented by her counsel.

- 5.** This Court also finds it very pertinent to take note of that the appearance of the petitioner may only be required at the stage of her cross-examination. If there is any exigency, in the opinion of this court, the petitioner would be well advised to file appropriate application seeking issuance of commission for the purpose of her cross-examination at her place of residence. This court had also enquired with the learned counsel appearing on behalf of the respondents herein, who are the plaintiffs, as to whether they would object to such application and the learned counsel on instructions submits that the plaintiffs would not object, if the said application is duly supported by medical documents.
- 6.** This Court also finds it very relevant to take note of that the suit is for specific performance in respect to a plot of land which is situated in the district of Chirang and if the said suit is decreed in favour of the plaintiffs, it would require execution of the decree through registration of the deed of sale. This aspect would cause serious complications if the said suit is transferred outside the district of Chirang. Under such circumstances, this Court is not inclined to exercise the powers under section 24 of the Code of Civil Procedure, 1908 in the instant proceedings, for which the instant proceedings stands dismissed.
- 7.** This court also takes note of that on 03.05.2023, the further proceedings of Title Suit No. 30/2022 pending before the court of the learned Civil Judge, Kajalgaon, Chirang was stayed.

8. Taking into account the order passed herein, the said stay order is vacated and as the parties are represented before this Court are directed to appear through their counsels before the learned Trial Court on 20.05.2024 for further proceedings of Title Suit No. 30/2022.

J U D G E

Comparing Assistant