

GAHC010082612023



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

Case No. : CRP(IO)/108/2023

HIRANYA KUMAR SARMA AND ANR
S/O LATE BALADEB SARMA, R/O BIDYAPUR, COLLEGE ROAD, NALBARI
TOWN, WARD NO. 3, MOUZA-KHATA, P.S.-NALBARI, DIST-NALBARI,
ASSAM

2: RIJUMONI SARMA
W/O SRI HIRANYA KUMAR SARMA
R/O BIDYAPUR
COLLEGE ROAD
NALBARI TOWN
WARD NO. 3
MOUZA-KHATA
P.S.-NALBARI
DIST-NALBARI
ASSA

VERSUS

ON THE DEATH OF SOLE PLAINTIFF, RAMESH BARMAN
HIS LEGAL REPRESENTATIVES

1.1:SMTI BHANUMATI BARMAN
W/O LATE RAMESH BARMAN
R/O VILL-BARKURA
P.O.-BALIKARIA
MOUZA-BATAHGILA
P.S.-NALBARI
DIST-NALBARI
ASSAM

1.2:KISHOR BARMAN
S/O LATE RAMESH BARMAN
R/O VILL-BARKURA
P.O.-BALIKARIA

MOUZA-BATAHGILA
P.S.-NALBARI
DIST-NALBARI
ASSAM

1.3:MANOJ KUMAR BARMAN
S/O LATE RAMESH BARMAN
R/O VILL-BARKURA
P.O.-BALIKARIA
MOUZA-BATAHGILA
P.S.-NALBARI
DIST-NALBARI
ASSAM

1.4:TAPAN CH. BARMAN
S/O LATE RAMESH BARMAN
R/O VILL-BARKURA
P.O.-BALIKARIA
MOUZA-BATAHGILA
P.S.-NALBARI
DIST-NALBARI
ASSAM

1.5:HITESH KR. BARMAN
S/O LATE RAMESH BARMAN
R/O VILL-BARKURA
P.O.-BALIKARIA
MOUZA-BATAHGILA
P.S.-NALBARI
DIST-NALBARI
ASSAM

1.6:GITANJALI BARMAN
D/O LATE RAMESH BARMAN
R/O VILL-BARKURA
P.O.-BALIKARIA
MOUZA-BATAHGILA
P.S.-NALBARI
DIST-NALBARI
ASSA

For the appellant (s) : Mr. M. A. Sheikh, Advocate

For the respondent (s) : Mr. J. Deka, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

29.05.2024

The instant petition has been filed under Article 227 of the Constitution challenging the order dated 18.03.2023 passed in Title Appeal No.31/2023 whereby the learned First Appellate Court, i.e. the Court of the Civil Judge, Nalbari had rejected the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short, 'the Code') filed by the appellants for adducing the additional evidence.

2. This Court taking into account the judgment of the Supreme Court in the case of ***Union of India vs. Ibrahim Uddin & Another***, reported in **(2012) 8 SCC 148** is of the opinion that the said order is in conflict with the expressed stipulation contained in the said judgment wherein it has been categorically mentioned that the application under Order XLI Rule 27 of the Code has to be taken into consideration at the time of final hearing of the Appeal and to consider as to whether the said additional evidence would be required for passing the said judgment.

3. Taking into account the above and in the facts of the case as the said application was disposed even prior to the final hearing of the Appeal, this Court interferes with the order dated 18.03.2023 passed by the learned First Appellate Court.

4. This Court vide an order dated 21.04.2023 had stayed the further proceedings of Title Appeal No.3/2021. The said stay order stands vacated and the parties are directed to appear before the learned First Appellate

Court, i.e. the Court of the Civil Judge, Nalbari on 19.06.2024. The learned First Appellate Court in view of the law laid down by the Supreme Court in the case of ***Ibrahim Uddin*** (supra) shall consider the said application at the time of final hearing of the Appeal and pass such order in terms with the stipulation contained in the said judgment.

5. It is further observed that the learned First Appellate Court shall not be influenced by the order passed on 18.03.2023 which has been impugned in the instant proceedings as well as the order passed herein while deciding the application under Order XLI Rule 27 of the Code or the Appeal being Title Appeal No.3/2021.

6. In view of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant