

GAHC010084082023



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

Case No. : CRP(IO)/149/2023

MOBARAK ALI AND ANR
SON OF LATE CHANDU SK,
R/O- VILL. DHARMASALA PART-III,
P.S. AND DIST.- DHUBRI, ASSAM.

2: ASKER ALI
SON OF LATE CHANDU SK

R/O- VILL. DHARMASALA PART-III

P.S. AND DIST.- DHUBRI
ASSAM

VERSUS

JAHANUDDIN BEPARI AND 10 ORS.
SON OF LATE TASADDI BEPARI AND GOHURAN BEWA,
R/O- VILL. DHARMASALA PART-IV,
P.S. AND DIST.- DHUBRI, ASSAM.

2:SAHABUDDIN BEPARI
SON OF LATE TASADDI BEPARI AND GOHURAN BEWA

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI
ASSAM.

3:ABDUS SAFUR BEPARI
SON OF LATE TASADDI BEPARI AND GOHURAN BEWA

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI

ASSAM.

4:ACHIYA BIBI

DAUGHTER OF LATE TASADDI BEPARI AND GOHURAN BEWA

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI

ASSAM.

5:ON THE DEATH OF AKTAR ALI BEPARI

SON OF LATE TASADDI BEPARI

HIS LEGAL HEIRS-

5.1:DILARA BIBI (WIFE)

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI

ASSAM.

5.2:AKRAMUL HOQUE (SON)

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI

ASSAM.

5.3:ATIQUL HOQUE BEPARI (SON)

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI

ASSAM.

5.4:IMRAN HOQUE BEPARI (SON)

R/O- VILL. DHARMASALA PART-IV

P.S. AND DIST.- DHUBRI

ASSAM.

6:THE STATE OF ASSAM

REPRESENTED BY THE COLLECTOR

DHUBRI

P.O.

P.S. AND DIST. DHUBRI

ASSAM.

7:THE SETTLEMENT OFFICER

DHUBRI

P.O.
P.S. AND DIST.- DHUBRI
ASSAM.

8:THE ASSTT. SETTLEMENT OFFICER
DHUBRI
P.O.
P.S. AND DIST.- DHUBRI
ASSAM.

9:ON THE DEATH OF MAHURAN BIBI

HER LEGAL HEIR

9.1:NOBIJAN NESSA (DAUGHTER)
W/O- MOYJUDDIN SK.

R/O- VILL. DHARMASALA PART- IV

P.S. AND DIST. DHUBRI
ASSAM.

9.2:NAZURAN NESSA (DAUGHTER)
W/O. SAKAT ALI

R/O- VILL. KACHUARKHASH PT-II

P.O.
P.S. AND DIST.- DHUBRI
ASSAM.

9.3:SABIJAN NESSA (DAUGHTER)
W/O- MOYJUDDIN SK.

R/O- VILL. KISMATHASHDAHA PART-IV

DHARMASHALA PART-IV

P.S. AND DIST.- DHUBRI
ASSAM.

10:ATIKUL HOQUE
S/O- PARIZUDDIN SK.

R/O- VILL. SAGOLCHARA PART-III

P.O.- SAGOLCHARA

P.S. AND DIST.- DHUBRI
ASSAM

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

For the respondent (s) : Mr. K. K. Dey, Advocate,

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

03.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 21.01.2023 passed in Misc. (J) Case No.112/2022 arising out of Title Suit No.83/2022.

2. Vide the impugned order, the learned Trial Court, i.e. the Court of the Munsiff No.3, Dhubri (for the sake of convenience, referred to as the Trial Court) has rejected the application under Section 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') filed by the defendants for stay of the suit.

3. This Court has perused the impugned order and from the perusal of the said impugned order, it reveals that the learned Trial Court after coming to an opinion that all the issues in both the suits are not the same passed the order that it was not a case for stay of the subsequently instituted suit because of the pendency of the previously instituted suit being Title Suit No.143/2021.

4. From a perusal of the reasoning so given by the learned Trial Court in its impugned order, it is the opinion of this Court that the same appears

to be just and reasonable, and as such, the question of interference with the said order does not arise.

5. Mr. A Rahman, the learned counsel for the petitioners and Mr. K. K. Dey, the learned counsel for the respondents, during the course of argument, submitted that taking into account that most of the parties in both the suits are one and the same and there would be overlapping of evidence, it would be in the interest of justice that both the suits are analogously tried. In that regard, the counsels referred to the judgment of the Supreme Court in the case of **Citivalasa Jute Mills vs. Jaypee Rewa Cement**, reported in **(2004) 3 SCC 85** wherein it has been held that exercise of inherent powers for consolidation of two suits is permission.

6. This Court has given an anxious consideration to the matter and has also taken note of paragraph No.12 of the judgment in the case of **Citivalasa Jute Mills** (supra) which is reproduced herein under:-

“12. The two suits ought not to be tried separately. Once the suit at Rewa has reached the court at Visakhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The trial court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the court flowing from Section 151 CPC. Unless specifically prohibited, the civil court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the

two suits at two different trials. The evidence having been recorded, common arguments need to be addressed followed by one common judgment. However, as the suits are two, the court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits. This is how the trial court at Visakhapatnam shall proceed consequent upon this order of transfer of suit from Rewa to the court at Visakhapatnam."

7. This Court has also taken note of that Title Suit No.143/2021 is pending before the Court of the learned Court of Munsiff No.1, Dhubri whereas Title Suit No.83/2022 is pending before the learned Court of Munsiff No.3, Dhubri.

8. It is the opinion of this Court that the consolidation of both the suits would meet the ends of justice as it would save both the parties from the multiplicity of proceedings, delay and expenses. There is also substantial and sufficient similarities of the issues which would be involved in both the suits. The need of adducing the same or similar documentary and oral evidence twice in two suits and two different trials would be relieved in the instant case, if both the suits are consolidated. Further to that, the likelihood of two conflicting decisions would not be there. Under such circumstances, this Court in exercise of powers under Section 151 of the Code read with Article 227 of the Constitution, transfers Title Suit No.83/2022 to the Court of the Munsiff No.1, Dhubri. The learned District Judge, Dhubri is directed to pass appropriate administrative order in that regard upon production of certified copies of the instant order. This Court further directs that upon transfer, the learned Court of the Munsiff No.1. Dhubri shall proceed with both the suits analogously in terms with the observation so made by the Supreme Court in the above quoted

paragraph.

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

10. The interim order dated 24.05.2023 stands vacated and the parties are directed to appear before the learned District Judge, Dhubri along with a certified copy of the instant order on 02.05.2024 and the learned District Judge, Dhubri thereupon shall pass appropriate orders in terms with the above observations.

JUDGE

Comparing Assistant