

GAHC010085882022



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

Case No. : CRP(IO)/182/2022

SMTI BHABANI TALUKDAR @ DAS
W/O LATE SARBESWAR DAS, VILL-NIZ NAMATI, MAUZA-NAMATI, P.S.-
TIHU, DIST-NALBARI (ASSAM), PIN-781355

VERSUS

SARBESHWAR TALUKDAR AND 17 ORS.
LEGAL HEIR OF LATE PABITRA TALUKDAR, R/O VILL-NIZ NAMATI,
MAUZA-NAMATI, P.S.-TIHU, DIST-NALBARI (ASSAM), PIN-781355

2:HEMCHANDRA TALUKDAR
LEGAL HEIR OF LATE PABITRA TALUKDAR
R/O VILL-NIZ NAMATI
MAUZA-NAMATI
P.S.-TIHU
DIST-NALBARI (ASSAM)
PIN-781355

3:RATNESWAR TALUKDAR
LEGAL HEIR OF LATE PABITRA TALUKDAR
R/O VILL-NIZ NAMATI
MAUZA-NAMATI
P.S.-TIHU
DIST-NALBARI (ASSAM)
PIN-781355

4:PUTUL TALUKDAR
LEGAL HEIR OF LATE PABITRA TALUKDAR
R/O VILL-NIZ NAMATI
MAUZA-NAMATI
P.S.-TIHU
DIST-NALBARI (ASSAM)

PIN-781355

5:SMTI JAMINI TALUKDAR
LEGAL HEIR OF LATE PABITRA TALUKDAR
R/O VILL-NIZ NAMATI
MAUZA-NAMATI
P.S.-TIHU
DIST-NALBARI (ASSAM)
PIN-78135

Advocate for the Petitioner : MR. A BISWAS, MS S AHOM,MR R KALITA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 30.08.2024

- 1.** Heard Mr. A. Biswas, learned counsel for the petitioner. None appears for the respondents when the matter is called.
- 2.** It appears that though notices was duly served and completed in respect of respondent Nos. 1 to 4, none represented the aforesaid respondents today when the matter was called. Accordingly, the matter is taken up for admission hearing as directed by this Court by Order dated 06.08.2024.
- 3.** This petition is filed under Article 227 of the Constitution of India r/w Section 151 of CPC, 1908 assailing the Order dated 07.04.2022 passed by the Court of the Munsiff, Tihu in T.S. No. 05/2016 whereby the application filed by the petitioner/plaintiff under Order VI Rule 17 of CPC r/w Section 151 CPC for seeking amendment of the plaint was rejected.
- 4.** The case of the petitioner is as follows:-

The petitioner as the plaintiff has instituted a Title Suit being Title Suit No. 5/2016 before the Court of the Munsiff, Tihu at Nalbari against the respondents seeking declaration of possession, recovery of possession, partition and injunction in respect to the suit properties mentioned in the Schedule appended to the plaint.

5. In the said suit, the defendant after entering appearance filed written statement-cum-counter claim. The said suit is pending in the evidence stage. During the pendency, the petitioner on 02.07.2021 came to know that the defendants have executed two different registered Sale Deed in favour of two different persons for selling some portion of the suit premises and in this regard, a registered Sale Dead bearing No. 245/2017 and Sale Dead bearing No. 247/2017 have been executed.

6. Situated thus, it was imperative that the aforesaid facts be brought to the notice of the Trial Court by way of an amendment so as to effectively dispose the suit.

7. Accordingly, an amendment application being Petition No. 125/2021 was filed. However, the learned Trial Court on 07.04.2022 rejected the said application against which the present revision petition is preferred.

8. Mr. A. Biswas, learned counsel for the petitioner submits that the amendment sought is necessary and essential for an effective adjudication of the suit and since the said facts have come to light to the petitioner after filing the suit, the amendment petition ought to have been allowed by the Trial Court.

9. I have given my prudent consideration to the arguments made by the learned counsel for the petitioner and perused the materials available on record.

10. Order VI Rule 17 of the CPC, 1908 is reproduced hereunder for ready reference:-

*“[R. 17. **Amendment of pleadings.**- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]*

11. In the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Another***, reported in ***(2022) 16 SCC 1***, the Apex Court has laid down the following parameters for consideration of amendment prayer which is reproduced hereunder for ready reference:-

“71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless: 71.4.1. By the amendment, a time-barred claim is sought to be

introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed."

12. Keeping in mind the aforesaid parameters, let me now consider as whether the Trial Court has committed any error while rejecting the prayer of amendment as sought for.

13. It appears from the Order dated 07.04.2022 that the Trial Court rejected the prayer for amendment sought by the petitioner plaintiff on the ground that there are no averments or pleadings proposed in support of the proposed prayer, which are reproduced as hereunder:-

“The newly impleaded prayer shall be added after Cha are:-

(cha) Issue direction that the registered Deed No. 245/2017 and 246/2017 dated 18.12.2017 executed by the defendant are illegal and Srim Kamal Das and Sri Mukul Thakuria have no right, title and interest in the aforesaid land.

(Ja) Issue direction that the registered Deed No. 245/2017 and 246/2017 are illegal and cancelled.

(Jha) Issue precept to the Sub-Registrar to cancel the registered Deed No. 245/2016 and 246/2017.

(Nio) Issue precept to cancel the names from the record of rights if the names of Sri Kamal Das and Sri Mukul Thakuria are mutated with strength of the aforesaid registered deeds before the office of the Circle Officer, Tihu”

14. It appears from the amendment application which is enclosed as annexure 'C' to the revision petition that the petitioner plaintiff has specifically averred that since the defendant have illegally sold some portion of the subject land the amendment has been necessitated.

15. Relevant paragraph of the amendment petition is reproduced hereunder for ready reference:-

“The plaintiff had not arrayed the co pattader whose name is included in the documents and their beneficiaries heirs as party due to mistakes. The newly impleaded defendant are included as proforma defendant No.19 to 39 at Page No.2 below serial No.18. They are Karuna Talukdar, Samudra Talukdar, Ratul Talukdar, Golapi Talukdar, Ganeshwar Talukdar, Nalinibala Deka, Lankeshwar Kalita, Narendra Nath Deka, Jaleshwar deka, Sakuntala Deka, Basanta Pathak, Lohit Chandra Basumatary, Rinkushree Goyari, Bhanumati Talukdar, Bharat Chandra Talukdar, Gadadhar Pathak, Pramod Pathak, Kalichandra Talukdar, Kandarpa Talukdar, Ganeka Talukdar, Gobinda Keot, Kaultilya Talukdar, Sarala Talukdar, Gakul Nath Talukdar, Nareshwar

Medhi, Romoni Talukdar, Girin Das, Bhaben Das, Dibakar Das, Kiran talukdar, Geetarani Talukdar, all residents of Niz Nomati, Mouza- Nomati, Police station- Tihu, District- Nalbari. The defendant had illegally sold the land under Patta No.118 and the purchasers are made defendant as No. (40) Sri Kamal Das, son of- Khagendra Nath Das, resident of 1 No. Nathkuchi, Mouza- Nomati, Police station- Tihu, District- Nalbari (Assam). (41) Mukul Thakuria, son of- Anil Thakuria, resident of Bormakhibaha, Police station- Tihu, District- Nalbari (Assam)."

16. Perusal of the aforesaid paragraph, it appears that the plaintiff petitioner having come to know about the illegal sale of the subject portion of land falling under the suit premises is seeking to bring the following amendment so as to have the entire facts before the Court for effective and essential adjudication of the case in hand.

17. It appears that the foundation for the reliefs sought is available in the proposed paragraph of amendment.

18. Thus, a case for amendment has been made out by the petitioner.

19. Therefore, the learned Trial Court committed manifest error in rejecting the prayer of the amendment vide Order dated 07.04.2022.

20. Accordingly, the impugned Order dated 07.04.2022 passed by the Court of learned Munsiff, Tihu in T.S. No. 5/2016 is set aside and quashed.

21. The Revision Petition stands allowed.

22. Registry to intimate the order of this Court to the office of the jurisdictional Court for doing the needful.

JUDGE

Comparing Assistant