

GAHC010086162018



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

Case No. : CRP(IO)/133/2018

SORAB ALI AND 11 ORS.
S/O. LT. AHEZ ALI, VILL. LATAKHAT, MOUZA- SHYAMABARI, P.O.
BALABARI, P.S. DHULA, DIST. DARRANG, ASSAM.

2: MD. KADER ALI

S/O. LT. AHEZ ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM.

3: MD. TURAP ALI
S/O. LT. AHEZ ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM.

4: ON THE DEATH OF RUSTOM ALI
HIS LEGAL HEIRS- MUSSTT. SAFINA BEGUM
W/O. LT. RUSTOM ALI VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

5: MUSSTT. MONOWARA BEGUM

W/O. LT. RUSTOM ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

6: NASIMA BEGUM

D/O. LT. RUSTOM ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

7: ABDUL ALI

S/O. LT. RUSTOM ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

8: AINAL HAQUE
(MINOR)
BEING MINOR REP. HIS MOTHER
MUSTT. SAFINA BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

9: RUKIA BEGUM

D/O. LT. RUSTOM ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

10: AFSANA BEGUM (MINOR)
BEING MINOR
REP. BY HER MOTHER
MUSTT. MONOWARA BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

11: RUKSANA BEGUM (MINOR)

BEING MINOR
REP. BY HER MOTHER
MUSTT. MONOWARA BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

12: RASIDA BEGUM (MINOR)

BEING MINOR
REP. BY HER MOTHER
MUSTT. MONOWARA BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSA

VERSUS

SAHIDUL HAQUE AND 27 ORS.
S/O. LT. KORBAN AKAND, VILL. LATAKHAT, MOUZA- SHYAMABARI, P.O.
BALABARI, P.S. DHULA, DIST. DARRANG, ASSAM.

2:MD. ASHRAF ALI

S/O. LT. KORBAN AKAND
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI

P.S. DHULA
DIST. DARRANG
ASSAM

3:MD. EUSUF ALI

S/O. LT. KORBAN AKAND
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

4:MD. ATAB ALI

S/O. LT. KORBAN AKAND
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

5:MUSTT. KARIMAND BEGUM

D/O. LT. KORBAN AKAND
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

6:MD. HASAR ALI

S/O. LT. KOBBAT ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

7:MD. HAKIM ALI

S/O. LT. KOBBAT ALI
VILL. LATAKHAT

MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

8:MD. HASMAT ALI

S/O. LT. KOBBAI ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

9:MUSTT. HALIMAN BEGUM

D/O. LT. KOBBAI ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

10:MD. ASHAD ALI

S/O. LT. SAHID ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

11:MD. MOTI ALI

S/O. LT. PANDIT ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

12:MUSTT. MARIYAM BEGUM

D/O. LT. MABJAL
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

13:MD. KABER ALI

S/O. LT. SAYED ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

14:SAHA ALI

S/O. LT. MAHMUD
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

15:KASED ALI

S/O. LT. SAHID ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

16:BASED ALI

S/O. LT. SAHID ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

17:MAINUL ALI

S/O. LT. SAHID ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

18:FULTAN BEGUM
D/O. LT. MOHAMMAD ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

19:JAHIRAN BEGUM
D/O. LT. MOHAMMAD ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

20:MADHU BEWA

W/O. LT. PANDIT ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

21:MUKTAR ALI

S/O. LT. PANDIP ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

22:PARIBHAN BEGUM

D/O. LT. PANDIT ALI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

23:YASMINA BEGUM (MINOR)

REP. BY HER MOTHER
MADHU BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

24:MARJINA BEGUM (MINOR)

BEING MINOR REP. BY HER MOTHER
MADHU BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

25:JENATUL HAQUE
(MINOR)

S/O. LT. MABJAL
BEING MINOR REP. BY HIS ELDER SISTER MAINU @ MARIYAM BEGUM
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

26:SAJINA BEGUM (MINOR)

D/O. LT. MABJAL
BEING MINOR REP. BY HER ELDER SISTER MAINU @ MARIYAM BEGUM

VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

27:FAJIRAN BEGUM

D/O. FAKKUNI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSAM

28:MANOWARA BEGUM

D/O. FAKKUNI
VILL. LATAKHAT
MOUZA- SHYAMABARI
P.O. BALABARI
P.S. DHULA
DIST. DARRANG
ASSA

Advocate for the Petitioner : MR. T ISLAM

Advocate for the Respondent : MR. S CHAUHAN (R1, R2, R4, R6-R11, R12, R14-R20, R22)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 22.03.2024

This is an application under Article 227 of the Constitution challenging the order dated 27.11.2017 passed in Title Suit No. 17/2012 by the learned Civil Judge, Darrang, Mangaldai.

2. From a perusal of the impugned order, it reveals that the petitioner herein

who is the defendant in the suit had filed two applications. The first Application pertains to an application under Order XIII, Rule 10 of the Code of Civil Procedure, 1908 (for the short 'the Code') for calling for the records of M.C. No. 42/2012 which are proceedings under Section 145/146 of the Code of Criminal Procedure, 1973 decided by Executive Magistrate. The second Application is an application under Order VIII, Rule 1-A (3) of the Code seeking the leave of the Court to bring on record a copy of Jamabandi relating to the Schedule A Land which the defendant/ petitioner claimed that he could trace out the said document on 12.05.2017.

3. This Court upon hearing the learned counsel for the parties is of the opinion that the said impugned order dated 27.11.2017 does not require any interference from this Court, more so, in a proceedings under Article 227 of the Constitution.

The reasons are as under:

- i) The petition so filed an Order XIII, Rule 10 of the Code relates to calling for the records of M.C. No. 42/2012. This Court has specifically enquired with the learned counsel appearing on behalf of the petitioner why the records of M.C. No. 42/2012 is required. The learned counsel submitted that he has certified copies of the order dated 16.03.2012 passed by the SDJM, Darrang in M.C. No. 42/2012 as well as the Order dated 03.02.2012 passed by the SDJM, Darrang, Mangaldai and also the Order dated 05.03.2012 passed by this Court in criminal petition No. 125/2012. He therefore submitted that in order to prove those certified copies the defendant wants to call for the records of M.C. No. 42/2012. The orders referred to above are orders passed by authorities in exercise of statutory duties

and as such, those orders are public documents and certified copies those documents would be admissible in law. Under such circumstances, the reasons for which the application was filed calling for M.C. No. 42/2012 is completely unnecessary. This Court also find it relevant to take note of the provisions of Order XIII Rule 10 (2) of the Code which categorically mandate that if certified copy of the records can be produced, there is no necessity for calling for the record. Under such circumstances this Court finds no reason for interference with the decision of the learned Trial Court in Petition No. 1943/2013.

ii) Now coming to the Petition No. 1196/2017, it is seen that the said application was filed to bring on record a Jamabandi which the defendant/Petitioner herein claims that he had traced out on 12.05.2017. This Court had made a specific query upon the learned counsel for the petitioner as to what is the stage of the suit. He submitted that the present stage of the suit is the stage of Defendant's witness. Under such circumstances a question begs consideration as to whether the said document can be brought on record at this stage taking into consideration that if the basis of the said document is not there in the pleadings, granting a leave at this stage would be meaningless in as much as it is the settled principle of law that no evidence can be led is beyond the pleadings. Under such circumstances, the rejection of the second application is well founded.

4. This Court however is of the opinion that the petitioner can well be advised to file an application under the appropriate provisions of law i.e. Order XVI, Rule

1 & 6 of the Code to call for the witness as well document, if otherwise permissible under law. In such circumstances the learned Trial Court shall duly consider the same and pass appropriate orders on such application, if so filed.

5. This Court had taken note of that vide and order dated 18.05.2018, this Court has stayed the further proceedings Title Suit No. 17/2012. The said stay order is vacated and the parties are directed to appear before the learned Trial Court on 10.04.2024.

6. The present application accordingly disposed of.

JUDGE

Comparing Assistant