

GAHC010086762023



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

Case No. : CRP(IO)/134/2023

SIMANTA BORA AND 3 ORS
S/O- LATE LAKHESWAR BORA,
R/O- RAJABHAR GAON,
MOUZA- MISAMORA, NEAR DKD COLLEGE,
P.O. AND P.S.- DERGAON,
DISTRICT- GOLAGHAT, ASSAM.

2: BIJIT BORA
S/O- LATE LAKHESWAR BORA
R/O- RAJABHAR GAON
MOUZA- MISAMORA
NEAR DKD COLLEGE
P.O. AND P.S.- DERGAON
DISTRICT- GOLAGHAT
ASSAM.

3: REKHA BORA
D/O - LATE LAKHESWAR BORA
R/O- RAJABHAR GAON
MOUZA- MISAMORA
NEAR DKD COLLEGE
P.O. AND P.S.- DERGAON
DISTRICT- GOLAGHAT
ASSAM.

4: SWABHILASH S BORA
S/O- LATE RIDIP BORA
R/O- RAJABHAR GAON
MOUZA- MISAMORA
NEAR DKD COLLEGE
P.O. AND P.S.- DERGAON
DISTRICT- GOLAGHAT
ASSAM

VERSUS

BIREN BORUAH
S/O- LATE KALINATH BORUAH,
R/O- CHOKIAL GAON, WARD NO. 4,
DERGAON TOWN, MOUZA- DERGAON,
P.O. AND P.S.- DERGAON,
DIST.- GOLAGHAT, ASSAM.

For the appellant(s) : Mr. B. Kaushik, Advocate

For the respondent (s) : Mr. M. Dutta, Advocate

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

01.04..2024

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the order dated 20.01.2023 passed in Title Appeal No.05/2022 whereby the petitioner's application seeking amendment of the plaint under Order VI Rule 17 of the Code was allowed.

2. This Court has duly taken note of that the instant proceedings ought to have been preferred under Article 227 of the Constitution and not an application under Section 115 of the Code, and as such, for the interest of justice, the instant proceedings is converted to a proceedings under Article 227 of the Constitution.

3. This Court has duly taken note of the application which was filed seeking amendment of the plaint and the grounds and reasons stated therein. It has also been brought to the notice of this Court that prior to filing of the application under Order VI Rule 17 of the Code seeking

amendment of the plaint no issues were framed. This Court has also taken note of the paragraph No.6 to the plaint and the reasons so assigned as to why now it has become necessary for the purpose of seeking amendment of the plaint as well as also the amendment to the relief sought for in the plaint. This Court has also taken note of the order dated 20.01.2023 passed by the learned Trial Court and is of the opinion that the said order do not suffer from jurisdictional error. Moreover, the question of interference of the impugned order dated 20.01.2023 is not called for in a proceedings under Article 227 of the Constitution, in the present facts.

4. Accordingly, the instant petition therefore stands dismissed.

5. The interim order dated 10.05.2023 stands vacated and the parties being duly represented are directed to appear before the Trial Court on 02.05.2024. The Court of the Munsiff No.1, Golaghat shall proceed with the Title Suit No.05/2020 in accordance with law.

6. Before concluding this Court however observes that the defendants/petitioners herein would be at liberty to file the written statement on the next date so fixed before the Trial Court.

JUDGE

Comparing Assistant