

GAHC010091462009



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

Case No. : CRP/9/2009

SRI PUNYA DEO MISHRA and ANR.
S/O LATE RAM NARESH MISHRA DEPOT ROAD, KOKRAJHAR, WARD NO.
4, P.S.- KOKRAJHAR, DIST.- KOKRAJHAR, ASSAM.

2: SRI KAJAL DHAR
S/O LATE DWIJENDRA LAL DHAR PROPRIETOR OF M/S A NCHAL
READYMADE GARMENT. DEPOT ROAD
KOKRAJHAR
WARD NO. 4
R/O TENGAPARA
KOKRAJHAR TOWN
WARD NO. 5
P.S. KOKRAJHAR
DIST.- KOKRAJHAR
ASSAM

VERSUS

ON THE DEATH OF DWARIKA PRASAD BRAHMIN,
HIS LEGAL HEIRS

1.1: SMT SULACHANA DEVI SHARMA
W/O LATE DWARIKA PRASAD BRAHMIN
R/O KOKRAJHAR TOWN
J.D. ROAD (DEPOT ROAD)
WARD NO. 4
P.O. AND P.S.- KOKRAJHAR
DISTRICT- KOKRAJHAR (BTAD)
ASSAM.

1.2: SRI VIVEK SHARMA
S/O LATE DWARIKA PRASAD BRAHMIN
R/O KOKRAJHAR TOWN
J.D. ROAD (DEPOT ROAD)

WARD NO. 4
P.O. AND P.S.- KOKRAJHAR
DISTRICT- KOKRAJHAR (BTAD)
ASSAM.

1.3:SRI AJAY KUMAR SHARMA
S/O LATE DWARIKA PRASAD BRAHMIN
R/O KOKRAJHAR TOWN
J.D. ROAD (DEPOT ROAD)
WARD NO. 4
P.O. AND P.S.- KOKRAJHAR
DISTRICT- KOKRAJHAR (BTAD)
ASSAM.

1.4:SRI SANJAY KUMAR SHARMA
S/O LATE DWARIKA PRASAD BRAHMIN
C/O- SOHI VILLA
60
VISHWAKARMA PARK
2ND FLOOR
NEAR SHAKARPUR POLICE STATION
LAKSHMI NAGAR
DELHI-110092.

1.5:SMT ANJU SHARMA
D/O LATE DWARIKA PRASAD BRAHMIN AND W/O SRI UTTAM SHARMA
R/O URIUM GHAT ROAD
SARUPATHER (NEAR APEX BANK)
P.O. AND P.S.- SARUPATHER
DISTRICT- GOLAGHAT
ASSAM.

1.6:SMT KUSUM DEVI SHARMA
D/O LATE DWARIKA PRASAD BRAHMIN AND W/O LATE JAGADISHWAR
LAL SHARMA
R/O JALAKPARA ROAD
DIBRUGARH
P.O AND P.S- DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM

Advocate for the Petitioner : B DAS

Advocate for the Respondent : D MAZUMDAR

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

11.06.2024

Heard Mr. G. Baishya, the learned counsel appearing for the petitioners.

None appears or the respondent on call.

2. This is an application under article 227 of the Constitution of India challenging the order dated 28.11.2008 passed by the learned Civil Judge (Sr. Divn.), Kokrajhar in Misc. (J) Case No.02/2008 arising out of Title Suit No.03/2007.

3. The short question that is involved in this revision is- when an order under Order 19 Rule 2 of the Code of Civil Procedure can be passed by a civil court.

4. Order 19 Rule 2 of the Code of Civil Procedure reads as under:

“2. Power to order attendance of deponent for cross-examination.

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.”

5. Whenever a party to a suit wants to prove a particular thing by filing an affidavit, then only the other side is entitled to cross-examine him.

6. In the case in hand, the petitioner(s) filed their pleadings supported by an affidavit. Therefore, the other party is not entitled to cross-examine him on the basis of the said affidavit. The party which filed pleadings, is to prove his pleadings by adducing evidence and at that time, the other party shall have the opportunity to

cross-examine the said party.

7. The learned court below has erroneously interpreted the provisions of law as contained in Order 19 Rule 2 of the Code of Civil Procedure. Therefore, the impugned order is bad in law and stands set aside.

8. The trial court is directed to dispose of the Misc. (J) Case No.02/2008 expeditiously in accordance with the provision as laid down by law.

The revision petition is disposed of.

The interim order passed earlier, stands vacated.

Send back the LCR.

JUDGE

Comparing Assistant