

GAHC010092062023



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

Case No. : CRP(IO)/125/2023

AMAD UDDIN @ AMODUDAN AND 4 ORS
S/O LATE SOYA UDDIN,
RESIDENT OF VILL. AND P.O.- GULCHERRA,
P.S.- NILAMBAZAR, DIST.- KARIMGANJ,
ASSAM. PIN- 788720.

2: ASAD UDDIN
S/O LATE SOYA UDDIN

RESIDENT OF VILL. AND P.O.- GULCHERRA

P.S.- NILAMBAZAR
DIST.- KARIMGANJ

ASSAM. PIN- 788720.

3: MOIN UDDIN
S/O LATE SOYA UDDIN

RESIDENT OF VILL. AND P.O.- GULCHERRA

P.S.- NILAMBAZAR
DIST.- KARIMGANJ

ASSAM. PIN- 788720.

4: JAMILA KHANAM
D/O LATE SOYA UDDIN

RESIDENT OF VILL. AND P.O.- GULCHERRA

P.S.- NILAMBAZAR
DIST.- KARIMGANJ

ASSAM. PIN- 788720.

5: BADRUN NESSA
D/O LATE SOYA UDDIN

RESIDENT OF VILL. AND P.O.- GULCHERRA

P.S.- NILAMBAZAR
DIST.- KARIMGANJ

ASSAM. PIN- 788720

VERSUS

AZIR UDDIN AND 7 ORS
S/O LATE SOYA UDDIN,
RESIDENT OF VILL. AND P.O.- GULCHERRA,
P.S.- NILAMBAZAR, DIST.- KARIMGANJ,
ASSAM. PIN- 788720.

2:SOLMAN UDDIN @ SOLMAN AHMED
S/O AZIR UDDIN

RESIDENT OF VILL. AND P.O.- GULCHERRA

P.S.- NILAMBAZAR
DIST.- KARIMGANJ

ASSAM. PIN- 788720.

3:MAHMUDA BIBI
W/O LATE SOYA UDDIN

RESIDENT OF VILL. AND P.O.- GULCHERRA

P.S.- NILAMBAZAR
DIST.- KARIMGANJ

ASSAM. PIN- 788720.

4:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O.
P.S. AND DIST. KARIMGANJ

ASSAM.

5:THE SUB-REGISTRAR

PATHERKANDI
P.O. AND P.S. PATHERKANDI

DIST.- KARIMGANJ
ASSAM.

6:THE SUB-REGISTRAR
RATABARI
P.O. AND P.S.- RATABARI

DIST.- KARIMGANJ
ASSAM.

7:THE SUB-REGISTRAR
R.K. NAGAR
P.O. AND P.S. RAMKRISHNANAGAR

DISTRICT- KARIMGANJ
ASSAM.

8:THE SUB-REGISTRAR
KARIMGANJ
P.O.
P.S. AND DIST.- KARIMGANJ

ASSAM

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

15.03.2024

This is an application under Article 227 of the Constitution of India challenging the orders dated 19.12.2022, 07.02.2023 as well as 03.04.2023

passed in Title Suit No.176/2019.

2. From a perusal of the materials on record, it is seen that the plaintiffs have filed a suit seeking declaration that the plaintiffs are the ejmali owners of Schedule A land by way of an amicable distribution of properties of the defendant No.3 as well as for permanent injunction. The defendant Nos.1 to 3 filed their written statement denying the case of the plaintiffs and sought for dismissal of the suit with compensation. From the record, it reveals that on 05.04.2022, issues were framed and the case was fixed on 13.05.2022 for plaintiff's evidence. The plaintiffs sought for time to submit their evidence on 13.05.2022, 22.06.2022, 26.07.2022, 07.09.2022, 16.11.2022 and 19.12.2022. The learned trial court taking into account that three last chances were granted closed the evidence of the plaintiffs and fixed the case on 07.02.2023 for defendants evidence. On 07.02.2023, the defendants submitted that they would not adduce any evidence, for which the matter was fixed on 15.03.2023 for arguments. On 15.03.2023, the plaintiffs sought for adjournment on the ground of the illness of the plaintiff. Thereupon, on 03.04.2023, an application was filed for recalling of the order dated 19.12.2022 on the ground that the PW-1 was ill for which the plaintiffs evidence could not be filed on 19.12.2023. The learned trial court rejected the said application also and fixed for argument/judgment and under such circumstances, the matter has come before this Court by way of the instant proceedings.

3. This Court has duly taken note of the provisions of the Order XVII Rule 1 of the Code which categorically stipulates that no adjournment shall be granted for more than three times to a party during the hearing of the suit. This Court

further finds it relevant to also take note of that hearing of the suits starts with the date fixed for submission of the evidence.

4. In the instant case, the plaintiffs were afforded not only three opportunities, but were given three last chances and then also, they did not file their evidence. The order dated 19.12.2022 under such circumstances, can be said to be illegal or suffering from any material irregularity. However, this Court finds it very pertinent to observe that it is a well settled principle of law that pleadings are not evidence and the suit can only be decreed on the basis of evidence supported by pleadings. Under such circumstances, when there was no counter claim filed by the defendant or any admission of the rights of the plaintiffs, the learned trial court ought not to have fixed the matter for defendants' evidence and ought to have taken recourse to Order XVII Rule 3 (a) of the Code and have dismissed the suit then and there.

5. This Court has also taken note of the order dated 03.04.2023, which also in the opinion of this Court was justified. Under such circumstances, this Court finds no merits to interfere with the impugned orders. This Court further vacates the order of stay dated 03.05.2023 passed by this Court and directs the parties to appear before the learned trial court on 08.04.2024. The learned trial court shall duly take note of the above observations while disposing of the suit.

6. The revision petition, accordingly, stands dismissed.

JUDGE

Comparing Assistant