

GAHC010098272023



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

Case No. : CRP(IO)/133/2023

KUNJA GOGOI
W/O PORESH BORUAH,
R/O WARD NO. 5, UDAY NAGAR, MOUKOWA MAUZA, GOLAGHAT TOWN,
P.O. AND P.S.- GOLAGHAT, DISTRICT OF GOLAGHAT, ASSAM.

VERSUS

GOKUL KALITA AND 9 ORS.
S/O LATE KALIA KALITA,
R/O KUMARPATTY, WARD NO. 2, MOUKOWA MAUZA, GOLAGHAT TOWN,
P.O. AND P.S.- GOLAGHAT, DISTRICT OF GOLAGHAT, ASSAM.

2:MOHEN KALITA
S/O LATE KALIA KALITA

R/O KUMARPATTY
WARD NO. 2
MOUKOWA MAUZA
GOLAGHAT TOWN
P.O. AND P.S.- GOLAGHAT
DISTRICT OF GOLAGHAT
ASSAM.

3:GHANA KALITA
S/O LATE KALIA KALITA

R/O KUMARPATTY
WARD NO. 2
MOUKOWA MAUZA
GOLAGHAT TOWN
P.O. AND P.S.- GOLAGHAT
DISTRICT OF GOLAGHAT

ASSAM.

4:ARUN KALITA
S/O LATE KALIA KALITA

R/O KUMARPATTY
WARD NO. 2
MOUKOWA MAUZA
GOLAGHAT TOWN
P.O. AND P.S.- GOLAGHAT
DISTRICT OF GOLAGHAT
ASSAM.

5:PODUMI KALITA DUTTA
W/O LILADHAR DUTTA

VILL.- TATI GAON
P.O.- PURANA TITABOR
P.S.- JORHAT
PIN- 785632.

6:ANU KALITA HAZARIKA
W/O TILU HAZARIKA

VILL.- FOLONGONI (END PULL)

DIST.- GOLAGHAT

P.O.- MORPHULONI

P.S.- GOLAGHAT
PIN- 785621.

7:RENA KALITA HAZARIKA
W/O BHUA HAZARIKA

RUPJYOTI NAGAR (ARANGAPARA) WARD NO. 1
DIST.- GOLAGHAT

P.O. AND P.S.- GOLAGHAT
PIN- 785621.

8:TUTU DUTTA
M/O LATE LOKESHORI DUTTA

W/O NABIN DUTTA

VILL.- BOSSA GAON (NEAR ATHKHILIA NAMGHOR)

DIST.- GOLAGHAT
P.O.- PULIKAITONI
P.S.- GHILADHARI
PIN- 785631.

9: BABUL DUTTA
M/O LATE LOKHESHORI DUTTA

W/O NABIN DUTTA

VILL.- BOSSA GAON (NEAR ATHKHILIA NAMGHOR)
DIST.- GOLAGHAT
P.O.- PULIKAITONI
P.S.- GHILADHARI
PIN- 785631.

10: DUL DUTTA
M/O LATE LOKESHORI DUTTA

W/O NABIN DUTTA

VILL.- BOSSA GAON (NEAR ATHKHILIA NAMGHOR)
DIST.- GOLAGHAT
P.O.- PULIKAITONI
P.S.- GHILADHARI
PIN- 785631

Advocate for the petitioner(s): Mr. AK Sahewala

Advocate for the respondent(s): Mr. AB Dutta

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

22.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 15.12.2022, passed by the learned Civil Judge, Golaghat in Title Suit No.10/2013 whereby the petition filed by the petitioners, who are the plaintiffs in the suit for issuing summons to one Shri Jogen Bora was rejected.

2. Mr. AK Sahewala, the learned counsel appearing on behalf of the petitioners who are the plaintiffs in the suit submits that irrespective of the summons to be issued by the Court, in view of the provisions of Order XVI Rule 1A, the petitioners/plaintiffs can bring in witnesses without applying for summons to give evidence or to produce documents.

3. Mr. AB Dutta, learned counsel for the respondents submits that the learned Trial Court on the earlier occasions has rejected the application, *inasmuch as*, the plaintiffs had sought for issuance of summons to one Jogen Saikia. The learned counsel for the respondents submitted that the plaintiffs have to prove that Jogen Bora and Jogen Saikia are one and the same person.

4. This Court had heard the learned counsels appearing for the parties and had given due consideration to the submissions made. This Court had also perused the provisions of Order XVI Rule 1A of the Code which permits any party to the suit to bring in witnesses to give evidence and to produce documents without applying for summons under Rule 1.

5. Taking into account the specific submission of Mr. AK Sahewalla, the learned counsel for the petitioners that the petitioners are going to bring the said Shri Jogen Bora as their witness without seeking the assistance of the Court, this Court finds no reason to debar the plaintiffs to bring the said Jogen Bora as plaintiffs witness in terms of Order XVI Rule 1A of the Code.

6. Accordingly, this Court without interfering with the order dated 15.12.2022 passed by the learned Trial Court permits the plaintiffs to adduce evidence of Jogen Bora in terms of Order XVI Rule 1A of the Code.

7. It is clarified that the said permission so granted shall not in any manner be construed for granting permission to the plaintiffs to seek assistance of the

Court for obtaining summons to said Shri Jogen Bora to adduce evidence.

8. This Court further takes note of that vide order dated 12.05.2023, the further proceedings of Title Suit No.10/2013 was stayed by this Court. The said order stands vacated and the parties are directed to appear before the learned Trial Court i.e. the Court of the learned Civil Judge, Golaghat on 20.05.2024, on which date, the plaintiffs/petitioners shall file the evidence on affidavit of Shri Jogen Bora.

9. With the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant