

GAHC010107722022



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

Case No. : CRP(IO)/122/2022

SMTI. KAMALA DEVI BANTHIA
W/O- LATE NATHMAL BANTHIA, D/O- LATE BHANWARLAL BOTHRA, R/O-
BANTHIA KA CHOWK, P.O. AND P.S. BIKANER, DIST. BIKANER,
RAJASTHAN ACTING THROUGH HER ATTORNEY SMT. CHANDRA KANTA
BOTHRA, W/O- SRI PRAKASH CHANDRA BOTHRA, R/O- OPPOSITE OF
NEHRU MAIDAN, TEZPUR TOWN, P.O. AND P.S. TEZPUR, MOUZA-
MAHABHAIRAB, DIST. SONITPUR, ASSAM

VERSUS

RAJENDRA KUMAR BOTHRA AND 9 ORS
S/O- LATE BHANWARLAL BOTHRA, R/O- MAIN ROAD, WARD NO. 9,
MOUZA- MAHABHAIRAB, P.O. AND P.S. TEZPUR, DIST. SONITPUR, ASSAM
AND PRESENTLY RESIDING AT MUKIM BOTHRAKI GAWAR, P.O. AND P.S.
BIKANER, DIST. BIKANER, RAJASTHAN.

2: LOON KARAN BOTHRA
S/O- LATE BHANWARLAL BOTHRA
R/O- MAIN ROAD
WARD NO. 9
MOUZA- MAHABHAIRAB
P.O. AND P.S. TEZPUR
DIST. SONITPUR
ASSAM AND PRESENTLY RESIDING AT MUKIM BOTHRAKI GAWAR
P.O. AND P.S. BIKANER
DIST. BIKANER
RAJASTHAN.

3: KANTILA BOTHRA
S/O- LATE BHANWARLAL BOTHRA
R/O- MAIN ROAD
WARD NO. 9

MOUZA- MAHABHAIRAB
P.O. AND P.S. TEZPUR
DIST. SONITPUR
ASSAM AND PRESENTLY RESIDING AT MUKIM BOTHRAKI GAWAR
P.O. AND P.S. BIKANER
DIST. BIKANER
RAJASTHAN.

4:MAHENDRA KUMAR BOTHRA
S/O- LATE BHANWARLAL BOTHRA
R/O- MAIN ROAD
WARD NO. 9
MOUZA- MAHABHAIRAB
P.O. AND P.S. TEZPUR
DIST. SONITPUR
ASSAM AND PRESENTLY RESIDING AT MUKIM BOTHRAKI GAWAR
P.O. AND P.S. BIKANER
DIST. BIKANER
RAJASTHAN.

5:ON THE DEATH OF RAJENDRA KUMAR BOTHRA
HIS LEGAL HEIRS

5.1:SMTI. SUMAN DEVI BOTHRA
(WIFE)
R/O- K.C. ROAD
WARD NO. 9
TEZPUR
P.O. AND P.S. TEZPUR
MOUZA- MAHABHAIRAB
DIST. SONITPUR
ASSAM

5.2:SMTI. SHEETAL BOTHRA BENGANI
(DAUGHTER)
W/O- JAI PRAKASH BENGANI
R/O- KRISHNA KUNJ 32/1 ROLAND ROAD
2ND FLOOR
FLAT NO. 2B
KOLKATA-20.

5.3:MITHUN BOTHRA
(SON)
R/O- K.C. ROAD
WARD NO. 9
TEZPUR
P.O. AND P.S. TEZPUR
MOUZA- MAHABHAIRAB

DIST. SONITPUR
ASSAM

5.4:SHAKTI BOTHRA
(SON)
R/O- K.C. ROAD
WARD NO. 9
TEZPUR
P.O. AND P.S. TEZPUR
MOUZA- MAHABHAIRAB
DIST. SONITPUR
ASSAM

6:CHANDAN MAL BOTHRA
S/O- LATE KISTUR CHAND BOTHRA
R/O- MAIN ROAD
DHEKIAJULI
P.O.
P.S. AND MOUZA- DEKHIAJULI
DIST. SONITPUR
ASSAM

7:SMTI. PUSHPA DEVI KOCHAR @ PUSHPA DEVI BOTHRA
W/O- SRI SAMPATLAL KOCHAR
D/O- LATE BHANWARLAL BOTHRA
C/O- MEGHRAJ SAMPATLAL KOCHAR
R/O- KOCHARON KA CHOWK
BIKANER
P.O.
P.S. AND DIST. BIKANER
RAJASTHAN

8:ON THE DEATH OF MANJU DEVI KOCHAR @ MANJU DEVI BOTHRA
HER LEGAL HEIRS.

8.1:GAUTAM KOCHAR
(SON)
R/O- KOCHARON KA CHOWK
P.O.
P.S. AND DIST. BIKANER.

8.2:SMTI. PUJA BHURA
(DAUGHTER)
W/O- SRI KISHOR BHURA
RESIDING AT SURYA PLAZA
FLAT NO. B 511
UDHANA MAGADALLA ROAD
BHATAR

SURAT-395017.

8.3:SMTI. PRIYA GOLCHA
(DAUGHTER)
W/O- SRI DIPAK GOLCHA KHAJANCHI MOHALLA
NEAR GOLCHAKI GAWAR
P.O. AND P.S. BIKANER
DIST. BIKANER
RAJASTHAN

8.4:SMTI. MUKTI MINNI
(DAUGHTER)
R/O- 23 GANGULY LANE
1ST FLOOR
BARABAZAR
KOLKATA-700007
WEST BENGAL.

9:SMTI. MANI BAID
W/O- SRI DEVENDRA KUMAR BAID
D/O- LATE BHANWARLAL BOTHRA
R/O- A-1/195 B
KWSHAVPURAM
LAWRENCE ROAD
DELHI.

10:PRAKASH CHANDRA BOTHRA (HUF)
REPRESENTED BY KARTA OF HUF
SRI PRAKASH CHANDRA BOTHRA
R/O- OPPOSITE NEHRU MAIDAM
P.O. AND P.S. TEZPUR
MOUZA- MAHABHAIRAB
DIST. SONITPUR
ASSA

For the petitioner (s) : Mr. B. D. Deka, Advocate

For the respondent (s) : Mr. A. Ganguli, Advocate
Mr. G. Choudhury, Advocate
Ms. A. Gayan, Advocate

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

06.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 05.04.2022 passed in Title Suit No.27/2016 whereby the learned Trial Court rejected the application filed by the petitioners who are the plaintiffs in the suit for initiating an enquiry against the defendant Nos.5 & 6 in the said suit including their counsels.

2. The facts leading to the filing of the instant application briefly stated are that a Release Deed dated 16.08.2013 is the subject matter of challenge in Title Suit No.27/2016 amongst others. In the said suit, an application was filed by the defendant Nos.5 & 6 under Order XXVI Rule 10A of the Code of Civil Procedure, 1908 (for short, 'the Code') seeking scientific examination of the signatures of the plaintiff Smti. Kamala Devi Banthia. The said application was allowed by the learned Trial Court vide an order dated 18.09.2018. However, in allowing the learned Trial Court directed the defendant Nos.5 & 6 to take immediate steps for sending the signatures of the plaintiff to the handwriting expert for scientific examination against her admitted signatures. It further reveals from the records that pursuant to the order dated 18.09.2018, the learned Trial Court vide an order dated 13.12.2018 issued a notice to the Directorate of Forensic Science Laboratory, Kahilipara to examine the signatures of the plaintiff taken on some white paper in the open Court and compare the same with the signatures appearing in the agreement for sale dated 20.12.2004, two Power of Attorneys executed by the plaintiff dated

24.12.2012 and 27.11.2010 and the Release Deed executed on 16.08.2013. It was also mentioned in the said notice that the report be sent in a sealed envelope to the Court before 18.01.2019. Along with the said notice, a draft of Rs.2,000/- in the name of the Director, FSL was enclosed further stating that if any additional expenses were required, the same shall be paid upon the submission of the bill.

3. Surprisingly, instead of the Court sending the said papers, either through the official process or through the Special Messenger, the learned Trial Court and its Office handed over the papers to the defendant No.5 on 14.12.2018 to send those papers to the Director, FSL. It is an admitted fact that on 14.12.2018, one Ms. Ameli Saikia, Advocate received the envelope from the Office of the Civil Judge, Tezpur and handed over the same to the defendant No.5. The defendant No.5 thereupon took steps on 24.01.2019 through registered post and the consignment was booked from Tezpur Head Post Office vide consignment No.RS445171301IN. This aspect of the matter is seen from paragraph No.5 of the written objection filed by the legal representatives of the defendant No.5. It was mentioned in the said written objection that upon sending the said document, there was no report submitted by the Director of FSL. Under such circumstances, the learned Trial Court issued notice reminding the Director, FSL for submission of the report and the Director, FSL vide the communication dated 15.07.2019 sought for the receipt number and the date of sending the papers for further verification as they could not trace out those documents sent for examination. It further reveals from the impugned order that there were various enquiries being made with the Department of Post also and from the said enquiry it revealed that it was

on account of the fault of the Postal Department that the consignment bearing No. RS445171301IN dated 24.01.2019 could not be trace out. It is under such circumstances, alleging that there were certain illegalities being committed by the defendant Nos.5 & 6 along with their counsels, an application was filed by the plaintiff seeking initiation of an enquiry. This application was registered as petition No.442/2020. To the said application, a written objection was filed by the legal representatives of the defendant No.5 as well as defendant No.6. Vide the impugned order dated 05.04.2022, the said application was rejected and it is under such circumstances, the present proceedings have been initiated.

4. This Court had heard Mr. B. D. Deka, counsel appearing for the petitioner and Mr. A. Ganguly and Mr. G. Choudhury, counsels appearing for the respondents. The contentions of the learned counsels have been duly given consideration.

5. This Court had perused the impugned order and in the opinion of this Court, the learned Trial Court did not err in law or had committed any jurisdictional error in rejecting the application seeking an enquiry. At this stage, this Court finds it very pertinent to observe that the learned Trial Court ought not to have handed over the documents to the defendant No.5 to send the documents to the Director, FSL, rather it should have been sent by the learned Trial Court through its office or through a Special Messenger. This fault on the part of the learned Trial Court to hand over the papers had led to this unnecessary episode. As the consignment admittedly was lost on account of the fault of the Department of Posts, it is the opinion of this Court that the learned Trial Court in its impugned order had committed no illegality in refusing to hold any further enquiry.

Under such circumstances, this Court finds no reason to interfere with the impugned order dated 05.04.2022.

6. This Court further takes note of that vide an order dated 08.06.2022, the further proceedings of Title Suit No.27/2016 was stayed. The said order stands vacated and as the parties are duly represented, they are directed to appear before the learned Trial Court on 15.06.2024.

7. Before parting with the records, this Court finds it very relevant to observe that the observations made in the instant order as well as also in the impugned order dated 05.04.2022 shall not preclude the parties in the suit to take such pleas in respect to those documents alleged to have been sent vide consignment No. RS445171301IN which are otherwise permissible under the law.

JUDGE

Comparing Assistant