

GAHC010127622020



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

Case No. : CRP/66/2020

M/S EASTERN ROAD CARRIERS AND 2 ORS.
P-9, NEW C.I.T. ROAD, KOLKATA-700073, WEST BENGAL

2: M/S EASTERN ROAD CARRIERS
HAVING ITS BRANCH OFFICE AND GODOWN AT BETKUCHI
NH-37
LOKHRA CHARIALI
P.S.-BETKUCHI OUT POST UNDER P.S.-FATASHIL AMBARI
GUWAHATI-34
KAMRUP(M)
ASSAM

3: RAVINDRA KUMAR MITTAL
S/O SRI RAM AVTAR MITTAL
PARTNER
M/S EASTERN ROAD CARRIERS
P-9
NEW C.I.T. ROAD
KOLKATA-700073
WEST BENGAL

VERSUS

SMT. JENITHA SANGMA AND 6 ORS.
D/O LATE GALLENDRA MOMIN, R/O VILL-NIAPOLI, P.S.-DHUDNOI, DIST-
GOALPARA, ASSAM, PIN-783101

2:ELBINGSTON SANGMA
S/O LATE GALLENDRA MOMIN
R/O VILL-NIAPOLI
P.S.-DHUDNOI
DIST-GOALPARA
ASSAM
PIN-783101

3:SMT. LABAINO SANGMA
D/O LATE GALLENDRA MOMIN
R/O VILL-NIAPOLI
P.S.-DHUDNOI
DIST-GOALPARA
ASSAM
PIN-783101

4:SMT. SUKILA SANGMA
D/O LATE GALLENDRA MOMIN
R/O VILL-NIAPOLI
P.S.-DHUDNOI
DIST-GOALPARA
ASSAM
PIN-783101

5:SMT. BREPILA SANGMA
D/O LATE GALLENDRA MOMIN
R/O VILL-NIAPOLI
P.S.-DHUDNOI
DIST-GOALPARA
ASSAM
PIN-783101

6:HAIDER ALI
S/O HUSSAIN ALI
R/O VILL AND P.O.-KALARCHAR
P.S.-BHANGNAMARI
DIST-NALBARI
ASSAM
PIN-781126

7:ABDUL NOOR
S/O HASEN ALI
R/O DAKHIN GAON
KAHILIPARA
P.S.-DISPUR
GUWAHATI-781019
ASSA

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : MR S N ADHYAPAK (R-1)

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 17.07.2024

1. Heard Mr. A. Sarma, learned counsel for the petitioners. Also heard Mr. S. N. Adhyapak, learned counsel for the respondent No. 1 and Mr. B. Bora, learned counsel for the respondent Nos. 6 and 7.

2. This revision petition has been filed under Article 227 of the Constitution of India by the petitioners, 1. M/S Eastern Road, 2. M/S Eastern Road Carriers and 3. Ravindra Kumar Mittal, who is the Managing Partner of the petitioner No. 1 impugning the order dated 29.02.2020 passed by the learned Civil Judge No. 1, Kamrup(M) in Misc.(J) Case No. 46/2020 arising out of Title Suit No. 322/2016 pending before the learned Civil Judge No. 1, Kamrup(M).

3. The facts relevant for consideration of the instant Civil Revision Petition, are that:-

(i) The petitioners have claimed to have purchased 2 Bighas of land covered by K.P. Patta No. 92, Dag No. 416, Village- Betkuchi, Mouza- Beltola, P.S.- Dispur, Guwahati from the recorded Pattadar and possessor of the said land, namely, Tartari Lalungani, W/o- Late Shyam Singh by executing a registered sale deed No. 5015/1983, dated 02.07.1983.

(ii) It is contended by the petitioner that later on one of the legal heir of the seller of the said land, namely, Gallendra Momin raised some objections regarding the purchase of land by the petitioners. However, the matter was amicably settled between the said Gallendra Momin and the

petitioners and a deed of agreement was executed on 18.02.2009.

(iii) It is pertinent to mention herein that in the meanwhile, the petitioners had filed a suit against said Gallendra Momin before the Court of learned Munsiff No. 1, Guwahati which was registered as Title Suit No. 89/2008 and said suit was decreed on compromise 22.04.2010 on the basis of deed of compromise which was entered into between the parties on 18.02.2009.

(iv) Later on, some of the legal heirs of said Gallendra Momin again raised some dispute over the title of the land purchased by the petitioners and they filed applications for cancellation of mutation which was in the name of the present petitioners. Thereafter, the present petitioners filed a title suit before the Court of learned Civil Judge No. 1, Kamrup(M) praying for declaration of right, title and interest over the scheduled land which was the land purchased by the present petitioners from the predecessor of Gallendra Momin. The said suit was registered as Title Suit No. 322/2016 and is presently pending before the learned Civil Judge No. 1, Kamrup(M).

4. The learned counsel for the petitioners has submitted that the petitioners had filed an application before the Trial Court under Order 1 Rule 10(2) of the Code of Civil Procedure for impleading three legal heirs of the original seller of the suit land, namely, Smt. Labaino Sangma, Smt. Sukila Sangma and Smt. Brepila Sangma. The said prayer was allowed by the learned Trial Court by its order dated 29.02.2020 and the three legal heirs named by the present petitioners were allowed to be impleaded as defendant in the suit filed by the plaintiff. However, in the meanwhile, the respondent Nos. 6 and 7,

namely, Haider Ali and Abdul Noor also filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure praying for impleading them as defendant in the suit filed by the petitioners on the ground that two of the legal heirs of the original owners of the suit land, namely, Smt. Labaino Sangma and Elabinston Sangma had entered two agreement of sale with the respondent Nos. 6 and 7 bearing Deed No. 6171/2017 dated 24.06.2017 and Deed No. 6172/2017 dated 24.06.2017 respectively for sale of 4 Kathas of out of the suit land and claimed that they also got interest in the suit land to the extent of the of 4 Kathas.

5. The learned counsel for the petitioners has submitted that though the respondent Nos. 6 and 7 were totally strangers to the suit and were not connected anywhere in the dispute between the petitioners and the other defendants of the said suit, the names of the respondent Nos. 6 and 7, namely, Haider Ali and Abdul Noor were impleaded in the plaint on the basis of impugned order dated 29.02.2020 passed by the learned Civil Judge No. 1, Kamrup(M) in Misc.(J) Case No. 46/2020.

6. The learned counsel for the petitioners has submitted that bare perusal of the impugned order would show that though the names of the respondent Nos. 6 and 7 are not reflected in the said order, however, on the basis of the said order, their names were impleaded in the plaint by the Office of the Court of Civil Judge No. 1, Kamrup(M).

7. The learned counsel for the petitioners has submitted that as the plaintiff have filed the suit against the heirs of the original seller of the land as

the heirs of the original seller of the land have preferred an application for cancellations of mutations order in favour of the petitioners in respect of the aforesaid land.

8. The learned counsel for the petitioners has submitted that the petitioners have no dispute with the respondent Nos. 6 and 7 and they are not either necessary parties or proper parties for resolution of dispute between the petitioners and the other respondents in the pending civil suit.

9. The learned counsel for the petitioners has also submitted that though the respondent Nos. 6 and 7 have claimed to have entered into an agreement for sale with two of the heirs of the original seller, namely, Smt. Labaino Sangma and Elabinston Sangma, however, no copy of the purported sale deed have been furnished or annexed with their impleadment petition, therefore, the Court without application of mind allowed the Misc(J) Case No. 46/2020 which was filed on the basis of application filed by the respondent Nos. 6 and 7 under Order 1 Rule 10(2) of the Code of Civil Procedure. The learned counsel for the petitioners has submitted that the grounds stated by the petitioners the impugned order is liable to be set aside.

10. On the other hand, learned counsel for the respondent No. 1, namely, Smt. Jenitha Sangma, who is the daughter Late Gallendra Momin with whom the petitioners have entered into a compromise earlier had submitted that the respondent No. 1 has never entered into any agreement with the respondent Nos. 6 and 7, and submits that he has no objection if the revision petition is allowed.

11. On the other hand, the learned counsel for the respondent Nos. 6 and 7 has fairly submitted that bare perusal of the impugned order would show that there is some error in the said order as it appears to have a result of copy and paste. As on the same date the petitioners had also filed an application for impleadment of three of the legal heirs of Gallendra Momin which was allowed by the Trial Court and it appears that same order has been pasted while considering the application filed by the respondent Nos. 6 and 7, which has resulted into an erroneous error. However, the learned counsel for the respondent Nos. 6 and 7 has prayed that in view of the error apparent on bare perusal of the impugned order, he prays for remanding the case back to the Trial Court with a direction for considering the application filed by the respondent Nos. 6 and 7 afresh by the Trial Court.

12. I have considered the submissions made by the learned counsel for the parties and have perused the materials available on record.

13. For the sake of convenience, the order of the Trial Court dated 29.02.2020 in Misc.(J) Case No. 46/2020 in connection with Title Suit No. 322/2016 which has been impugned in this instant petition is quoted herein below:-

“29.02.2020

This Misc (J) case arose out of a petition No. 4697 filed under Order 1 Rule 10(2) of CPC wherein the petitioner prayed to implead them as defendant No. 4 and 3.

The petitioner in the instant petition submitted that Late Gallendra Momin had left 5 numbers of legal heirs and successors namely (1) Smt. Labaino Sangma (daughter), (2) Elbingston Sangma (son) (3)

Smt. Jenitha Sangma (daughter), (4) Smt. Sukila Sangma, and (5) Smt. Brepila Sangma and right to sue survives against them. So, he prayed to implead them as party to the suit.

Considered the submission of the petitioner. I am of view that the plaintiff is the best person who knows about the merit, demerit of this case and he is the master of his plaint and he has the right to choose the party. In view of the above background, when plaintiff has shown sufficient cause why he wants to implead the above parties, I deem it fit to allow the petition. Hence, petition is allowed. Bench Assistant will do the needful entry in the plaint.

Accordingly, Misc. (J) Case stands disposed of."

14. On bare perusal of the aforesaid order would show that there is no mention about the names of the respondent Nos. 6 ad 7 in the said order. It also appears that the Trial Court in the said order has allowed the petition filed by the respondent Nos. 6 ad 7 on the ground that the plaintiff (the present petitioners) do not have any objection to the said impleadment, which is not the truth as the petitioners had objected the impleadment of respondent Nos. 6 ad 7 by filing a written objection before the Trial Court which is annexed along with this revision petition as Annexure- 3.

15. It has also been admitted by the learned counsel for the respondent Nos. 6 ad 7 that the respondent Nos. 6 ad 7 have not annexed or produced the copies of the agreement for sale which is purported to be entered into by respondent Nos. 6 ad 7 with two of the legal heirs of original seller of the land, therefore, it appears that the no materials were before the Court for consideration on the basis of which the prayer of respondent Nos. 6 ad 7 was allowed by the Trial court apart from the impleadment petition filed by the said respondent. Moreover, it also appears that as apparently the impugned order is

erroneous to the extent that it mentions that plaintiff has no objection to the said impleadment orders, whereas, in fact the plaintiffs (present petitioners) had objected to such impleadment. As the plaintiff is the *Dominus Litis* in a case and he or she has right to choose the defendants in a case. As from the materials on record, it appears that the suit i.e., Title Suit No. 322/2016 was preferred by the petitioners as plaintiffs seeking redressal for the grievances against only the legal heirs Gallendra Momin.

16. For the aforesaid reason, it appears that there is total non-application of mind by the Trial Court in passing the impugned order dated 29.02.2020 and, therefore, same is not sustainable.

17. For the reasons stated above, the impugned order dated 29.02.2020 passed in Misc.(J) Case No. 46/2020 in connection with Title Suit No. 322/2016 is hereby set aside.

18. The names of respondent Nos. 6 ad 7, which were impleaded on the basis of impugned order, shall be strike out from the plant in Title Suit No. 322/2016.

19. This Civil Revision Petition is accordingly allowed and disposed of.

JUDGE

Comparing Assistant