

GAHC010137592023



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

Case No. : CRP(IO)/190/2023

SIRAJ UDDIN

S/O- LATE TOIOB ALI, R/O- VILL.- FULBARI (KHAGKANDI), P.O. KALIGANJ
BAZAR, P.S. AND DIST. KARIMGANJ, ASSAM

VERSUS

AJIR UDDIN AND 5 ORS.

S/O- LATE TOIOB ALI, R/O- VILL.- FULBARI (KHAGKANDI), P.O. KALIGANJ
BAZAR, P.S. AND DIST. KARIMGANJ, ASSAM

2:ESSA BIBI

D/O- LATE TOIOB ALI
R/O- VILL.- FULBARI (KHAGKANDI)
P.O. KALIGANJ BAZAR
P.S. AND DIST. KARIMGANJ
ASSAM

3:ASMA BEGUM

W/O- ABDUL MALIK
D/O- LATE TOIOB ALI
R/O- VILL.- SAGAR PAR
P.O. CHATAL
P.S. AND DIST. KARIMGANJ
ASSAM

4:ABU SUFIAN (MINOR)

S/O- LATE BURHAN UDDIN
REPRESENTED BY HIS MOTHER
THE OPPOSITE PARTY NO. 4.

5:MUSSTT. AFIA BEGUM

W/O- LATE BURHAN UDDIN

R/O- VILL.- FULBARI (KHAGKANDI)
P.O. KALIGANJ BAZAR
P.S. AND DIST. KARIMGANJ
ASSAM

6:THE SUB-REGISTRAR
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSA

For the Petitioner(s) : Ms. R. Choudhury, Advocate

For the Respondent(s) : Mr. S. Y. Ahmed, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 04.03.2024

1. The instant petition under Article 227 of the Constitution has been filed challenging the order dated 18.05.2023 whereby the learned Court of the Munsiff No.1, Karimganj had rejected the petition filed by the Plaintiff to reject the Expert Report dated 17.03.2020 and further seeking a direction to send the thumb impression of the plaintiff for examination.

2. The learned counsel appearing on behalf of the Petitioner submitted that there was a mistake committed by the lawyers conducting the case of not availing the opportunity in terms with Order XXVI Rule 10(2) of the Code seeking the cross-examination of the Commissioner and thereupon filing an appropriate application if something could be discerned on the basis of the said cross-examination. She further submitted that she would not like to press the instant petition however liberty may be given to the Petitioner to avail the remedies under Order XXVI Rule 10 of the Code of Civil Procedure, 1908.

3. Taking into account the above, this Court closes the instant petition. However taking into account that there is a vital right conferred upon the parties to the suit to examine the Commissioner in terms with Order XXVI Rule 10(2), this Court grants liberty to the plaintiff/petitioner to file an appropriate application before the learned Court of the Munisiff No.1 on or before the next date so that the learned Court below can take appropriate decision on the said aspect.
4. Taking into account that both the parties are duly represented, this Court directs both the parties to appear before the learned Trial Court again on 27.03.2024 and the plaintiff/petitioner would be at liberty to file an application on or before the said date in terms with Order XXVI Rule 10(2) of the Code and if such application is filed, the learned Court below shall take appropriate decision in accordance with law without being influenced by the order dated 18.05.2023.
5. The interim order which was passed on 26.06.2023 stands vacated.

JUDGE

Comparing Assistant