

GAHC010147192023



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

Case No. : CRP(IO)/208/2023

PHANINDRA MOHAN DAS
S/O LATE HARICHARAN DAS, R/O NO. 1 SALBARI, HOUSE NO. 102,
PANCHATIRTHA PATH, P.O. AND P.S.-NOONMATI, DIST- KAMRUP (M),
GUWAHATI-20, ASSAM, PIN-781020

VERSUS

PRADIP CHANDRA DAS
S/O LATE HARI CHARAN DAS, R/O NO. 1 SALBARI, P.O. AND P.S.-
NOONMATI, DIST- KAMRUP (M), GUWAHATI-781020, ASSAM

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : DR P C MAZUMDAR (R-1)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

11.03.2024

The instant application under Article 227 of the Constitution read with

Section 151 of the Code of Civil Procedure, 1908 (for short, the Code) is directed against the order dated 25.04.2023 passed in Title Suit No.30/2019. The record reveals that on 08.01.2024, the counsel representing the sole respondent had filed the *vakalatnama*. However, none has appeared today when the matter is taken up for consideration.

2. This Court has also taken note of that the impugned order dated 25.04.2023 relates to an application filed by the petitioner as plaintiff for withdrawal of the suit with liberty, taking into account that the Government was not made a party and further without issuance of notice under Section 80 of the Code, the suit was filed. This Court further has taken note of that by the impugned order dated 25.04.2023, the learned trial court had also observed that the said application filed by the petitioner/plaintiff would be taken up pursuant to the disposal of the application filed by the defendant challenging the maintainability of the suit under Section 154 of the Assam Land and Revenue Regulations, 1886.

3. This Court having heard the learned counsel for the petitioner is of the view that the right to withdraw the suit simpliciter is unfettered. However, when a suit is sought to be withdrawn with liberty to re-file, then in that circumstances, the Court can permit the plaintiff to withdraw the suit subject to fulfilling the conditions as stipulated under Sub-Rule 3 of Rule 1 of Order XXIII. From the impugned order, it reveals that the learned trial court did not address to the said aspect of the matter, rather had committed an illegality in deferring the decision of the said application seeking withdrawal of the suit with liberty, after deciding the application seeking dismissal of the suit on maintainability. In the opinion of this Court, the same requires to be interfered with.

4. Accordingly, this Court duly interferes with the order dated 25.04.2023.

This Court further directs the learned trial court first to decide the application filed by the petitioner/plaintiff seeking withdrawal of the suit with liberty and as to whether the pre-conditions stipulated in Sub-rule 3 of Rule 1 of Order XXIII are duly satisfied.

5. This Court further finds it relevant to take note of that vide order dated 30.08.2023, the further proceedings in Title Suit No.30/2019 was stayed. This stay order is vacated and the parties herein are directed to appear before the learned trial court on 10.04.2024 for further proceeding with the suit as directed above.

6. With the above observations and directions, this petition stands allowed.

JUDGE

Comparing Assistant