

GAHC010148252024



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

**Case No. : CRP(IO)/290/2024**

REBAT PAYENG @ REBOT PAWE AND ANR  
S/O- LATE MULARAM PAYENG @ MULARAM PAWE, R/O- VILL.- UJANI  
MIRI GAON, P.O. PAHUMARA, PS. NORTH LAKHIMPUR, MOUZA-  
NOWBOICHA, DIST. LAKHIMPUR, ASSAM

2: GAUTAM PAYENG @ GAUTOM PAWE  
S/O- LATE MULARAM PAYENG @ MULARAM PAWE  
R/O- VILL.- UJANI MIRI GAON  
P.O. PAHUMARA  
PS. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST. LAKHIMPUR  
ASSA

VERSUS

NAKUL PAWE AND 10 ORS.  
S/O- SRI RAMDHAN PAWE, R/O- VILL.- DIKHOWMUKHIA, P.O. PAHUMARA,  
P.S. NORTH LAKHIMPUR, MOUZA- NOWBOICHA, DIST.- LAKHIMPUR,  
ASSAM

2:GOLAP PAWE  
S/O- LATE KEHIRAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR  
ASSAM

3:ANIL PAWE  
S/O- LATE SHISHURAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA

P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR  
ASSAM

4:RANU PAWE  
S/O- LATE SHISHURAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR  
ASSAM

5:ANIMA PAWE  
D/O- LATE SHISHURAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR  
ASSAM

6:SABITA PAWE  
D/O- LATE SHISHURAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR  
ASSAM

7:PUSHPALATA PAWE  
D/O- LATE SHISHURAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR  
ASSAM

8:GITUMONI PAWE  
D/O- LATE SHISHURAM PAWE  
R/O- VILL.- DIKHOWMUKHIA  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- NOWBOICHA  
DIST.- LAKHIMPUR

ASSAM

9:SMTI CHIKUN PAWE @ CHIKUN PAYENG  
W/O- LATE HEMADHAR PAYENG  
R/O- VILL.- PAHUMARA UJONI MIRI GAON  
P.O. PAHUMARA  
P.S. NORTH LAKHIMPUR  
MOUZA- KAMALABARIA  
DIST. LAKHIMPUR  
ASSAM

10:ANANTA PAWE  
S/O- LATE HEMADHAR PAYENG  
R/O- VILL.- PAHUMARA UJONI MIRI GAON  
P.O. PAHUMARA  
PS. NORTH LAKHIMPUR  
MOUZA- KAMALABARIA  
DIST. LAKHIMPUR  
ASSAM

11:SMTI NIYADA PAWE  
D/O- HEMADHAR PAYENG  
R/O- VILL.- PAHUMARA UJONI MIRI GAON  
P.O. PAHUMARA  
PS. NORTH LAKHIMPUR  
MOUZA- KAMALABARIA  
DIST. LAKHIMPUR  
ASSA

**Advocate for the Petitioner** : MR B KAUSHIK, MR. S HAZARIKA,S ACHUMI,K BHARALI

**Advocate for the Respondent** : ,

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 12.08.2024**

Heard Mr. B. Kaushik, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners, namely, Rebat Payeng @ Rebot Pawe and Gautam Payeng @

Gautom Pawe have put to challenge the correctness or otherwise of the order dated 25.04.2024, passed in Title Suit No. 5/2018, passed by the learned Civil Judge (Senior Division), Lakhimpur.

3. It is to be noted here that vide impugned order, dated 25.04.2024, the learned Civil Judge (Senior Division), Lakhimpur has dismissed the petition, being No. 289/2024, for amendment in the plaint, under Order 6 Rule 17, read with Section 151, Code of Civil Procedure.

4. The background facts, leading to the filing of the present petition, are adumbrated herein below:

“The petitioners, as plaintiffs, had instituted a Title Suit, being Title Suit No. 5/2018, before the Court of learned Civil Judge (Senior Division), Lakhimpur for a decree by evicting the defendants and demolishing the semi-permanent house constructed by the defendants over the suit land and to hand over the possession to them and to grant permanent injunction against the defendants from entering into the suit land measuring 6 Bighas 1 Katha 12 Lechas, after granting decree in their favour. Thereafter, notice was issued to the defendants and accordingly, the defendants appeared before the learned trial Court. Thereafter, the defendant No. 1 effected a compromise with the present petitioners in respect of a plot of land measuring 1 Bigha 3 Kathas 4 Lechas, upon which the learned trial Court had allowed the petition for compromise with the defendant No. 1 and prepared a decree. Thereafter, the defendant Nos. 2 and 3 had contested the said title suit, and submitted their written statements. Thereafter, the learned trial Court had framed the issues. And when the petitioners prepared the affidavit in evidence, then they noticed that the earlier schedule of the suit has to be amended after the suit with

the defendant No. 1 was compromised, otherwise the decree, if granted would be inexecutable. Therefore, they had filed a petition for amendment of the plaint, especially Schedule 'B' of the plaint in respect of a plot of land measuring 4 Bighas 3 Kathas 8 Lechas covered by Periodic Patta No. 57, Dag Nos. 151 and 53 of Dikhowmukhiya revenue map of Nowboicha Mouza, under Nowbhoicha Revenue Circle in Lakhimpur district. But, the learned trial Court had dismissed the petition on the ground that it had already framed the issues and the circumstances of the suit need to be examined keeping in perspective to Order 6 Rule 17, Code of Civil Procedure, which postulates that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Thereafter, the learned trial Court has dismissed the prayer, vide impugned order dated 25.04.2024, on the ground that allowing the prayer of the plaintiffs would tantamount to great abuse of the process of law and cause injustice to the other party."

5. Now the question before this Court is when the trial in civil cases commences.

6. Mr. Kaushik, learned counsel for the petitioners, referring to a decision of Hon'ble Supreme Court in the case of **Vidyabai & Ors. vs. Padmalatha & Anr.**, reported in **(2009) 2 SCC 409**, especially to paragraph No. 8, submits that the date, on which the issues are framed is the date for first hearing and the provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding, and filing of an affidavit in lieu of examination-in-chief of the witness, would amount to commencement of

proceeding. Mr. Kaushik further submits that as here in this case, the affidavit, in lieu of examination-in-chief of the witnesses, was not filed, the trial had not started here in this case. Mr. Kaushik has also referred to another decision of Hon'ble Supreme Court in **Ganesh Prasad vs. Rajeshwar Prasad & Ors.**, reported in **2023 SCC OnLine SC 256**, and submits that without amendment of the plaint if a decree is passed, then the same would not be executable as after compromise of the suit with the defendant No. 1, the claim of the petitioners/plaintiffs in respect of the suit land would be only 4 Bighas 3 Kathas 8 Lechas, covered by Periodic Patta No. 57, Dag Nos. 151 and 53 of Dikhowmukhiya revenue map of Nowboicha Mouza, under Nowbhoicha Revenue Circle in Lakhimpur district. Referring to paragraph No. 36 of the aforesaid judgment, Mr. Kaushik further submits that where the amendment is sought before commencement of trial, the Court ought to have been liberal in its approach. Mr. Kaushik, therefore, submits that this petition may be allowed by setting aside the impugned order dated 25.04.2024.

7. Having heard the submission of Mr. Kaushik, learned counsel for the petitioners, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 25.04.2024, and also gone through to the relevant provisions of law i.e. the proviso of Order 6 Rule 17 of the Code of Civil Procedure and the decisions referred by Mr. Kaushik.

8. As in view of the decision of Hon'ble Supreme Court in **Vidyabai** (supra), the trial commences only after filing of affidavit in lieu of examination-in-chief of the witnesses and as here in this case, the petitioners, as plaintiffs, had not submitted the affidavit in lieu of examination-in-chief of the witnesses, this Court is of the considered opinion that the trial has not commenced and as such, the bar of Order 6 Rule 17 of the Code of Civil Procedure in amendment of

the plaint, is not applicable here in this case.

9. Another aspect of the matter, which should not lost sight of, is that after effecting compromise with the defendant No. 1, in respect of the land measuring 1 Bigha 3 Kathas 4 Lechas, now the claim of the petitioners remained for a plot of land measuring 4 Bighas 3 Kathas 8 Lechas, instead of 6 Bighas 1 Katha 12 Lechas, only. Unless the Schedule is amended for 4 Bighas 3 Kathas 8 Lechas of land, the decree has to be passed for entire 6 Bighas 1 Katha 12 Lechas of land and in such event, the same would be inexecutable. From this stand point also the prayer of the petitioners appears to be justified. But, unfortunately, this aspect eschewed consideration of the learned trial Court.

10. In the given facts and circumstances, this Court is of the view that there is sufficient merit in this petition and accordingly, the same stands allowed. The impugned order dated 25.04.2024, in Title Suit No. 5/2018 stands set aside and quashed and the matter is remanded back to the learned trial Court with a direction to allow the petitioners to amend the Schedule 'B' of the plaint and thereafter, proceed to hear and dispose of the suit in accordance with law.

11. In terms of above, this revision petition stands disposed of.

**JUDGE**

**Comparing Assistant**