

GAHC010149182024



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

**Case No. : CRP(IO)/302/2024**

ABHAY KALITA  
S/O- LATE NABIN KALITA,  
R/O WARD NO-4, RANGIA BAZAR,  
P.O AND P.S- RANGIA,  
DIST- KAMRUP, ASSAM PIN-781354

VERSUS

BISWA NATH JAJODIA  
S/O- LATE BAJRANGALAL JAJODIA,  
R/O- RANGIA TOWN , WARD NO-4, RANGIA BAZAR,  
P.O AND P.S- RANGIA, PIN-781354,  
DIST- KAMRUP , ASSAM

**Advocate for the Petitioner** : MR. A PAUL,

**Advocate for the Respondent** : ,

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

**ORDER**

**27.08.2024**

Heard Mr. A. Paul, learned counsel for the petitioner.

**2.** This petition, under Article 227 of the Constitution of India read with Section 151 of the C.P.C., is directed against the order dated 18.08.2022, passed by the learned Civil Judge (Senior Division), Kamrup, Amingaon, in Misc. (J) Case

No. 172/2022, corresponding to Title Appeal No. 11/2019.

**3.** It is to be noted here that vide order dated 18.08.2022, the learned Civil Judge (Senior Division), Kamrup, Amingaon has dismissed the petition filed by the petitioners, to adduce some documents as additional evidence, under Order XLI Rule 27 of the C.P.C.

**4.** Mr. Paul, learned counsel for the petitioner submits that the petitioner has instituted one title appeal, being Title Appeal No. 11/2019, against the judgment and decree dated 01.03.2019, passed by the learned Munsiff, Kamrup, Rangia in Title Suit No. 11/2014. Mr. Paul further submits that while the Title Appeal No. 11/2019, was pending for final disposal before the learned Civil Judge (Senior Division), Kamrup, Amingaon, the petitioner filed a petition to adduce some documents as additional evidence, including challans and rent receipts, under Order XLI Rule 27 of the C.P.C. and upon the said petition, Misc. (J) Case No. 172/2022 was registered. But, after hearing learned counsel for both the parties, the learned Civil Judge (Senior Division), Kamrup, Amingaon has dismissed the petition, vide order dated 18.08.2022, and thereafter, the petitioner filed another petition seeking review of the said order with one R.T.I. reply received by him in connection with the case. But, the same was also dismissed by learned Civil Judge (Senior Division), Kamrup, Amingaon, vide order dated 28.07.2023, in Misc. (J) Case No. 229/2022.

**5.** Mr. Paul, referring to order, dated 09.04.2024, passed by a coordinate bench of this Court, in CRP(IO) No. 389/2023, where in the petition filed by the petitioner in that case was allowed, by setting aside the order dated 18.08.2022, passed in Misc. (J) Case No. 171/2022 and order dated 28.07.2023, passed in Misc. (J) Case No. 228/2022, relying upon a decision of Hon'ble Supreme Court in the case of **Union of India vs. Ibrahim Uddin and Another**, reported in **(2012) 8**

**SCC 148.** Mr. Paul also submits that the present case is also squarely covered by the aforesaid order, and therefore, Mr. Paul has contended to allow this petition.

**6.** Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the order dated 18.08.2022, passed in Misc. (J) Case No. 172/2022 and order dated 28.07.2023, passed in Misc. (J) Case No. 229/2022, by the learned Civil Judge (Senior Division), Kamrup, Amingaon and also gone through the decision of Hon'ble Supreme Court in the case of **Ibrahim Uddin (Supra)**.

**7.** It is to be noted here that in the case of **Ibrahim Uddin (Supra)**, the Hon'ble Supreme Court has observed that the stage of taking an application under the Order XLI Rule 27 of the C.P.C. is at the time when the Court takes upon the said appeal for final disposal.

**8.** In the instant case, admittedly, the appeal was not taken up for hearing for final disposal and as such, there is no bar in allowing the petitioner to adduce some documents as additional evidence, including challans and rent receipts.

**9.** Thus, having tested the impugned order dated 18.08.2022, passed by learned Civil Judge (Senior Division), Kamrup, Amingaon, in Misc. (J) Case No. 172/2022, on the touchstone of the principles laid down by Hon'ble Supreme Court, in the case of **Ibrahim Uddin (Supra)**, this Court is of the view that the same failed to withstand the legal scrutiny and accordingly, the same stands set aside and quashed. Consequently, the order dated 28.07.2023, passed in Misc. (J) Case No. 229/2022, also stands set aside and quashed.

**10.** It is provided that the learned Civil Judge (Senior Division), Kamrup, Amingaon shall take up the application under Order XLI Rule 27 of the C.P.C. at the time of final disposal of the appeal.

**11.** In terms of above, this petition stands disposed of. The parties have to bear their own costs.

**Comparing Assistant**

**JUDGE**