

GAHC010151862024



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

Case No. : CRP/80/2024

RANJIT DAS
S/O- LATE MONINDRA DAS, R/O- NABAPALLY, KARATIGRAM, RONGPUR
PART-IV, P.O. AND P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

ANUPAMA DAS AND ANR
W/O- LATE SUNIL DAS, R/O- NABAPALLY, KARATIGRAM, RONGPUR PART-
IV, P.O. AND P.S. SILCHAR, DIST. CACHAR, PIN- 788009, ASSAM

2:SUBHENDU DAS
S/O- LATE SUNIL DAS
R/O- NABAPALLY
KARATIGRAM
RONGPUR PART-IV
P.O. AND P.S. SILCHAR
DIST. CACHAR
PIN- 788009
ASSA

Advocate for the Petitioner : MR. P K DEKA, MR. I H LASKAR, MR. P DAIMARY, MR. R.
KARIM, MS. N M LONGKENG

Advocate for the Respondent : MR. K K DEY (R-1,2),

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

17.09.2024

- 1.** Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr. K.K. Dey, learned counsel for the respondents.
- 2.** This application under Section 115 of the Code of Civil Procedure, 1908 impugning the order dated 26.06.2024, passed by the learned Civil Judge (Sr. Div)-cum-Asstt. Sessions No. 2, Cachar, Silchar in Misc.(J) No. 144/2023, arising out of Title Suit No. 95/2017.
- 3.** The facts relevant for consideration of the instant civil revision in brief, are as follows: that the predecessor-in-interest of the present respondents, namely, Sunil Das, had filed a suit for specific performance of contract before the Court of the learned Civil Judge (Sr. Div) No. 2, Cachar, Silchar. However, during the pendency of the suit, the plaintiff, Sunil Das expired.
- 4.** Thereafter, the present respondents filed an application under Order 1, Rule 10 read with Section 151 of the Code of Civil Procedure, for impleading the legal heirs, namely, the present respondents, as substituted plaintiffs in place of deceased plaintiff. Thereafter, it appears that by the impugned order dated 26.06.2024, the application of the respondents was allowed by the Trial Court and both the respondents were allowed to be substituted as plaintiffs in place of deceased plaintiff, namely, Sunil Das.
- 5.** The learned counsel for the petitioner has submitted that the Trial Court was wrong in allowing the petition as the petition was not filed under proper provisions of law. The petition ought to have been filed under Order 22 Rule 3(1) of the Code of Civil Procedure. However, the respondents have filed

the petition under wrong provisions.

6. It is also submitted by the learned counsel for the petitioner that the Trial Court was wrong in observing that in spite of repeated opportunity given to the opposite parties, (petitioner in this case), however, no objection was filed and neither the petitioner objected at the time of hearing.

7. The learned counsel for the petitioner submits that the Trial Court made a wrong observation as apparently on 09.07.2024. The petitioner had filed a written objection objecting to the impleadment to the respondents. He also submits that a copy of the objection filed by the petitioner was also received by the learned counsel for the respondent's side. He also submits that the petition for substitution was not filed within the period of limitation as prescribed under Article 120 of the Limitation Act, 1963 and there was a delay of 403 days and said aspect was not considered by the Trial Court. He submits that the suit of the plaintiff had already been abated and there was no application for setting aside the abatement to this case.

8. On the other hand, the learned counsel for the respondents has submitted that apparently, the application for substituting the legal heirs of deceased plaintiff appears to have been filed under wrong provisions. However, he also submits that when empowered to do a thing exists in a Court mere quoting wrong provisions in the application would not invalidate the order passed by the Trial Court. He submits that from records, it appears that the present petitioner has in fact filed a written objection against the petition filed by the present respondents on 16.08.2023, which might have been overlooked by the Trial Court due to inadvertence. Hence, he prays that the matter may be disposed of by giving a direction to the Trial Court to consider the objection filed by the petitioner afresh.

9. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record. For sake of convenience, the impugned order passed by the Trial Court on 26.06.2024 in Misc.(J) No. 144/2023 is quoted herein below:-

"26-06-2024

Both sides are represented.

The petitioners Anupama Das and Subhendhu Das had filed a petition bearing no. 106/7 under Order 1 Rule 10 read with section 151 CPC for impleading them in place of original plaintiff Sunil Das in the present case.

The petitioners have pleaded that Anupama Das is the wife of the original plaintiff Sunil Das and Subhendhu Das is the son of the original plaintiff Sunil Das who expired on 22-09-2021.

The petitioners have pleaded that they came know about the existence of the present suit only on 14-01-2023 when they were cleaning their house and they did not had prior intimation regarding this case.

The petitioners further submitted that being the

legal heirs of the original plaintiff their right to sue survives and their Impleadment in the present suit is necessary.

The petitioners have therefore, prayed for, impleading their names as plaintiff Nos. 1 (a) and 1(b).

Although repeated opportunities were given to the opposite party/defendant, but neither filed any objection nor did he objected to the petition of the petitioners at the time of the hearing.

As the opposite party / defendant has no objection in respect of the aforesaid petition, petition bearing no. 106/7 is hereby allowed.

Misc. (J) Case No. 144/2023 disposed of accordingly."

10. Apparently, on perusal of the above order, it appears that the petition filed by the respondents was allowed mainly on the ground that the Trial Court was of the view that the present petitioner neither filed any objection nor objected to the petition filed by the respondents. No other reason has been mentioned in the impugned order for allowing the petition filed by the respondents. It also apparently appears that the Trial Court has overlooked the written objection filed by the present petitioner opposing the prayer for

impleadment.

11. The Trial Court has also not considered any of the grounds taken by the present petitioner opposing the petition for impleadment, filed by the respondents.

12. In view of the above, this Court is of considered opinion that the impugned order is not sustainable in law and hence, same is set aside.

13. The Trial Court is directed to consider afresh the application which was filed by the present respondents on 27th January, 2023, after taking into consideration, the written objection filed by the present petitioner on 16.08.2023 and after giving an opportunity of hearing both the sides.

14. With the above observations, this revision petition is hereby disposed of.

JUDGE

Comparing Assistant