

GAHC010165132024



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

Case No. : CRP(IO)/309/2024

GITIKA DEVI AND 7 ORS
DAUGHTER OF LATE MAHODHAR SARMA,
RESIDENT OF VILLAGE- MUGURIA,
MOUZA- UTTAR BAJALI, DISTRICT- BAJALI,
ASSAM, P.S.- PATACHARKUCHI,
PIN- 781326.

2: TRIPTI DEVI
DAUGHTER OF LATE MAHODHAR SARMA
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326.

3: SARAJU DEVI
DAUGHTER OF LATE MAHODHAR SARMA
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326.

4: DHIRA DEVI
DAUGHTER OF LATE MAHODHAR SARMA
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326.

5: RASHMI DEVI
DAUGHTER OF LATE MAHODHAR SARMA
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326.

6: GUPTAMONI SARMA
SON OF LATE MAHODHAR SARMA
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326.

7: HRISHIKESH MADHUKALYA
SON OF LATE RUNU DEVI
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326.

8: HIRAKESH MADHUKALYA
SON OF LATE RUNU DEVI
RESIDENT OF VILLAGE- MUGURIA
MOUZA- UTTAR BAJALI
DISTRICT- BAJALI
ASSAM
P.S.- PATACHARKUCHI
PIN- 781326

VERSUS

GOPESWAR KALITA AND ANR
SON OF SRI NIRANJAN KALITA,
RESIDENT OF VILLAGE- MUGURIA (DAKHINPAR),
MOUZA- UTTAR BAJALI,
P.S.- PATACHARKUCHI,
DISTRICT- BAJALI, ASSAM.
PIN- 781326.

2: JATINDRA SARMA
SON OF LATE ARABINDA SARMA

RESIDENT OF VILLAGE- MUGURIA
PATHSALA
P.S.- PATACHARKUCHI
ASSAM. PIN- 781326

Advocate for the Petitioner : MR. S P SHARMA, K AHMED

Advocate for the Respondent : ,

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

28.08.2024

Heard Mr. S.P. Sharma, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the order dated 14.06.2024, passed by the learned Civil Judge, Senior Division, Bajali in Title Suit No. 08/2023.

3. It is to be noted here that vide order dated 14.06.2024, the learned trial court has decided to hear the parties on the evidence tendered by them to decide the additional issue i.e. whether the suit is bound by res-judicata.

4. Mr. Sharma, learned counsel for the petitioner submits that the land in question in the Title Suit No. 08/2023 and also the Title Suit No. 02/2002 is same and the said aspect has already been dealt with by the learned Civil Judge, vide order dated 29.02.2020, in the petition filed by the petitioners for impleading them in the Title Suit No. 08/2023 and as the learned trial court has already decided the factual aspect of the matter, then tendering evidence and considering the same on the same issue is not required to decide the issue of res-judicata. Mr. Sharma further submits that the Title Suit No. 02/2002 was instituted by the present

petitioners, wherein the learned trial court had decreed the suit in favour of the petitioners, vide judgment and decree dated 11.05.2004, and against the said judgment and decree, the respondent No. 2, namely, Jatindra Sarma has preferred one title appeal, being Title Appeal No. 09/2004, before the first appellate court and the first appellate court, vide judgment and decree dated 22.09.2005, has upheld the judgment and decree passed by the learned trial court and against the aforesaid judgment and decree of the first appellate court, the respondent No. 2 had preferred one second appeal before this court and vide judgment and order dated 28.04.2015, in R.S.A. No. 02/2006, this court has affirmed the judgment and decree passed by the first appellate court and also by the learned trial court. Mr. Sharma also submits that being the land in question in Title Suit No. 02/2002 and in Title Suit No. 08/2023 are same and since the learned Civil Judge, Senior Division, Bajali in the order dated 29.02.2020, has already recorded a finding and no further determination of the factual aspect is required and as such, the impugned order dated 14.06.2024, is illegal and fails to withstand the legal scrutiny and therefore, it is contended to set it aside.

5. 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 impugned order dated 14.06.2024 and also perused the judgment and order of this court dated 28.04.2015, in R.S.A. No. 02/2006 and also the order dated 29.02.2020.

6. It appears that vide order dated 29.02.2020, learned Civil Judge, Senior Division, Bajali has allowed the impleadment petition filed by the petitioners in Title Suit No. 08/2023 and while disposing of the said petition filed to that effect, the learned Civil Judge, Senior Division, Bajali has observed as extracted below:-

“Going through the judgment and decree passed in T.S. No.

02/2002, it appears that right, title and interest over the suit land of the said suit has been decreed in favour of the predecessors of the present petitioners and the registered sale deed No. 263/2001 has been declared fraudulent and issued precept for cancellation of the same. Putting glance on the suit land of the present suit it appears that the suit land of T.S. No. 02/2002 and of this present suit is the same and it is claimed by the present plaintiff on the basis of an agreement executed by Jatindra Sarma whose title arose vide Sale Deed No. 263/2001.”

7. In view of the aforesaid finding of the learned Civil Judge, Senior Division, Bajali in the order dated 29.02.2020, this court is of the view that to decide the issue of res-judicata, further hearing of the parties on the evidence tendered by them is not required. And in that view of the matter, the impugned order dated 14.06.2024, appears to be illegal and arbitrary and as such, the same stands set aside and the matter is remanded back to the learned Civil Judge, Senior Division, Bajali to decide the additional issue, i.e. whether the suit is bound by res-judicata or not, on the basis of the materials already placed on record.

8. In terms of above, this Civil Revision Petition stands allowed, at the motion stage itself.

JUDGE

Comparing Assistant