

GAHC010169392024



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

Case No. : CRP(IO)/308/2024

SAMIRUDDIN
S/O- LT. KALIMUDDIN,
R/S.- MAGURMARI,
P.O.- KANDHULIMARI,
P.S.- DHING, DISTRICT- NAGAON,
ASSAM, PIN- 782123.

VERSUS

MUSST ANUWARA BEGUM AND 4 ORS
W/O- LT. TAMIZUDDIN,
R/O- MAGURMARI,
P.O.- KANDHULIMARI,
P.S.- DHING, DISTRICT- NAGAON,
ASSAM, PIN- 782123.

2: BABUL HAZARIKA
S/O- LT. TAMIZUDDIN
R/O- MAGURMARI
P.O.- KANDHULIMARI
P.S.- DHING
DISTRICT- NAGAON
ASSAM
PIN- 782123.

3: MONUWARA BEGUM
W/O- ABDUL WAHID CHOUDHURY
D/O- LT. KALIMUDDIN
R/O- SAIMORA BORI
P.O.- KANDHULIMARI
P.S.- DHING
DISTRICT- NAGAON
ASSAM
PIN- 782123.

4:JARINA KHATUN
W/O- LT. SUKUR ALI
D/O- LT. KALIMUDDIN
R/O- SONARIGAON
NEAR MASJID
P.O.- SONARIGAON
P.S.- DHING
DISTRICT- NAGAON
ASSAM
PIN- 782123.

5:MUSST. RASHIDA KHATUN
W/O- LT. ABDUL RAHIM
D/O- LT. KALIMUDDIN
R/O- JURIA
COLONY JALAH
P.O. AND P.S.- JURIA
DISTRICT- NAGAON
ASSAM
PIN- 782124

Advocate for the Petitioner : M HOSSAIN, MR J HUSSAIN,MD A WADUD

Advocate for the Respondent : ,

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

27.09.2024

Heard Mr. M. Hossain, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the impugned order dated 08.07.2024, passed in Title Suit No. 08/2024 and also the impugned order dated 08.07.2024, passed in Misc. (J) Case No. 02/2024, by the learned Civil Judge (Junior Division), No. 1, Nagaon.

3. Mr. Hossain, learned counsel for the petitioner submits that the present respondents have instituted one suit, being Title Suit No. 08/2024, before the learned

Civil Judge (Junior Division), No. 1, Nagaon. Wherein, the learned trial court has issued summon to the present petitioner. But, he did not receive the summon. Later on, he came to know from one Ramjan Ali, who is the profoma defendant in the suit, on 19.03.2024, about the said suit filed by the respondents. Mr. Hossain further submits that having aware of filing of the said suit, the petitioner appeared before the learned trial court and filed a petition on 20.03.2024, along with written statement for vacating the ex-parte order and to allow him to contest the suit. But, vide order dated 08.07.2024, the learned trial court has dismissed the petition, on the basis of a report submitted by the process server that the petitioner has refused to accept the summon from the process server. Thereafter, the learned trial court had proceeded to hear the matter ex-parte. Mr. Hossain also submits that the impugned order is illegal and arbitrary as the learned trial court has accepted the report of the process server in contravention of the Order 5 Rules 17 & 19 of the C.P.C. and therefore, it is contended to set aside and quashed the impugned order 08.07.2024, passed in Title Suit No. 08/2024 and also the impugned order dated 08.07.2024, passed in Misc. (J) Case No. 02/2024, by the learned Civil Judge (Junior Division), No. 1, Nagaon and to allow the present petitioner to contest the said suit filed by the respondents.

4. 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 08.07.2024, passed in Title Suit No. 08/2024 and also the impugned order dated 08.07.2024, passed in Misc. (J) Case No. 02/2024, by the learned Civil Judge (Junior Division), No. 1, Nagaon.

5. It appears that the learned trial court, on the basis of a report furnished by the process server, which is annexed with the petition, at page No. 93, has decided to proceed with the matter against the petitioner ex-parte. The report of the process server indicates that the petitioner had refused to accept the notice. But, it appears that the process server was not examined as required under Order 5 Rule 19 of the C.P.C. and also the report of the process server is not supported by any affidavit.

6. Thus, having examined the impugned order, in the light of the relevant provisions, this court is of the view that the same fails to withstand the legal scrutiny and therefore, the same requires to be interfered with.

7. Accordingly, the impugned order dated 08.07.2024, stands set aside and quashed. Consequently, the order dated 06.03.2024, stands vacated. It is provided that the learned trial court shall accept the written statement filed by the present petitioner and thereafter, to proceed with the matter in accordance with law.

8. In terms of above, this petition stands disposed of, at this motion stage itself.

JUDGE

Comparing Assistant