

GAHC010174072016



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

**Case No. : CRP/377/2016**

BASANT KUMAR BAGARIA  
S/O LT. DUNGARMAL BAGARIA, R/O S.S. ROAD, OLD A.T. ROAD, P.O.  
HAIBARGAON, MOUZA- TOWN, P.S. NAGAON SADAR, DIST- NAGAON,  
ASSAM, PIN-782002

VERSUS

DHARAM CHAND SETHIA and 7 ORS

1.1:PUKHRAJ SETHIA  
WIFE OF LATE DHARAM CHAND SETHIA

1.2:RAKESH SETHIA  
SON OF LATE DHARAM CHAND SETHIA  
BOTH ARE RESIDENTS OF S.S. ROAD ( OLD A.T ROAD)  
P.O - HAIBARGAON  
MOUZA -TOWN  
P.S- NAGAR SADAR  
DIST NAGAON  
ASSAM  
PIN 782002.

1.3:USHA DHAREWA  
D/O - LATE DHARAM CHAND SETHIA

1.4:RENU SANJAY KOTHARI  
D/O LATE DHARAM CHAND SETHIA

1.5:MADHU DILIPKUMAR CHORADIA  
D/O LATE DHARAM CHAND SETHIA  
ADDRESS 1.3

1.4

1.5 IS C/O RAKESH SETHIA  
S.S ROAD ( OLD A.T ROAD) PO HAIBARGAON MOUZA TOWN  
PS NAGAON SADAR  
DIST NAGAON  
ASSAM  
PIN 782002

2:KAMAL SINGH SETHIA

3:PRADEEP KUMAR SETHIA

4:TILOK CHAND SETHIA  
ALL ARE S/O LT. SITA RAM SETHIA  
AND R/O S.S. ROAD OLD A.T. ROAD

P.O. HAIBARGAON  
MOUZA- TOWN  
P.S. NAGAON SADAR  
DIST- NAGAON  
ASSAM  
PIN-782002

5:MAHENDRA KR. BAGARIA  
S/O LT. DUNGARMAL BAGARIA  
AND R/O S.S. ROAD  
OLD A.T. ROAD

P.O. HAIBARGAON  
MOUZA- TOWN  
P.S. NAGAON SADAR  
DIST- NAGAON  
ASSAM  
PIN-782002

6:PRAMOD KR. BAGARIA  
S/O LT. DUNGARMAL BAGARIA  
AND R/O S.S. ROAD  
OLD A.T. ROAD

P.O. HAIBARGAON  
MOUZA- TOWN  
P.S. NAGAON SADAR  
DIST- NAGAON  
ASSAM  
PIN-782002

7:PREMLATA AGARWALA  
D/O LATE DUNGARMAL BAGARIA  
W/O RAJ KUMAR AGARWALA  
C/O TRANS ENCLAVE  
6TH FLOOR A  
R.G.B. ROAD  
NEAR RUPALI PATH  
GUWAHATI-24  
DIST- KAMRUP (M)  
ASSA

For the Petitioner(s) : Mr. U. K. Das, Advocate

For the Respondent(s) : Mr. R. C. Sancheti, Advocate

Date of Hearing : **01.04.2024**

Date of Judgment : **01.04.2024**

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (ORAL)**

1. This is an application filed under Article 227 of the Constitution challenging the order dated 17.05.2016 passed in Misc. (J) Case No.18/2015 arising out of Title Suit No.13/2012 whereby the application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 read with Section 151 of the said Code was rejected by the learned Court of the Munsiff No.1, Nagaon.

2. From the materials on record, it reveals that the plaintiff who is the Petitioner herein has filed the suit for declaration of right, title and interest of the plaintiff over the Schedule-A land; for khas possession of the same and also for permanent injunction. The said suit was registered and numbered as Title

Suit No.13/2012. The defendants thereupon filed their written statement on 11.04.2012 wherein it was categorically mentioned that the defendants are claiming right, title and interest over the Schedule-A land on the basis of a Sale Deed No.5050/78 dated 19.05.1978 executed by one Dungarmal Bagaria in favour of the Sitaram Sethia. Thereupon, the plaintiff did not take any steps. At the stage when the suit was fixed for submission of the evidence on affidavit of the plaintiff, the application under Order VI Rule 17 read with Section 151 of the Code was filed seeking amendment of the plaint thereby to insert paragraph Nos. 4(a) and 4(b) and in addition to that, seeking the reliefs of a decree for cancellation of the said sale deed on the ground that the same is fraudulent, illegal and null and void and a precept be issued in that regard.

3. Upon the said application being filed, the defendants had filed their objections stating inter alia that the plaintiff knew very well about the Deed of Sale as the same was duly mentioned in the written statement which was received by the counsel for the plaintiff on 11.04.2012 and after a lapse of more than 3 (three) years, had filed the said application.

4. The learned Trial Court vide an order dated 17.05.2016 rejected the said application filed by the plaintiff/Petitioner on the ground that there has been no satisfactory explanation to the delay in filing of the application that too when the trial had started. It is against the said order, the instant application has been filed before this Court challenging the order dated 17.05.2016.

5. This Court has heard the learned counsel for the Petitioner as well as the Respondents. The learned counsel appearing on behalf of the Petitioner Mr. U. K. Das submitted that after the written statement was filed, the plaintiff made necessary enquiries and as such there has been a delay. He further submitted

that only after the issues were framed and thereupon at the time when the evidence on affidavit was required to be filed, the plaintiff sought for amendment of the plaint.

6. On the other hand, Mr. R. C. Sancheti, the learned counsel appearing on behalf of the Respondents submitted that this is a clear cut case of negligence on the part of the Petitioner/plaintiff in filing the application seeking the amendment. He further submitted that the plaintiff very well knew about the execution of the Deed of Sale even prior to the filing of the suit. However, in order to mislead the Trial Court as well as this Court, the plaintiff had stated that he only came to know about the execution of the Deed of Sale only after the filing of the written statement. He submitted that if the amendments were allowed, it would impact the defence of limitation which the defendants have a due right as per the statute.

7. Having given the anxious consideration to the relevant submissions, this Court is of the opinion that the issue of limitation or for that matter as to whether any challenge would be barred by limitation cannot be decided at the stage of proceedings under Order VI Rule 17 of the Code. This Court is not unmindful of the fact that Section 3 of the Limitation Act, 1963 confers a statutory right upon the defendants and in the instant case, it has been the specific case of the defendants that the Petitioner/plaintiff knew about the Deed of Sale even prior to the filing of the suit. This Court is also aware of the fact that the entire suit of the plaintiff would become redundant unless the Deed of Sale is put to challenge. It is relevant to mention that the cause of the plaintiff to seek for right, title and interest and recovery of khas possession of the Schedule-A land cannot be effectually adjudicated upon if the Deed of Sale is

not permitted to be put to challenge. Therefore, the amendment sought for is necessary for adjudication of the real question in controversy.

8. In the backdrop of the above, let this Court now take into account the aspect as regards the delay in filing of the application seeking amendment. No doubt, the trial had started in view of the date fixed for filing the evidence on affidavit but taking into account that Order VI Rule 17 is a procedural provision which as per the well settled principles is always subservient to the interest of justice, this Court is of the opinion that the amendment so sought for is required to be allowed. However this Court makes it very clear that while allowing the said amendment, the principle of relation back shall not apply meaning thereby the amendments which have been allowed shall be treated to have been allowed only from the date of filing of the application seeking amendment. In the opinion of this Court, under such circumstances, the Respondents shall not be prejudiced.

9. This Court is also aware of the fact that the suit has progressed substantively for a period of 3 years after the filing of the written statement and on account of the negligence on the part of the plaintiff, the suit had been delayed. Under such circumstances, this Court is of the opinion that some reasonable costs has to be imposed.

10. Accordingly, this Court allows the application being Misc. (J) Case No.18/2015 arising out of Title Suit No.13/2012 thereby permitting the amendments which have been sought for to insert paragraph Nos. 4(a) and 4(b) as well as the reliefs C1 and C2 as detailed out in the amendment application subject to deposit of Rs.25,000/- by the plaintiff before the learned Trial Court.

11. This Court fixes the matter again on 19.04.2024 before the learned Trial Court and on that very date, the petitioner/plaintiff shall file the amended plaint and also deposit the cost of Rs.25,000/- which shall be a condition precedent for acceptance of the amended plaint. This Court further observes that failure to do so, the consequences under Order VI Rule 18 shall duly come into play.

12. With above observations and directions, the instant petition stands disposed of.

13. Interim order passed on 04.10.2016 stands vacated and the learned Trial Court shall proceed with the suit in accordance with law.

**JUDGE**

**Comparing Assistant**