

GAHC010180052018



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

Case No. : CRP(IO)/290/2018

CHINTAMONI MAHANTA
S/O- LATE ATUL CHANDRA MAHANTA, R/O- FOREST SCHOOL,
JALUKBARI, GUWAHATI- 781014, DIST- KAMRUP(M), ASSAM, PRESENTLY
R/O- UDDAI NAGAR, R G ROAD, SUCHILA PATH, H NO. 109(A), P.S-
BASISTHA, GUWAHATI- 22, DIST- KAMRUP(M), ASSAM

VERSUS

ON DEATH OF PUSPA MAHANTA HIS LEGAL HEIRS - PRANATI
BORTHAKUR AND 5 ORS
KAMRUP(M), ASSAM

1.1:PRANATI BORTHAKUR
W/O- LATE PUSPA BORTHAKUR
R/O- LAKHIMI NIWAS
NEAR PANJABARI HIGH SCHOOL
H NO. 07
NAMGHAR PATH
P.S- CHACHAL (SATGAON)
GUWAHATI
DIST- KAMRUP(M)
ASSAM

1.2:AMITAV BORTHAKUR
S/O- LATE PUSPA BORTHAKUR
R/O- LAKHIMI NIWAS
NEAR PANJABARI HIGH SCHOOL
H NO. 07
NAMGHAR PATH
P.S- CHACHAL (SATGAON)
GUWAHATI
DIST- KAMRUP(M)

ASSAM

1.3:ABHINASH BORTHAKUR
S/O- LATE PUSPA BORTHAKUR
R/O- LAKHIMI NIWAS
NEAR PANJABARI HIGH SCHOOL
H NO. 07
NAMGHAR PATH
P.S- CHACHAL (SATGAON)
GUWAHATI
DIST- KAMRUP(M)
ASSAM

2:ATUL CHANDRA MEDHI
S/O- ARABINDA MEDHI
R/O- RAVI ENCLAVE HENGRABARI
P.S- DISPUR
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSAM

3:CUCKOO MEDHI
W/O- ATUL CHANDRA MEDHI
R/O- RAVI ENCLAVE HENGRABARI
P.S- DISPUR
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSAM

4:AJIT THAKUR
S/O- LATE INDRESWAR THAKUR
R/O- RUKMINIGAON
GHY- 22
P.S- DISPUR
DIST- KAMRUP(M)
ASSA

For the petitioner (s) : None appears

For the respondent (s) : Mr. S. Difusa, Advocate
Mr. G. Bharadwaj, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

29.05.2024

None appears on behalf of the petitioner on call.

2. Mr. G. Bharadwaj, the learned counsel appears on behalf of the respondents.

3. It is seen that on the earlier occasion also, the petitioner was not represented for which the instant proceedings were dismissed for non-prosecution. However, subsequently vide an order dated 04.04.2023, the proceedings was restored. In spite of that, none has appeared on behalf of the petitioner on 28.04.2023. Today also none has appeared on behalf of the petitioner. Under such circumstances, this Court takes up the instant proceedings for disposal.

4. The instant petition has been filed challenging the order dated 28.03.2018 passed by the learned Munsiff No.2, Kamrup (M) at Guwahati in Title Suit No.37/2013. A perusal of the said order shows that the petitioner herein who is also the plaintiff had filed two applications before the learned Trial Court. The first application was an application under Order XVI Rule 2 of the Code of Civil Procedure, 1908 (for short, 'the Code') for issuance of summons upon the Senior Sub-Registrar, Kamrup (M) for production of various original Sale Deeds being Sale Deed No.3045 dated 22.02.2008; Sale Deed No.5652/2000 dated 07.08.2000; Sale Deed No.2752 dated 07.05.1999; Sale Deed No.10191/05 dated 22.08.2005; Sale Deed No.2346/98 dated 14.05.1998; Sale Deed No.2763/99 dated

07.05.1999 and Power of Attorney being Deed No.972/05 dated 17.02.2005. In addition to date, vide another petition which was under Order XIII Rule 10 of the Code, the original records of land sale permission vide No.1056/05 bearing File No.1056/05/25 dated 27.06.2005 was sought for from the GMDA, Bhangagarh.

5. The learned Trial Court vide the order dated 28.03.2018 partly allowed the petition No.2949 thereby calling for the official witness from the Office of the Senior Sub-Registrar, Kamrup (M) in respect to the Sale Deed No.3045 dated 22.02.2008. However, the learned Trial Court rejected in respect to calling for the original of the other Sale Deeds on the ground that there was no pleadings in the plaint in respect to those Sale Deeds. As regards the petition No.2950, the same was also rejected on the ground that there was no mention in the pleadings as regards the said sale permission.

6. This Court finds it very pertinent at this stage to take note of the provisions of Order VII Rule 14 of the Code which stipulates that if a plaintiff sues and relies on a particular document, the said has to be enclosed along with the plaint. It is also mentioned that in the circumstance the plaintiff is not in possession of the said document, it has also to be mentioned in the plaint as to in whose possession and power the said document is. In the instant case, the learned Trial Court has rightly passed the impugned order in as much as when there is no mention about those documents, more particularly the other Sale Deeds or the sale permission in the pleadings, the question of issuance of any direction to the authorities to produce those documents was not necessary.

7. Accordingly, this Court finds no merit in the instant petition for which instant petition stands dismissed.

8. This Court further takes note of that vide the order dated 24.05.2023, the further proceedings of Title Suit No.37/2013 was stayed. The said order stands vacated and the parties herein directed to appear before the learned Trial Court on 15.07.2024.

9. Taking into account that the petitioner is not present today, the learned Trial Court shall issue due notice to the petitioner/the plaintiff before further proceedings with the suit.

JUDGE

Comparing Assistant