

GAHC010185572024



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

Case No. : CRP(IO)/366/2024

NANDITA SARKAR
W/O- MEHTAB AHMED, R/O- H. N. ROAD, WARD NO. 8, DHUBRI, P.S. AND
DIST. DHUBRI, ASSAM, PIN- 783301.

VERSUS

RAKESH SARKAR
S/O- LATE NIKHIL CHANDRA SARKAR, R/O- WARD NO. 2 (OLD)/5 (NEW),
BARUPATTI, GAURIPUR, P.S. GAURIPUR, DIST. DHUBRI, ASSAM, PIN-
783331.

Advocate for the Petitioner : MR. A C SARMA, MR G BHARADWAJ,MR B DEORI,MR N
BRAHMA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

27.09.2024

Mr. A.C. Sarma, learned Senior Counsel assisted by Mr. G. Bharwadwaj,
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 03.08.2024, passed in Misc. (J) Case No. 03/2024, arising out of Title Suit

(Probate) No. 01/2023, by the learned Additional District Judge, Dhubri.

3. It is to be noted here that vide impugned order dated 03.08.2024, the learned Additional District Judge, Dhubri has dismissed the petition filed by the petitioner under Order 6 Rule 17 of the C.P.C. to allow her to amend the written statement.

4. Mr. Sarma, learned Senior Counsel appearing for the petitioner submits that the petitioner is the defendant in the suit filed by the plaintiff, being Title Suit (Probate) No. 01/2023. Wherein, the petitioner had already filed written statement and the said suit is pending at the stage of cross-examination of plaintiff's witnesses. Mr. Sarma further submits that the petitioner vide petition No. 58, dated 10.05.2024, under Order 6 Rule 17 of the C.P.C. prays for allowing her to amend the written statement filed by her, incorporating one paragraph, as Para No. 21, which is extracted here in below :-

“21. That, the identity of the named witnesses in the so-called WILL is disputed. The declaration made by the so-called witnesses in the probate petition are neither lawful nor genuine.”

Mr. Sarma also submits that incorporation of the proposed amendment, would not change the nature and character of the suit, as observed by the learned trial court in the impugned order dated 03.08.2024, it would not amounts to birding lacuna and as such, dismissal of the petition by the learned trial court is illegal and arbitrary. Referring to a decision of Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another**, reported in **2022 LiveLaw (SC) 729**, Mr. Sarma submits that all amendments are to be allowed, which are necessary for determining the real question in controversy. It is the further submission of Mr. Sarma that it does not

cause any injustice or prejudice to the other sides also. Therefore, it is contended to allow the petition.

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 03.08.2024, passed in Misc. (J) Case No. 03/2024, arising out of Title Suit (Probate) No. 01/2023, by the learned Additional District Judge, Dhubri and also perused the decision of Hon'ble Supreme Court in the case of **Sanjeev Builders Private Limited** (supra).

6. It appears that incorporation of paragraph No. 21 in the written statement filed by the present petitioner is very much necessary in order to determine the real question in controversy and the same would not cause any prejudice to the other sides and as observed by the learned trial court it would not amounts birding lacuna by the present petitioner. In the decision referred by Mr. Sarma, Hon'ble Supreme Court has categorically stated that where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer may be allowed. It is however a fact that there is delay in filing the petition. but, delay alone cannot be a ground to refuse the amendment.

7. In that view of the matter, the impugned order dated 03.08.2024, fails to withstand the legal scrutiny and therefore, the same requires to be interfered with.

8. Accordingly, the impugned order dated 03.08.2024, passed in Misc. (J) Case No. 03/2024, arising out of Title Suit (Probate) No. 01/2023, by the learned Additional District Judge, Dhubri stands set aside and quashed. It is further provided that the learned trial court shall allow the petitioner to incorporate the paragraph No. 21 in the written statement filed by the present petitioner and

thereafter, to proceed with the matter in accordance with law.

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

Comparing Assistant

JUDGE