

GAHC010187752023



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

Case No. : CRP(IO)/273/2023

SHEPHALI SINHA
W/O DILIP SINHA, D/O LATE BIR KUMAR SINHA, R/O 14 CANTONMENT,
PINEWALK, OPPOSITE CIVIL HOSPITAL, SHILLONG-1, MEGHALAYA

VERSUS

CHABI SENA DEBI AND 2 ORS
W/O LATE BIR KUMAR SINHA, R/A VILL-RAJARGAON, P.O. AND P.S.-
PATHARKANDI, DIST-KARIMGANJ

2:MOUSUMI SINHA
D/O LATE BIR KUMAR SINHA
R/A VILL-RAJARGAON
P.O. AND P.S.-PATHARKANDI
DIST-KARIMGANJ

3:PRAVASINI SINHA
D/O LATE BIR KUMAR SINHA
R/A VILL-RAJARGAON
P.O. AND P.S.-PATHARKANDI
DIST-KARIMGANJ (REPRESENTED BY HER NATURAL GUARDIAN
RESPONDENT NO. 1

For the appellant(s) : Mr. S. K. Das, Advocate

For the respondent (s) : Mr. K. Uddin, Advocate

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

01.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 15.07.2023 passed in Misc.(J) Case No.149/2023 arising out of the Title Suit No.114/2016 whereby the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') by the plaintiff was allowed.

2. From the materials on record, it reveals that the suit was filed by the plaintiffs seeking declaration and for permanent injunction. The said suit was registered and numbered as Title Suit No.114/2016. After the suit was filed, the defendants had filed their written statement. Thereupon, issues were framed. The plaintiffs' evidence was duly completed and when the suit was at the stage of defendants' evidence, an application was filed under Order VI Rule 17 of the Code seeking amendment of the plaint. This application was registered and numbered as Misc. (J) Case No.146/2023. The defendants duly filed the written objection stating inter-alia that the said amendment so prayed for ought to be rejected on the ground that mere engagement of a new Advocate cannot be a ground for new amendment, that too at the belated stage. It was also categorically mentioned in paragraph No.2 of the written objection that the plaintiffs side have already submitted their evidence and acceptance of the amendment at this stage will result in *de novo* trial which would not be reasonable under any respect. It is also seen from the said written

objection that the defendants have also raised the issue if the said amendments is allowed, it would change the nature and character of the suit.

3. In the backdrop of the above, if this Court takes note of the order dated 15.07.2023 passed by the learned Trial Court, it shocks and surprises this Court to take note of that even when the evidence of the plaintiffs was over and the suit was fixed at the stage of defendants evidence, the Trial Court in a complete misconceived notion as regards commencement of trial had held that trial had not commenced. The learned Trial Court had also not taken into consideration the proviso to Order VI Rule 17 of the Code which was inserted vide the amendment carried out in the year 2002 which makes it mandatory on the part of the learned Court while dealing with an amendment application to record that the learned Court has to come to a conclusion that inspite of diligence, the party could not have raised the matter before the commencement of the trial. There is no finding to that effect. Further to that, this Court having perused the application filed by the plaintiffs under Order VI Rule 17 of the Code finds that there is/are no reasons assigned that inspite of due diligence, the plaintiffs could not file the amendment application prior to the commencement of trial.

4. Considering the above, this Court is of the opinion that the impugned order dated 15.07.2023 is a result of complete non-application of mind of the learned Trial Court apart from the same being contrary to the proviso to the Order VI Rule 17 of the Code.

5. Accordingly, the impugned order dated 15.07.2023 is set aside and quashed. The amended plaint which had been filed pursuant to the order

dated 15.07.2023 has to be therefore disregarded and the learned Trial Court shall proceed with the disposal of the suit on the basis of the plaint which existed at the time of the filing of the suit.

6. In view of the above, the instant petition stands allowed with costs. However, no cost is imposed in the peculiar facts.

7. This Court makes it clear that the order dated 01.09.2023 passed by this Court stands vacated and the parties are directed to appear before the Trial Court on 02.05.2024 on which date, the Trial Court shall fix a date for further proceeding of the suit in accordance with law.

JUDGE

Comparing Assistant