

GAHC010189942024



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

Case No. : CRP(IO)/349/2024

PARAMESWAR DAS
S/O- LATE SANKAR DAS,
R/O- BRINDABAN HATI, BARPETA,
MOUZA, P.S AND DIST- BARPETA, ASSAM

VERSUS

TARUN CHANDRA SARMA
S/O- LATE JAGANATH SARMA ,
R/O- BRINDABAN HATI, BARPETA,
MOUZA, P.S AND DIST- BARPETA, ASSAM, PIN-781301

Advocate for the Petitioner : MR. N HAQUE, MR. A K AZAD, MR M HUSSAIN, MR. S R BARBHUIYA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20.09.2024

Heard Mr. N. Haque, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with

Section 151 of the CPC, the petitioner, namely, Parameswar Das has put to challenge the correctness or otherwise of the order, dated 20.08.2024, passed by the learned Civil Judge (Junior Division) No. 1, Barpeta, in Misc. (J) Case No. 41/2024, arising out of Title Suit No. 187/2016.

3. It is to be noted here that vide impugned order, dated 20.08.2024, the learned Civil Judge (Junior Division) No. 1, Barpeta ('trial Court', for short) has allowed the petition, being Petition No. 520/2024, under Order 6 Rule 17 of the CPC, filed by the respondent herein in connection with Title Suit No. 187/2016.

4. Mr. Haque, learned counsel for the petitioner submits that the respondent herein, as plaintiff, had instituted title suit, being Title Suit No. 187/2016, before the learned trial Court for declaration of right, title and interest over the suit land, described in Schedule 'A' of the plaint and also for recovery of khas possession contending that he had acquired title over the suit land by right of gift deed, being Gift Deed No. 2780/1999, executed in his favour by the defendant No. 1 of the said title suit. Mr. Haque further submits that the present petitioner, as defendant No. 2, has contested the said suit by filing written statement and counter claim contending that he had purchased the suit land by registered sale deed, being Sale Deed No. 2893/1997, from the defendant No. 1 and got possession over the suit land described in Schedule 'M' of the written statement-cum-counter claim, and he claimed declaration of right, title, interest and possession over the Schedule 'M' land and for a declaration that the Gift Deed No. 2780/1999, as fraudulent one. Mr. Haque also submits that thereafter, the respondent herein has filed a petition, being Petition No. 520/2024, on 20.01.2024, under Order 6 Rule 17 of the CPC for amendment of the plaint, but the learned trial Court then registered a

case being Misc. (J) Case No. 41/2024, arising out of Title Suit No. 187/2016, and after hearing the learned Advocates of both sides, vide impugned order dated 20.08.2024, has allowed the respondent to amend the plaint. And being aggrieved, the petitioner has approached this Court by filing the present petition to set aside the impugned order dated 20.08.2024, on the ground that in his written statement-cum-counter claim filed on 01.04.2017, he had categorically taken a stand that he had purchased the suit land by registered Sale Deed No. 2893/1997, from the defendant No. 1, and that the respondent had filed written statement against the counter claim filed by the present petitioner on 12.06.2017, and there was no whisper or any statement against the Sale Deed No. 2893/1997, and that while the case was fixed for argument of the suit, the respondent had filed the petition, under Order 6 Rule 17 of the CPC, for amendment of the plaint. Mr. Haque submits that there is no explanation for delay of seven years in filing the said petition, and that he had filed the petition only to cause delay in disposing of the suit, and that there is lack of diligence on his part which shows that the petition is not bonafide one and therefore, Mr. Haque has contended to allow the petition.

5. Mr. Haque has also referred to a decision of Hon'ble Supreme Court in the case of **Pandit Malhari Mahale vs. Monika Pandit Mahale and Ors.**, reported in **(2020) 11 SCC 549**, in support of his submission.

6. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 20.08.2024, and the decision of Hon'ble Supreme Court referred by Mr. Haque, learned counsel for the petitioner.

7. It is to be noted here that in the case of **Pandit Malhari Mahale (supra)**, Hon'ble Supreme Court, referring to its earlier decision in the case of **Vidyabai and Ors. vs. Padmalatha and Anr.**, reported in **(2009) 2 SCC 409**, held that to allow amendment under Order 6 Rule 16 of the Code of Civil Procedure, 1908, after the evidence being lead, the Court must return a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

8. In the case of **Vidyabai (supra)**, Hon'ble Supreme Court, while dealing with the issue, in paragraph 19, has held as under:

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

9. Now, advertng to the facts herein this case, I find from the documents placed on record that Title Suit No. 187/2016, was pending at the stage of argument. And only thereafter, the respondent herein had filed the petition for amendment of the plaint on the ground that his previous engaged counsel returned the brief to him on account of health ground and thereafter, the case was handed over to another counsel and the said counsel had obtained the certified copies of the plaint, written statement-cum-counter claim and objection to the counter claim and thereafter, suggested filing a petition for

amendment of the plaint.

10. It also appears that the petitioner had filed his written statement on 01.04.2017, stating categorically that he had purchased the suit land by registered Sale Deed No. 2893/1997 from the defendant No. 1. And the respondent herein, had filed written statement against the counter claim filed by the petitioner on 12.06.2017, wherein no whisper was made against the Sale Deed No. 2893/1997. Only after elapse of seven years of filing the written statement-cum-counter claim by the petitioner, on 12.06.2017, the respondent had chosen to file the petition under Order 6 Rule 17 of the CPC, when evidence of both the parties were closed and the case was posted for argument. There is no explanation whatsoever, as to what prevented the respondent from filing amendment immediately after filing of written statement-cum-counter claim by the present petitioner. Though it is stated that there was change in counsel, the said explanation is found to be far from satisfactory.

11. It also appears from the impugned order dated 20.08.2024, that the learned trial Court had held that it is cognizant of the fact that the petition is at a belated stage of trial and the same would cause additional delay to the case and that at the same time it has also to be kept in mind that the purpose of justice would be fulfilled only when the real questions in controversy were permitted to be answered, and procedural law is nothing but the handmaid of justice. No doubt, the learned trial court has assigned a reason for allowing the amendment at the belated stage, but, the learned trial Court had not recorded a finding that it was satisfied that in spite of due diligence, the respondent herein could not have raised the matter before the commencement of trial, as held by Hon'ble Supreme Court in the case of

Pandit Malhari Mahale (supra).

12. In that view of the matter, the impugned order allowing the respondent to amend the plaint, fails to withstand the legal scrutiny and therefore, this Court is inclined to allow this petition.

13. Accordingly, the impugned order dated 20.08.2024, stands set aside and quashed. The learned trial Court shall proceed to dispose of the Title Suit No. 187/2016, in accordance with law.

14. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant