

GAHC010195512024



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

Case No. : CRP(IO)/367/2024

TARACHAN
S/O- LATE ASAN ALI, R/O- VILL.- TETLIRTOL, P.S. BARPETA, PIN- 781315,
DIST. BARPETA, ASSAM

VERSUS

NUR HOQUE
S/O- LATE WAHED ALI, R/O- VILL.- TETLIRTOL, P.S. AND DIST. BARPETA,
ASSAM, PIN- 781315.

Advocate for the Petitioner : MR. A SATTAR, S CHOUDHURY,G IMTIAZ,MR. S K SINGH

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 23.09.2024

Heard Mr. A. Sattar, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has challenged the correctness or otherwise of the order dated 06.07.2024, passed by the learned Civil Judge (Senior Division), Barpeta, in Misc. (J) Case No. 11/2024, arising out of Title Suit No. 19/2021.

3. It is to be noted here that vide impugned order dated 06.07.2024, the learned trial Court has rejected the application filed by the petitioner/plaintiff, under Order 1 Rule 10(2), read with Section 151 of the CPC, together with Section 19 of the Specific Relief Act, 1963, to implead the subsequent purchaser, namely, Monowara Ahmed as defendant in the suit and also to amend the plaint accordingly for the said specific development.

4. Mr. Sattar, learned counsel for the petitioner submits that the petitioner as plaintiff had instituted a title suit, being Title Suit No. 19/2021 against the respondent/defendant, seeking relief by way of specific performance of contract and for permanent injunction. Thereafter, the respondent had entered appearance therein and contested the suit by filing written statement as well as written objection, wherein he denied the claim of the petitioner. Thereafter, during the pendency of the suit, the petitioner came to know about the sale of the suit property by the defendant and therefore, he filed an application, bearing No. 62/2024, dated 10.01.2024, under Order 1 Rule 10(2), read with Section 151 of the CPC, together with Section 19 of the Specific Relief Act, 1963, to implead the subsequent purchaser, namely, Monowara Ahmed as defendant in the suit and also to amend the plaint for the subsequent development, which was registered as Misc. (J) Case No. 11/2024. But, the learned trial Court, vide impugned order dated 06.07.2024, has dismissed the petition. Mr. Sattar further submits that in view of the decisions of Hon'ble Supreme Court in the cases of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Anr.**, reported in 2022 0 AIR(SC) 4256 and **Amit Kumar Shaw and Anr. vs. Farida Khatoon and Anr.**, reported in (2005) 11 SCC 403, submits that due to subsequent development, the petitioner is entitled to implead the purchaser, namely,

Monowara Begum as defendant in the suit and to amend the plaint, otherwise the petitioner will suffer irreparable loss and would not be able to establish his case and therefore, it is contended to allow the petition.

5. Having heard the submission of Mr. Sattar, 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 06.07.2024 and the decisions of Hon'ble Supreme Court referred by Mr. Sattar.

6. It appears that the learned trial Court, vide impugned order dated 06.07.2024, has dismissed the petition preferred by the petitioner/plaintiff on the ground that the main suit had already proceeded to the stage of cross-examination of defendant's witnesses and the case had been fixed to the stage of cross-examination of D.W.3, and in view of the fact that the issues had already been framed and evidence of the petitioner/plaintiff and his witnesses, along with defendant and his one witness was also over, at such belated stage, the petition cannot be allowed and rejected the same.

7. The grounds so assigned by the learned trial Court, have left this Court unimpressed in view of the fact that there is subsequent development here in this case i.e. while the suit was pending for hearing, the defendant had fraudulently executed one deed and sold the land to one Monowara Ahmed and unless the new purchaser is impleaded as defendant and the petitioner is not allowed to amend the plaint, then the petitioner/plaintiff would not be able to establish his case and the decree, even if granted, would not be executable.

8. It is a fact that the stage of amendment is already over, but sufficient cause having been shown, the petitioner may be allowed to amend the plaint. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India** (supra) has held that all amendments of the pleadings should be allowed

which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken and provided it does not cause injustice or prejudice to the other side. This is mandatory as is apparent from the use of word 'shall' in the latter part of Order 6 Rule 17 of the CPC. Again, in the case of **Amit Kumar Shaw** (supra), Hon'ble Supreme Court has held that transferee *pendente lite* can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral.

9. Thus, drawing premises from the aforesaid two decisions and also in view of the submission of the learned counsel for the petitioner, and further considering the facts and circumstances on the record, this Court is of the view that allowing the petitioner to implead the subsequent purchaser, namely, Monowara Ahmed as defendant and to amend the plaint, will advance the cause of justice.

10. Accordingly, this revision petition stands allowed and the impugned order dated 06.07.2024, stands set aside. The learned trial Court is directed to allow the petitioner to implead Monowara Ahmed as defendant in the Title Suit No. 19/2021 and to allow the amendment of the plaint and thereafter, proceed to hear and dispose of the same in accordance with law.

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

JUDGE

Comparing Assistant