

GAHC010196712022



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

Case No. : CRP(IO)/231/2022

AMIT KUMAR BHAJANKA
S/O LATE KAILASH CHAND BHAJANKA, R/O BHAJANKA BHAWAN, G.S
ROAD, CHRISTIAN BASTI, GUWAHATI-781005, DIST-KAMRUP (M), ASSAM

VERSUS

SHANKAR LAL BHAJANKA
S/O LATE RAM KUMAR BHAJANKA, R/O BHAJANKA BHAWAN, G.S ROAD,
CHRISTIAN BASTI, GUWAHATI-781005, DIST- KAMRUP (M), ASSAM

For the Applicant(s) : Mr. R. C. Sancheti, Advocate

For the Respondent(s) : Mr. G. Khandelia, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 27.03.2024

1. The instant application has been filed challenging the order dated 16.08.2022 passed in Title Suit No.146/2016 by the Court of the learned Civil Judge No.1, Kamrup (M) at Guwahati whereby the application filed by the Defendant No.2 to amend the counter claim was allowed.

2. It appears from the records that after the completion of pleadings in the suit being Title Suit No.146/2016, an application was filed seeking amendment of the counter claim wherein it was stated that during the pendency of the suit cum counter claim, on 19.04.2019, the plaintiff along with the Defendant No.3 had trespassed into the commercial shop and were trying to let out the shops to third parties. On the basis of that, an FIR was filed on 21.04.2019. Taking into account that in the counter claim, the reliefs which was sought for was for mere declaration and for confirmation of possession and now in view of the subsequent events, there is a requirement for recovery of possession, the Defendant No.2 sought for amendment of the counter claim by inserting the subsequent cause of action by inserting paragraph (m) and (n) after paragraph No.22(l) of the written statement cum counter claim as well as also insertion of additional reliefs to the counter claim. Written objections were filed by the Plaintiffs.

3. The learned Trial Court vide an order dated 16.08.2022 after hearing both the parties observed that if the said amendment is not allowed, it would led to creation of multiplicity of proceedings in respect to the same dispute between the parties pertaining to subsequent events. It was under such circumstances, the learned Trial Court had allowed the said amendment vide the impugned order dated 16.08.2022. The said impugned order has been challenged on the ground that the allowing such an amendment would change the nature and character of the counter claim and as such the same ought not to have been allowed.

4. I have heard the learned counsels for the parties and have given anxious consideration to the submissions so made. This Court having taken note of the application seeking amendment of the counter claim and also having taken note

of the written statement cum counter claim filed by the Defendant No.2 is of the opinion that the amendment which was sought for related to subsequent events and the reliefs are also required to be amended in order to give full effect to the counter claim so filed. Under such circumstances, the decision of the learned Trial Court vide the order dated 16.08.2022 does not call for any interference in view of the grounds and reasons stated therein.

5. This Court therefore finding no error in exercise of jurisdiction or any error in law committed by the learned Trial Court in the order dated 16.08.2022 dismisses the instant petition.

JUDGE

Comparing Assistant