

GAHC010209982023



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

Case No. : CRP(IO)/304/2023

PRAHLAD SINGH AND ANR
SON OF SRI MITHER RAI,
RESIDENT OF SHANKARNAGAR, TOKOBARI,
A.T. ROAD, P.S.- BHARALUMUKH,
GUWAHATI- 781009, DISTRICT- KAMRUP(M),
ASSAM.

2: MANISH RAI
SON OF SRI MITHER RAI

RESIDENT OF SHANKARNAGAR
TOKOBARI

A.T. ROAD
P.S.- BHARALUMUKH

GUWAHATI- 781009
DISTRICT- KAMRUP(M)

ASSAM

VERSUS

PRABHAWATI DAS AND 2 ORS
WIFE OF LATE RAJEN CHANDRA DAS, ALIAS (LATE RAJEN DAS),
RESIDENT OF TOKOBARI, A.T. ROAD, NEAR CHAND MARKET BYE LANE,
BETWEEN CHAND MARKET AND PAWAN AUTOMOBILES,
P.O. AND P.S.- BHARALUKUKH, DISTRICT- KAMRUP(M),
GUWAHATI-9.

2:NALINI BALA DAS
DAUGHTER OF LATE SARURAM DAS
ALIAS SARURAM MEDHI

RESIDENT OF TOKOBARI
A.T. ROAD
NEAR CHAND MARKET BYE LANE

BETWEEN CHAND MARKET AND PAWAN AUTOMOBILES

P.O. AND P.S.- BHARALUKUKH
DISTRICT- KAMRUP(M)

GUWAHATI-9.

3:JAYANTA KUMAR PATHAK
SON OF LATE SURENDRA KUMAR PATHAK

ORIGINALLY RESIDENT OF TOKOBARI
A.T. ROAD
NEAR CHAND MARKET BYE LANE

BETWEEN CHAND MARKET AND PAWAN AUTOMOBILES

P.O. AND P.S.- BHARALUKUKH
DISTRICT- KAMRUP(M)

GUWAHATI-9.
PRESENTLY EMPLOYED IN GUWAHATI CO-OPERATIVE URBAN BANK
LTD.
CHATRIBARI
GUWAHATI-8
DISTRICT- KAMRUP(M)

ASSAM

Advocate for the Petitioner : MR. S SHARMA,

Advocate for the Respondent : MR S BHARALI (R-1,3), N K NEOG (R-1,3),MR. M DAS (R-1,3)

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

13.09.2024

Heard Mr. S. Sharma, learned counsel for the petitioners and also heard Mr. N.K.

Neog, learned counsel for the respondent Nos.1 and 3.

2. This application under Article 227 of the Constitution of India is preferred by the petitioners, namely, Shri Prahlad Singh and Shri Manish Rai, challenging the correctness or otherwise of the order dated 04.08.2023 passed by the learned Civil Judge (Senior Division) No.3, Kamrup(M), Guwahati, on the Petition No.4363/2022 filed by the petitioners/plaintiffs under Order 7 Rule 14(3), read with Section 151 of the Code of Civil Procedure for filing additional documents.

3. It is to be noted here that vide impugned order dated 04.08.2023, the learned Trial Court has dismissed the petition on the ground that the plaint contains no averment, whatsoever, regarding filing of the income tax return of the plaintiffs for any assessment year and as such, the additional documents sought to be filed by the petitioners/plaintiffs are beyond their pleadings and therefore, rejected the petition.

4. Mr. Sharma, learned counsel for the petitioners submits that in the written statement submitted by the respondent Nos.1 and 3 reveals that after signing of the agreement of the plaintiffs, as per income tax department notification, the plaintiffs cannot pay a sum of Rs.5,00,000/- in cash and they will make payment by bank transfer within a week. However, the plaintiffs did not make any payment. Since a specific plea is taken in the written statement cum counter claim filed by the respondent Nos.1 and 3, the plaintiffs are required to file the income tax return and that the petitioners have already filed reply to the said counter claim and in view of the averment made by the respondents in the written statement cum counter claim, the petitioners/plaintiffs may be allowed to file the income tax return.

5. On the other hand, Mr. Neog, learned counsel for the respondent Nos.1 and 3 submits that there is no averment in the plaint regarding filing of any income tax return and as such, the learned Trial Court has rightly dismissed the petition.

6. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused

the impugned order dated 04.08.2023 passed by the learned Civil Judge (Senior Division) No.3, Kamrup(M), Guwahati, on the Petition No.4363/2022 filed by the petitioners/plaintiffs under Order 7 Rule 14(3), read with Section 151 of the CPC.

7. It appears that the learned Trial Court has rejected the petition on the ground that no averment was made in the plaint by the petitioners/plaintiffs regarding filing of income tax return in respect of any assessment year and therefore, rejected the petition. But, it appears from the written statement cum counter claim filed by the respondent/defendant Nos.1 and 3 that a plea has been taken regarding payment of Rs.5,00,000/- at the time of execution and the same has been shown in the income tax file of the plaintiffs and in that view of the matter, the reason for dismissing the petition filed by the petitioners/plaintiffs by the learned Trial Court, appears to be illegal and arbitrary and as such, the same cannot be allowed to stand.

8. Accordingly, the order dated 04.08.2023 stands set aside, being arbitrary and illegal. The learned Trial Court is directed to allow the petitioners/plaintiffs to file their income tax return for the assessment years 2017-18 and 2018-19.

9. In terms of above, this civil revision petition stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant