

GAHC010218162023



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

Case No. : CRP(IO)/322/2023

KIRAN CHANDRA CHOUDHURY AND 2 ORS
SON OF LATE UMESH CHANDRA DEV CHOUDHURY,
RESIDENT OF WARD NO. 3, PATHSALA,
MOUZA- UTTAR BAJALI,
DISTRICT- BARPETA, ASSAM.

2: BHABESH CHANDRA CHOUDHURY
SON OF LATE UMESH CHANDRA DEV CHOUDHURY

RESIDENT OF WARD NO. 3
PATHSALA

MOUZA- UTTAR BAJALI

DISTRICT- BARPETA
ASSAM.

3: DWIPENDRA CHANDRA CHOUDHURY
SON OF LATE UMESH CHANDRA DEV CHOUDHURY

RESIDENT OF WARD NO. 3
PATHSALA

MOUZA- UTTAR BAJALI

DISTRICT- BARPETA
ASSAM

VERSUS

JYOTISH CHANDRA CHUDHURY AND ANR.
SON OF LATE UMESH CHANDRA DEV CHOUDHURY,
RESIDENT OF WARD NO. 3, PATHSALA,
MOUZA- UTTAR BAJALI,

DISTRICT- BARPETA, ASSAM.

2:RAJDEEP CHOUDHURY

SON OF SRI JYOTISH CHANDRA DEV CHOUDHURY

SON OF LATE UMESH CHANDRA DEV CHOUDHURY

RESIDENT OF WARD NO. 3

PATHSALA

MOUZA- UTTAR BAJALI

DISTRICT- BARPETA

ASSAM

Advocate for the Petitioner : MR. SAILENDRA DEKA

Advocate for the Respondent : MR. M K CHOUDHURY (R-1,2)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

21-06-2024

Heard Shri S. Deka, learned counsel for the petitioners, who has filed this application under Article 227 of the Constitution of India challenging an order dated 31.08.2023 passed by the learned Civil Judge, Junior Division, Bajali in Misc. Cas(C) No. 15/2021 arising out of Title Suit No. 17/2021. By the aforesaid order, the learned Court, while allowing the prayer for amendment of pleadings and for impleadment of new parties, has rejected the prayer for amendment of inclusion of fresh relief/prayer.

2. The petitioners were the plaintiffs in the aforesaid suit which was initially instituted in the year 2019 by the petitioner no. 1 alone in which the petitioner nos. 2 & 3 are made the *pro-forma* defendants. The suit was for declaration and partition. Subsequently, the petitioner nos. 2 & 3 herein had filed an application

for their transposition from *pro-forma* defendant to plaintiffs which was accordingly allowed. As a result thereof, application was filed for amending the plaint and also to include certain other properties.

3. The learned Court has however passed the aforesaid order dated 31.08.2023 whereby there has been rejection of part of the prayers made.

4. Shri Deka, the learned counsel for the petitioners has submitted that the reasons assigned for such rejection by bringing in the aspect of limitation is not in accordance with law. It is submitted that the limitation has to be calculated from the date of institution of the original suit and from which the cause of action had arisen. He accordingly submits that interference by this Court is required with regard to the impugned order dated 31.08.2023.

5. Shri P. Bhardwaz, learned counsel for the respondents has however submitted that the impugned order does not suffer from such legal infirmity which would require interference by this Court under Article 227 which is only a supervisory jurisdiction. He has submitted that the impugned order contains reasons which are plausible and are not required to be substituted. The learned counsel has, however, fairly submitted that the aspect of limitation may not have been properly appreciated by the learned Court.

6. The rival submissions have been considered and the impugned order has been examined.

7. This Court has noticed that after the transposition of the *pro-forma* defendants of the original suit as plaintiffs, there was a requirement of amendment of the plaint which was accordingly done. In the considered opinion of this Court, the learned Court, while allowing such amendment, should not

have restricted the prayer sought to have been made, more so when the contesting defendants would have all the rights to contest such prayers in accordance with law. The application of the law of limitation also does not appear to be in its proper perspective.

8. In view of the above, the present application is allowed and the impugned order dated 31.08.2023 passed by the learned Civil Judge, Junior Division, Bajali in Misc. Cas(C) No. 15/2021 stands modified with a direction that the amendments sought for by the petitioners as plaintiffs are to be allowed in its entirety. It is needless to state that the defendants would be at liberty to file their written statement in accordance with law.

9. Interim order passed earlier stands merged with the final order.

10. The parties are accordingly directed to appear before the learned Court below on 15.07.2024, from which date, the learned Court would take charge for the proceedings.

JUDGE

Comparing Assistant