

GAHC010218452023



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

Case No. : CRP(IO)/323/2023

PUNYA DEO MISHRA
S/O LATE RAM NARESH MISHRA, R/O KOKRAJHAR TOWN, DEPOT ROAD,
WARD NO. 4, P.O. AND P.S.-KOKRAJHAR, DIST-KOKRAJHAR (BTAD),
ASSAM, PIN-783370

VERSUS

MD. MOZAHAR ALI PRODHANI AND ANR
ADVOCATE, KOKRAJHAR COURT, P.O. AND P.S.-KOKRAJHAR, DIST-
KOKRAJHAR (BTAD), ASSAM, PIN-783370

2:SMTI. PROMILA MISHRA
W/O LT DHRUBA DEO MISHRA
R/O KOKRAJHAR TOWN
DEPOT ROAD
WARD NO. 4
P.O. AND P.S.-KOKRAJHAR
DIST-KOKRAJHAR (BTAD)
ASSAM
PIN-78337

Advocate for the Petitioner : MR G BAISHYA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 07.02.2024

Heard Mr.G.Baishya, learned counsel for the petitioner.

This is an application under Article 227 of the Constitution of India read with Section 115/151 of

the CPC challenging the order dated 31.07.2023 passed by the learned Civil Judge, Kokrajhar, Assam in Misc. Case (J) No. 15/2023 arising out of M.S. No.03/2009.

The petitioner filed the suit seeking certain reliefs. Thereafter, the learned counsel for the petitioner expired and a new counsel was engaged and the new counsel advised the petitioner to make some amendments in the plaint. Therefore, an application under Order VI Rule 17 of the CPC was filed before the trial court.

The view of the trial court is quoted as under:

“15.After careful consideration of the plaintiff’s prayer for amendment of the plaint, this court finds that the plaintiff has failed to satisfy the court that the proposed amendment is a result of a bona fide mistake and that after due diligence the matter could not be raised at an earlier occasion.”

I have considered the submission of Mr. Baishya.

Whenever a prayer for amendment of pleading is made by the parties in court, the court has to see whether the proposed amendment can change the nature and character of the suit. These are the only grounds on which prayer for amendment of pleadings can be allowed or rejected.

The trial court seems to have erroneously oriented itself and arrived at an incorrect finding.

This court finds that the proposed amendment could not change the nature and character of the suit and for that matter, the impugned order is bad in law and stands set aside. The trial court is directed to allow the petitioner to amend his pleading and to file an amended plaint.

With the aforesaid direction, the revision petition stands disposed of.

JUDGE

Comparing Assistant