

GAHC010225362022



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

Case No. : CRP(IO)/264/2022

BINITA DAS AND 4 ORS
W/O- LATE DHARMAKANTA DAS,
R/O- BELTOLA TINIALI (LAKSMINAGAR),
BY LANE MANIKANCHAN PATH,
HOUSE NO. 31, GUWAHATI- 28,
DISTRICT- KAMRUP(M), ASSAM.

2: DHRITI REKHA DAS
D/O- LATE DHARMAKANTA DAS

R/O- BELTOLA TINIALI (LAKSMINAGAR)

BY LANE MANIKANCHAN PATH

HOUSE NO. 31
GUWAHATI- 28

DISTRICT- KAMRUP(M)
ASSAM.

3: MAMANI DAS
W/O- LATE BIPUL DAS

R/O- BASUGAON TOWN
WARD NO. 2 (DHANBAZAR)

P.O. AND P.S.- BASUGAON

DISTRICT- CHIRANG
ASSAM.

4: HIRAK JYOTI DAS @ MUNNA
S/O- LATE BIPUL DAS

R/O- BASUGAON TOWN
WARD NO. 2 (DHANBAZAR)

P.O. AND P.S.- BASUGAON

DISTRICT- CHIRANG
ASSAM.

5: DIMPA DAS
D/O- LATE BIPUL DAS

R/O- BASUGAON TOWN
WARD NO. 2 (DHANBAZAR)

P.O. AND P.S.- BASUGAON

DISTRICT- CHIRANG
ASSAM

VERSUS

HRIDAY DAS
S/O- LATE BIRENDRA CHANDRA DAS,
R/O- BASUGAON TOWN, WARD NO. 2,
P.O. AND P.S.- BASUGAON,
DISTRICT- CHIRANG, ASSAM.

Advocate for the Petitioner : MR P UPADHYAY

Advocate for the Respondent : MR. R M CHOUDHURY

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

21.02.2024

Heard Mr. P. Upadhyay, learned counsel appearing for the petitioners. Also heard Mr. R.M. Choudhury, learned counsel representing

the sole respondent.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 05.01.2022 passed by the learned Munsiff, Chirang in Title Suit No.34/2021.

3. The petitioners claimed before the learned trial court that the suit property in T.S. No.34/2021 is the same as in T.S. No.82/2015. Therefore, the petitioners prayed before the trial court to dispose of the case on the issue of maintainability of the second suit i.e. T.S. No.34/2021.

4. The trial court held that the suit properties of T.S. No.34/2021 and that of T.S. No.82.2015 are different and therefore, decided the preliminary issue like that.

5. The learned counsel Mr. Upadhyay vehemently submitted that the suit property of T.S. No.82/2015 is the same as in T.S. No.34/2021.

6. Mr. Choudhury, on the other hand, submits that the suit properties of both the suits are different.

7. I have considered the submissions made by the learned counsels of both sides.

8. Under Order XIV Rule 2 of the Code of Civil Procedure, a case can be disposed of on a preliminary issue. Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary

issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it.

9. In the case in hand, the plea, that suit property of T.S. No.34/2021 is the same as in T.S. No.82.2015, is the factual aspect of the case. Therefore, the petitioners have to prove the aforesaid fact in T.S. No.34/2021.

10. The Issue raised by the petitioners is a mixed question of law and fact. Thus, this issue has to be proved before the learned trial court by way of evidence.

11. Under the aforesaid circumstances, this Court finds the present Revision Petition devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant