

GAHC010247442024



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

Case No. : CRP(IO)/486/2024

RADHIKA JAIN
W/O SRI SUNIL JAIN, R/O HARI BASUMATARY PATH, DHIRENPARA, P.O.-
FATASHIL, GUWAHATI, DIST- KAMRUP (M), ASSAM, PIN-781025

VERSUS

DIPIKA KALITA GAYAN
W/O SHRI KHAGEN GAYAN, R/O NORTH HAIBARGAON, M.D. ROAD, P.O.-
NAGAON SADAR, DIST- NAGAON, ASSAM, PIN-782001

Advocate for the Petitioner : MR. M DUTTA, MR K M BORA

Advocate for the Respondent : MR U S BORGOHAIN,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 27.11.2024

Heard Mr. M. Dutta, learned counsel for the petitioner and Mr. U.S. Borgohain, learned counsel for the respondent.

2. In this petition, under Article 227 of the Constitution of India, read with Section 151 of the CPC, the petitioner has put to challenge the correctness or otherwise of the order dated 25.10.2024, passed by the learned Civil Judge (Junior Division) No. 3, Kamrup(M), Guwahati, in Title Suit No. 231/2022, on a

joint petition No. 756, dated 29.06.2024.

3. Mr. Dutta, learned counsel for the petitioner submits that the respondent herein as plaintiff instituted Title Suit No. 231/2022, for specific performance of contract of the agreement dated 20.08.2013 and for permanent injunction. In the said title suit, the petitioner herein as defendant filed written statement. Thereafter, both the parties had arrived at a settlement and they had executed an agreement dated 29.06.2024 and thereafter, they had jointly filed a petition under Order 23 Rule 3, read with Section 151 of the CPC for compromise decree enclosing the agreement therewith. Then, the parties had entered appearance and thereafter, hearing both the parties, the learned trial Court, vide impugned order dated 25.10.2024, had dismissed the petition on the ground that no valid compromise was entered into by the parties to the suit so as to adjust the claim of the plaintiff and the plaintiff would enter into the shoes of a vendor if the compromise decree is passed. Mr. Dutta further submits that the learned trial Court had misinterpreted the provision of Order 23 Rule 3 of the CPC and since the parties have settled the dispute amicably and entered into an agreement and prayed for a compromise decree, the Court has no other option, but to allow the same and in support of his submission, Mr. Dutta has referred to a decision of Hon'ble Supreme in the case of **K. Venkata Seshian Vs. Kanduru Ramasubbamma (dead) by LRS**, reported in **1991 AIR SCW 808**, wherein endorsing the view taken by Orissa High Court in the case of **Bhaja Govinda Maikap vs. Janaki Devi**, reported in **AIR 1980 Orissa 108**, held that once the Court was satisfied that there was a compromise, it was for the Court to record the same and no option lay before the Court to act otherwise to contend that as the compromise petition is genuine and lawful, the same has to be acted upon, and as such, the learned court had failed to exercise such

jurisdiction and on such count, the impugned order, so passed by the learned trial Court, is illegal and arbitrary and therefore, it is contended to set it aside.

4. On the other hand, closed to the heel of Mr. Dutta, Mr. Borgohain, learned counsel for the respondent also submits that the parties have settled the dispute amicably and entered into an agreement on 29.06.2024, and thereafter, they have filed an application before the learned trial Court and as such, there is no impediment in passing the compromise decree and as such, he has no objection in the event of setting aside the impugned order and remanding the matter back to the learned trial Court for fresh consideration.

5. Having heard the submissions 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 25.10.2024, and also perused the relevant provision of law of Order 23 Rule 3 of the CPC and the decision referred by Mr. Dutta, learned counsel for the petitioner.

6. Order 23 Rule 3 of the CPC is reproduced herein below:

“3. Compromise of suit.— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise ¹ [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith ² [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to

grant such adjournment.]

[Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”

7. Herein this case, it appears from the agreement dated 29.06.2024, that the parties have settled the dispute amongst themselves and thereafter, they have preferred an application before the learned trial Court for passing a compromise decree.

8. In view of the submissions of learned Advocates of both the parties, and also in view of the decision of Hon'ble Supreme Court in the case of **K. Venkata Seshian** (supra), this Court is of the considered opinion that the impugned order dated 25.10.2024, so passed by the learned trial Court, fails to withstand the legal scrutiny. Accordingly, the same stands set aside and quashed. The matter is remanded to the learned trial Court with a direction to pass necessary order taking note of the spirit of the provision of Order 23 Rule 3 of the CPC, and also taking note of the ratio laid down by Hon'ble Supreme Court in the case of **K. Venkata Seshian** (supra).

9. The parties shall obtain certified copy of this order and place the same before the learned trial Court within a period of one week from today and on receipt of the same, the learned trial Court shall pass necessary order, as indicated herein above.

10. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant