

GAHC010257382022



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

Case No. : CRP(IO)/307/2022

RADHA DEVI
WIFE OF LATE SHIV PRASAD SINGH @ LATE SRI PRASAD SINGH,
RESIDENT OF RAMKRISHNA NAGAR, RAJA ALI ROAD,
P.O., P.S. AND DISTRICT- TINSUKIA, ASSAM,
PIN- 786125.

VERSUS

LAKHINDER URANG AND 10 ORS.
SON OF LATE DEVARU URANG,
RESIDENT OF BHIMPARA GAON,
P.O. AND P.S. AND DISTRICT- TINSUKIA, ASSAM,
PIN- 786125.

2:MAHINDER URANG
SON OF LATE DEVARU URANG

RESIDENT OF BHIMPARA GAON

P.O. AND P.S. AND DISTRICT- TINSUKIA
ASSAM

PIN- 786125.

3:MINATI URANG @ SONARI URANG
WIFE OF LATE SUKRU URANG

RESIDENT OF BHIMPARA GAON

P.O. AND P.S. AND DISTRICT- TINSUKIA
ASSAM

PIN- 786125.

4:RESHMA URANG
DAUGHTER OF LATE SUKRU URANG

RESIDENT OF BHIMPARA GAON

P.O. AND P.S. AND DISTRICT- TINSUKIA
ASSAM

PIN- 786125.

5:RIMA URANG
DAUGHTER OF LATE SUKRU URANG

RESIDENT OF BHIMPARA GAON

P.O. AND P.S. AND DISTRICT- TINSUKIA
ASSAM

PIN- 786125.

6:SONU URANG
SON OF LATE SUKRU URANG

RESIDENT OF BHIMPARA GAON

P.O. AND P.S. AND DISTRICT- TINSUKIA
ASSAM

PIN- 786125.

7:DEBANTI DEVI
WIFE OF LATE KRISHNA PD. SAH

RESIDENT OF BHIMPARA GAON

C/O- DALMUT FACTORY
NEAR CHIKU FACTORY

P.O.
P.S. AND DISTRICT- TINSUKIA
ASSAM

PIN- 786125.

8:PANMOTI DEVI
WIFE OF SRI NANDLAL RAI

RESIDENT OF JYOTI NAGAR

NEAR HARAK CHAND JAIN VIDYALAYA

P.O.

P.S. AND DISTRICT- TINSUKIA

ASSAM

PIN- 786125.

9:SARITA DEVI BERIA

WIFE OF SRI SRAWAN KUMAR BERIA

RESIDENT OF A.T. ROAD

HIJUGURI

P.O.

P.S. AND DISTRICT- TINSUKIA

ASSAM

PIN- 786125.

10:GUNJAN AGARWAL

WIFE OF SRI SANJAY KUMAR AGARWAL

RESIDENT OF A.T. ROAD

HIJUGURI

P.O.

P.S. AND DISTRICT- TINSUKIA

ASSAM

PIN- 786125.

11:GIYAN CHANDRA DEY

SON OF LATE MAHENDRA CHANDRA DEY

RESIDENT OF BORDOLOI NAGAR

TINSUKIA

P.O.

P.S. AND DISTRICT- TINSUKIA

ASSAM

PIN- 786125

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent : MR G N SAHEWALLA (R-8,9,10,11)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

08.01.2024

Heard the learned senior counsel Mr. B. Dutta assisted by Mr. A. Huda, learned counsel appearing for the petitioner. Also heard the learned senior counsel Mr. G.N. Sahewalla assisted by Mr. K. Bhattacharyya, learned counsel representing respondent nos.8 to 11. Mr. R. Chakraborty, learned counsel appears for the respondent nos.1 to 6.

This is an application under Article 227 of the Constitution of India challenging the order dated 03.12.2022 passed by the learned Civil Judge, Tinsukia in T.S. No.74/2021.

The petitioner is the plaintiff before the learned trial court. She also filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure along with the plaint. In the suit, the petitioner failed to take steps for service of notice upon the defendant no.7 whereas in the injunction petition, she has taken steps for service of notice upon the opposite party no.7. Since the petitioner failed to take steps for service of notice upon the defendant no.7, the learned trial court dismissed the entire suit.

The learned counsels of both sides have agreed that the impugned order dated 03.12.2022 is erroneous because under Order IX Rule 5 of the

Code of Civil Procedure, the suit should have been dismissed against the defendant no.7 only.

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

This Court is of the opinion that the impugned order dated 03.12.2022 dismissing the entire suit by the learned trial court is erroneous in law. Therefore, the said order is set aside.

For the ends of justice, this Court decides that one last opportunity should be given to the petitioner to take steps upon the defendant no.7.

Therefore, the learned trial court is directed to give one last opportunity to the petitioner to take steps for service of notice upon the defendant no.7. After that, the learned trial court shall dispose of the case in accordance with the procedure as laid-down by law.

With the aforesaid direction, the Civil Revision Petition is disposed of.

JUDGE

Comparing Assistant