

GAHC010257392023



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

**Case No. : CRP/185/2023**

SATYENDRA DAS AND 3 ORS  
S/O- LATE BHADESWAR DAS, RESIDENT OF SANTINAGAR, METUAKUCHI,  
P.O. AND P.S. BARPETA, DISTRICT- BARPETA (ASSAM), PIN NO- 781301

2: MRIGENDRA NATH DAS  
S/O- LATE BHADESWAR DAS  
RESIDENT OF SANTINAGAR  
METUAKUCHI  
P.O. AND P.S. BARPETA  
DISTRICT- BARPETA (ASSAM)  
PIN NO- 781301

3: RUPOM DAS  
S/O- LATE BHADESWAR DAS  
RESIDENT OF SANTINAGAR  
METUAKUCHI  
P.O. AND P.S. BARPETA  
DISTRICT- BARPETA (ASSAM)  
PIN NO- 781301

4: KULAJIT DAS  
S/O- LATE BHADESWAR DAS  
RESIDENT OF SANTINAGAR  
METUAKUCHI  
P.O. AND P.S. BARPETA  
DISTRICT- BARPETA (ASSAM)  
PIN NO- 78130

VERSUS

GANESH CHANDRA DAS  
S/O- LATE SHYAM CHARAN DAS, RESIDENT OF SANTINAGAR,  
METUAKUCHI, P.O. AND P.S. BARPETA, DISTRICT- BARPETA (ASSAM), PIN  
NO- 781301

For the Petitioner(s) : Mr. S. Das, Advocate

For the Respondent(s) : Mr. N. Hoque, Advocate

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 01.05.2024**

This is an application under Article 227 of the Constitution challenging the order dated 31.08.2023 by which the learned Trial Court allowed an application under Order XXIII Rule 1(3) read with Section 151 of the Code of Civil Procedure, 1908 to withdraw the suit.

2. It is relevant to take note of that on 31.08.2023, when the suit was fixed for cross-examination of the defendant witnesses, the counsel appearing on behalf of the plaintiff being recently engaged filed an application seeking adjournment. Accordingly, the learned Trial Court fixed the matter on 22.12.2023 for cross-examination of the defendant witnesses. It further reveals that an application was filed by the plaintiff for withdrawal of the suit with a liberty to re-file which was registered and numbered as Misc (J) Case No.175/2023. The filing of the said application was also done on 31.08.2023 but was filed pursuant to the order passed on the same date thereby fixing 22.12.2023 as it is apparent from the records. However, the learned Trial Court i.e. the Court of the Civil Judge (Junior Division) No.1, Barpeta without taking into consideration the rights of the defendants to oppose an application seeking withdrawal with liberty allowed the said application vide the impugned order

dated 31.08.2023 which is the subject matter of the challenge in the instant proceedings.

3. This Court has duly taken note of the arguments made by the learned counsel appearing on behalf of both the parties and has given due consideration to the same.

4. This Court is shocked and surprised to take note of the manner in which the learned Trial Court i.e. the Court of the learned Civil Judge (Junior Division) No.1, Barpeta had dealt with the said application filed for withdrawal of the suit with liberty without at all considering that there is a right available upon the defendants to oppose the liberty to be granted for filing a fresh suit. This Court also finds it very strange on the part of the learned Trial Court to pass the impugned order ex-parte pursuant to an order passed whereby adjournment was given thereby fixing 22.12.2023 for cross-examination of the DWs. Such a practice ought to be deprecated as the same goes against the very principles of natural justice which is a basic tenet of all judicial proceedings. Accordingly, this Court therefore sets aside the order dated 31.08.2023 passed by the learned Trial Court in Misc. (J) Case No.175/2023 and directs the learned Trial Court to decide the said application being Misc. (J) Case No.175/2023 de novo after giving due opportunity to the defendants to oppose the said application.

5. As both the parties are duly represented before this Court, they are directed to appear before the learned Trial Court on 03.06.2024 on which date, the defendants would be at liberty to file their objection(s), if any, to the petition filed under Order XXIII Rule 1(3) of the Code which have been registered and numbered as Misc. (J) Case No.175/2023 and as observed earlier, the learned Trial Court shall decide the same in accordance with law.

6. With above observations and directions, the instant petition stands disposed of.

**JUDGE**

**Comparing Assistant**