

GAHC010258042024



2024:GAU-AS:12859

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

Case No. : CRP(IO)/528/2024

GAUTAM THAPA AND 4 ORS.
S/O- LATE NEELAMBAR THAPA, R/O- VILL.- NOKHROY GAON, P.O.
BORGURI, P.S. GUIJAN OUT POST, DIST. TINSUKIA, ASSAM, PIN- 786126.

2: SMTI GEETA THAPA
W/O- LATE UTTAM THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126.

3: RAJA THAPA
S/O- LATE UTTAM THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126.

4: SMTI SANAM THAPA DAS
D/O- LATE UTTAM THAPA
W/O- SRI DIPOK DAS
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126.

5: DEEPAK THAPA
S/O- LATE PAHALMAN THAPA

R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126

VERSUS

ABINASH THAPA AND 2 ORS
S/O- LATE RATAN THAPA, R/O- VILL.- NOKHROY GAON, P.O. BORGURI, P.S.
GUIJAN OUT POST, DIST. TINSUKIA, ASSAM, PIN- 786126.

2:BISHNU THAPA
S/O- LATE RATAN THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126.

3:SMTI KUMARI THAPA
W/O- LATE RATAN THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126

Advocate for the Petitioner : MR. R K TALUKDAR, MR. M K SHARMA,MS TINLUNG

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17.12.2024

Heard Mr. M.K. Sharma, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India read with

Section 151 of the C.P.C., the petitioners have put to challenge the correctness or otherwise of the Order dated 05.09.2024, passed by the learned Civil Judge (Senior Division), Tinsukia in Misc. (J) Case No. 60/2024, arising out of Title Suit No. 58/2023.

3. It is to be noted here that vide Order dated 05.09.2024, the learned Civil Judge (Senior Division), Tinsukia has allowed the petitioner to amend the plaint.

4. Mr. Sharma, learned counsel for the petitioners submits that the petitioners are the defendants in the title suit, being Title Suit No. 58/2023, filed by the respondents herein and in the said title suit the petitioners have submitted their written statement and thereafter, the respondents as plaintiffs filed one petition, under Order 6 Rule 17 read with Section 151 of the C.P.C. for amendment of the plaint, stating that the name of the legal heirs of Late Neelamba Thapa @ Leelambar Thapa, is impleaded as Manoj Thapa and the same ought to have been Manohar Thapa. Mr. Sharma further submits that the learned trial court has allowed the said amended petition so that the issue of non-joinder of necessary party does not survive and also allowed to incorporate a new schedule being Schedule-'O' in view of the Notice dated 21.02.2024, received by the respondent and thereby, prejudice is caused to the petitioner. Therefore, Mr. Sharma submits that the impugned order suffers from illegality and therefore, it is contended to interfere with the same.

5. Having heard the submissions of learned counsel for the petitioners, I have carefully gone through the petition as well as the documents placed on record and also perused the Order dated 05.09.2024, passed by the learned Civil Judge (Senior Division), Tinsukia in Misc. (J) Case No. 60/2024, arising out of Title Suit No. 58/2023.

6. It appears that the learned trial court, after hearing learned counsel for both the parties, arrived at a finding that for proper adjudication of the dispute between the parties, amendment of the plaint is necessary and thereafter, allowed the propose amendment.

7. It is to be noted here that in the case of **Dinesh Goyal @ Pappu vs. Suman Agarwal (Bindal) & Others**, in **Special Leave Petition (Civil) No. 30324/2019**, Hon'ble Supreme Court has held that all amendment should be allowed if the same is necessary to determine the exact dispute between the parties.

8. In the case in hand, the stage for amendment of the plaint is yet to over and the learned trial court after considering all the aspects has allowed the petition. The learned counsel for the petitioner has failed to show any perversity or illegality committed by the learned trial court in the impugned Order dated 05.09.2024, passed by the learned Civil Judge (Senior Division), Tinsukia in Misc. (J) Case No. 60/2024, arising out of Title Suit No. 58/2023.

9. Thus, having examined the impugned order in the light of the decision of Hon'ble Supreme Court, in the case of **Dinesh Goyal (supra)**, this court is of the view that no case for interfering with the impugned order of the learned trial court is made out.

10. Accordingly, this petition stands dismissed, at this motion stage itself.

JUDGE

Comparing Assistant