

GAHC010259962023



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

Case No. : CRP(IO)/373/2023

SHAIKH SADI
S/O- LATE SAMIR JALAL MIRDHA @ JAMIR JALAL MIRDHA,
VILLAGE- KHILLI,
P.O- AND P.S- KALGACHIA,
DIST- BARPETA,
PIN-781319, ASSAM

VERSUS

MD GULJAR HUSSAIN @ GULJAR GUJAR AND 3 ORS
S/O- ABDUS SATTAR MIRDHA

2:MD. JAHAR ALI
S/O- DILBAR ALI

3:MOSSTT. SAHERA KHATUN
W/O- GULJAR HUSSAIN

4:SAHERUL ISLAM
S/O- GULJAR HUSSAIN MIRDHA.
ALL ARE RESIDENTS OF VILLAGE - DUMURIA PART I
P.S AND P.O- ABHAYAPURI
DIST- BONGAIGAON
PIN-78338

Advocate for the Petitioner : MR. M U MAHMUD, TOSLIMA BEGUM,MR S AFRIDI,MR. S. SUR,MR S ISLAM,MRS. M SAIKIA,MR S H MAHMUD

Advocate for the Respondent : MS. R CHOUDHURY(R-1 TO 4), MS F N ZAMAN(R-1 TO 4),MS. B. HAZARIKA(R-1 TO 4)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

27.11.2024

Heard Mr. M.U. Mahmud, learned counsel for the petitioner and Ms. R. Choudhury, learned counsel for all the respondents.

2. In this petition, under Article 227 of the Constitution of India read with Section 151 of the C.P.C., the petitioner has put to challenge the correctness or otherwise of the Order dated 25.08.2023, passed by the learned Civil Judge (Junior Division), North Salmara at Abhayapuri, in Title Suit No. 125/2021.

3. It is to be noted here that vide impugned order dated 25.08.2023, the learned trial court has dismissed the petitions, being Petition Nos. 2918/2019 and 2919/2019, filed by the petitioner for sending the thumb impression of the petitioner contained in Chitha Book along with his admitted thumb impression to the Forensic Science Laboratory (F.S.L.) for comparison and opinion.

4. Mr. Mahmud, learned counsel for the petitioner submits that the respondents Nos. 1 & 2 herein being permissive occupier of the suit land entered their names into the Chitha Book and on the basis of the said entry in the Chitha Book, they have claimed their right, tile and interest over the suit land. Mr. Mahmud further submits that the petitioner herein never put his thumb impression in the Chitha Book and the same is obtained fraudulently and as such, there is a requirement of sending the said Chita Book containing thumb impression of the petitioner and their admitted thumb impression to the F.S.L. for comparison and obtaining opinion, which will definitely help the court to arrive at a just finding of the case. Therefore, Mr. Mahmud submits that the impugned order suffers from illegality and infirmity and it requires interference of this court. Therefore, it is contended to allow this petition.

5. On the other hand, Ms. Choudhury, learned counsel for the respondents submits that there are no averments in the pleadings of the petitioner in respect of forging of thumb impression in the Chitha Book and as such, the learned trial court has not committed any illegality or infirmity in dismissing the petition filed by the petitioner.

6. It is to be noted here that the petitioner herein has filed another petition, being Petition No. 2914/2019, before the learned trial court for summoning the Circle Officer as witness to render evidence and the learned trial court has allowed the said petition. Mr. Mahmud, learned counsel for the petitioner submits that though the learned trial court has allowed the said petition for examining the Circle Officer, he is yet to be examined.

7. In view of above, it is provided that if any such materials in respect of fraudulent entry in the Chitha Book comes in the evidence of the Circle Officer, then the learned trial court shall, if deemed it necessary in the interest of justice shall send the Chitha Book containing the thumb impression of the petitioners with his admitted thumb impression to the F.S.L. for comparison and obtaining opinion and thereafter, proceed to hear the matter in accordance with law.

8. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant