

GAHC010263932023



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

Case No. : CRP(IO)/389/2023

SURJYA KALITA
SON OF LATE ABHIRAM KALITA,
RESIDENT OF WARD NO. 4, RANGIA BAZAR,
P.O. AND P.S.- RANGIA,
DISTRICT- KAMRUP, ASSAM,
PIN- 781354.

VERSUS

BISWANATH JAJODIA
SON OF LATE BAJRANGALAL JAJODIA,
RESIDENT OF RANGIA TOWN, WARD NO. 4,
RANGIA BAZAR,
P.O. AND P.S.- RANGIA, PIN- 781354,
DISTRICT- KAMRUP, ASSAM.

For the Petitioner(s) : Mr. A. Paul, Advocate

For the Respondent(s) : Mr. A. U. Choudhury, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 09.04.2024

1. This is an application under Article 227 of the Constitution challenging the order dated 18.08.2022 passed by the learned Civil Judge (Senior Division), Kamrup at Amingaon in Misc. (J) Case No.171/2022 arising out of Title Appeal No.10/2019.

2. It has also been brought to the attention of this Court that pursuant to the impugned order dated 18.08.2022 passed by the learned First Appellate Court, a review application was filed which was also rejected on 28.07.2023. This Court has specifically enquired with the learned counsels for the parties as to what is the stage of the said Title Appeal. It has been brought to the attention of this Court that the Title Appeal No.10/2019 is still pending adjudication before the First Appellate Court.

3. In the backdrop of the above, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***Union of India Vs. Ibrahim Uddin and Another*** reported in **(2012) 8 SCC 148** wherein the Supreme Court had categorically observed that the stage of taking an application under the Order XLI Rule 27 is at the time when the Court takes up the said appeal for final disposal. Taking into account that the said application under Order XLI Rule 27 has been rejected even prior to the appeal being taken up for hearing on merits, the impugned order dated 18.08.2022 suffers from jurisdictional error and consequently, the said impugned order dated 18.08.2022 passed in Misc. (J) Case No.171/2022 stands set aside and quashed. The consequential affect of setting aside of the said impugned order is that the order dated 28.07.2023 passed in Misc. (J) Case No.228/2022 also becomes redundant.

4. This Court accordingly directs the learned First Appellate Court i.e. the Court of the Civil Judge, (Senior Division) Kamrup at Amingaon to take up the application under Order XLI Rule 27 at the time of final disposal of the appeal. This Court further observes that the learned First Appellate Court shall decide the said application along with the appeal without being influenced by the impugned orders dated 18.08.2022 and 28.07.2023.

5. Further to that, this Court vacates the interim order dated 06.12.2023

passed by this Court in the present proceedings and taking into account that both the parties are represented, they are directed to appear before the learned First Appellate Court on 14.05.2024 so that the learned First Appellate Court can further proceed with the adjudication of the appeal in accordance with law.

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

JUDGE

Comparing Assistant