

GAHC010269682017



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

Case No. : CRP(IO)/295/2017

GIRIBALA BARMAN
W/O SHRI DEBARU BARMAN, R/O LACHITNAGAR, ULUBARI GUWAHATI-
781007

VERSUS

ABALA BARMAN and 6 ORS.

2:SHRI TARUN CHANDRA BARMAN

3:SHRI NILAMONI BARMAN

4:SMT. ALAKA BARMAN

6:ON THE DEATH OF DEEPIKA BARMAN HER LEGAL HEIR
NAMELY

6.1:SMT. PRITI BARMAN @ PRITI DEKA BARMAN
W/O SRI BUBUL BORO AND D/O/LEGAL HEIR OF SRI HITESH DEKA AND
LATE DEEPIKA BARMAN @ DEEPAMANI BARMAN KALITA

R/O- KALIMANDIR PATH
DHIRENPARA
GUWAHATI- 781025
KAMRUP(M) ASSAM.

7:SMT. SARALA BARMAN
NO.1 IS WIFE

NO.2 and 3 ARE SONS AND NO. 4

5

6 and 7 ARE DAUGHTERS FO SHRI DEBARU BARMAN ALL ARE RESIDENTS
OF ULUBARI CHARIALI OPPOSITE DISTRICT TRANSPORT OFFICE

G.S. ROAD

GUWAHATI-78100

Linked Case : I.A.(Civil)/297/2021

GIRIBALA BARMAN

W/O. LATE DEBARU BARMAN

R/O. LACHITNAGAR

ULUBARI

GHY-7

VERSUS

ABALA BARMAN AND 4 ORS.

GUWAHATI

2:SHRI TARUN CHANDRA BARMAN

3:SHRI NILAMONI BARMAN

4:SMT. ALAKA BARMAN

NO.1 IS THE WIFE

NOS.2 and 3 ARE SONS AND NO. 4 IS THE DAUGHTER OF SHRI DEBARU
BARMAN

ALL ARE R/O. ULUBARI CHARIALI

OPPOSITE DISTRICT TRANSPORT OFFICE

G.S. ROAD

GHY-7

6:PRITI BARMAN @ PRITI DEKA BARMAN

W/O. SRI BUBUL BORO

D/O. SRI HITESH DEKA AND LATE DEEPITA BARMAN @ DEEPAMANI
BARMAN KALITA

R/O. KALIMANDIR PATH

DHIRENPARA

GHY-25

KAMRUP(M)

ASSAM

For the petitioner (s) : Mr. R. K. Jain, Advocate

For the respondent (s) : Mr. P. Sarma, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

13.05.2024

This is an application filed under Article 227 of the Constitution challenging the order dated 04.09.2017 passed in Title Suit No.353/2006 whereby the petition Nos.2060/2017 and 2305/2017 were rejected by the learned Trial Court, i.e. the Court of the Munsiff No.2, Kamrup (M) at Guwahati.

2. For discerning as to whether the order impugned requires any interference by this Court under Article 227 of the Constitution, this Court finds it relevant to take note of the brief facts leading to the passing of the impugned order.

3. The petitioner herein is the plaintiff No.2 in Title Suit No.223/2000. The petitioner along with her husband who was the plaintiff No.1 filed the suit seeking declaration of their right, title and interest in respect to the suit land described in the Schedule to the plaint on the basis of adverse possession and also sought for various consequential reliefs on the basis of such declaration. The defendant filed a written statement denying the claim of the plaintiffs. On 19th May, 2011, the said Title Suit filed by the plaintiffs was dismissed with costs. Being aggrieved, the plaintiffs preferred an Appeal being Title Appeal No.48/2011 before the Court of the Civil Judge No.1, Kamrup (M) at Guwahati. The said Appeal was disposed of vide an order

dated 12.08.2015 thereby remanding the suit back to the learned Trial Court by framing two additional issues. The said additional Issues were:-

1. What was the source from where Late Bogibala Dasya got the suit land?

2. Whether there are any legal heirs of her husband or the legal heirs of Late Bogibala Dasya at the time of her death? If so, who are they?

4. Upon the suit being remanded back to the learned Munsiff No.2, Kamrup (M) at Guwahati, the petitioner herein as plaintiff No.2 filed an application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 (for short, 'the Code') for addition of the legal heirs of Late Kamala Kanta Kalita @ Borah to whom by virtue of Section 16 of the Hindu Succession Act, 1956 (for short, 'the Act of 1956'), the suit property was reverted upon the death of Late Bogibala Dasya. Surprisingly, the plaintiff No.1 filed objection to the petition filed by the plaintiff No.2 stating inter-alia that the said persons whose names have been mentioned in the application were not the legal heirs of Late Bogibala Dasya as well as of her husband. The defendants also filed objections stating inter-alia that the said application on the face of it was not tenable and was a case of a blatant lie. It is under such circumstances, the petitioner filed another application bearing No.2305/2017 thereby stating that Late Kamala Kanta Kalita had two brothers, namely, Kolia Ram Kalita and Chandra Kalita. The two brothers of Late Kamala Kanta Kalita expired and they had legal representatives. Under such circumstances, the properties therefore had devolved upon them in terms with Section 16 of the Act of 1956.

5. The learned Trial Court vide the order dated 04.09.2017 rejected both the petitions by taking into account Section 15 read with Section 8 and

Schedule-I and II of the Act of 1956. It is under such circumstances, the instant application has been filed challenging the order dated 04.09.2017.

6. This Court has heard Mr. R. K. Jain, the learned counsel for the petitioner and Mr. P. Sarma, the learned counsel appearing on behalf of the respondent Nos.1 to 4 & 7.

7. This Court has duly taken note of the impugned order wherein the learned Trial Court had rejected the application by taking into account Section 15 of the Act of 1956 and reading the same with Section 8 of the said Act, but in doing so, the learned Trial Court failed to take into consideration the provisions of Section 15 (2) (b) of the Act of 1956 in the proper perspective in as much as if the provisions of Section 15 (2) (b) of the Act of 1956 is attracted, the same has to be then read with Rule 3 of Section 16 of the Act of 1956 which consequently will come back to Section 8 and Schedule-II of the Act of 1956. The question as to whether Late Kamala Kanta Kalita had two brothers or not, has not been decided by the learned Trial Court. The aspect as to whether the suit property originally devolved from Late Kamala Kanta Kalita upon his death to his wife Late Bogibala Dasya is not in dispute. The question which begged consideration and what the learned Trial Court ought to have decided as to whether Late Kamala Kanta Kalita had two brothers as alleged and as to whether the plaintiffs being the dominus litis would have a right to implead them in the suit. The learned Trial Court having not done so, in the opinion of this Court, the impugned order requires to be interfered with.

8. Mr. R. K. Jain, the learned counsel for the petitioner submitted that taking into account the scope of the suit, the application under Order I Rule 10 of the Code ought to have been filed simultaneously with an application

seeking amendment of the plaint in as much as necessary pleading would be required to be inserted. The learned counsel for the petitioner submitted that the petitioner may be given the permission to do so.

9. This Court is of the opinion that leave to grant permission for filing an amendment to the plaint lies with the learned Trial Court before whom the suit is pending and for seeking such amendment, the petitioner would be required to file appropriate application and the learned Trial Court has to consider as to whether the said amendment could be permitted in the facts of the case.

10. Accordingly, this Court therefore disposes of the instant petition by interfering with the order dated 04.09.2017 and directing the learned Trial Court to decide the said application afresh in the touchstone of the observations made herein above.

11. The petitioner would be at liberty to file application seeking amendment of the plaint before the learned Trial Court, and in such circumstances, if such application is filed, the learned Trial Court shall duly consider the same in accordance with law.

12. Taking into account that vide an order dated 21.09.2017, the further proceedings of Title Suit No.353/2006 was stayed, this Court vacates the said stay order and directs the parties to appear before the learned Trial Court on 10.06.2024.

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

JUDGE