

GAHC010273382023



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

Case No. : CRP(IO)/397/2023

SMTI. CHAMPA BALA DAS
D/O LATE PIPRA RAM DAS, W/O GANESH DAS, VILL-BHALUKMARI, P.O.-
HARALTARI, DIST-DHUBRI (ASSAM)

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED BY THE DISTRICT COLLECTOR, BONGAIGAON, P.O. AND
DIST- BONGAIGAON (ASSAM)

2:DOLEN DAS
S/O LATE PRAKASH CHANDRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

3:KARUNAKANTA DAS
S/O LATE PRAKASH CHANDRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

4:BINAY CHANDRA DAS
S/O LATE PRAKASH CHANDRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

5:ANOWAR HUSSAIN
S/O MOSLEM UDDIN
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

6:ABDUL MAZID
S/O KHULA UDDIN
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

7:HASMAT ALI
S/O JABED ALI
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

8:ABDUL WAHAB
S/O AJIBULLAH SK.
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

9:HEMANTA RAY
S/O BIPRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

10:BAPAN CHANDRA DAS
S/O BIPRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

11:NIKUJA DAS
S/O BIPRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

12:MRIDUL DAS
S/O BIPRA DAS
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

13:HANIF UDDIN
S/O GOLAP UDDIN
R/O VILL-KANARA BEEL
P.O.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : Mr. C Sharma
For respondent Nos.5 to 8
Mr. A Bhattacharyya
Government Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 29.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 31.08.2023 passed by the Court of the learned Civil Judge (Junior Division) North Salmara in Title Suit No.198/2021 whereby the application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, the Code) seeking a further amendment to the plaint was rejected.

2. This Court has perused the application under Order VI Rule 17 read with Section 151 of the Code filed by the petitioner before the learned Trial Court. This Court has also perused the amended plaint. On a conjoint reading of the amended plaint along with the application under Order VI Rule 17, it transpires that the said amendment so sought for amounts to amplification of the pleadings which were already there on record. As regards, the relief which was sought to be inserted by way of the amendment, the relief is specific taking into account that on the earlier occasion, the plaintiffs have sought for cancellation of all deeds of sale against the defendant Nos.5 to 8. Now by way of this

amended registered deed of sale which was executed in favour of the defendant No.8 was specifically sought for cancellation. In the opinion of this Court, if these amendments are not permitted, it would result in ambiguity and at a later stage lead to unnecessary complications. Accordingly, this Court for the purpose of deciding the real question in controversy, permits the said amendment as sought for vide the application being Petition No.743/2023 filed on 17.03.2024.

3. This Court also takes note of that upon the amendment being allowed, the suit shall revert back to the stage of filing of additional written statement and thereupon framing of additional issues, if need be. In addition to that, it may require filing of additional evidence on affidavit. Consequently, the defendants, more particularly, the defendant Nos.2 to 13 would require to file an additional written statement. This Court taking note of the costs which would be involved again to revert back to the stage of filing of additional pleadings on the last occasion, asked the counsel representing the defendant Nos.2 to 13 to file an affidavit as regards the costs which would be involved.

4. An affidavit has been filed today. In paragraph 3 of the said affidavit, there have been details mentioned as regards the instant revision petition. But as regards the suit, what has been mentioned is an amount of Rs.10,000/- on account of hearing of the petition for amendment of the plaint and an additional amount of Rs.10,000/- for filing the additional written statement. However, there is no mention as to what further additional expenses would have to be incurred as regards the appearance fees of the counsels.

5. Taking into account that the amendment has been allowed by this Court hereinabove, and it would result in filing of an additional written statement as well as the other expenses on account of counsel fees, this Court reasonably is of the opinion that an amount of Rs.20,000/- would recompense the defendant Nos.2 to 13. Accordingly, this Court, therefore, permits the amendment to the plaint on the basis of the Petition No.743/2023, subject to deposit of an amount of Rs.20,000/- before the learned Trial Court by the plaintiff.

6. This Court further vacates the earlier order of stay of the suit and directs the appearance of the parties on 19.06.2024 before the learned Trial Court and on which date, the amended plaint be filed incorporating the amendments in terms with the Petition No.743/2023 and also the amount of Rs.20,000/- be deposited before the learned Trial Court, which shall be a condition precedent for acceptance of the amended plaint.

7. It is further observed that if on 19.06.2024, the said amended plaint and the amount of Rs.20,000/- is not deposited before the learned Trial Court, the consequence in terms with Order VI Rule 18 of the Code would follow. The defendant Nos.2 to 13 shall be at liberty to file an application before the learned Trial Court for release of the said amount and the learned Trial Court shall pass appropriate order(s) thereof.

8. With the above, the instant revision petition stands disposed of.

JUDGE

Comparing Assistant