GAHC010215032019

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

Case No. : CRP/121/2019

PADYESWARI ROY
W/O- SRI DAMBARU ROY, VILL- MOWTARI, P.O AND P.S- CHAPAR, DIST- DHUBRI, ASSAM

VERSUS

KHARGESWAR DEV AND ANR.
S/O- LATE JITENDRA NARAYAN DEV, R/O- VILL DAMODARPUR (CHOUDHURY PARA), P.O- SILGARA, P.S- KOKRAJHAR, DIST- KOKRAJHAR, BTAD, ASSAM

2:JITEN BARUAH
S/O- KHAGEN BARUAH
R/O- VILL DAMODARPUR (CHOUDHURY PARA)
P.O- SILGARA, P.S- KOKRAJHAR
DIST- KOKRAJHAR, BTAD, ASSA

Advocate for the Petitioner : MR. B PATHAK
Advocate for the Respondent : MR. S R BHATTACHARJEE

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

Date : 04-12-2020

Heard Mr. B. Pathak, learned counsel for the petitioner.

Order dated 3.6.2019 passed by the learned Munsiff, Kokrajhar in Title Suit No. 3/2018 is put under challenge in this revision petition. The present petitioner is the plaintiff in the

said suit who filed an application under Order 23 Rule 3 CPC seeking for withdrawal of the suit with liberty to file it afresh. The grounds for withdrawal of the suit are as follows:

"*Plaintiff have prayed for withdrawal stating:*

(a) Of formal defects to have occurred at the time of the writing of the plaint of the present suit.

(b) That the value is fixed less than actual value of the suit land which is required to be enhanced.

(c) That from the prayer portion of the plaint, it appears that the relief sought by the present suit is not specifically clear."

The court below rejected the said prayer holding that the plaintiff petitioner failed to state clearly the formal defects present in the suit and how far those formal defects would affect the suit. The court below rightly observed that the grounds does not fall within the restricted definition of the formal defects. On the basis of said finding the court below passed the impugned order.

I have heard Mr. Pathak and also perused the impugned order alongwith pleadings more specifically the plaint of Title Suit No. 3/2018. From such perusal I am unable to hold that such formal defects goes to the root of the suit as apparent from the pleadings.

Be that as it may, I am not inclined to interfere with the impugned order dtd. 3.6.2019. The petitioner has the liberty to file amendment application for verification of the defects if so advised. The court below upon filing of amendment petition by the petitioner shall decide the same as per law.

With the said observation, this revision petition stands dismissed. Interim order stands vacated.

JUDGE

Comparing Assistant