

GAHC010006902023



2026:GAU-AS:1833

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

Case No. : CRP(IO)/20/2023

KAMLA DEVI AGARWALLA AND 2 ORS
WIFE OF LATE BANWARILAL AGARWALLA,
RESIDENT OF NAHARKATIA TOWN, WARD NO. 2,
POST OFFICE AND POLICE STATION- NAHARKATIA,
DISTRICT- DIBRUGARH, ASSAM.

2: ANKIT AGARWALLA
SON OF LATE BANWARILAL AGARWALLA

RESIDENT OF NAHARKATIA TOWN
WARD NO. 2

POST OFFICE AND POLICE STATION- NAHARKATIA

DISTRICT- DIBRUGARH
ASSAM.

3: MUNNI AGARWALLA
WIFE OF SANJAY AGARWAL

RESIDENT OF BIHUBOR

DISTRICT- SIVASAGAR
ASSAM

VERSUS

PRODIP BANERJEE
SON OF LATE TEJENDRALAL BANERJEE,
RESIDENT OF NAHARKATIA TOWN, WARD NO. 2,
POST OFFICE AND POLICE STATION- NAHARKATIA,
DISTRICT- DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR. S C KEYAL,

Advocate for the Respondent : MR S KHOUND, MS. N BORAH

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the petitioners : Mr. S.C. Keyal

Advocate for the respondent : Mr. S. Khound

Date on which judgment is reserved: 10.11.2025

Date of pronouncement of judgment : 10.02.2026

Whether the pronouncement is of
the operative part of the judgment : Full judgment.

Whether the full judgment has been
pronounced : Yes

JUDGEMENT AND ORDER (CAV)

Heard learned counsel Mr. S.C. Keyal for the petitioners and learned counsel Mr. S. Khound for the respondent.

2. The petitioners in this case are Smti. Kamla Devi, Sri Ankit Agarwalla and Mrs. Munni Agarwalla. The landlord Sri Prodip Banerjee is arrayed as respondent.

3. The petitioners are aggrieved by the order dated 29.10.2022 passed by the learned Munsiff, Naharkatia in Title Suit No. 11/2019. During the pendency

of the title suit, a petition under Section 151 of Code of Civil Procedure, 1908 (CPC for short) was filed by the petitioners who are the defendants in the original title suit. It was submitted by the petitioners through their petition under Section 151 of CPC that the plaintiff had instituted the title suit against 7 (Seven) defendants, who are the legal heirs of the original tenant Late Banwarilal Agarwalla. All the defendants are necessary parties to the suit for eviction and in their absence, the suit is not maintainable.

4. It was further submitted by the petitioners that during the course of trial, summonses were served on defendants No. 1, 5 and 7 and they appeared and they are at present contesting the original title suit, but no summonses were served on defendants No. 2, 3 and 4 and the plaintiff also failed to take steps for service of summonses on the defendants No. 2, 3 and 4 inspite of repeated orders by the Court.

5. The Court then vide order dated 29.05.2018 dismissed the case against the defendants No. 2, 3 and 4 on default.

6. It is further submitted that the defendants No. 2, 3 and 4 are necessary parties and they derive a joint and heritable right in the suit for eviction initiated against the legal heirs of the tenant Banwarilal Agarwalla, by the plaintiff. It is averred that the plaintiff i.e. the respondent in this present case realized his fallacy and to cover up the same, the plaintiff filed Misc (J) Case No. 03/2019 for restoration of the case against the defendants No. 2, 3 and 4. It is further submitted that the plaintiff was not diligent and failed to take steps for service of summonses on the defendants No. 2, 3 and 4 and subsequently, the plaintiff filed a petition on 20.03.2021 to withdraw the Misc (J) Case No. 03/2019, which was disposed of by the Court on withdrawal vide order dated 20.03.2021.

7. The case against the defendants No. 2, 3 and 4 was dismissed on 29.05.2018. The defendants then prayed before the learned Trial Court to dismiss the suit against them, the suit being not maintainable due to absence of all necessary and essential parties.

8. On this petition, the impugned order dated 29.10.2022 was passed by the learned Trial Court, after framing a preliminary issue as follows :-

Whether in the absence of all the legal heirs of the deceased tenant Late Sri Banwarilal Agarwala, section 2(f) of the Assam Urban Areas Rent Control Act, 1972 bars the maintainability of the instant suit for eviction under the Act.

9. On the preliminary issue as framed by the learned Trial Court, the petitioners' prayer to dismiss the suit against the defendants No. 1, 5 and 6, came to be rejected and the preliminary issue was decided in negative.

10. It is contended that the order impugned by the petitioners is not tenable in law as the learned Trial Court misread, misunderstood and misinterpreted the requirement of law and erroneously passed the impugned order.

11. It is further contended that as the Trial Court has dismissed the suit against the other defendants, the title suit against the present defendants i.e. the petitioners, will not be maintainable as the suit would be barred for non-joinder of necessary parties.

12. The petitioners has relied on the decision of this Court in the case of *On the death of the sole Suranjan Dev, his heirs Smti. Sushama Rani Dey and others-Versus-Mustt Hamida Khatun Choudhury and Others* reported in 1993 *Supp GauLR 113*, wherein it has been held that :-

“15. Mr. Lahiri, learned counsel for the petitioner placed reliance on the decision of Textile

Association (India) Bombay Unit v. Balmohan Gopal Kurup, (1990) 4 SCC 700. In this case, the premises in question was under occupation of one Gopal Kurup as tenant. He left behind his widow, two sons and daughters. After death of Gopal Kurup the landlord filed an eviction petition only against mother and brother i.e. wife and son were impleaded as party and a son was left out in the said petition. The Supreme Court held that without impleading all the heirs the eviction petitioner was not maintainable.

Following the decision of the Apex Court, I hold that all the heirs of Surendranath Deb having interest over the demise house, a suit against the deceased petitioner is not maintainable in view of the fact that interest on the demise house is indivisible, and, therefore, all the heirs are necessary party."

13. Learned counsel for the petitioners has relied on the decision of this Court in *Ranjit Kumar Choudhury-Versus-On the death of Amala Chakravarty her legal heirs Gopesh Chakravarty* reported in 1996 1 GauLJ 148 wherein it has been held that :-

"6. I have carefully considered the submission of the counsel for the parties and held that heirs and legal representatives of the deceased tenant had stepped into the position of contractual tenants of the said premises on the death of their father. Admittedly the original tenant left behind him his widow, two sons and two daughters. Nothing has been disclosed in evidence that the said other heirs and legal representatives of the deceased are not staying at the said premises or that the said persons had, at any time, surrendered the said tenancy in favour of the defendant solely with landlord. They had acquired heritable rights in the said tenancy and the same continued to subsist between the landlord and the heirs and legal representatives of the deceased tenant. In this connection I refer to clause (f) section 2 of the Assam Urban Areas Rent Control Act, 1972 which reads as follows:

"(f) Tenant means any person by whom or on whose behalf rent is payable for any house and includes every person who from time to time derives the titles under a tenant."

The definition of tenant shows that not only the original tenant but also other persons who derive a title under a derivative title is also a tenant. As such a suit in the absence of all the heirs and legal representatives of the deceased-tenant as parties was not maintainable. The same was rightly dismissed by the trial Court inasmuch as all the heirs and legal representatives of the deceased tenant were necessary and essential parties in the suit, but they were not impleaded as parties. The landlord as plaintiff realised the importance of the same and obtained an order from the trial Court to make the said persons as parties, however, after obtaining the order for adding them as parties failed to do so. This was very fatal omission on the part of the landlord."

14. Reverting back to this case, it is held that in the instant case the present petitioners Smti. Kamla Devi, Sri Ankit Agarwalla and Mrs. Munni Agarwalla, were arrayed as defendants No. 1, 5 and 6 in Title Suit No. 20/2017. This case against the other defendants has already been dismissed. If this case against the present defendants is dismissed, the entire title suit will be dismissed on the preliminary issue. It is also not clear if all the legal heirs of Late Banwarilal Agarwala including the present petitioners are residing in the given address as tenants of the respondent.

15. It is contended that the petitioners are not residing at Naharkatia anymore. The submissions of the learned counsel for the petitioners that the learned Trial Court has misconstrued the decision of the Hon'ble Supreme Court in Gurdeep Kaur vs. Vinod Kumar Lamba and Anr. reported in (1994) 107 PLR 185 holds no water, as the ratio of the decision of the Hon'ble Supreme Court is not applicable in this case.

16. It is also submitted by the learned counsel for the respondent that the petitioners have traversed beyond the pleadings as they have not taken this plea in their written statement.

17. The contention that all the legal heirs of the deceased tenant are not occupying the suit premises are basically opposed by the learned counsel for the petitioners.

18. Learned counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in *Shivshankara and Another-Versus-H.P. Vedavyasa Char* reported in (2023) SCC OnLine SC 358 wherein it has been held that :-

“38. We are of the considered view that the same analogy is applicable in a case where even in

the event of death of one of the defendants, when the estate/interest was being fully and substantially represented in the suit jointly by the other defendants along with deceased defendant and when they are also his legal representatives. In such cases, by reason of non-impleadment of all other legal heirs consequential to the death of the said defendant, the defendants could not be heard to contend that the suit should stand abated on account of non-substitution of all the other legal representatives of the deceased defendant. In this case, it is to be noted that along with the deceased 3rd defendant the original defendant Nos. 1 and 2 were jointly defending their joint interest. Hence, applying the ratio of the aforesaid decision and taking into account the fact that the appellants/the original defendants No. 1 and 2 despite the death of original defendant No. 3 defended the suit and preferred and prosecuted the first appeal. Upon the death of the second appellant the joint interest is being fully and substantially taken forward in this proceeding as well by the first appellant along with the substituted legal representatives of the deceased second appellant, we do not find any reason to disagree with the conclusions and findings of the courts below for rejecting the contention that suit ought to have held abated owing to the non-substitution of all the legal heirs of deceased third defendant against all defendants. For the same reason, the contention that the suit was bad for non-joinder of necessary parties of all his legal heirs/representatives also has to fail.”

19. Learned counsel for the respondent has also relied on the decision of the Hon'ble Supreme Court in *Suresh Kumar Kohli-Versus-Rakesh Jain and Another* reported in (2018) 6 SCC 708 wherein it has been held that :-

“24. We are of the view that in the light of H.C. Pandey, the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.”

20. In the light of the decision of the Hon'ble Supreme Court in *Shivshankara*

(supra) and Suresh Kumar Kohli (supra), it is held that the title suit can proceed against the defendants No. 1, 5 and 6. At this juncture, it is not conclusively affirmed that the suit will not be maintainable or the suit is bad for non-joinder of necessary parties which also includes the defendants No. 2, 3 and 4, against whom the suit has been dismissed on default.

21. The learned Trial Court has elaborately discussed how a tenant under Section 2(f) of the Assam Urban Areas Rent Control Act, 1972, also includes the legal heirs of the tenant. Sound reasonings were assigned why the Title Suit No.11/2019 may not be dismissed on the basis of preliminary issue considering the bar on the suit on account of non joinder of parties.

22. I therefore, record my concurrence to the decision of the learned Trial court . In view of the foregoing discussions, this petition is dismissed as this petition is devoid of merits and the order dated 29.10.2022 by the learned trial court in Title Suit No.11/2019 is upheld.

23. No order as to costs.

JUDGE

Comparing Assistant