GAHC010063742025

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

Case No. : CRP/46/2025

SHREE SHREE SHIV RAM MANDIR
(PREVIOUSLY KNOWN AS BIHARI THAKURBARI), DHUBRI, WARD NO 3, VIVEKANANDA ROAD, P.O AND P.S- DHUBRI, DIST- DHUBRI, ASSAM, REPRESENTED BY ITS SECRETARY, SRI PRADIP MALLAH, AGED ABOUT 48 YEARS, S/O LATE DINANATH MALLAH, R/O WARD NO. 3, DHUBRI TOWN, P.O. AND P.S.- DHUBRI, DIST- DHUBRI, ASSAM

VERSUS

PRADIP KUMAR ROY AND 4 ORS.
S/O- LATE LAKHAN PROSAD ROY, R/O WARD NO. 3, VIVEKANANDA ROAD, DHUBRI TOWN, P.O. AND P.S.- DHUBRI, DIST- DHUBRI, ASSAM, PIN-783301

2:SANJEET ROY
S/O- LATE LAKHAN PROSAD ROY
R/O WARD NO. 3
VIVEKANANDA ROAD
DHUBRI TOWN
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM, PIN-783301

3:JAGADISH KR. ROY
S/O- LATE LAKHAN PROSAD ROY
R/O WARD NO. 3
VIVEKANANDA ROAD
DHUBRI TOWN
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM, PIN-783301

4:SHOBHA ROY
S/O- LATE LAKHAN PROSAD ROY

R/O WARD NO. 3
VIVEKANANDA ROAD
DHUBRI TOWN
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN-783301

5:PURNIMA KUMARI ROY
S/O- LATE LAKHAN PROSAD ROY
R/O WARD NO. 3
VIVEKANANDA ROAD
DHUBRI TOWN
P.O. AND P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. D A KAIYUM, MS. M BEGUM,MR. M S MONDAL

Advocate for the Respondent : MS. R CHOUDHURY (R-1 TO 5), MS. B. HAZARIKA (R-1 TO 5),MD. MEMON AHMED (R-1 TO 5)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 07.10.2026

1. Heard Mr. D. A. Kaiyum, the learned counsel for the petitioner. Also heard Ms. R. Choudhury, the learned senior counsel assisted by Mr. Z. Hussain, the learned counsel for the respondents.

2. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908,has been filed by the petitioner, namely, Shree Shree Shiv Ram Mandir (previously known as Bihari Thakurbari) impugning the order dated 04.01.2025 passed by the court of learned Civil Judge (Junior Division) No. 1, Dhubri, in Misc.(J) Case No. 213/2023, arising out of Title Suit No. 173/2015, whereby the application filed by the present petitioner under Order 1 Rule 10(2)

of the Code of Civil Procedure, 1908 for impleading it as one of the defendant in the said suit was rejected by the Trial Court.

3. The facts relevant for consideration of the instant civil revision petition is that the predecessor-in-interest of the present respondents, namely, late Lakhan Prosad Roy had instituted a suit against one Pradip Kumar Roy and seven others as main defendants as well as four other proforma defendants praying for declaration of right, title and interest, and confirmation of possession of the plaintiff over the suit premises as well as for a decree of permanent injunction restraining the defendants from entering and dispossessing plaintiff from the schedule land. A relief was also sought for by the plaintiffs in the said suit for declaring the order passed in Misc. Case No. 10/2007 as unjust and improper and liable to be set aside.

4. The present petitioners on 01.09.2023 had filed an application under Order 1, Rule 10(2) read with Section 151 Code of Civil Procedure, 1908 for impleading Shree Shree Shiv Ram Mandir as one of the defendants in the said suit which was rejected by the Trial Court by passing the impugned order 04.01.2025.

5. Mr. D. A. Kaiyum, the learned counsel for the petitioner submits that the Trial Court has erred in rejecting the prayer of impleadment filed by the present petitioner merely by holding that the petitioner failed to establish that Shree Shree Shiv Ram Mandir is a legal entity. He submits that the temple may be regarded as a legal entity capable of suing and being sued and in support of his submission, he has cited the ruling of "***M. Siddiq (Dead) Through Legal Representatives (Ram Janamabhumi Temple Case) Vs. Mahant Suresh Das and***

Others" reported in "***(2020) 1 SCC 1".***

6. He further submits that in this connection in the pending suit on the prayer of the plaintiff, a commission was issued for spot verification of the disputed land and the report of the Lat Mandal shows that the present petitioner, i.e., the Temple has been constructed over a part of the suit land.He submits that the Temple is situated over the suit land for more than 70 years and, as such, same is a necessary party in this case. In support of his submission, he has cited the following rulings: -

1. "***NAK Engineering Company Private Limited Vs. Tarun Keshrichand Shah and Others***" reported in "***(2026) 3 SCC 631***";

2. "***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others***", reported in "***(1992) 2 SCC 524***".

7. On the other hand, Ms. R. Choudhury, the learned senior counsel for the respondents has raised a question of maintainability of this civil revision petition. She submits that this revision petition is not maintainable in view of the bar provided in the proviso to Section 115 of Code of Civil Procedure, 1908. She submits that a plain reading of Section 115 of the Code of Civil Procedure, 1908 makes it clear that if the order which has been impugned in this case had been passed in favour of the petitioner, had it finally disposed of the suit or other proceeding, the revision petition would have been maintainable. However, on the contrary, if the suit or the proceeding is not finally disposed of even if the impugned order would have been passed in favour of the petitioners, the revision petition is not maintainable.

8. The learned senior counsel for the respondents submits that even if the

prayer for impleadment under Order 1 Rule 10(2) made by the petitioner had been allowed, it would not have finally disposed of the suit. As such, she submits that the instant revision is barred under proviso to Section 115 of the Code of Civil Procedure, 1908.In support of her submission, she has cited ruling of the Apex Court in the case of "***Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers",*** reported in "***(2003) 6 SCC 659***".

9. She further submits that the Trial Court has correctly dismissed the prayer for impleadment as the present petitioner failed to establish the fact that it was a legal entity capable of suing or being sued. She also submits that the respondents/plaintiffs being the *dominus litis* in the suit have the discretion to make any person as defendant. However, unless Court finds that the legal entity is necessary or proper for adjudication of the suit, such impleadment prayer may not be allowed, which has been correctly rejected by Trial Court in this case. In support of her submission, she has also relied uponthe following cases:-

1. "NAK Engineering Company Private Limited Vs. Tarun Keshrichand Shah and Others" reported in "***(2026) 3 SCC 631***";

2. "***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others***", reported in "***(1992) 2 SCC 524***".

10. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

11. On perusal of the impugned order dated 04.01.2025, passed in Misc. (J)

Case No. 213/2023, it appears that the Trial Court has rejected the prayer for impleading the present petitioner as a party in the Title Suit No. 173/2015 mainly on the ground that the petitioner has failed to establish that it, namely, Shree Shree Shiv Ram Mandir is a legal entity capable of suing and being sued. Nothing has been shown by the petitioner before the Trial Court to show that it is a public temple and has vested any right to hold any property.

12. On perusal of the ruling of the Apex Court in the case of "***M. Siddiq (Dead) Through Legal Representatives (Ram Janamabhumi Temple Case) Vs. Mahant Suresh Das and Others***" (supra), it appears that though it recognizes the concept of a Hindu idol to be treated as a juristic person, however, treating the idol or the deity to be a juristic person is quite different from treating a temple as juristic person. Though, the idol or the deity may be regarded as a juristic person under certain circumstances, however, the temple in which said idol or deity is located may not be regarded as a juristic person in absence of materials on record to show that such a juristic personality was ever bestowed on such temple. There is nothing on record to show that the present petitioner was considered at any point of time to be a juristic person capable of holding property. Further, the plaintiff's witness, while deposing as PW-1 in the Title Suit No. 173/2015 has deposed that the Temple situated over suit land is his personal Temple and has been established more than 70 years ago.

13. This Court is of considered opinion that though a Hindu idol or deity, if consecrated for some pious purpose may be conferred the juristic personality, however, without any proof of the same, the Temple, where annual Durga Puja is celebrated for more than 70 years, in itself, cannot be a reason to treat such a temple as juristic person capable of suing and being sued. More so, when there

is evidence on record showing that the said Temple is a Private Temple of PW-1. Constructing a private Temple over private land for a long period of time does not automatically confer a legal entity to such a Temple. This Court, therefore does not find any infirmity in the order of the Trial Court rejecting the prayer for impleadment of the present petitioner as a defendant in the Title Suit No. 173/2015 mainly on the ground that the petitioner has failed to establish that it may be regarded as a juristic person for the purpose of suing and being sued.

14. Moreover, the contention of learned senior counsel for the respondents that the present revision petition is barred by the proviso to Section 115 of the Code of Civil Procedure, 1908 may also be not discarded. Even if by the impugned order the prayer for impleadment of present petitioner would have been allowed by the Trial Court, it would not have finally disposed of the suit or other proceedings, as such, the embargo provided in proviso to Section 115 of the Code of Civil Procedure, 1908 appears to be applicable in this case.

15. In view of the discussions made and reasons stated in the foregoing paragraphs, this revision petition is found devoid of any merit and accordingly dismissed.

16. The party shall bear their own costs.

17. Let a copy of this order be sent to the Trial Court by the Registry.

JUDGE

Comparing Assistant