GAHC010282022025

2026:GAU-AS:16526

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRP(IO)/536/2025

1. Mrs Juliana Saikia Deka
Wife of Late Biraj Deka,
R/O B.C.B.R. Road, Tezpur Town,
P.O.- Tezpur, Dist- Sonitpur, Assam

.....Petitioner

-Versus-

1. Rishiraj Saikia
Son of Late Prabit Saikia,
Resident of Khara- Ati, P.O.- Tezpur,
District- Sonitpur, Pin-784001

2. Smti Mamoni Saikia Sundi
Daughter of Late Prabit Saikia
Resident of Khara- Ati
P.O.- Tezpur
District- Sonitpur
Pin-784001

.....Respondents

For Petitioner	:	Ms. A. Roy, Advocate
For Respondents	:	Mr. S. D. Purkayastha, Advocate
Date of Hearing	:	**19.08.2026**
Date of Judgment	:	**10.11.2026**

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

1. Heard Ms. A. Roy, the learned counsel for the petitioner. Also heard Mr. S.D. Purkayastha, the learned counsel for the respondents.

2. This CRP (I/O) has been registered on filing of an application under Article 227 of the Constitution of India by the petitioner, Ms. Juliana Saikia Deka, impugning the order dated 13.08.2025 passed in Misc.(J) Case No. 125/2024 by the Court of learned Civil Judge (Junior Division) No. 1, Sonitpur at Tezpur in connection with Title Suit No. 14/2019, whereby the prayer for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure, 1908 made by the present petitioner was rejected by the Trial Court.

3. The facts relevant for consideration of the instant application, in brief, are that the present petitioner had filed a suit against the predecessor-in-interest of the present respondent, praying for a decree of permanent injunction restraining the defendant from evicting the plaintiff (present petitioner) from the suit room and from closing the doors of the suit premises under lock and key and also from disconnecting the electricity connection from the suit premises till the petitioner is evicted from the suit premises under due process of law. It has been averred by the present

petitioner in the plaint that the defendant is the owner of the suit room and premises and plaintiff is the tenant in respect of the said premises and running a business of restaurant-cum-bar in the suit premises under the name and style of M/s SIP & BITE. The present respondent contested the suit by filing written statement.

4. During the pendency of the Title Suit No. 14/2019, the present petitioner, on 23.07.2024, filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, praying for amendment of the plaint by incorporating certain new development which took place subsequent to the filing of the suit by the petitioner. It was stated in the said petition filed by the present petitioner that on 12.02.2019, the suit room was put under lock and key by the present respondent, and as such, necessity of incorporating a new relief of restoration of possession of the present petitioner in the suit premises was there. Thus, apart from the relief of injunction which was earlier prayed for by the present petitioner, a relief for restoration of possession of the petitioner over the suit premises was also sought to be incorporated by way of amendment. However, by order dated 13.08.2025 passed in Misc.(J) Case No. 125/2024, which is impugned in this CRP (I/O), the prayer for amendment was rejected by the Trial Court.

5. Ms. A. Roy, the learned counsel for the petitioner submits that the Trial Court has erred in denying the petitioner to

amend the plaint as was prayed for by her, mainly on the ground of belated filing of the amendment petition and holding that the relief sought for is barred by limitation. She submits that the Trial Court has erred in holding that the relief, which is sought to be incorporated by way of amendment is barred by limitation.

6. She submits that the Trial Court has erred in holding that the relief of recovery of possession in the present case is governed by Section 6 of the Specific Relief Act, 1963, which prescribes the limitation period of only six months from the date of alleged dispossession. She submits that the nature of dispossession of the petitioner from the suit premises entitled her to seek relief against such dispossession and the limitation period applicable for such remedy is governed by Article 64 of the Limitation Act, 1963, which prescribes the limitation period of 12 years for filing such suit from the date of dispossession. In support of her submission, she has cited a ruling of the Apex Court in the case of ***"Nair Service Society Ltd. v. K.C. Alexander and Others"*** reported in ***AIR 1968 SC 1165.***

7. The learned counsel for the petitioner has further submitted that the Trial Court also erred in rejecting the prayer for amendment merely on the ground that the allowing of such petition would amount to change of cause of action for the suit. She submits that the law in this regard is settled that in order to allow the prayer for amendment, if the change in cause of action occurs, same may not be a consideration for

rejecting the amendment prayer, as at that stage such a consideration is hardly relevant. She has further submitted that the delay in filing amendment application was occasioned due to the fact that the Title Suit was kept in abeyance from 21.08.2019 till 27.09.2023. She submits that the amendment sought for by the present petitioner in her plaint is necessary in order to decide the real controversy between the parties and as such, the Trial Court was wrong in rejecting the prayer for amendment made by the present petitioner. She, therefore, prays for setting aside the impugned order and allows the petitioner to amend her plaint as prayed for by her. The learned counsel for the petitioner has also cited following ruling in support of her submissions:

a) ***Usha Devi vs. Rijwan Ahamad and others,*** reported in ***AIR 2008 SC 1147***.

8. On the other hand, Mr. S. D. Purkayastha, the learned counsel for the respondents has submitted that the Trial Court, by the impugned order, has rightly rejected the prayer for amendment sought for by the present petitioner in her plaint, as the said prayer was made after more than 5 years of the date when the cause of action for the said amendment arose.

9. He submits that even going by the averments made by the present petitioner in her application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, the present petitioner was

dispossessed from the suit property on 12.02.2019, whereas the application for amendment of the plaint was filed on 23.07.2024, which is more than 5 years of the date of the arising of the cause of action for the said amendment.

10. He further submits that the Trial Court was also correct in holding that the suit for recovery of possession under such circumstances would lie only under Section 6 of the Specific Relief Act, 1963, which prescribes a period of limitation of six months only for seeking relief against such dispossession.

11. He further submits that the Title Suit No. 14/2019 was filed by the present petitioner seeking the relief of only injunction without any declaration or without seeking any other relief. As such, the Trial Court was also correct in holding that the amendment sought for, if allowed, would change the nature of the suit.

12. He submits that it is the settled principle of law that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or nature of claim. He submits that if the amendment which was sought for by the present petitioner is allowed, it would convert the suit for injunction into a suit for recovery of possession, that too beyond the period of limitation prescribed for seeking such a relief. As such, he submits that the Trial Court has correctly dismissed the prayer for amendment of the plaint which was sought for at such a belated stage. In support of his submission, the learned counsel for the respondents has cited following rulings:

a) ***Usha Balasaheb Swami and others Vs. Kiran Appaso Swami and others,*** reported in ***(2007) 5 SCC 602.***

b) ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others,*** reported in ***(2009) 10 SCC 84.***

13. 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 learned counsel for both sides in support of their respective submissions.

14. On perusal of the materials available on record, it is apparent that there is no dispute to the fact that the present petitioner is claiming herself to be a tenant of the respondents. As such, if she alleges that she was dispossessed from the suit property otherwise than in due course of law, the remedy open to her is by filing a suit under Section 6 of the Specific Relief Act, 1963, for which the period of limitation prescribed under the said provision is six months from the date of dispossession. Hence, this Court is of considered opinion that this is not a case where the limitation prescribed in Article 64 of the Limitation Act, 1963 would be applicable, rather the Trial Court is correct in observing that the period of limitation for seeking remedy against dispossession from the suit property is six months as prescribed under Section 6 of the Specific Relief Act, 1963.

15. In the instant case, it appears that the petitioner has alleged her dispossession from suit property on 12.02.2019, however, the prayer for amendment of the plaint under

Order 6 Rule 17 of the Code of Civil Procedure, 1908 has been made by her in an application which was filed on 23.07.2024, i.e., after more than 5 years of the date of alleged dispossession. Even if the contention of the learned counsel for the petitioner that the Title Suit No. 14/2019 was kept in abeyance from 21.08.2019 till 27.09.2023 is accepted, still it appears that the application for seeking amendment of the plaint was filed on 23.07.2024, i.e., more than 10 months from 27.09.2023, i.e., the date till which the Title Suit No. 14/2019 is stated to be kept in abeyance. As such, the fact that the prayer for seeking amendment of the plaint has been filed belatedly is apparent from the records.

16. It is further relevant that the Trial Court also took into consideration the fact that this Court, by order dated 12.03.2020 passed in Misc. Appeal No. 5/2019, has directed the Trial Court to dispose of the Title Suit No. 14/2019 within a period of one year from the date of said order. As such, the impugned order by which the Trial Court has dismissed the prayer for amendment of plaint mainly on the ground of lack of due diligence, as well as on the ground that it was filed after more than 5 years of the cause of action for the said amendment arose and is contrary to the statutory provisions. The powers of this Court under Article 227 of the Constitution of India may not be invoked to interfere with the impugned order merely on the ground that another view than the view taken by the Trial Court is also a possible view. It is a settled proposition of law that the powers under Article

227 of the Constitution of India to interfere with the orders of the courts subordinate to High Court has to be very sparingly exercised.

17. For the reasons stated in the foregoing paragraphs and discussions made therein, this Court is of considered opinion that this is not a fit case to invoke the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India by interfering with the impugned order.

18. Accordingly, this CRP (I/O) is, hereby, dismissed.

19. Parties are left to bear their own costs.

20. The stay granted on further proceeding of Title Suit No. 14/2019 by this Court on 06.01.2026 is hereby vacated. The Trial Court shall proceed with the trial of Title Suit No. 14/2019 and shall bring the same to its logical conclusion as expeditiously as possible.

21. Let a copy of this order be sent to the Trial Court for compliance.

JUDGE

Comparing Assistant

Amita Sharma
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