GAHC010109582024

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

Case No. : CRP(IO)/179/2024

PABAN HAZARIKA AND 9 ORS
FOR AND ON BEHALF OF HIMSELF

2: SRI PRADIP HAZARIKA
AGED ABOUT 70 YEARS

3: SRI TAPAN KR. HAZARIKA
AGED ABOUT 67 YEARS.

4: SMTI. ANU HAZARIKA (KAKOTI)
W/O SRI SIRISH KAKOTI
RESIDENT OF BETIANI KAKOTI GAON
PO BETANI
PS DHEKIAL
DIST. GOLAGHAT
ASSAM

5: SMTI QUEEN HAZARIKA
W/O LATE (DR.) GRISHMA BORAH
RESIDENT OF 1A ASHIRBAD APARTMENTS
CHANDMARI COLONY
GUWAHATI 781003
ALL ARE RESPECTIVE SONS AND DAUGHTERS OF LATE GANESH CHANDRA HAZARIKA AND LATE CHANDRA PRABHA HAZARIKA
NOPAM GAON
PO AND PS AMGURI
DIST SIVASAGAR
ASSAM 785680

6: SMTI. JYOTI HAZARIKA
W/O LATE GAGAN HAZARIKA
NOPAM GAON
PO AND PS AMGURI
DIST SIVASAGAR

ASSAM 785680

7: SMTI BIJU HAZARIKA
W/O LATE RAJEN HAZARIKA

8: NUPUR HAZARIKA
S/O LATE RAJEN HAZARIKA

9: SRI JANARDHAN HAZARIKA
S/O LATE RAJEN HAZARIKA

10: SRI ABHINANDAN HAZARIKA
S/O LATE RAJEN HAZARIKA

11: SMTI DIPSHIKA HAZARIKA
D/O LATE RAJEN HAZARIKA

SL. NO. 7 TO 11 ARE THE LEGAL HEIRS OF LATE RAJEN HAZARIKA
HALOATING BAZAR
PO AND PS HALOATING
DIST SIVASAGAR
ASSAM 78568

VERSUS

PARISHMITA HAZARIKA AND 2 ORS
W/O SRI RANA KONWAR
RESIDENT OF AMGURI TOWN, PO AND PS AMGURI, DIST SIVASAGAR,
ASSAM 78568

2:SMTI ABHISHMITA HAZARIKA
W/O SRI DEBAJIT CHANGMAI
RESIDENT OF RAMNAGAR
PO AND PS DIGBOI
DIST TINSUKIA
ASAM 786171

3:SMTI. LABANYA HAZARIKA
D/O UNKNOWN
C/O SMTI. PARISHMITA HAZARIKA

PO AND PS AMGURI
DIST SIVASAGAR
ASSAM 78568

Advocate for the Petitioner : MR. A DAS, MR. T SARMA,MR. N I KHAN,MS. M BORDOLOI,MR. A BISWAS

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 14.10.2026

1. Heard Mr. A. Das, learned counsel for the petitioners.

2. It appears that in spite of due service of notice on the respondents, none have appeared when the matter was called on for hearing on 07.10.2026. As such, this Court directed that the instant CRP (IO) shall proceed *ex-parte* against the respondents.

3. This CRP (IO) has been filed by the petitioners under Article 227 of the Constitution of India impugning the order dated 15.02.2024, passed by the Court of learned Civil Judge (Senior Division), Sivasagar, in Misc.(J) Case No. 35/2023, arising out of Title Suit No. 10/2021, pending before the said Court whereby the Trial Court partly allowed the prayer for amendment of the plaint.

4. The petitioners are aggrieved with the rejection of some of the amendments which were sought for by the present petitioners before the Trial Court by filing the application under Order 6 Rule 17 of the Code of Civil Procedure, 1908.

5. The facts relevant for consideration of the instant CRP (IO) are that

the present petitioners have filed a suit for recovery of possession of the suit land as well as suit premises under Section 6 of the Specific Relief Act, 1963 with consequential reliefs. The said suit was registered as Title Suit No. 10/2021, before the Court of learned Civil Judge (Senior Division), Sivasagar. Along with the aforesaid suit, the petitioners also filed application for grant of temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908.

6. The learned counsel for the petitioners submits that during the proceedings of Misc. case which was registered under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, certain developments took place and the petitioners came across certain documents which were not in their possession at the time of filing of the suit. As such, an application under Order 6 Rule 17 read with Order 7 Rule 14 of the Code of Civil Procedure, 1908 was filed seeking amendment of the plaint and also seeking leave of the Court to bring the documents which were discovered subsequently on record. On the basis of said application, Misc.(J)Case No. 35/2023 was registered.

7. The learned counsel for the petitioners submits that by the order dated 15.02.2024, passed in Misc.(J) Case No. 35/2023, which has been impugned in this instant CRP(IO), the application for amendment was partly allowed and amendments sought for by incorporating paragraph Nos. 11(B), 11(C),11(D) and 11(E) were rejected by the Trial Court.

8. The learned counsel for the petitioners submits that since the evidence of plaintiffs' witnesses has not yet started though issues are already framed, hence, the defendants would not be prejudiced even if the said amendments

are allowed.

9. The learned counsel for the petitioners submits that the petitioners are mainly aggrieved with the rejection of the prayer of amendment for incorporating two paragraphs, namely, 11(D) and 11(E) as was suggested in the application under Order 6 Rule 17 filed by the present petitioners before the Trial Court. He submits that the main ground for disallowing these amendments by the Trial Court was that, according to the Trial Court, the said developments in connection with the suit have already formed part of the case record and, as such, it was of the considered opinion that necessity of incorporating same in the plaint by way of amendment may not be there.

10. However, the learned counsel for the petitioner submits that unless the said developments are incorporated in the pleadings by the plaintiff, he may be prevented from adducing evidence by the other side at the time of adducing evidence in the suit. He submits that the new developments which are reflected in the proposed amendment by incorporating paragraph Nos. 11(D) and 11(E) would be necessary for determining the real questions in controversy between the parties and same would not cause any prejudice to the other side.

11. I have considered the submissions made by learned counsel for the petitioners and have gone through the materials on record.

12. Since, this CRP(IO) is proceeding *ex-parte* against the respondents in spite of due service of notice on them, a presumption may be drawn that even the relief prayed for is granted, the respondents would not be prejudiced and, therefore, they choose not to object or oppose to this instant CRP(IO).

13. The sole ground for rejecting the amendment application by the counsel is that as the developments in connection with the suit which are sought to be incorporated by adding new paragraph have already formed part of the case records, same may not be required to be incorporated. However, the contention raised by the learned counsel for the petitioners also has substance in it, as unless the facts are pleaded by a party, there may be an objection later on in the suit regarding adducing evidence with regard to the said fact, if the circumstances require such adducing of evidences is necessary.

14. Apparently, the paragraphs sought to be incorporated by way of amendment are later developments and were not within the knowledge of the petitioners at the time of filing of the suit. As such, this is a case where, in spite of due diligence, the petitioners could not have incorporated the said matter before commencement of the trial i.e., framing of issues. Even if the amendment is allowed at this stage, the defendants may be afforded opportunity to file additional written statement and if required, additional issues may be framed.

15. As such, this Court is of the considered opinion that the allowing of the amendment by incorporating paragraph Nos. 11(D) and 11(E) to the plaint would serve the ends of justice and would help the Trial Court in determining the real question in controversy between the parties.

16. In view of the discussions made and reasons stated in the foregoing paragraphs, the impugned order dated 15.02.2024, passed in Misc.(J) Case No. 35/2023 by the Court of learned Civil Judge (Senior Division), Sivasagar disallowing proposed amendment by incorporating Paragraph Nos. 11(D) and

11(E)is set aside to that extent only.

17. The petitioner along with the amendment which has been already allowed by the Trial Court by the impugned order is also allowed to incorporate paragraph Nos. 11(D) and 11(E) as proposed by them in their application under Order 6 Rule 17 of the Code of Civil Procedure before the Trial Court.

18. With the above observations, this CRP (IO) is allowed.

19. The stay of Title Suit No. 10/2021 granted by this Court earlier stands vacated.

20. After filing of the amended plaint, the Trial Court shall proceed with the trial and take it to its logical conclusion.

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

JUDGE

Comparing Assistant