



GAHC010013952019

Page No.# 1/11



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

Case No. : CRP(IO)/46/2019

NUR ISLAM

S/O. WAZED ALI, VILL. JOYBHUM, P.O. JOYBHUM, P.S. LAKHIMPUR, DIST.
GOALPARA, ASSAM-783129.

VERSUS

MALEK UDDIN AHMED AND 16 ORS.

S/O. LT. HABIBAR RAHMAN, VILL. JOYBHUM, P.O. JOYBHUM, P.S.
LAKHIPUR, DIST. GOALPARA, ASSAM-783129.

2:MAYEN UDDIN AHMED

S/O. LT. HABIBAR RAHMAN
VILL. JOYBHUM
P.O. JOYBHUM
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

3:MOFIDUL ISLAM

S/O. LT. HABIBAR RAHMAN
VILL. JOYBHUM
P.O. JOYBHUM
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

4:NUR UDDIN AHMED

S/O. LT. HABIBAR RAHMAN
VILL. JOYBHUM



P.O. JOYBHUM
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

5:HAFIZA KHATUN

D/O. LT. HABIBAR RAHMAN
VILL. DHUMBANDA
P.O. BASHBARI
P.S. BAGUAN
DIST. GOALPARA
ASSAM-783129.

6:MONZUR AHMED

S/O. LT. HABIBAR RAHMAN
VILL. JOYBHUM
P.O. JOYBHUM
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

7:ANOWARA KHATUN

D/O. LT. ABDUL KASHEM
VILL. PADDABARI
P.O. CHUNARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

8:ABIA KHATUN @ RABIA KHATUN

D/O. LT. MOHIR UDFDIN
W/O. SHOMSHER ALI
VILL. UDMARI
P.O. JALESWAR
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

9:KHADEJA KHATUN

D/O. LT. MOHIR UDFDIN
W/O. NISAR AHMED
VILL. KARBALA
P.O. GOBINDAPUR



P.S. GOALPARA
DIST. GOALPARA
ASSAM-783129.

10:JINNAT ALI

S/O. LT. MOFIZ UDDIN
VILL. HASILAPARA
P.O. GOALPARA
P.S. GOALPARA
DIST. GOALPARA
ASSAM-783101.

11:MOZIRAN NESSA
D/O. LT. MOFIZ UDDIN
W/O. KALU SHEIKH
VILL. HALUAPARA
P.O. LAKHIPUR
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-7831293

12:MONSERA KHATUN

D/O. LT. MOFIZ UDDIN
W/O. SOBAHAN ALIU
VILL. HASILAPARA
P.O. GOALPARA
P.S. GOALPARA
DIST. GOALPARA
ASSAM-783101.

13:SATTAR ALI

S/O. EUSUB ALI
VILL. DHUPTOLA
LEWABARI
P.O. RAKHYASINI
P.S. MORNAI
DIST. GOALPARA
ASSAM-783129.

14:NURJAHAN KHATUN

D/O. EUSUB ALI
W/O. CHANDULLAH
VILL. KOKRADANGA
P.O. AOLATOLI



P.S. BAGUAN
DIST. GOALPARA
ASSAM-783129.

15:ABDUL KHALEQUE

S/O. WAZED ALI
VILL. JOYBHUM
P.O. JOYBHUM
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

16:SHIRAJUL HOQUE

S/O. WAZED ALI
VILL. JOYBHUM
P.O. JOYBHUM
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129.

17:ASSTT. SETTLEMENT OFFICER

LAKHIPUR CIRCLE
LAKHIPUR
P.O. LAKHIPUR
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM-783129

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri M.U. Mondal, Advocate

Advocate for the respondents : Shri B.C. Das, Sr. Advocate.
Shri S. Hoque, Advocate.



Date of hearing : 20.09.2023

Date of judgment : 04.10.2023

1. The instant petition has been filed under Article 227 of the Constitution of India against an order dated 12.12.2018 passed by the learned Civil Judge, Goalpara in Misc (J) Case No. 59/2018 arising out of T.S. No. 02/2016. The petitioner was the defendant No. 9 in the aforesaid suit.

2. The suit was instituted for declaration of right, title, interest and also had challenged three numbers of Sale Deeds. While the suit was pending, the respondents, as plaintiffs had filed Miss (J) Case No. 22/2018 under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint. The said petition was however rejected by the learned Court vide Order dated 15.09.2018. Thereafter, another petition under the same provision of Order VI Rule 17 of the CPC has been filed. The said petition was objected to by the present petitioner by filing a written objection wherein it was stated that the present petition was identical to the earlier petition and therefore, the bar of *res judicata* would be applicable. However, vide the impugned order dated 12.12.2018, the amendment has been allowed. It is the legality and validity of the said order by which the amendment was allowed by the Court which is the subject matter of challenge in this petition.

3. I have heard Shri M.U. Mondal, learned counsel for the petitioner. I have also heard Shri B.C. Das, learned Senior Counsel for the contesting respondents. The materials placed before this Court have been duly perused.

4. Shri Mondal, the learned counsel for the petitioner has submitted that the

earlier application for amendment having been rejected vide order dated 15.09.2018 and the said order not being put to challenge, the respondents - plaintiffs were precluded from filing another amendment petition with the same prayer. He submits that the doctrine of *res judicata* is applicable at various stages of the suit.

5. In support of his submission, Shri Mondal, the learned counsel for the petitioner has placed reliance on the decision of ***Prasana Kumar Keshan vs. Pradip Gogoi*** reported in **2017 (4) GLT 787**. In the said case, this Court had laid down that the principles of *res judicata* would also be applicable in case of an application filed under Order VI Rule 17 of the CPC. For ready reference, the relevant portion of the judgment is extracted herein below.

“16. The same ground which was rejected earlier by the order dated 03.03.2015 is sought to be introduced by way of amendment under Order VI Rule 17 CPC. Thus, in the opinion of this Court, it normally falls within the principles of res-judicata which prohibits that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties. It is a well settled proposition of law that the principle of res-judicata applies also as between two stages in the same litigation.

6. In the said case, reliance was also placed in the case of ***U.P. State Road Transport Corporation vs. State of U.P.***, reported in **(2005) 1 SCC 444**, wherein the Hon’ble Supreme Court held as follows:-

“11. The principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-



agitate the matter again at a subsequent stage of the same proceedings. (See Satyadhan vs. Smt. Deorajin Devi AIR 1960 SC 941)."

7. *Per contra*, Shri Das, the learned Senior Counsel has submitted that the doctrine of *res judicata* would be applicable only when the earlier case is decided on merits. He submits that the contents of the two applications are different and therefore, there is no error committed by the learned Court in allowing the amendment which had been done in the interest of justice. In this connection, the learned Senior Counsel for the respondents has drawn the attention of this Court to the contents of the two applications which are annexed to the present Revision Petition. He submits that in the impugned order dated 12.12.2018, the earlier order has been quoted which would show that the earlier order was not passed on the merits of the case and was only technical in nature.

8. The learned Senior Counsel for the respondents has also submitted that the powers to be exercised by this Court under Article 227 of the Constitution of India is a restrictive power and unless there is clear jurisdictional error or the order which has been passed is based on irrelevant and extraneous materials or where the relevant materials have been ignored, only under those circumstances, this Court may exercise such powers. He submits that the impugned order does not fall within the ambit and contours laid down for invoking the powers under Article 227 of the Constitution of India.

9. In support of his submission, the learned Senior Counsel for the respondents has placed reliance upon the following case laws.

(i) *Sheodan Singh vs. Daryao Kunwar [AIR 1966 SC 1332].*

(ii) *Shalini Shyam Shetty and Anr. vs. Rajendra Shankar Patil [2010 (8) SCC 329].*

10. In the case of ***Sheodan Singh*** (supra), the Hon'ble Supreme Court has held that in the former suit, the decision is required to be on merits.

11. In the case of ***Shalini Shyam Shetty*** (supra), the Hon'ble Supreme Court has laid down the principles for invoking the jurisdiction of the High Court under Article 227 of the Constitution of India.

12. The rival submissions made by the learned counsel for the parties have been duly considered.

13. First, let us examine the contents of the two applications filed for amendment of the plaint. The contents of the two applications appear to be similar and there is no substantial change at all. This Court has also noticed that while rejecting the earlier application vide order dated 15.09.2018, no liberty was either sought for or granted to the plaintiff to file another petition. It is also seen that the petitioner did not seek any time to file additional facts. This Court has noticed that the discussions made in the impugned order dated 12.12.2018 is not on the objection of *res judicata* but on the principles of amendment. It appears that the learned Court has wholly overlooked the objection of *res judicata* and has passed the impugned order.

14. There is no manner of doubt that the principle of *res judicata* is applicable

suits so as to make the provisions Section 11 of the Civil Procedure Code, applicable in terms. That the scope of the principle of res judicata is not confined to what, is contained in Section 11 but is of more general application is also not in dispute. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits..."

17. Following the principles laid down in the case of **Satyadhyan Ghosal** (supra), in the subsequent case of **U.P. State Road Transport Corporation vs. State of U.P. and Anr.**, reported in **(2005) 1 SCC 444**, the Hon'ble Supreme Court has laid down as follows:-

"11. The principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of the Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reargue the matter again at a subsequent stage of the same proceedings."

18. In a recent judgment, the Hon'ble Supreme Court in the case of **Central Bank of India and Ors. vs. Dragendra Singh Jadon** reported in **(2022) 8SCC 378**, has been laid down that the principles of *res judicata* are attracted when the subject in issue in a subsequent proceedings have directly and substantially been the subject in an earlier proceedings between the same parties in a competent Court. Further, in paragraph 16, the following has been laid down.

"16. Where an issue could have been raised in earlier proceedings, but has not been raised, the principle of constructive res judicata would be attracted to deny relief, for it is not the policy of law that multiple proceedings should be initiated in Court in relation to the same cause of



action. Where the cause of action for initiation of proceedings is a distinctive cause of action, the principles of res judicata would not apply.”

19. The learned Senior Counsel for the respondents had strenuously argued that the present petition under Article 227 of the Constitution of India is not maintainable and had cited the case of ***Shalini Shyam Shetty*** (supra). This Court is in humble agreement with the principles laid down. However, this Court is of the opinion that even by adhering to the aforesaid principles, the impugned order appears to be one wherein the relevant factors have been ignored and the same is based on factors which were not even the issue for deciding the application. This Court has also noticed that while rejecting the earlier application vide order dated 15.09.2018, neither any liberty was sought for nor the same was granted to file a fresh petition. Accordingly, the order dated 15.09.2018 had attained finality. This Court has also noticed that the contents of the two applications filed for amendment of the plaint are substantially similar. This Court has also noticed that the initial order dated 15.09.2018 was not put to any further challenge. Under those facts and circumstances, this Court is of the opinion that the impugned order dated 12.12.2018, has been passed without adhering to the principles of law and is accordingly held to be unsustainable in law. Accordingly, the order dated 12.12.2018, passed by the learned Civil Judge, Goalpara in Misc (J) Case No. 59/2018 arising out of T.S. No. 2/2016 is interfered with and set aside.

20. The Revision Petition accordingly stands allowed.

JUDGE

Comparing Assistant