



GAHC010025572023

Page No.# 1/13



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

Case No. : CRP/17/2023

NEEVA KONWAR AND ANR
W/O- LATE DEVANAND KONWAR, R/O- RUKIMINIGAON, CHINAKI PATH,
HNO. 11, P.O- KHANAPARA, P.S- DISPUR, GHY- 22, DIST- KAMRUP(M),
ASSAM

2: NANDITA KONWAR
D/O-LATE DEVANAND KONWAR
P.O- KHARGHULI
P.S- LATASIL
GHY- 781004
DIST- KAMRUP(M)
ASSA

VERSUS

KOUSTAV MONI CHANGMAI
S/O- LATE DURGESWAR CHANGMAI, R/O- NITAIPUKHURI KONWAR
GAON, NITAIPUKHURI MOUZA, P.O- NITAIPUKHURI, P.S- DEMOW, SUB
DIVISION SIVASAGAR, ASSAM, PIN- 785671,

2:ON THE DEATH OF SRI SUBUDH KONWAR HIS LEGAL HEIRS
PERMANENT R/O- NITAIPUKHURI KONWAR GAON
NITAIPUKHURI MOUZA
P.O- NITAIPUKHURI
P.S- DEMOW
SUB DIVISION SIVASAGAR
ASSAM
PIN- 785671
PRESENT R/O- USHAPUR
P.O- MORANHAT
P.S- CHARAIDEO
DIST- CHARAIDEO
ASSAM
PIN- 785690



2.1:BINA KONWAR
PERMANENT R/O- NITAIPUKHURI KONWAR GAON
NITAIPUKHURI MOUZA
P.O- NITAIPUKHURI
P.S- DEMOW
SUB DIVISION SIVASAGAR
ASSAM
PIN- 785671
PRESENT R/O- USHAPUR
P.O- MORANHAT
P.S- CHARAIDEO
DIST- CHARAIDEO
ASSAM
PIN- 785690

2.2:SANTANU KONWAR
PERMANENT R/O- NITAIPUKHURI KONWAR GAON
NITAIPUKHURI MOUZA
P.O- NITAIPUKHURI
P.S- DEMOW
SUB DIVISION SIVASAGAR
ASSAM
PIN- 785671
PRESENT R/O- USHAPUR
P.O- MORANHAT
P.S- CHARAIDEO
DIST- CHARAIDEO
ASSAM
PIN- 785690

2.3:SAMPRITI KONWAR
PERMANENT R/O- NITAIPUKHURI KONWAR GAON
NITAIPUKHURI MOUZA
P.O- NITAIPUKHURI
P.S- DEMOW
SUB DIVISION SIVASAGAR
ASSAM
PIN- 785671
PRESENT R/O- USHAPUR
P.O- MORANHAT
P.S- CHARAIDEO
DIST- CHARAIDEO
ASSAM
PIN- 785690

3:THE STATE OF ASSAM
REP. BY DEPUTY COMMISSIONER



SIVASAGAR
P.O AND P.S- SIVASAGAR
ASSAM
PIN- 785640

4:CIRCLE OFFICER
DEMOW REVENUE CIRCLE
P.O AND P.S- DEMOW
DIST- SIVASAGAR
ASSAM
PIN- 78566

Advocate for the Petitioner : MR. A SATTAR

Advocate for the Respondent : GA, ASSAM

Linked Case : CRP/19/2023

NEEVA KONWAR AND ANR
W/O. LT. DEVANAND KONWAR PRESENT R/O. RUKMINI GAON
CHINAKI PATH
HOUSE NO.11
P.O. KHANAPARA
P.S. DISPUR
GUWAHATI-781022
DIST. KAMRUP (M)
ASSAM.

2: SMT. NANDITA KONWAR
D/O. LT. DEVANAND KONWAR
P.O. KHARGHULI. P.S. LATASIIL
GUWAHATI-781004
DIST. KAMRUP (M)
ASSAM.
VERSUS

KOUSTAV MONI CHANGMAI AND 3 ORS.
S/O. LT. DURGESWAR CHANGMAI
R/O. NITAIPUKHURI KONWAR GAON
NITAIPUKHURI MOUZA
P.O. NITAIPUKHURI
P.S. DEMOW
SUB-DIVISION SIVASAGAR
ASSAM
PIN-785671.



2:ON THE DEATH OF SRI SUBUDH KONWAR

HIS LEGAL HEIRS AND SUCCESSORS-

2.1:i) SMT. BINA KONWAR (WIFE)

PERMANENT R/O. NITAIPUKHURI KONWAR GAON NITAIPUKHURI MOUZA

P.O. NITAIPUKHURI

P.S. DEMOW

SUB DIVISION SIVASAGAR

ASSAM

PIN-785671

PRESENTLY RESIDING AT- USHAPUR

P.O. MORANHAT

P.S. CHORAIDEO

DIST. CHORAIDEO

ASSAM

PIN-785690.

2.2:ii) SRI SANTANU KONWAR (SON)

PERMANENT R/O. NITAIPUKHURI KONWAR GAON NITAIPUKHURI MOUZA

P.O. NITAIPUKHURI

P.S. DEMOW

SUB DIVISION SIVASAGAR

ASSAM

PIN-785671

PRESENTLY RESIDING AT- USHAPUR

P.O. MORANHAT

P.S. CHORAIDEO

DIST. CHORAIDEO

ASSAM

PIN-785690.

2.3:iii) SMT. SAMPRITI KONWAR (DAUGHTER)

PERMANENT R/O. NITAIPUKHURI KONWAR GAON NITAIPUKHURI MOUZA

P.O. NITAIPUKHURI

P.S. DEMOW

SUB DIVISION SIVASAGAR

ASSAM

PIN-785671

PRESENTLY RESIDING AT- USHAPUR

P.O. MORANHAT

P.S. CHORAIDEO

DIST. CHORAIDEO

ASSAM

PIN-785690.

3:STATE OF ASSAM

REP. BY DEPUTY COMMISSIONER

SIVASAGAR

P.O. AND P.S. SIVASAGAR

ASSAM

PIN-785640.

4:CIRCLE OFFICER



DEMOW REVENUE CIRCLE
P.O. AND P.S. DEMOW
DIST. SIVASAGAR
ASSAM
PIN-785662.

Advocate for : MR. A SATTAR
Advocate for : S ALI (R1) appearing for KOUSTAV MONI CHANGMAI AND 3
ORS.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 15-06-2023

1. Heard Mr. A Sattar, learned for the petitioners. Also heard Mr. S Ali, learned counsel for the respondent No.1 and Ms. K Phukan, learned Government Advocate.

2. The present petition has been fled assailing an order dated 11.11.2022, whereby an application filed by the present petitioners under Order I Rule 10 (2) read with section 151 of the Code Civil Procedure seeking to be impleaded as party defendant in Title Suit No.65/2021 was rejected.

3. The background facts leading to the present petition can be summarized as follows:-

I. The respondent No.1 as plaintiff instituted one Title Suit being Title Suit No.65/2021 seeking declaration of right title and interest over the schedule suit land with a further declaration that the defendants have no legal right or authority to get the mutation and partition granted in favour of the plaintiff in respect of the suit land cancelled. A further prayer of permanent injunction was also sought against the

defendant No.1.

II. The case of the plaintiff is that the father of the plaintiff by a registered sale deed No.359 dated 23.03.1999 purchased a plot of land measuring 2 bighas out of 2 bigha, 1 katha 16 lecha covered by Dag No.514/620 of Periodic Patta No.212 from the defendant No.1.

III. According to the plaintiff, the defendant No.1 (the vendor) acquired title over the land by inheritance from his father, one Padma Kanta Konwar who died on 30.01.1996. It is also pleaded that the other brothers of the defendant have been possessing their respective shares of land separately after partition granted on the same day i.e., on 30.01.1996. Thus it is the case of the plaintiff that on 30.01.1996 the land purchased by the father of the plaintiff was partitioned among the sons of Padma Kanta Konwar and the vendor of the plaintiff who is one of the son of said Padma Kanta Konwar executed the registered sale deed on 30.01.1996.

IV. It is the case of the plaintiff that after the purchase, he possessed the land and got the land mutated in his name after creation of separate dags and patta. Now the plaintiff alleges that defendant No.1 has been trying to get the partition and mutation granted in favour of the plaintiff cancelled and has threatened that he will forcefully evict and dispose the plaintiff from the suit land. It is also case of the plaintiff that the defendant No.2 who is the Circle Officer of the Revenue Circle where the land is situated declared that the earlier Circle Officer once cancelled the mutation granted in favour of the plaintiff's father. Accordingly, the title of the plaintiff was

clouded and having threatened the suit was filed for declaration of the right title and interest on the basis of the sale deed in question and for permanent injunction.

4. In the meantime, the defendant No.1 expired and he was also duly substituted before the Trial Court and in the present proceeding also. Though notices were duly served upon the legal heirs of defendant No.1, who is respondent No.1 herein, however, none appears for them.

5. The petitioners herein are daughters in law and grand-daughters of Padma Kanta Konwar and accordingly, they claims to be inherited some land from said Padma Kanta Konwar through his son namely Devananda Konwar, who is the brother of the deceased defendant No.1.

6. The petitioners have filed the application in question i.e., under Order I Rule 10 (2) with a prayer to implead them as defendant in the suit filed by the plaintiff against deceased defendant No.1. The basic ground for seeking such impleadment is discernible from the application filed under Order I Rule 10(2) which was registered as Miss (J) Case No.67/2022 are as follows:

I. The plaintiff suppressed certain material facts that a portion of the disputed land, after purchase by the deceased father of the plaintiff from the defendant No.1, the predecessor in interest namely Devananda Konwar lodged a complaint in the office of the Circle Office Demow seeking cancellation of mutation in favour of the father of the plaintiff on the basis of the sale deed executed by the defendant No.1. According to the petitioners after a enquiry was conducted, such mutation was cancelled by an order dated 07.10.1999 in respect of the suit land.

II. It is also the case of the petitioners that the deceased father of the plaintiff and deceased defendant No.1 tried to take

possession of land from the deceased father of the petitioners. But such attempt was failed and it is also a claim that the said land has been possessed by the petitioners since the days of their predecessor in interest adversely and openly. Therefore, in the aforesaid background they claimed that they are the necessary party to the suit land as they are having a definite claim over the suit land.

7. The plaintiffs raised objection with a contention that the plaintiff is *dominus litis* and it is the plaintiff who will decide who should be made a defendant and it will depend on the relief claimed by the plaintiff and the plaintiff has not claimed any relief against the petitioners. The relief sought for against the defendant No.1, who was the vendor of the plaintiff and who was threatening to dispose and cancel his mutation. Therefore, the petitioners are not all necessary parties.

8. The learned court below after hearing the parties by the impugned order dated 11.11.2022 dismissed such petition concluding that from the perusal of the pleadings it transpires that father of the plaintiff purchased the suit land from the defendant No.1 in the year 1999 and plaintiff has been in possession of the land and has also started construction thereon. The suit land itself was partitioned in the year 1996 amongst the legal heirs of Padma Kanta Konwar including the defendant No.1 and late Devananda Konwar, the predecessor in interest of the petitioners. Therefore, the plaintiff had to file the suit against defendant no.1 for his action. Accordingly, it was also concluded that the petitioners have no right over the suit land and further the plaintiffs have not sought any relief against the petitioner.

9. Mr. Sattar, learned counsel for the petitioner assailing such order submits that the petitioners by way of filing an application under Order I

Rule 10 (2) brought to the notice of the trial Court that the petitioners are necessary parties and that the mutation in respect of the suit land was cancelled on an application filed by the predecessor in interest of the petitioners and they specifically pleaded that they are in possession of the land and they claimed title over the said land. Therefore, after such facts being brought into the notice of the trial Court it ought to have considered the fact that right title and interest over the schedule suit land cannot be declared in absence of the petitioner as defendant and such decree shall affect the right of the petitioners. It is further contended that the learned trial Court could not have decided in an application under Order I Rule 10(2) regarding the title or right of the petitioners and such determination can be made in the suit itself or in a separate suit. Therefore, the learned trial Court exceeded its jurisdiction in holding the sale deed to be valid, the partition order to be valid and holding that the petitioners are having no right over the aforesaid land.

10. Per contra, Mr. S Ali learned counsel submits that law is by now well settled that the plaintiff is a *dominus litis* and it is the plaintiff who will have the absolute right to decide who shall be made a party. Therefore, the learned trial Court has not committed any such error not to say jurisdictional error to entertain such a revision petition under Article 227 of the Constitution of India.

11. Mr. Ali further contends that it is also a well settled principle that the plaintiff cannot be compelled to sue a person against whom he does not claim any relief. In the given facts of the present case, the plaintiff has not sought any relief against the petitioner inasmuch as, it is not the claim that the petitioners are in possession and the plaintiff wants recovery of possession from them. If non adding them as a party defendant results defeat of the right of the plaintiff, it is up to the plaintiff to make the

petitioners a party or not. The consideration that decree will not be executable in absence of the present petitioners, cannot be a ground to add them as a party defendant.

12. It is further contended by Mr. Ali that the court is to look into whether in absence of the petitioners the adjudication can be made effectually and completely upon the issues to be determined in the suit. In the suit the plaintiff claims title on the basis of her registered sale deed executed by the deceased defendant No.1 and it is the specific case of the plaintiff that the respondent/defendant No.1 was threatening the plaintiffs and such action has given the cause of action to file suit. Therefore, to adjudicate the title on the basis of the sale deed executed by the defendant No.1 and his threatened dispossession, the presence of the petitioners are not necessary.

In support of such contention Mr. Ali relies on the decision of the Hon'ble Apex Court in the case of ***Canara Bank Vs. Joboka Woods Private Limited*** reported in ***1991 (2) GLJ 374***, ***Kasturi Vs. Iyyamperumal and Ors*** reported in ***(2005) 6 SCC 733***, ***Ved Mitra Verma Vs. Dharma Deo Verma & Anr*** reported in ***2007 (3) GLT 191***, ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & Others***, reported in ***(1992) 2 SCC 524*** and ***Sudhir Ranjan Chakraborty and Others Vs. Ashis Upadhyay and Others*** reported in ***2010 4 GLR 591***.

13. This court has given anxious considerations to the arguments advanced by the learned counsel for the parties and also perused the pleadings that has been made in the plaint as well as the application under Order I Rule 10(2) CPC and the objection filed therein.

14. From the judgments that has been relied upon by Mr. Ali, the following principles of law can be culled out.

- I. The plaintiff is a *dominus litis* and cannot be compelled to fight against a person against who he does not want to fight

and against who he does not have any relief

II. While considering a petition under Order I Rule 10(2) CPC for addition of party, the court is to satisfy itself that the person who is sought to be added as party ought to have been joined as a party. Such satisfaction should be based on two consideration, one is, whether he is necessary party or proper party.

III. A necessary party is a party in absence of whom the suit cannot be completely decided.

IV. A party is required to be added when he ought to have been joined as plaintiff or defendant and is not joined or when without his presence the questions in the suit cannot be completely decided.

V. A presence of party shall also be necessary when the same will enable the court to effectively and completely adjudicate upon the settle all the questions involve in the suit.

VI. In case of proper party it is a party in whose absence though, an effective order can be made but whose presence is necessary for a complete and final decision on the question involve in the proceeding.

15. Now in the view of the aforesaid settled propositions of law, this Court is to answer whether the present petitioners are required to be added as parties in the given facts of the case.

16. From the facts as summarized and discussed herein above, it is clear that the plaintiff has claimed right over the suit property by virtue of a registered sale deed executed by the deceased defendant No.1, who according to the plaintiff, in turn acquired such right to transfer by

inheritance from his father Padma Dhar.

17. On the other hand, the case of the petitioner is that their predecessor in interest Debananda Konwar is the brother of the defendant No.1 and earlier there was a dispute as regards the suit property which involves cancellation of mutation of the plaintiff on the application of said Debananda Konwar. They also claimed right over the suit land by virtue of inheritance from Padma Dhar to Debananda Konwar and from Debananda Konwar to the present petitioners and they further claimed that they have possession over the portion of the suit land.

18. In view of such dispute raised by the defendant, in the considered opinion of this Court in absence of the defendant the suit cannot be completely decided and the presence of the petitioners shall enable the court to effectively and completely adjudicate upon and settled all questions involved in the suit. Therefore, in the considered opinion of this court, the learned court has committed a patent illegality by passing the order in ignorance of settled proposition of law as discussed herein above. In fact the learned trial court has exceeded in its jurisdiction and came to certain conclusion regarding the right title of the petitioner inasmuch as, such determination cannot be made in an application under order 1 Rule 10(2) CPC.

19. The learned Trial Court shall implead the petitioners as defendants in Title Suit No.65/2021 and as opposite parties in Misc (J) Case No.69/2021.



20. In the aforesaid terms, the present petitions are allowed.

JUDGE

Comparing Assistant